



**State of West Virginia
West Virginia Board of Pharmacy
Prescription Monitoring Program**

Solicitation Number CRFQ 0913 PHB180000001



08/03/17 12:55:01
WV Purchasing Division

**Technical Proposal Original
August 1, 2017**

REQUEST FOR QUOTATION
[Prescription Monitoring Software]

Title Page

Mahantech Corporation
405 Capitol Street,
Suite 101,
Charleston,
West Virginia 25301
USA
Telephone: 304 720 2246
Fax: 304 720 2247
www.mahantech.com




Channa Arjuna
President

carjuna@mahantech.com

August 1, 2017

REQUEST FOR QUOTATION [Prescription Monitoring Software]

	Purchasing Division 2019 Washington Street East Post Office Box 50130 Charleston, WV 25305-0130	State of West Virginia Request for Quotation 34 - Service - Prof
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Proc Folder: 348608 Doc Description: Prescription Monitoring Program. Proc Type: Control Order Agreement			
Code Issued	Submission Class	Submission No	Version
2017-07-18	2017-08-03 13 3500	CRFO 013 (0012000003)	1

BID RECEIVING LOCATION BID CLERK DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION 2019 WASHINGTON ST E CHARLESTON WV 25305 JR	
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VENUE Vendor Name, Address and Telephone Number: Mahantech Corporation 405 Capitol St, Ste 101, Charleston, WV 25301 Phone: 304-720-2266 Fax: 304-720-2267
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FOR INFORMATION CONTACT THE BUYER: Melissa Patney (304) 568-0084 melissa.k.patney@wv.gov		
Signature: 	PHONE 34-1861587	DATE August 3, 2017

REQUEST FOR QUOTATION [Prescription Monitoring Software]

ADDITIONAL INFORMATION

Central Request for Quotation (CRFQ)

The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Board of Pharmacy to establish a contract for the one-time purchase of a Prescription Monitoring Program per the attached bid requirements, specifications and terms and conditions.

BUYER TO	SELLER TO
BOARD OF PHARMACY 2310 KANAWHA BLVD E CHARLESTON WV25311 US	BOARD OF PHARMACY 2310 KANAWHA BLVD E CHARLESTON WV 25311 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Prescription Monitoring Program Database	0.00000	LS		

Comm Code	Manufacturer	Specification	Model #
81111507			

Extended Description :

Comprehensive Controlled Substance Monitoring Program for the WV Board of Pharmacy with migration of historical data and transfer of user accounts. This includes a database management system, with hosting of the database, collection and loading of data, providing access for authorized users and customer support. Also providing system tools to query the database, assist with and modify user accounts and monitor CSMP activities.

BUYER TO	SELLER TO
BOARD OF PHARMACY 2310 KANAWHA BLVD E CHARLESTON WV25311 US	BOARD OF PHARMACY 2310 KANAWHA BLVD E CHARLESTON WV 25311 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Implementation and Installation to Acceptance	0.00000	LS		

Comm Code	Manufacturer	Specification	Model #
81111507			

Extended Description :

Implementation and Installation to Acceptance; and First Year Maintenance and Support/Warranty/Hosting

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INVOICE TO		SHIP TO	
BOARD OF PHARMACY 2310 KANAWHA BLVD E		BOARD OF PHARMACY 2310 KANAWHA BLVD E	
CHARLESTON	WV25311	CHARLESTON	WV 25311
US		US	

Line	Comm Ln Desc	Qty	Unit Issues	Unit Price	Total Price
3	Year 2 Maintenance, Support/ Warranty/Hosting	0.00000	YR		

Comm Code	Manufacturer	Specification	Model #
81111507			

Extended Description :
Second Year Maintenance and Support/Warranty/Hosting

INVOICE TO		SHIP TO	
BOARD OF PHARMACY 2310 KANAWHA BLVD E		BOARD OF PHARMACY 2310 KANAWHA BLVD E	
CHARLESTON	WV25311	CHARLESTON	WV 25311
US		US	

Line	Comm Ln Desc	Qty	Unit Issues	Unit Price	Total Price
4	Year 3 Maintenance, Support/ Warranty/Hosting	0.00000	YR		

Comm Code	Manufacturer	Specification	Model #
81111507			

Extended Description :
Third Year Maintenance and Support/Warranty/Hosting

INVOICE TO		SHIP TO	
BOARD OF PHARMACY 2310 KANAWHA BLVD E		BOARD OF PHARMACY 2310 KANAWHA BLVD E	
CHARLESTON	WV25311	CHARLESTON	WV 25311
US		US	

Line	Comm Ln Desc	Qty	Unit Issues	Unit Price	Total Price
5	Year 4 Maintenance, Support/ Warranty/Hosting	0.00000	YR		

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Comn Code	Manufacturer	Specification	Model #
01111507			

Extended Description :
Fourth Year Maintenance and Support/Warranty/Hosting

INVOICE TO		BICP TO	
BOARD OF PHARMACY 2310 KANAWHA BLVD E		BOARD OF PHARMACY 2310 KANAWHA BLVD E	
CHARLESTON	WV25311	CHARLESTON	WV 25311
US		US	

Line	Commo Lin Desc	Qty	Unit Issue	Unit Price	Total Price
0	Additional Professional Services Support Hours	0.00000	HOOR		

Comn Code	Manufacturer	Specification	Model #
01111507			

Extended Description :
Additional Professional Services Support Hours

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ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

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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.

Channa M Arjuna, President

(Name, Title)

CHANNA ARJUNA President

(Printed Name and Title)

409 Capitol St., Ste 101, Charleston, WV 25301

(Address)

(304) 720-2246 / (304) 720-2247

(Phone Number) / (Fax Number)

carjuna@mahantech.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.

MAHANTECH CORP

(Company)



Channa M Arjuna, President

(Authorized Signature) (Representative Name, Title)

CHANNA ARJUNA PRESIDENT

(Printed Name and Title of Authorized Representative)

05/02/2017

(Date)

(304) 720-2246 / (304) 720-2247

(Phone Number) (Fax Number)

Revised 07/07/2017

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Mr. Michael Goff
Acting Director
West Virginia Board of Pharmacy
2310 Kanawha Boulevard East
Charleston, WV 25311

C/O

Melissa Pettrey,
Buyer
Department of Administration,
Purchasing Division,
2019 Washington Street East,
Charleston, WV 25305

Dear Mr. Goff,

Re: Mahantech's response to the State of West Virginia and the West Virginia Board of Pharmacy RFQ: CRFQ 0913 PHB1800000001 for a Prescription Monitoring Program.

Background

Mahantech Corporation is pleased to submit this proposal in response to the Request for Quotation CRFQ 0913 PHB1800000001 for a Prescription Monitoring Program. We have thoroughly reviewed your request and have prepared a submission that meets or exceeds all requirements for this invaluable and critical tool for Physicians, Pharmacists, Law Enforcement and State Agencies.

Mahantech is proud of the long-term relationship we have built with the Board of Pharmacy. Over the last thirteen years, we have been privileged to demonstrate our commitment to the goals and mission of the Board of Pharmacy in the task of reducing drug abuse and diversion. Our proposal will speak to our strong Prescription Monitoring experience and our ability to adapt and to react to critical changes with minimum response time. We are committed to meeting or exceeding your needs and expectations every day.

While both the Board and yourself are very familiar with our company, we would take a moment remind you of our journey together. Mahantech Corporation is an **SBA recognized Small Minority Owned Business** that has been based in **Charleston, West Virginia** since 1998. In 2003, the company became an early entrant in the specialty area of Controlled Substance Prescription Data Management and Pseudo Ephedrine product reporting with its product RxDataTrack. We initially worked with the Board of Pharmacy to migrate early datasets from Microsoft Access to Microsoft

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SQL databases. We then introduced the first of many generations of RxDataTrack, our PMP (Prescription Monitoring Program) software. RxDataTrack is an electronic database and reporting tool which collects designated data on controlled substances dispensed both within the State of West Virginia or controlled substances provided by pharmacies in other states to West Virginia residents. This product was designed using programming methodologies that allow the utmost flexibility to make rapid changes to meet the changing needs of the client agencies.

As a tool to address prescription drug abuse, addiction and diversion, RxDataTrack serves supports multiple capabilities including:

1. To provide data to counteract the CDC key identifier of prescriber and dispenser shopping as an indicator of prescription drug misuse/abuse.
2. To support access to legitimate medical use of controlled substances.
3. To identify and deter or prevent drug abuse and diversion.
4. To facilitate and encourage the identification, intervention with and treatment of persons addicted to prescription drugs.
5. To inform public health initiatives through outlining of use and abuse trends.
6. To educate individuals about PDMPs and the use, abuse and diversion of and addiction to prescription drugs.

Our system is designed to operate in near real-time allowing for better decision making by Prescribers and Dispensers and more efficient use in drug diversion intervention efforts. CSAPP/RxDataTrack gives instant access to data for individuals who are authorized under state law to receive the information for purposes of their profession.

Opioid Abuse and Prevention

We recognize that the challenges faced by the Board of Pharmacy in participating in the mission to combat Opioid addiction, abuse and the resulting diversion of controlled substances can only be met by the sharing and coordination of useable data. Reliance solely on controlled prescription dispensing data is no longer sufficient. It now requires a multi-faceted approach on a more global perspective to include Wholesale Supplier data, anti-opioids distribution, overdose statistics and much more. Mahantech Corporation will work closely with the WVBOP to assist in tracking and integrating these differing data sources into meaningful tools.

Data Center

Under the new PMP hosting model for the Board of Pharmacy, we shall move the existing nineteen operational databases (with their corresponding 15,000+ datasets) that comprise CSAPP/RxDataTrack from the current state data center to our secure hosting facility in a designated data center where it will be managed by Mahantech Corporation.

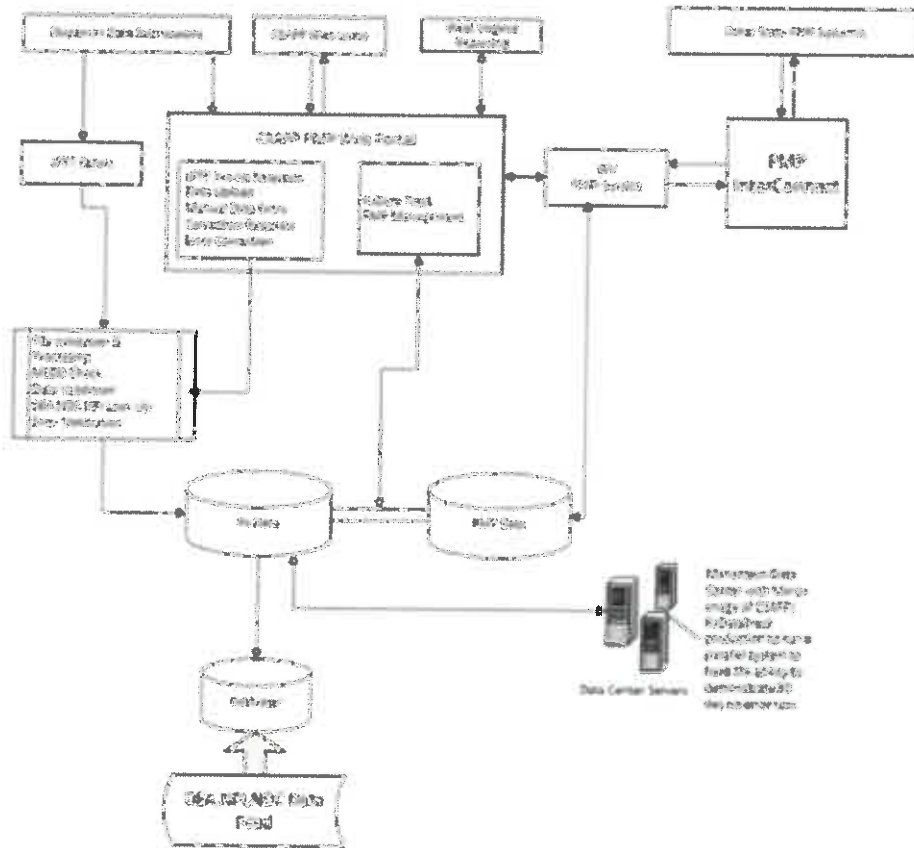
We intend to relocate our Corporate Data Center IT support services in a collocation environment with our partner Alpha Technologies LLC. Alpha Technologies is a **West Virginia Service Disabled Veteran Owned Small Business** located in South Charleston. This data center is the only HIPAA certified data center in West Virginia and already supports a number of West Virginia corporate and state entities including regional hospitals plus large national contracts. This center provides full hosting services that will meet or exceed the requirements of this contract:

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- 80,000 sq ft data center
- Redundant commercial power feeds supplied by four diverse power supplies,
- Backup up power including diverse battery systems and multiple megawatt generators
- Cooling is provided by 3 diverse chillers
- Internet connectivity will be provided by multiple providers via a load balanced connection. So, if one provider has an issue, the service itself will remain unchanged as the other providers will assume the load and keep the connection up and working.
- Multiple telecommunication service providers with diverse paths into DC1
- Separate fire detection zones coupled with Halon fire suppression and dry-pipe water system
- The only data center in West Virginia with the following certifications/accreditations:

HIPAA- HiTech PCI -DSS
SSAE16 SOC 1/2
ISO27001 FISMA
LEED certification pending

The fiber optic connection between the Data Center and the State Capitol should allow the Board of Pharmacy to connect via high speed connections.



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Transition Plan

Mahantech Corporation, with its product CSAPP/RxDataTrack, offers the West Virginia Board of Pharmacy and the state of West Virginia a **Low To No Risk** transition to a new contract.

The challenge:

- The RFQ requires that after notice to proceed, the Agency will not formally accept the System until operational without failure for thirty consecutive days.
- During that thirty days the data is **dynamic** and constantly changing. Even “historic” data is changing with updates, changes and additions.
- Every thirty days, the system (CSAPP/RxDataTrack) receives and processes 500,000+ new pieces of data.
- This data is then delivered back to the 250,000 report requests that the system receives and processes during those same 30 days.
- More than 350 active sFTP accounts are being used by both chain pharmacies and individually owned stores to submit data electronically to an IP address or to sFTP server domain address.
- All data submitters will be required to make changes to their hardware and programming changes to software to meet the new contract requirements in order to submit to a new IP address or a new website address.

Our solution to this challenge:

Should Mahantech Corporation be selected and given the notice to proceed under this RFQ:

- Operate parallel systems during the 30 to 90-day pre-approval testing prior to formal acceptance. We will treat our data center as an additional data back-up center so as to maintain the integrity of the production databases. It is a straight forward process to transition the users and data to our data center since there is no data conversion or data re-structuring for the 19 databases and the 15,000+ datasets in the current system or 50 million active records currently in production.
- During the critical change over period from post-acceptance to operational, assist the Board of Pharmacy as it coordinates the use of a new name with its constituents/ users to inform all Pharmacies, Dispensing Prescribers and reporting entities that data needs to be re-directed to a new domain name/website of the data center.
- Move all operational and communication email accounts from .gov to the new domain
- Mahantech Corporation stands ready to standup the system and databases under this contract in the data center. Upon notice to proceed, we can run in parallel for 30 days and then commence on January 1, 2018 (this assumes a start date based upon our existing contract).

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As residents of the State of West Virginia, we at Mahantech Corporation have a vested interest in the ongoing campaign to counteract opioid abuse in the State. Mahantech Corporation will provide a WV PMP system that meets or exceeds all of the stated requirements. Mahantech acknowledges the Bid Bond and will provide same upon notice of award.

We appreciate the opportunity to continue to serve the West Virginia Board of Pharmacy.

If you have any questions or require further information, please do not hesitate to contact us at 304 610 3720 or email to carjuna@mahantech.com

Sincerely,



Channa Arjuna
President
Mahantech Corporation

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SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Board of Pharmacy (WVBOP) to establish a one-time contract for a Prescription Monitoring Program.

All of the data in the database shall belong to WVBOP

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in Section 2 of the General Terms and Conditions.

- 2.1 **"Contract Services"** means Use and Support for Prescription Monitoring Software as more fully described in these specifications.
- 2.2 **"Pricing Page"** means the pages, contained wvOASIS or attached hereto as Exhibit A, upon which Vendor should list its proposed price for the Contract Services.
- 2.3 **"Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 2.4 **"DEA"** means Drug Enforcement Administration
- 2.5 **"NDC"** means National Drug Code
- 2.6 **"NPI"** means National Provider Identifier
- 2.7 **"PMP"** means Prescription Monitoring Program
- 2.8 **"PMPI"** means Prescription Monitoring Program Interconnect
- 2.9 **"Schedule II, III and IV Controlled Substances"** means drugs, substances or immediate precursors listed in the Chapter 60A WV Controlled Substances Act
- 2.10 **ASAP"** means American Society for Automation in Pharmacy
- 2.11 **CSAPP/RxDataTrack** (Controlled Substance Automated Prescription Program/RxDataTrack) means the Prescription Monitoring Program and the system software.

3. QUALIFICATIONS: Vendor, or Vendor's staff if requirements are inherently limited to individuals rather than corporate entities, must meet the following minimum qualifications:

3.1 The Vendor must be currently providing and managing a comprehensive, large-scale prescription monitoring program for at least one state PMP, continuously for the three-year period immediately prior to the date of this Solicitation.

Prior to the date of this Solicitation, Mahantech Corporation has provided a comprehensive large-scale prescription monitoring program for the state of West Virginia continuously for a period of twelve years. The program name is CSAPP (Controlled Substance Automated Prescription Program and the software is RxDataTrack).

3.2 The Vendor shall have a current connection to the multi-state PMP data sharing hub PMP Interconnect.

Mahantech Corporation, as part of its pmp/software product CSAPP/RxDataTrack, maintains a copy of PMPi Interconnect v4 providing a current connection to the multi-state PMP data sharing hub PMP Interconnect.

3.3 The Vendor shall have the ability to perform multi-state PMP data query and retrieval, to include at least the states of Virginia, Ohio, Kentucky, Maryland, Pennsylvania, Connecticut, Indiana, Arizona, Nevada, Kansas, Massachusetts, New York, Colorado, South Carolina, Rhode Island, North Dakota, Minnesota and New Mexico.

Mahantech Corporation's with the CSAPP/RxDataTrack solution currently has the ability to perform multi-state PMP data query and retrieval, to include the states of Virginia, Ohio, Kentucky, Maryland, Pennsylvania, Connecticut, Indiana, Arizona, Nevada, Kansas, Massachusetts, New York, Colorado, South Carolina, Rhode Island, North Dakota, Minnesota, New Mexico, Tennessee, District of Columbia, Arkansas and New Jersey

4. DELIVERABLES: The Vendor meeting all of the above qualifications will provide a WV PMP system that provides all of the stated requirements.

Mahantech will meet all of the above qualifications and will provide a WV PMP system that provides all of the stated requirements.

5. MANDATORY REQUIREMENTS

5.1 Mandatory Contract Services Requirements and Deliverables: Contract Services must meet or exceed the mandatory requirements listed below.

5.1.1 PRESCRIPTION MONITORING SOFTWARE AND SERVICES

GENERAL

5.1.1.1 The system must be web-based (no dedicated client-side component) with graphical Internet interfaces for all users and browser agnostic to include standard browsers.

CSAPP/RxDataTrack is web-based (no dedicated client-side component) with graphical Internet interfaces for all users and browser agnostic to include all standard browsers.

5.1.1.2 The system must provide database management, including hosting of the database, collection and loading of data and providing access for authorized users.

CSAPP/RxDataTrack will provide database management, including hosting of the database in a data center, collection and loading of data and provide access for authorized users. The data center is located in Charleston, WV.

5.1.1.3 The system website must include a home page, which is branded with WVBOP information, and can be modified by WVBOP staff.

CSAPP/RxDataTrack website will provide a homepage, in consultation with the West Virginia Board of Pharmacy, branded with their information with the capability for their staff to update and modify elements of the page with changing relevant information.

5.1.1.4 The system must not use Pop-up windows to communicate messages.

CSAPP/RxDataTrack does/will not use Pop-up windows to communicate information or messages.

5.1.1.5 The system must be able to autofill and auto-populate NDC and DEA related data.

CSAPP/RxDataTrack is able to auto-fill and auto-populate NDC and DEA related data.

5.1.1.6 The system must ensure name fields are in proper case (upper/lower).

CSAPP/RxDataTrack does ensure name fields are in proper upper/lower case.

5.1.1.7 Provide comprehensive user's manuals, documenting all database structure, relationships between tables and database dictionary. Include instructions for all administrative functions (e.g. user management, password management, role/profile management, etc.).

Mahantech shall provide comprehensive user's manuals, documenting database structure, relationships between tables and database dictionary. Manual includes instructions for all administrative functions (e.g. user management, password management, role/profile management, etc.).

5.1.1.8 The system must permit administrator to assign user level permissions.

CSAPP/RxDataTrack permits administrators to assign user level permissions. All users are assigned Board of Pharmacy pre-defined roles per their job title or user account type. These roles can be added or deleted at the discretion of the WVBOP administrator.

5.1.1.9 The system must permit administrators to create their own ad-hoc reports, to include ability to map and graph data based on any fields within data sets.

CSAPP/RxDataTrack shall permit administrators to create their own ad-hoc reports, to include the capability to map and graph data based on any fields within data sets.

5.1.1.10 The system must have online registration for users, with capabilities to upload related document(s.)

CSAPP/RxDataTrack has online registration for users. At the conclusion of the registration process, users will have the option to choose the method of supporting documentation submission to include the capability to upload related documents.

5.1.1.11 The system must have capabilities to utilize data from DEA for license verifications.

CSAPP/RxDataTrack has the capability to utilize data from DEA for license verifications.

5.1.1.12 The system must provide support and maintenance for all PMP user accounts.

CSAPP/RxDataTrack provides support and maintenance for all PMP user accounts.

5.1.1.13 The system must provide support and maintenance of connections to the PMPi interstate data sharing hub, including adding new states as needed and maintaining any PMPi version updates/modifications.

CSAPP/RxDataTrack supports and maintains connections to the PMPi interstate data sharing hub, including the addition of new states as available, approved by WVBOP and needed. We also maintain PMPi version updates/modifications.

5.1.1.14 Must have capabilities to interface with data from WVBOP license registrations and other licensing boards (license verifications).

We will make our best effort to interface with data from WVBOP license registrations and other licensing boards (license verifications) as required. To achieve these interfaces requires receiving more detailed information regarding: 1. Details of the function, interface and data structure of the selected WVBOP license registration product after the award of solicitation PHB180000001 (which was in the procurement process for the Board of Pharmacy. 2. additional detail of the license systems of the other Boards (not detailed in this RFQ). Once we have received details such as functionality, interface and data structure, we can better determine level of effort to meet this requirement.

USER ACCOUNTS

5.1.1.15 Each user account must have a unique user id/password combination.

Each user account has a unique user id/password combination created upon account set-up. Password resets are required each 90 days.

5.1.1.16 Email verification must be performed during registration.

Email verification is performed during registration.

5.1.1.17 Security questions must be selected from a list by users.

Security questions are selected from a pre-determined list by users.

5.1.1.18 Passwords must expire on scheduled intervals.

Passwords expire on 90 day scheduled intervals. This schedule is set but can be changed at the request of WVBOP.

5.1.1.19 Change password opportunity for users to change their password at each logon

Change password opportunity is available for users to change their password at each logon.

5.1.1.20 Automatic expiration of password with prior warning.

The system has an automatic expiration of password with prior warning. A notice appears with a countdown upon login.

5.1.1.21 Notification of password expiration ahead of time with number of days password is still valid.

A notification of password expiration is displayed with number of days until password expires and is displayed upon User login.

5.1.1.22 Self-service password reset for users who successfully answer pre- set security questions or email a link to reset password.

Self-service password reset is available for users who successfully answer pre- set security questions or to an email sent to a link to reset password is available.

5.1.1.23 System lockout after three failed login attempts. Locking account with email notification for reporting and unlocking ability.

The system currently locks out after three failed login attempts. Notification is made via email for reporting and unlocking. WVBP can also review all locked accounts via a dashboard report at any time to view reason for lock-outs.

5.1.1.24 Track, record and timeout illegal attempts at system access.

CSAPP/RxDataTrack tracks, records and times out illegal attempts at system access. A full audit trail is recorded and saved.

5.1.1.25 User access is controlled by the role assigned to the user.

User roles are assigned per pre-determined roles assigned by WVBP. User access is controlled by the role(s) assigned to the user.

5.1.1.26 Users are able to save and print a confirmation, that indicates that they have an active CSMP account, the current date, the date created and specific user information.

Users are able to save and print a confirmation certificate to demonstrate that they have an active CSMP account. This certificate details Name, DEA number, License Number, Date of Enrolment with CSAPP/RxDataTrack, Account Active/Non-Active, Issue Date of certificate.

SECURITY TO INCLUDE THE FOLLOWING:

5.1.1.27 Vendor must ensure all network traffic is encrypted using SSL or stronger.

All network traffic is currently encrypted using SSL.

5.1.1.28 The system must not use proprietary encryption techniques.

CSAPP/RxDataTrack does not use proprietary encryption techniques.

5.1.1.29 The standard for exchange of data within the system must be a secure hypertext transport protocol or https.

The standard for exchange of data within CSAPP/RxDataTrack is a secure hypertext transport protocol or https.

5.1.1.30 Must Identify and log attempted illegal access at place of occurrence and at system level.

CSAPP/RxDataTrack identifies and logs attempted illegal accesses at place of occurrence and at system level.

5.1.1.31 Must Maintain transaction log (including edits and deletions) for the entire system.

CSAPP/RxDataTrack maintains transaction log (including edits and deletions) for the entire system.

5.1.1.32 Must Maintain a system access (log in/out history by client, server and database locations) with time stamp.

CSAPP/RxDataTrack maintains a system access (log in/out history by client, server and database locations) with time stamp.

5.1.1.33 Must have the ability to limit access to a minimum of these levels (Screens, Reports, Applications, Menus, Fields).

CSAPP/RxDataTrack has the ability to limit access to a minimum of these levels (Screens, Reports, Applications, Menus, Fields).

WORKFLOW TOOLS

5.1.1.34 System must permit WVBOP administrators to generate e-mails, alerts and labels, to notify users about timelines, flags, workflow, tasks or other information.

CSAPP/RxDataTrack permits WVBOP administrators to generate e-mails,

alerts and labels, to notify users about timelines, flags, workflow, tasks or other information and can select by ALL users or by subset determined by user type or title.

5.1.1.35 WVBOP administrators must be able to select recipients of notifications by user type.

WVBOP administrators are able to select recipients of notifications by user type and title.

5.1.1.36 System must have the ability to track tasks, notifications, flags and any other workflow data, including to scheduled start date, scheduled end date and who received notices.

CSAPP/RxDataTrack will have the ability to track and record tasks, notifications, flags and any other workflow data, including to scheduled start date, scheduled end date and who received notices.

SYSTEM DESIGN

5.1.1.37 Must have editing, coding, and validation routines to minimize data entry errors and enforce data entry consistency (e.g. pick-lists, drop-down boxes, or other easy-to-use options to assist users in correctly entering data)

CSAPP/RxDataTrack has editing, coding, and validation routines to minimize data entry errors and enforce data entry consistency (e.g. pick-lists, drop-down boxes, or other easy-to-use options to assist users in correctly entering data). This utilizes a proprietary add-on software for manual data entry and reporting, RxDataFlow. In addition to the standard data entry, it maintains its own dataset to pre-populate manual data submissions reducing the repetitive user specific data and the number of keystrokes necessary to submit a manual report. This *potentially* also allows for non-DEA certified entities to report other required substances such as Naloxone products, to include regional agencies and first responders.

5.1.1.38 Must have a consistent look/feel (for navigation and use) among modules within system.

CSAPP/RxDataTrack has a consistent look/feel (for navigation and use) among the modules within system.

5.1.1.39 Must accommodate at least ten thousand (10,000) queries per day and must be scalable for future demand without system performance degradation.

CSAPP/RxDataTrack accommodates at least ten thousand (10,000) queries per day and is scalable for future demand without system performance degradation.

5.1.2 CONTRACTUAL REQUIREMENTS

DATA COLLECTION FROM DISPENSERS

5.1.2.1 Data shall be collected by the Vendor in the ASAP 4.2 format, or latest approved version, established by the American Society for Automation in Pharmacy in its ASAP Rules Based Implementation Guide for Prescription Monitoring Programs. For details and examples please consult the ASAP Rules Based Standard Implementation Guide for Prescription Monitoring Programs, Version 4, Release 2. This document is available from the American Society for the Automation in Pharmacy (www.asapnet.org). The Vendor shall be able to receive the electronic data from dispensers via secure email, Secure FTP, Virtual Private Network (VPN), SSL Website and any other agreed upon media.

Data is collected by the Mahantech Corporation in the ASAP 4.2 format, or latest approved version, established by the American Society for Automation in Pharmacy in its ASAP Rules Based Implementation Guide for Prescription Monitoring Programs. Mahantech Corporation is able to receive the electronic data from dispensers via secure email, Secure FTP, Virtual Private Network (VPN), SSL Website and any other agreed upon media.

5.1.2.2 The Vendor shall prepare and provide to all users any instructions needed to comply with the reporting requirements, including technical assistance. WVBOP reserves the right to review and approve any communication prior to it being distributed to dispensers. WVBOP will provide the Vendor with a list of dispensers required to report, which will include the dispensers' names and addresses. There are approximately 1,500 dispensers that may be required to report to the program. The composition of the dispensers currently includes approximately 700 in-state pharmacies, 600 out-of-state pharmacies and approximately 200 dispensing physicians.

Mahantech Corporation prepares and provides to all users any instructions needed to comply with the reporting requirements, including technical assistance.

5.1.2.3 The Vendor shall collect prescription data from all dispensers for Schedule II, III and IV Controlled Substances, as well as any other products required by the WVBP, such as opioid antagonists or other substances required by West Virginia State law.

Mahantech Corporation collects prescription data from all dispensers for Schedule II, III and IV Controlled Substances, as well as any other products required by the WVBP, such as opioid antagonists or other substances required by West Virginia State law.

5.1.2.4 The Vendor shall collect all prescription data from all dispensers at least daily. The Vendor shall document receipt of each data transmission from a dispenser, and provide acknowledgement to the dispenser of receipt of data transmission.

Mahantech Corporation collects all prescription data from all dispensers at least daily. Mahantech Corporation shall document receipt of each data transmission from a dispenser, and provide acknowledgement to the dispenser of receipt of data transmission.

5.1.2.5 The Vendor must be able to receive electronic prescription information transmitted directly from dispensers, seven (7) days a week, and twenty-four (24) hours per day, three hundred sixty-five (365) days per year.

Mahantech Corporation is able to receive electronic prescription information transmitted directly from dispensers, seven (7) days a week, and twenty-four (24) hours per day, three hundred sixty-five (365) days per year.

5.1.2.6 The Vendor shall accept a report of no (or zero) prescriptions issued in a given time period and generate and deliver a report of those submissions

Mahantech Corporation accepts a report of no (or zero) prescriptions issued in a given time period and generate and deliver a report of those submissions

5.1.2.7 Dispensers under common ownership must be permitted to submit their data in a single, joint transmission, provided each dispenser is clearly identified for each prescription dispensed. The Vendor is responsible for monitoring that each dispenser has submitted data on the required schedule, and for notifying both the dispenser and WVBOP of any failure to submit.

Dispensers under common ownership are permitted to submit their data in a single, joint transmission, provided each dispenser is clearly identified for each prescription dispensed. Mahantech Corporation is responsible for monitoring that each dispenser has submitted data on the required schedule, and for notifying both the dispenser and WVBOP of any failure to submit. In the event of failure to submit, following a predetermined schedule, email reminders are sent to the dispenser concerned. Failure to respond after this period is exceeded results in an escalation to WVBOP with a Delinquent Dispenser report.

5.1.2.8 The Vendor shall perform data checks to ensure that the data submitted is accurate and complete. The Vendor must ensure the presence of data in 100% of the patient name and address, and date filled fields, and in 97% of the other required fields, and that data in all required fields are valid, e.g., the dispensing date must be greater than the date of birth but less than or on the current date.

Mahantech Corporation performs data checks to ensure that the data submitted is accurate and complete. Mahantech Corporation ensures the presence of data in 100% of the patient name and address, and date filled fields, and in 97% of the other required fields, and that data in all required fields are valid, e.g., the dispensing date must be greater than the date of birth but less than or on the current date. We perform checks for mandatory fields, data validation and data normalization.

5.1.2.9 If a data file submitted by a dispenser does not meet the established threshold for accuracy and completeness of data, the Vendor shall be responsible for notifying the dispenser, specifying the problem with the data, and ensuring that the data is corrected and resubmitted by the dispenser. If the data is not corrected and returned by any WVBOP established deadline, the Vendor shall report this to WVBOP.

If a data file submitted by a dispenser does not meet the established threshold for accuracy and completeness of data, Mahantech Corporation is responsible for notifying the dispenser, specifying the problem with the data, and ensuring that the data is corrected and resubmitted by the dispenser. If the data is not corrected and

returned by any WVBOP established deadline, Mahantech reports this to WVBOP.

5.1.2.10 The Vendor shall allow dispensers to submit corrected data and display the corrected data with a notice that the data has been corrected.

Mahantech allows dispensers to submit corrected data and display the corrected data with a notice that the data has been corrected.

5.1.2.11 The Vendor shall provide a method for WVBOP staff to produce reports, on demand or scheduled, displaying information about all uploads by a dispenser, including contact information for each dispenser and the reported date ranges of the submission.

Mahantech provides a method for WVBOP staff to produce reports, on demand or scheduled, displaying information about all uploads by a dispenser, including contact information for each dispenser and the reported date ranges of the submission.

5.1.2.12 The Vendor shall provide a method for WVBOP staff to sort and view the upload history of a dispenser by timeframe, number of prescription errors, zero reports filed, late submissions and trends.

Mahantech Corporation shall provide a method for WVBOP staff to sort and view the upload history of a dispenser by timeframe, number of prescription errors, zero reports filed, late submissions and trends.

5.1.2.13 The Vendor shall convert and store the most recent five (5) years of data from the current PMP system, maintained by Mahantech Corporation.

Mahantech Corporation shall convert and store the most recent five (5) years of data from the current PMP system, maintained by Mahantech Corporation.

5.1.2.14 Data collected from the dispensers by Mahantech Corporation shall include for each prescription submitted, the following information, at a minimum:

General Reporting Requirements

- a. Dispenser Information
 - DEA registration number
 - Name
 - Full address, including, city, state and zip code
- b. Patient Information;

- Last name
 - First name
 - Full Address, including city, state and zip code
 - Date of birth
 - Gender
 - Identification number (if available)
- c. Person Picking Up (if different than patient) Information
- Last name
 - First name
 - Full Address, including city, state and zip code
 - Date of birth
 - Gender
 - Identification number (if available)
- d. Prescription Information
- Prescription number
 - Date the prescription was written by prescriber
 - Refills authorized
 - Date the prescription was dispensed
 - Refill number
 - NDC code for drug dispensed
 - Metric quantity dispensed
 - Estimated days' supply
 - Method of payment (classification for payment type)
- e. Prescriber Information
- DEA registration number
 - Name
 - Full address, including, city, state and zip code

DATA COLLECTION FROM OTHER USERS

5.1.2.15 The vendor shall collect opioid antagonist dispensing data from other users. These other users can include local health departments and other health care facilities defined by WVBOP staff.

Mahantech Corporation will collect opioid antagonist dispensing data from other users. These other users can include local health departments and other health care facilities defined by WVBOP staff.

5.1.2.16 The Vendor shall be able to receive the electronic data from other users via secure email, Secure FTP, Virtual Private Network (VPN), SSL Website and any other agreed upon media.

Mahantech Corporation will be able to receive the electronic data from other users via secure email, Secure FTP, Virtual Private Network (VPN), SSL Website and any other agreed upon media.

5.1.2.17 The Vendor shall prepare and provide to all users any instructions needed to comply with the reporting requirements, including technical assistance. WVBOP reserves the right to review and approve any communication prior to it being distributed.

Mahantech Corporation will prepare and provide to all users any instructions needed to comply with the reporting requirements, including technical assistance. WVBOP will review and approve any communication prior to it being distributed.

5.1.2.18 Opioid antagonist data collected by Mahantech from other users shall include for each dispensing submitted, the following information:

General Reporting Requirements

- a. Dispenser Information
 - DEA registration number (if available)
 - Name
 - Full address, including, city, state and zip code
- b. Patient Information;
 - Last name
 - First name
 - Full Address, including city, state and zip code
 - Date of birth
 - Gender
 - Identification number (if available)
- c. Person Picking Up (if different than patient) Information
 - Last name
 - First name
 - Full Address, including city, state and zip code
 - Date of birth
 - Gender
 - Identification number (if available)
- d. Dispensation Information
 - Identification number (if available)
 - Date dispensed
 - NDC code for drug dispensed
 - Quantity dispensed

- e. Prescriber Information (if applicable)
 - DEA registration number
 - Name
 - Full address, including, city, state and zip code

5.1.2.19 The Vendor will be able to receive electronic dispensing information transmitted directly from other users seven (7) days a week, and twenty-four (24) hours per day, three hundred sixty-five (365) days per year, and document receipt of each data transmission.

Mahantech Corporation is able to receive electronic prescription information transmitted directly from dispensers, seven (7) days a week, and twenty-four (24) hours per day, three hundred sixty-five (365) days per year.

5.1.2.20 The Vendor will provide a method for WVBOP staff to produce reports, on demand or scheduled, displaying information about all uploads by other users, including contact information for each user and the reported date ranges of the submission

Mahantech shall provide a method for WVBOP staff to produce reports, on demand or scheduled, displaying information about all uploads by a dispenser, including contact information for each dispenser and the reported date ranges of the submission.

5.1.2.21 The vendor will be able to collect overdose incident data from other users. These other users can include local health departments, EMS services and other medical service providers. Data collected and other users will be defined by WVBOP staff.

Mahantech will have the capability to collect overdose incident data from other users. These other users can include local health departments, EMS services and other medical service providers. Data collected and other users will be defined by WVBOP staff.

5.1.2.22 Overdose incident data collected by Mahantech Corporation from other users will include for each incident submitted, the following information:

General Reporting Requirements

- a. Patient Information;
 - Last name
 - First name
 - Full Address, including city, state and zip code
 - Date of birth
- b. Incident Information

- o Date of Incident
- Other Information as defined by WVBOP staff
- c. Medical Service Provider Information
 - Medical service provider name
 - DEA registration number (if available)

DATABASE MANAGEMENT

5.1.2.23 The Vendor shall be responsible for collecting and loading data into the database, which will reside on servers in a secure data center or cloud computing center, managed by the vendor. The data center must reside in the contiguous 48 states of the US. All of the data in the database shall belong to WVBOP.

Mahantech Corporation will be responsible for collecting and loading data into the database, which will reside on servers in a secure data center and managed by Mahantech. Our new location together with Data Center IT support services will be in a South Charleston, WV location. The Data Center is owned and operated by Alpha Technologies, a **West Virginia Service Disabled Veteran Owned Small Business** located in South Charleston. Mahantech will manage its own resources within that environment. This data center is the only **HIPAA certified data center** in West Virginia and already supports a number of West Virginia corporate and state entities including regional hospitals and also large national contracts. This center provides full IT hosting services that will meet or exceed the requirements of this contract:

- 80,000 sq ft data center
- Redundant commercial power feeds supplied by four diverse power supplies,
- Backup up power including diverse battery systems and multiple megawatt generators
- Cooling is provided by 3 diverse chillers
- Internet connectivity will be provided by multiple providers via a load balanced connection. So, if one provider has an issue the service itself will remain unchanged as the other providers will assume the load and keep the connection up and working.
- Multiple telecommunication service providers with diverse paths into DC1
- Separate fire detection zones coupled with Halon fire suppression and dry-pipe water system
- The only data center in West Virginia with the following certifications/accreditations:

HIPAA- HiTech
PCI -DSS
SSAE16

SOC 1/2
ISO27001
FISMA

5.1.2.24 The Vendor shall ensure that **system hardware and software** used by the Vendor and WVBOP for data collection, access and reporting, will be maintained for the life of the Contract Services.

Mahantech will ensure that system hardware and software used by Mahantech and WVBOP for data collection, access and reporting, will be maintained for the life of the Contract Services.

5.1.2.25 The Vendor shall be responsible for updating the system due to changes in security standards, changes in State IT requirements, or changes in State legislation, at no cost to the State.

Mahantech Corporation will be responsible for updating CSAPP/RxDataTrack due to changes in security standards, changes in State IT requirements, or changes in State legislation, at no cost to the State.

5.1.2.26 The Vendor shall have a help desk located in a call center and provide a toll-free number and email address by which dispensers or other users may contact the Vendor to resolve problems, assist with registration and receive information concerning data transmission and access. The toll-free number shall be staffed to provide assistance seven days a week, and twenty-four hours per day, three hundred sixty-five (365) days per year.

Mahantech Corporation will have a help desk located in a call center and provide a toll-free number and email address by which dispensers or other users may contact Mahantech Corporation to resolve problems, assist with registration and receive information concerning data transmission and access. The toll-free number shall be staffed to provide assistance seven days a week, and twenty-four hours per day, three hundred sixty-five (365) days per year.

5.1.2.27 Conversion of Drug Enforcement Agency (DEA) registration numbers: When a dispenser reports to the system, the DEA registration numbers of the prescriber and dispenser are reported. The system must be able to convert the DEA registration numbers to prescriber and dispenser name, address and registered schedules. The Vendor shall maintain a current reference source of DEA numbers for conversion, and also make that information available to WVBOP staff.

Conversion of Drug Enforcement Agency (DEA) registration numbers: When a dispenser reports to CSAPP/RxDataTrack, the DEA registration numbers of the prescriber and dispenser are reported. CSAPP/RxDataTrack is able to convert the DEA registration numbers to prescriber and dispenser name, address and registered schedules. Mahantech Corporation shall maintain a current reference source of DEA numbers for conversion, and also make that information available to WVBOP staff.

5.1.2.28 Conversion of NDC (National Drug Code) numbers: The system must be able to convert NDC numbers to drug, name, strength, controlled substance schedule and dosage form (to include compounds), both at the point of data import and also retrospectively upon receiving NDC number updates. The Vendor shall maintain a current reference source of NDC numbers for conversion, and also make that information available to WVBOP staff.

Conversion of NDC (National Drug Code) numbers: CSAPP/RxDataTrack is able to convert NDC numbers to drug, name, strength, controlled substance schedule and dosage form (to include compounds), both at the point of data import and also retrospectively upon receiving NDC number updates. Mahantech Corporation shall maintain a current reference source of NDC numbers for conversion, and also make that information available to WVBOP staff.

5.1.2.29 Conversion of NPI (National Provider Identifier) numbers: The system must be able to convert NPI numbers to prescriber or dispenser name and address when NPI number is supplied. The Vendor shall maintain a current reference source of NPI numbers for conversion, and also make that information available to WVBOP staff.

Conversion of NPI (National Provider Identifier) numbers: CSAPP/RxDataTrack (The PMP) is able to convert NPI numbers to prescriber or dispenser name and address when NPI number is supplied. Mahantech Corporation will maintain a current reference source of NPI numbers for conversion, and also make that information available to WVBOP staff.

5.1.2.30 The system shall provide data access and data management capabilities, integrated with data mining for ease of data analysis.

CSAPP/RxDataTrack shall provide data access and data management capabilities, integrated with data mining for ease of data analysis.

5.1.2.31 The system shall group recipients with different variations of their first name, last name, street address, birth date, or zip code so that when a search is performed for a recipient all matching records will simultaneously display (clustering).

CSAPP/RxDataTrack groups recipients with different variations of their first name, last name, street address, birth date, or zip code so that when a search is performed for a recipient all matching records will simultaneously display (clustering).

5.1.2.32 The Vendor shall maintain the information in the database for five (5) years, rolling monthly, and be made available to all system users. All information more than five (5) years old shall be deleted from the database by the vendor.

Mahantech Corporation maintains the information in the database for five (5) years, rolling monthly, and be made available to all system users. All information more than five (5) years old shall be deleted from the database by Mahantech Corporation.

5.1.2.33 The Vendor shall provide WVBOP with a copy of the current PMP data set if requested. Data exchange will be by secure FTP or web services or as mutually agreed upon by both parties.

Mahantech Corporation will provide WVBOP with a copy of the current PMP data set if requested. Data exchange will be by secure FTP or web services or as mutually agreed upon by both parties.

5.1.2.34 The Vendor shall provide system tools for the query of relational or multi-dimensional data that supports a broad range of search criteria.

Mahantech Corporation shall provide system tools for the query of relational or multi-dimensional data that supports a broad range of search criteria.

5.1.2.35 The Vendor shall provide system tools that will assist in the identification of illegal or unprofessional activities.

Mahantech Corporation shall provide system tools that will assist in the identification of illegal or unprofessional activities as identified by WVBOP.

5.1.2.36 The Vendor shall provide the capability for geocoding of patient, prescriber and dispenser locations to enable geographic analysis of the relationships to identify potential criminal activity, abuse or trending.

Mahantech Corporation shall provide the capability for geocoding of patient, prescriber and dispenser locations to enable geographic analysis of the relationships to identify potential criminal activity, abuse or trending. Displayable on a map, WVBOP shall be able to see the relationship between the patient's address, the prescriber's location and the dispenser's location.

SECURE WEB SERVICES

5.1.2.37 The Vendor must provide a system that is able to meet current demand and scalable to meet future demand to successfully manage this program, to keep response times to a minimum, and to provide continuous, twenty-four (24) hours a day, access to authorized users.

Mahantech Corporation provides a system that is able to meet current demand and scalable to meet future demand to successfully manage this program, to keep response times to a minimum, and to provide continuous, twenty-four (24) hours a day, access to authorized users.

5.1.2.38 The Vendor will provide an online registration process to enroll prospective users. The system must allow WVBOP to authenticate user registrations before providing login accounts. User types will include prescribers, dispensers, dispensing prescribers, professional licensing boards, law enforcement, Office of the Chief Medical Examiner, Bureau for Medical Services, WVBOP administrative staff, user delegates and others as defined by WVBOP staff.

Mahantech Corporation provides an online registration process to enroll prospective users. CSAPP/RxDataTrack will allow WVBOP to authenticate user registrations before providing login accounts. User types will include prescribers, dispensers, dispensing prescribers, professional licensing boards, law enforcement, Office of the Chief Medical Examiner, Bureau for Medical Services, WVBOP administrative staff, user delegates and others as defined by WVBOP staff.

5.1.2.39 Registered users roles and related account information must be able to be modified by WVBOP staff.

Registered users roles and related account information are able to be modified by WVBOP staff.

5.1.2.40 The Vendor shall transfer existing user/delegate accounts and account information to the new system (Currently approximately 13,000 users). When users initially logon to the new system, additional user information may also be collected. WVBOP staff will define what existing account information and what new information will be utilized.

Mahantech Corporation does not need to transfer existing user/delegate accounts and account information to CSAPP/RxDataTrack (currently 13,000+ users). We will migrate the same data to a new hosted environment. Additional user information may also be collected as required. WVBOP staff can define what existing account information and what new information will be utilized.

5.1.2.41 The system must meet or exceed the privacy and security standards of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The vendor must be willing to sign a Business Associate Addendum ("Addendum") in accordance with HIPAA privacy and security standards. This Addendum is made part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency") and the Business Associate ("Associate"), and is in affect as of the date of the execution of this Agreement.

CSAPP/RxDataTrack will meet or exceed the privacy and security standards of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The data center in which the PMP will be hosted is the only HIPAA certified data center in the state of West Virginia.

Mahantech Corporation will sign a Business Associate Addendum ("Addendum") in accordance with HIPAA privacy and security standards. This Addendum is made part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency") and the Business Associate ("Associate"), and is in effect as of the date of the execution of this Agreement. This will be signed by Mahantech Corporation and returned with Mahantech Corporation's submitted bid. This will be required prior to award of contract.

5.1.2.42 WVBOP will require role based user accounts. At a minimum, this would include an administrator level for WVBOP staff, a level appropriate for dispensers/prescribers, a level appropriate for law enforcement a level for other users and a level for all delegate users. User roles can be created and modified as needed by WVBOP staff.

Mahantech Corporation as part of its system/software CSAPP/RxDataTrack will provide WVBP the required role based user accounts. This includes an administrator level for WVBP staff, a level appropriate for dispensers/prescribers, a level appropriate for law enforcement a level for other users and a level for all delegate users. User roles can be created and modified as needed by WVBP staff.

5.1.2.43 The system must permit multiple users to be on the system and in the same applications at the same time.

CSAPP/RxDataTrack permits multiple users to be on CSAPP/RxDataTrack and in the same applications at the same time.

5.1.2.44 The system must permit a registered user to request and receive information, including automatic reports, via the Internet. The user would automatically receive the report without intervention by WVBP staff. This would enable users to access the system twenty-four (24) hours a day/seven (7) days a week/three hundred sixty-five (365) days a year.

CSAPP/RxDataTrack permits a registered user to request and receive information, including automatic reports, via the Internet. The user automatically receives the report without intervention by WVBP staff. This enables users to access CSAPP/RxDataTrack twenty-four (24) hours a day/seven (7) days a week/three hundred sixty-five (365) days a year.

5.1.2.45 The WVBP must have the ability to communicate information of interest to registered users of the web-based program through broadcast alerts, emails and an information section on the home page. The registered users shall be classed under specific role types and information may be sent to specific groups of system users based on that role type.

CSAPP/RxDataTrack provides the capability for WVBP to have the ability to communicate information of interest to registered users of the web-based program through broadcast alerts, emails and an existing information section on the home page. The registered users shall be classed under specific role types and information may be sent to specific groups of system users based on that role type.

5.1.2.46 To support account documentation necessary for registration, upload

capabilities are required to ensure completion of submittal requirements.

CSAPP/RxDataTrack provides the capability to support account documentation necessary for registration with upload capabilities to ensure completion of submittal requirements. At the conclusion of the registration process, users will have the option to choose the method of supporting documentation submission. This will be to submit an electronic copy with the completed registration, or to email after completion or to fax.

5.1.2.47 Account management will include delegate responsibilities. The system must permit a registered master account user to establish/deactivate delegate subaccounts, and further, provide a mechanism for the user to monitor the system activity of those delegates online and through a reporting mechanism.

CSAPP/RxDataTrack provides the capability for account management to include delegate responsibilities. The system permits a registered master account user to establish/deactivate delegate subaccounts, and further, provides a mechanism for the user to monitor CSAPP/RxDataTrack activity of those delegates online and through a reporting mechanism.

5.1.2.48 Master account holders will be limited to the number of delegates allowed. WVBOP administrators can select the number of delegates for master accounts, ranging from zero to two hundred (200). Delegates may be linked to more than one master account holder. If the delegate is associated with more than one master account holder, the delegate is provided with a list from which to select the master account holder for whom the query is performed for.

CSAPP/RxDataTrack provides the capability for Master account holders to be limited to the number of delegates allowed. WVBOP administrators can select the number of delegates for master accounts, ranging from zero to two hundred (200). Delegates can be linked to more than one master account holder. If the delegate is associated with more than one master account holder, the delegate is provided with a list from which to select the master account holder for whom the query is performed.

5.1.2.49 WVBOP will require at least three different types of Online Registration:

CSAPP/RxDataTrack provides WVBOP at least four different types of Online Registration:

- a. **Minimum fields for Practitioner/Delegate
On-line Registration**
- First Name, Middle Name, Last Name
 - Date of Birth
 - Last 4 Digits of SSN
 - Role Type (drop down box)
 - Professional License Number (if applicable)
 - Professional License State (if applicable)
 - DEA number (if applicable)
 - NPI (if applicable)
 - Specialty Type (drop down box)
 - Facility Practice Name
 - Mailing Address
 - City, State, County & Zip Code
 - Phone number
 - Email Address
 - Fax
 - Security Question
 - Security Answer
- b. **Minimum fields for Dispenser/Delegate
On-line Registration**
- First Name, Middle Name, Last Name
 - Date of Birth
 - Last 4 Digits of SSN
 - Role Type (drop down box)
 - Professional License Number (if applicable)
 - Professional License State (if applicable)
 - DEA number (if applicable)
 - NPI (if applicable)
 - Specialty Type (drop down box)
 - Facility Practice Name
 - Mailing Address
 - City, State, County & Zip Code
 - Phone number
 - Email Address
 - Fax
 - Security Question
 - Security Answer
- c. **Minimum fields for Law Enforcement
On-line Registration**
- First Name, Middle Name, Last Name

- Job Title/Rank
 - Role Type (drop down box)
 - Badge or Agency JD Number
 - Driver's License number and State
 - Date of Birth
 - Agency Name
 - Office Location Street Address
 - City, County, State, Zip
 - Area code and office telephone number
 - Area code and cell number
 - Area code and fax number
 - Email address
 - Supervisor's First Name, Last Name
 - Supervisor's Phone number
 - Supervisor's Email Address
 - Security Question
 - Security Answer
- d. **Minimum fields for Other On-line Registration**
- First Name, Middle Name, Last Name
 - Job Title
 - Role Type (drop down box)
 - Driver's License number and State
 - Date of Birth
 - Agency Name
 - Office Location Street Address
 - City, County, State, Zip
 - Area code and office telephone number
 - * Area code and cell number
 - Area code and fax number
 - Email address
 - Supervisor's First Name, Last Name
 - Supervisor's Phone number
 - Supervisor's Email Address
 - Security Question
 - Security Answer

DATA SECURITY AND CONFIDENTIALITY

5.1.2.50 The Vendor shall comply with Federal, State of West Virginia and WVBP privacy and security laws, regulations and rules.

Mahantech Corporation shall comply with Federal, State of West Virginia and WVBOP privacy and security laws, regulations and rules.

5.1.2.51 The Vendor must be willing to provide the results of a third-party, privacy and security assessment or be willing to complete a State provided privacy and security self-assessment.

Mahantech Corporation will be willing to provide the results of a third-party, privacy and security assessment and is willing to complete a State provided privacy and security self-assessment.

5.1.2.52 The Vendor must be willing to attest to a completed, annual risk analysis, in accordance with the HIPAA Security Rule

Mahantech Corporation is willing to attest to a completed, annual risk analysis, in accordance with the HIPAA Security Rule.

5.1.2.53 The Vendor shall have a system disaster recovery plan for data in the event the program is unavailable due to human error, equipment failure or a natural disaster.

Mahantech Corporation will have a system disaster recovery plan for data in the event the program is unavailable due to human error, equipment failure or a natural disaster. Upon award/ implementation, a full disaster recovery plan will be submitted to WVBOP.

5.1.2.54 For any breach or suspected breach of security of the collected data, the Vendor shall notify WVBOP staff as soon as possible by telephone or e-mail, and also:

For any breach or suspected breach of security of the collected data, Mahantech Corporation will notify WVBOP staff as soon as possible by telephone or e-mail, and also:

- Conduct an investigation,
- Confiscate and secure any evidence in conjunction with any such occurrences,
- Provide WVBOP with a written report of the investigation within three (3) business days of first learning of the breach.
- Subsequently supply a written report within 7 business days outlining the impact of the breach and the steps taken

to correct the situation and prevent future breaches, and time frame for completion. Assist WVBOP, including testifying, in any proceedings or hearings, which may be undertaken for any security violation.

QUERIES AND REPORTS

5.1.2.55 Data that has passed the checks for accuracy and completeness shall be accessible by WVBOP as soon as possible after submission and, at most, no more than one (1) calendar day after submission.

CSAPP/RxDataTrack provides the capability for data that has passed the checks for accuracy and completeness will be accessible by WVBOP as soon as possible after submission and, at most, no more than one (1) calendar day after submission. CSAPP/RxDataTrack processes data in near real-time and currently has dispensers reporting in real-time.

5.1.2.56 The Vendor shall prepare reports for WVBOP at least monthly identifying dispensers that have not submitted a required report and dispensers that submitted a report but the report was rejected.

Mahantech Corporation will prepare reports for WVBOP at least monthly identifying dispensers that have not submitted a required report and dispensers that submitted a report but the report was rejected by a Delinquent Dispenser Report.

5.1.2.57 The system must allow WVBOP administrators to search, correlate, query, and match user activity logs, to provide an audit trail for each user's system logins, reports and requests.

CSAPP/RxDataTrack will allow WVBOP administrators to search, correlate, query, and match user activity logs, to provide an audit trail for each user's system logins, reports and requests.

5.1.2.58 The system shall create three (3) basic queries, in the following format.

- Patient (recipient) query, to include patient name and date of birth, drug name and schedule, date filled, quantity and days supply, Morphine Equivalent Daily Dose, method of

payment and dispenser and prescriber name, DEA # and address;

- Prescriber query, to include prescriber name and address, patient name and date of birth, drug name and schedule, date prescribed and filled, and pharmacy name and address; and,
- Dispenser query, to include dispenser name and address, patient name and date of birth, drug name and schedule, date filled, quantity and days supply, method of payment and prescriber name and address.

CSAPP/RxDataTrack does comply and will provide the three (3) basic queries as above.

5.1.2.59 The system shall include capabilities for the following reporting:

- a. Top Ranking Reports (Summary by total and by each county monthly)
 - Top Prescribers of Controlled Substances by schedule, class and combinations
 - Top Dispensers of controlled substances by schedule, class and combinations
 - Top household addresses receiving controlled substances
 - Top recipients of Controlled substances by schedule, class and combinations
 - Recipients using most different pharmacies*
 - Recipients using most different prescribers*
 - Top controlled substances by generic name
 - Top drug usage by therapeutic class
 - Top drug usage by NDC
 - *able to change variables
- b. Trend Review Reports (Summary by total and by each county monthly)
 - RxCount
 - Total Quantity
 - Total Days Supply
 - Misc. Reports
 - Total Number of queries by role user by month
 - Total number of users per role per month
 - Recipients exceeding a certain MED/MME per user defined date range

- Prescribers and dispensers whose patients exceed a certain MED/MME per user defined date range
-

CSAPP/RxDataTrack includes these capabilities for the reporting as detailed above.

5.1.2.60 Users shall be able to view reports, print reports and save reports in PDF, Excel and other formats.

Users are able to view reports, print reports and then save reports in either PDF, Excel, Word, CSV or XML.

5.1.2.61 WVBOP will have the option to request at no charge ad hoc reports as necessary, not to exceed 15 per contract year

WVBOP will have the option to request at no charge ad hoc reports as necessary, not to exceed 15 per contract year.

5.1.2.62 The Vendor shall provide reporting for research or education; provided that data elements that would reasonably identify a specific recipient, prescriber or dispenser must be deleted or redacted from such information prior to disclosure. Release of the information only may be made pursuant to a written agreement between the requestor and the WVBOP in order to ensure compliance.

Mahantech Corporation shall provide de-identified data for reporting for research or education (removing data elements that would reasonably identify a specific recipient, prescriber or dispenser prior to disclosure). Release of the information only will only be made pursuant to a written agreement between the requestor and the WVBOP in order to ensure compliance.

5.1.2.63 The Vendor shall provide at no charge, copies of any portion of the data set to the WVBOP as needed, including de-identified data.

Mahantech Corporation shall provide at no charge, copies of any portion of the data set to the WVBOP as needed, including de-identified data.

5.1.2.64 The system must have the ability to perform multi state query and retrieval into a collated report.

CSAPP/RxDataTrack will have the ability to perform multi state query and retrieval into a collated report.

5.1.2.65 The system must be able to identify the number of registered user requests made by user type, and provide complete audit report capabilities for individual users on demand.

CSAPP/RxDataTrack can identify the number of registered user requests made by user type. It can also provide complete audit report capabilities for individual users on demand.

5.1.2.66 The system must enable WVBOP to perform ad hoc queries to respond to requests from other states' primary monitoring authorities, to respond to lawful court orders and for statistical, research or educational purposes. Since these queries and reports may vary in substance, an ad hoc query and reporting function is an essential aspect of the system.

CSAPP/ RxDataTrack will enable WVBOP to perform ad hoc queries to respond to requests from other states' primary monitoring authorities, to respond to lawful court orders and for statistical, research or educational purposes. Since these queries and reports may vary in substance, an ad hoc query and reporting function will be an essential aspect of CSAPP/RxDataTrack.

5.1.2.67 The system must have the capability to produce automatic patient threshold reports. Criteria may consist of number of prescriptions dispensed, number of prescribers used, number of pharmacies used and Morphine Equivalent Daily Dose, in a designated time period. These criteria can be modified by WVBOP staff.

CSAPP/RxDataTrack will have the capability to produce automatic patient threshold reports. Criteria may consist of number of prescriptions dispensed, number of prescribers used, number of pharmacies used and Morphine Equivalent Daily Dose, in a designated time period. These criteria can be modified by WVBOP staff. Under the current contract, the system provides 150 reports including multiple ad hoc reports covering all areas to include patients, dispensers, prescribers and prescriptions.

5.1.2.68 WVBOP requires a threshold report template designed by the Vendor that would enable WVBOP to change the parameters, independent from the Vendor, for producing automatic threshold reports. The Vendor will assist in defining threshold criteria.

Mahantech Corporation will assist in defining threshold criteria. Mahantech Corporation will then provide a threshold report template that will enable WVBOB to change the parameters, independent from Mahantech Corporation, for producing automatic threshold reports.

5.1.2.69 Prescribers must have the ability to run a report of prescriptions issued under their DEA number as the prescriber (Self-Report).

CSAPP/RxDataTrack provides the capability for Prescribers to run a report of prescriptions issued under their DEA number (Self-Report). This can be limited in date range at the discretion of the Board of Pharmacy.

5.1.2.70 The system must be able to provide prescriber users with unsolicited reports of their prescribing history and behavior (Prescriber Report Cards). These reports will include comparisons of the prescriber's behavior to others of the same specialty. The reports will also summarize patient and prescription volumes, as well as PMP usage. The reports will be provided at least quarterly.

CSAPP/ RxDataTrack will be able to provide prescriber users with unsolicited reports of their prescribing history and behavior (Prescriber Report Cards). These reports will include comparisons of the prescriber's behavior to others of the same specialty. The reports will also summarize patient and prescription volumes, as well as PMP usage. The reports will be provided at least quarterly.

5.1.2.71 The system must enable WVBOB administrators to create unsolicited reports for practitioners and dispensers based on specific thresholds. The reports may be shared via a secure website, delivered via secure email or printed for delivery via US mail.

CSAPP/RxDataTrack shall enable WVBOB administrators to create unsolicited reports for practitioners and dispensers based on specific thresholds. The reports may be shared via a secure website, delivered via secure email or printed for delivery via US mail.

5.1.2.72 Reports should be available to verify supervisor/subordinate relationship.

Mahantech will provide a report(s) as required to demonstrate and verify supervisor/subordinate relationships.

5.1.2.73 The system must provide WVBOB staff the ability to deactivate user

accounts that are no longer authorized to access the system for any reason.

CSAPP/RxDataTrack currently provides WVBOP staff the ability to deactivate and lock user accounts that are no longer authorized to access CSAPP/RxDataTrack for any reason.

DATA RECEIPT AND RECORDS

5.1.2.74 The Vendor shall document receipt of each data transmission from a dispenser. All documentation shall be retained by the Vendor for five (5) years. All data more than five (5) years old shall be purged. Upon request by WVBOP, or six (6) months prior to the expiration of this Contract, the Vendor shall provide to WVBOP a written turnover plan designed to ensure a smooth turnover of data. The Vendor shall take all reasonable action to provide a minimally disruptive turnover.

Mahantech Corporation will document receipt of each data transmission from a dispenser. All documentation shall be retained by Mahantech Corporation for five (5) years. All data more than five (5) years old shall be purged. Upon request by WVBOP, or six (6) months prior to the expiration of this Contract, Mahantech Corporation shall provide to WVBOP a written turnover plan designed to ensure a smooth turnover of data. Mahantech shall take all reasonable action to provide a minimally disruptive turnover.

5.1.2.75 At no additional cost to WVBOP, the Vendor shall provide to WVBOP all electronic and paper files, including data and historical files, at Contract end. This information should include but is not limited to procedures, training manuals, and instructions. The software used to access and view these files shall not in any manner preclude access to the files by WVBOP. WVBOP reserves the right to transfer all data, desk procedures, i.e., any information that would be required to use the program, such as passwords, training materials and system instructions to any future vendors.

At no additional cost to WVBOP, Mahantech Corporation shall provide to WVBOP all electronic and paper files, including data and historical files, at Contract end. This information should include but is not limited to procedures, training manuals, and instructions. The software used to access and view these files shall not be proprietary and shall not in any manner preclude access to the files by WVBOP. WVBOP reserves the right to transfer all data, desk procedures, i.e., any information that would be required to use the program, such as passwords, training materials and system instructions to any future

vendors.

5.1.2.76 The Vendor shall create and maintain electronic copies of all correspondence. Each document shall be identified and referenced to a specific request ID in a manner that will facilitate case reviews or appeals. The Vendor shall also assure that the correspondence and written notifications can be accessed in real time by WVBOP. At the conclusion of the contract, the Vendor shall transfer to WVBOP all correspondence and notifications in a format that can be read by a standard document manager with text search capabilities (for example .pdf format) specified in advance by WVBOP. The Vendor shall also transfer in electronic form all pertinent desk procedures, training manuals, letter templates, and instructions.

Mahantech Corporation shall create and maintain electronic copies of all correspondence. Each document shall be identified and referenced to a specific request ID in a manner that will facilitate case reviews or appeals. Mahantech Corporation shall also assure that the correspondence and written notifications can be accessed in real time by WVBOP. At the conclusion of the contract, Mahantech Corporation shall transfer to WVBOP all correspondence and notifications in a format that can be read by a standard document manager with text search capabilities (for example .pdf format) specified in advance by WVBOP. Mahantech Corporation shall also transfer in electronic form all pertinent desk procedures, training manuals, letter templates, and instructions.

5.1.2.77 Vendor will include in their bid the cost of optional Annual renewals through year four (4). This optional Annual renewal will be initiated by agency request agreed to by the vendor and processed as a Change Order authorized as issued by the West Virginia Purchasing Division.

Mahantech Corporation will include in their bid the cost of optional Annual renewals through year four (4). This optional Annual renewal will be initiated by agency request agreed to by Mahantech Corporation and processed as a Change Order authorized as issued by the West Virginia Purchasing Division.

6. CONTRACT SCHEDULE: Contract shall be completed within ninety (90) calendar days from the issuance of the written Notice to Proceed.

6.1 Vendor and Agency shall meet at the Agency's premises within 15 calendar days after issuance of purchase order to discuss pre-installation activities as well as the actual installation, and to agree on an installation date.

Mahantech Corporation representatives and Agency shall meet at the Agency's premises within 15 calendar days after issuance of purchase order to discuss pre-installation activities as well as the actual installation, and to agree on an installation date.

6.2 Agency will not formally accept the System until the System has operated without failure for thirty (30) consecutive days. The Agency will issue a request for Change Order to the West Virginia Purchasing Division stating acceptance of the system thereby beginning the first (1) year warranty. Future requests for warranty and maintenance will be based on these dates.

Mahantech accepts and understands that the Agency will not formally accept CSAPP/RxDataTrack until the System has operated without failure for thirty (30) consecutive days. The Agency will issue a request for Change Order to the West Virginia Purchasing Division stating acceptance of CSAPP/RxDataTrack thereby beginning the first (1) year warranty. Future requests for warranty and maintenance will be based on these dates.

The formal acceptance will necessitate the following:

Transition Plan / "Risk" Mitigation

Our solution to this challenge:

Should Mahantech Corporation be selected and given the notice to proceed under this RFQ:

- Operate parallel systems during the 30 to 90 day pre-approval testing prior to formal acceptance. We will treat our data center as an additional data back-up center so as to maintain the integrity of the operational databases. It is a straight forward process to transition the users and data from the state data center to our data center since there is no data re-structuring for the 19 databases and the 15,000+ datasets in the current system or 50 million active records currently in production. Mahantech already supports the databases, the datasets that comprise this PMP system and have the unique data structure already in place and can recreate at a new site with ease.

- During the critical change over period from post-acceptance to operational, Mahantech will assist the Board of Pharmacy as it coordinates the use of a new

contract with its constituents/ users that a new domain /website will be used from a determined operational date.

- Move all operational and communication email accounts from .gov to the new domain
- Our past experience in managing the PMP for WVBOP prior to it being moved to the State Data Center plus our knowledge in assisting the migration to the State's Data Center will prove invaluable in this contract.
- The additional bonus of software refreshes will mean that new features not offered under the existing contract will add enhancements to functionality and efficiency at no cost to the WVBOP. For example, the new SQL upgrade will contain added encryption to increase security.
- Since there are low to no transition issues / risks that can be anticipated, we have reflected the same in our pricing.
- Mahantech is ready to immediately standup the system and databases under this contract

6.3 Upon Contract expiration and/or termination, or as soon as possible, the Vendor shall work jointly with the WVBOP and any subsequent Vendor during the conversion and system startup, to ensure a smooth transition and changeover, prior to releasing the Vendor's Performance Bond.

Until Contract expiration and/or termination, or as soon as possible, Mahantech Corporation shall work jointly with the WVBOP and any subsequent Vendor during the conversion and system startup, to ensure a smooth transition and changeover, prior to releasing Mahantech Corporation's Performance Bond.

7. CONTRACT AWARD:

- 7.1 Contract Award:** The Contract is intended to provide the Agency with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

Vendor should provide with their bid a copy of any Software Terms and Conditions or Licenses that the State of West Virginia or the Agency will be required to agree or accept as a part of this solicitation. This information will be required before Purchase Order is

issued.

Vendor should provide with their bid a copy of Maintenance Terms and Conditions or Licenses that the State of West Virginia or the Agency will be required to agree or accept as a part of this solicitation. This information will be required before Purchase Order is issued.

- 7.2 **Pricing Page:** Vendor should complete the Pricing Page by adding Unit Price and multiplying by Quantity to equal Extended Cost. Total Bid Amount is total of Extended Cost column. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address: Melissa.k.pettrey@wv.gov

Vendors who wish to respond to a Centralized Request for Quotation (CRFQ) online may submit information through the State's wvOASIS Vendor Self Service (VSS). Vendors should download the Exhibit "A" Pricing Page that is attached separately to the CRFQ and published to the VSS. Vendors must complete this form with their prices information and include it as an attachment to their online response.

If unable to respond online Vendor must submit Exhibit "A" Pricing Pages with your bid prior to the scheduled bid opening dates.

8. **PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Service Deliverables, unless such a schedule is already included herein by Agency. In the event that 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.
9. **PAYMENT:** Agency shall pay annually, as shown on the Pricing Pages, 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.
10. **TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.

11. VENDOR DEFAULT:

- 11.1 The following shall be considered a vendor default under this Contract.
 - 11.1.1 Failure to perform Contract Services in accordance with the requirements contained herein.
 - 11.1.2 Failure to comply with other specifications and requirements contained herein.
 - 11.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
 - 11.1.4 Failure to remedy deficient performance upon request.
- 11.2 The following remedies shall be available to Agency upon default
 - 11.2.1 Immediate cancellation of contract.
 - 11.2.2 Immediate cancellation of one or more release orders issued under this Contract.
 - 11.2.3 Any other remedies available in law or equity.

12 MISCELLANEOUS:

- 12.1 **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: Channa Arjuna
Telephone Number: 304-720-2246
Fax Number: 304-720-2247
Email Address: carjuna@mahantech.com

EXHIBIT A- Pricing Page for Board of Pharmacy CSMP

CONTRACT ITEM

Item #	Item	Vendor Description	Unit of Measure	Quantity	Cost
1	Comprehensive Controlled Substance Monitoring Program for the WV Board of Pharmacy with migration of historical data and transfer of user accounts. This includes a database management system, with hosting of the database, collection and loading of data, providing access for authorized users and customer support. Also providing system tools to query the database, assist with and modify user accounts and monitor CSMP activities.	CSAPP/RxDataTrack meets the requirements of a comprehensive Controlled Substance Monitoring Program for the WV Board of Pharmacy.	Lump Sum	1.00	343,000.00
2		Implementation and Installation to Acceptance; and First Year Maintenance and Support/Warranty/Hosting			
Item #	Item	Vendor Description	Unit of Measure	Quantity	Cost
3	Second Year Maintenance and Support/Warranty/Hosting		Year	1.00	\$152,000.00
4	Third Year Maintenance and Support/Warranty/Hosting		Year	1.00	\$152,000.00
5	Fourth Year Maintenance and Support/Warranty/Hosting		Year	1.00	\$152,000.00

UNIT PRICES

Item #	Unit Prices are to be provided for the following item, and will only be used to execute formal Change Orders during the life of the contract, if required. Estimated Quantities are included for bid evaluation only; there is no guarantee that any quantity of the item(s) will be purchased.				
6	Additional Professional Services Support Hours	Unit Price Per Hour=\$225.00	Hour	1.00	\$225.00
Total Bid Amount (Item # 1+2+3+4+5+6) =					\$799,225.00

Contract evaluation will be of the total bid amount. Award will be the lump sum amount, implementation and year one maintenance only. Renewal options for years 2, 3, and 4 will be initiated by the Agency, Agreed to by the Vendor and Processed by the West Virginia Purchasing Division as Change Orders for subsequent years.

Vendor Preference Certificate (page 55)

Vendor Preference Certificate

Rev. 04/14

State of West Virginia VENDOR PREFERENCE CERTIFICATE

Certification and application is hereby made for Preference in accordance with *West Virginia Code, §5A-3-37* (Does not apply to construction contracts). *West Virginia Code §5A-3-37* provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preferences. The Purchasing Division will make the determination of the Vendor Preference, if applicable.

1. **Application is made for 2.5% vendor preference for the reason checked:**
 Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or
 Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or
 Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or
2. **Application is made for 2.5% vendor preference for the reason checked:**
 Bidder is a resident vendor who certifies that, during the life of the contract, an average of at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of the bid; or
3. **Application is made for 2.5% vendor preference for the reason checked:**
 Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certify that, during the life of the contract, an average of at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or
4. **Application is made for 5% vendor preference for the reason checked:**
 Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or
5. **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**
 Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or
6. **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**
 Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purpose of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, an average of at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.
7. **Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with *West Virginia Code §5A-3-59* and *West Virginia Code of State Rules*.**
Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, woman- and minority-owned business.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (*West Virginia Code, §61-5-3*), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: Mahantech Corp
Date: 03/01/2017

Signed: Channing A. [Signature]
Title: President

Purchasing Affidavit

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(a), 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 OTHER 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 while a vendor has contacted any tax administrator 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 furnish 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 organization or other entity whatsoever, related to any vendor by blood, marriage, co-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: Mahantech Corp

Authorized Signature: [Signature] Date: 08/02/2017

State of West Virginia

County of Kanawha, to-wit:

Taken, subscribed, and sworn to before me this 2nd day of August, 2017

My Commission expires Oct. 1, 2017



NOTARY PUBLIC [Signature]
Purchasing Affidavit (Revised 07/27/2017)

Ethics Disclosure

West Virginia Ethics Commission

Disclosure of Interested Parties to Contracts

Contracting business entity MAHANTECH CORP

Address: 405 CAPITOL ST, STE 101, CHARLESTON, WV 25301

Contracting business entity's authorized agent: Channa M Arjuna

Address: 405 CAPITOL ST, STE 101, CHARLESTON, WV 25301

Number or title of contract: Prescription Drug Monitoring Program

Type or description of contract: _____

Governmental agency awarding contract: West Virginia Board of Pharmacy

Names of each interested Party to the contract known or reasonably anticipated by the contracting business entity (attach additional pages if necessary):

Applied Machine Intelligence

Signature: Channa Arjuna Date Signed: 07/27/2017

Check here if this is a Supplemental Disclosure.

Verification

State of WV County of Kanawha

I CHANNA ARJUNA the authorized agent of the contracting business entity listed above, being duly sworn, acknowledges that the Disclosure herein is being made under oath and under the penalty of perjury

Taken, sworn to and subscribed before me this 27 day of July 2017



[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: _____

Exhibit B HIPAA Addendum

Exhibit B

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/purchases/vrc/agencvii.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.
- i. 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 § 164.804. 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 19008 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 19008 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/Info/agency1.htm and,

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

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

AGREED.

Name of Agency: WV Bd. of Pharmacy

Signature: [Handwritten Signature]

Title: CSAP Administrator

Date: 6/15/17

Name of Associate: Mahantech Corp

Signature: [Handwritten Signature]

Title: President

Date: 08/02/2017

Form - WVBA-012005
Revised 05.20.2013

RECORDED AS TO FORM THIS 26th
DAY OF June 20 17
BY [Signature]
Deputy Attorney
Attorney General

APPENDIX A

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: Michael L. Goff

Name of Agency: WV Board of Pharmacy

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

Patient Data: including name, address, DOB, sex, identification number

Person Picking Up a Prescription Data: including name, address, DOB, sex, identification number

Prescription Data: including date written, date filed, product information, quantity, days supply, form of payment, prescription number

Prescriber Data: including prescriber name, address, DEA number

Dispenser Data: including dispenser name, address, DEA number

To be submitted after contract award.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
(Contractor name, complete address including ZIP Code and legal title)

as Principal, hereinafter called Contractor, and _____
(Surety name and complete address including ZIP Code)

do hereby certify that we are a corporation organized and existing under
 the laws of the State of _____, with its principal office in the City of _____
 as Surety, hereinafter called Surety, are held jointly bound unto _____
(Owner name, complete address including ZIP Code and legal title)

as Obligor, hereinafter called Owner, in the amount of _____
 Dollars (_____), for the payment whereof Contractor and Surety bind themselves, their heirs, executors,
 administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____
 entered into a contract with Owner for _____
 in accordance with drawings and specifications prepared by _____

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.
 NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, promptly and faithfully perform and CONTRACT,
 then this obligation shall be null and void, otherwise it shall remain in full force and effect.
 The Surety hereby gives notice of any alteration or extension of time made by the Owner.
 Whenever Contractor shall be, and declared by Owner to be in default under the CONTRACT, the Owner having performed Owner's obligations
 thereunder, the Surety may promptly remedy the default, or shall promptly:
 1. Complete the CONTRACT in accordance with its terms and conditions, and
 2. Shall save the Owner harmless from any claims, judgments, or liens arising from the Surety's failure to either remedy the default or to
 complete the CONTRACT in accordance with its terms and conditions in a timely manner.
 No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the successors of
 Owner.

Signed and sealed this _____ day of _____, 20____

Principal Corporate Seal _____ (Seal)
(Contractor Name)

BY: _____ (Seal)
(Must be President, Vice President, Owner, Partner, Manager, Director, or other duly Authorized Agent)
 _____ (Title)
 _____ (Surety)

Surety Corporate Seal

NOTE: Please attach Power of Attorney

BY: _____ (Seal)

*Power of Attorney must be certified on this date or later.

NOTE: Applicable sections of attached award/agreements must be completed and returned as part of the bond.

APPROVED AG 03-12-16

ACKNOWLEDGMENTS

Acknowledgment by Principal if Individual or Partnership

1. STATE OF _____
2. County of _____ to-wit:
3. I, _____, a Notary Public in and for the
4. county and state aforesaid, do hereby certify that _____
whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.
5. Given under my hand this _____ day of _____ 20____
6. Notary Seal _____
7. _____
(Notary Public)
8. My commission expires on the _____ day of _____ 20____

Acknowledgment by Principal if Corporation

9. STATE OF _____
10. County of _____ to-wit:
11. I, _____, a Notary Public in and for the
12. county and state aforesaid, do hereby certify that _____
13. who as _____ signed the foregoing writing for
14. a corporation, has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
15. Given under my hand this _____ day of _____ 20____
16. Notary Seal _____
17. _____
(Notary Public)
18. My commission expires on the _____ day of _____ 20____

Acknowledgment by Surety

19. STATE OF _____
20. County of _____ to-wit:
21. I, _____, a Notary Public in and for the
22. county and state aforesaid, do hereby certify that _____
23. who as _____ signed the foregoing writing for
24. _____ a corporation
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
25. Given under my hand this _____ day of _____ 20____
26. Notary Seal _____
27. _____
(Notary Public)
28. My commission expires on the _____ day of _____ 20____

**Sufficiency in Form andanner
of Execution Approved**

This _____ day of _____ 20____ By: _____
Attorney General
(Deputy Attorney General)

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: PHB180000002

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.

Acknowledgments: 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.

Mahantech Corporation

Company

Chang A...

Authorized Signature

August 1, 2017

Date

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

**CRFQ PHB18*1
Prescription Monitoring Program**

- Q 1. I was wondering what system this would be replacing for the state?
Is there an incumbent contract with a vendor that does something similar to this already.
The RFQ mentioned that the new system would have to migrate 13,000 existing profiles to
the new database. Are those coming from a state run and operated system?
Also, has funding been set for this project?
If so, for how much?**

WVBOP Response: This RFQ is for the Controlled Substances Monitoring Program (CSMP) for the West Virginia Board of Pharmacy.
The Board has a current contract with Mahantech Corporation to provide these services for the State.
The 13,000 is the approximate number of current CSMP system users.
With regard to funding, yes there is funding, but we are prohibited from releasing that information during the solicitation process.

- Q 2. Section 5.1.2.21: Regarding the collection of overdose incident data, will the WVBOP require the selected vendor to collect these data from a single sourced database or will the vendor be required to interface with multiple reporting entities?**

WVBOP Response: The vendor will be receiving the overdose incident data from a single sourced database.

State of West Virginia General Contract Terms and Conditions

12

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance 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 vendor's 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.

Revised 07/07/2017

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 _____ and extends for a period of _____ 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 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. Renewal of this Contract is limited to _____ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

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 NINETY (90) days.

Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional THREE (3) successive one year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed THIRTY-SIX (36) months in total. Automatic renewal of this Contract is prohibited.

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.

Revised 07/07/2017

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.

Services: The scope of the service to be provided will be more clearly defined in the specifications included herewith.

Combined Services 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 \$50,000.00. The performance bond must be received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

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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 entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

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

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8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, 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 mandated herein, including but not limited to, policy cancellation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of this contract. 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:

Automobile Liability Insurance in at least an amount of: _____

Professional/Malpractice/Errors and Omission Insurance in at least an amount of:

Commercial Crime and Third Party Fidelity Insurance in an amount of:

Cyber Liability Insurance in an amount of: _____

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

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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. LITIGATION BOND: The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

11. LIQUIDATED DAMAGES: Vendor shall pay liquidated damages in the amount of

for _____
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.

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.

14. PAYMENT: 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. PURCHASING CARD ACCEPTANCE: The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

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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. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.

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. BANKRUPTCY: In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

31. 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/dm/purchase/privacy/default.html>.

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32. 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.

33. 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. 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.

34. 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.

35. 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.

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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.

36. 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, fringes 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.

37. 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.

38. PURCHASING AFFIDAVIT: In accordance with West Virginia Code § 5-22-1(i), the contracting public entity shall not award a contract for a construction project 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. Accordingly, prior to contract award, 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.

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39. 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"). 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. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

40. 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.

41. 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.

42. 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.

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

Revised 07/07/2017

43. 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.

Revised 07/07/2017

44. 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.

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45. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$100,000, 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. "Interested parties" means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract. The Agency shall submit a copy of the disclosure to the Ethics Commission within 15 days after receiving the supplemental disclosure of interested parties.

Revised 07/07/2017

ADDITIONAL TERMS AND CONDITIONS (Construction Contracts Only)

1. CONTRACTOR'S LICENSE: West Virginia Code § 21-11-2 requires that all persons desiring to perform contracting work in this state be licensed. The West Virginia Contractors Licensing Board is empowered to issue the contractor's license. Applications for a contractor's license may be made by contacting the West Virginia Division of Labor. West Virginia Code § 21-11-11 requires any prospective Vendor to include the contractor's license number on its bid. If an apparent low bidder fails to submit a license number in accordance with this section, the Purchasing Division will promptly request by telephone and electronic mail that the low bidder and the second low bidder provide the license number within one business day of the request. Failure of the bidder to provide the license number within one business day of receiving the request shall result in disqualification of the bid. Vendors should include a contractor's license number in the space provided below.

Contractor's Name: _____
Contractor's License No., WV: _____

The apparent successful Vendor must furnish a copy of its contractor's license prior to the issuance of a contract award document.

2. DRUG-FREE WORKPLACE AFFIDAVIT: W. Va. Code § 21-1D-5 provides that any solicitation for a public improvement contract requires each Vendor that submits a bid for the work to submit an affidavit that the Vendor has a written plan for a drug-free workplace policy. If the affidavit is not submitted with the bid submission, the Purchasing Division shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the affidavit within one business day of the request. Failure to submit the affidavit within one business day of receiving the request shall result in disqualification of the bid. To comply with this law, Vendor should complete the enclosed drug-free workplace affidavit and submit the same with its bid. Failure to submit the signed and notarized drugfree workplace affidavit or a similar affidavit that fully complies with the requirements of the applicable code, within one business day of being requested to do so shall result in disqualification of Vendor's bid. Pursuant to W. Va. Code 21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is \$100,000 or less or temporary or emergency repairs.

2.1. DRUG-FREE WORKPLACE POLICY: Pursuant to W. Va. Code § 21-1D-4, Vendor and its subcontractors must implement and maintain a written drug-free workplace policy that complies with said article. The awarding public authority shall cancel this contract if: (1) Vendor fails to implement and maintain a written drug-free workplace policy described in the preceding paragraph, (2) Vendor fails to provide information regarding implementation of its drug-free workplace policy at the request of the public authority; or (3) Vendor provides to the public authority false information regarding the contractor's drug-free workplace policy.

Pursuant to W. Va. Code 21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is \$100,000 or less or temporary or emergency repairs.

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3. DRUG FREE WORKPLACE REPORT: Pursuant to W. Va. Code § 21-1D-7b, no less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. For contracts over \$25,000, the public authority shall be the West Virginia Purchasing Division. For contracts of \$25,000 or less, the public authority shall be the agency issuing the contract. The report shall include:

- (1) Information to show that the education and training service to the requirements of West Virginia Code § 21-1D-5 was provided;
- (2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests;
- (3) The average number of employees in connection with the construction on the public improvement;
- (4) Drug test results for the following categories including the number of positive tests and the number of negative tests: (A) Pre-employment and new hires; (B) Reasonable suspicion; (C) Post-accident; and (D) Random.

Vendor should utilize the attached Certified Drug Free Workplace Report Coversheet when submitting the report required hereunder. Pursuant to W. Va. Code 21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is \$100,000 or less or temporary or emergency repairs.

4. AIA DOCUMENTS: All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the AIA A101-2007 and A201-2007 or the A107-2007 documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein.

5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS: In accordance with § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: Provided, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

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6. LOCAL LABOR MARKET HIRING REQUIREMENT: Pursuant to West Virginia Code §21-1C-1 et seq., Employers shall hire at least seventy-five percent of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the bureau of employment programs' division of employment services of the number of qualified employees needed and provide a job description of the positions to be filled.

If, within three business days following the placing of a job order, the division is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then the division shall issue a waiver to the employer stating the unavailability of applicant and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

Any employer who violates any provision of this article is subject to a civil penalty of one hundred dollars per day of violation. The West Virginia Division of Labor is responsible for establishing procedures for the collection of civil penalties.

The following terms used in this section have the meaning shown below.

(1) The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than \$500,000. The term "construction project" does not include temporary or emergency repairs;

(2) The term "employee" means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry; The term "employee" does not include:(i) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;(ii) Bona fide independent contractors; or(iii) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

(3) The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

(4) The term "local labor market" means every county in West Virginia and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia;

(5) The term "public improvement" includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

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7. DAVIS-BACON AND RELATED ACT WAGE RATES:

- The work performed under this contract is federally funded in whole, or in part. Pursuant to _____, Vendors are required to pay applicable Davis-Bacon wage rates.
- The work performed under this contract is not subject to Davis-Bacon wage rates.

8. SUBCONTRACTOR LIST SUBMISSION: In accordance with W. Va. Code § 5-22-1, the apparent low bidder on a contract valued at more than \$250,000.00 for the construction, alteration, decoration, painting or improvement of a new or existing building or structure shall submit a list of all subcontractors who will perform more than \$25,000.00 of work on the project including labor and materials. (This section does not apply to any other construction projects, such as highway, mine reclamation, water or sewer projects.) The subcontractor list shall be provided to the Purchasing Division within one business day of the opening of bids for review. If the apparent low bidder fails to submit the subcontractor list, the Purchasing Division shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid.

If no subcontractors who will perform more than \$25,000.00 of work are to be used to complete the project, the apparent low bidder must make this clear on the subcontractor list, in the bid itself, or in response to the Purchasing Division's request for the subcontractor list.

a. Required Information. The subcontractor list must contain the following information:

- i. Bidder's name**
- ii. Name of each subcontractor performing more than \$25,000 of work on the project.**
- iii. The license number of each subcontractor, as required by W. Va. Code § 21-11-1 et. seq.**
- iv. If applicable, a notation that no subcontractor will be used to perform more than \$25,000.00 of work. (This item iv. is not required if the vendor makes this clear in the bid itself or in documentation following the request for the subcontractor list.)**

b. Subcontractor List Submission Form: The subcontractor list may be submitted in any form, including the attached form, as long as the required information noted above is included. If any information is missing from the bidder's subcontractor list submission, it may be obtained from other documents such as bids, emails, letters, etc. that accompany the subcontractor list submission.

Revised 07/07/2017

c. Substitution of Subcontractor. Written approval must be obtained from the State Spending Unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

- i. The subcontractor listed in the original bid has filed for bankruptcy;
- ii. The subcontractor in the original bid has been debarred or suspended; or
- iii. The contractor certifies in writing that the subcontractor listed in the original bid fails, is unable, or refuses to perform his subcontract.

Revised 07/07/2017

**ADDITIONAL TERMS AND CONDITIONS
(Architectural and Engineering Contracts Only)**

1. PLAN AND DRAWING DISTRIBUTION: All plans and drawings must be completed and available for distribution at least five business days prior to a scheduled pre-bid meeting for the construction or other work related to the plans and drawings.

2. PROJECT ADDENDA REQUIREMENTS: The Architect/Engineer and/or Agency shall be required to abide by the following schedule in issuing construction project addenda. The Architect/Engineer shall prepare any addendum materials for which it is responsible, and a list of all vendors that have obtained drawings and specifications for the project. The Architect/Engineer shall then send a copy of the addendum materials and the list of vendors to the State Agency for which the contract is issued to allow the Agency to make any necessary modifications. The addendum and list shall then be forwarded to the Purchasing Division buyer by the Agency. The Purchasing Division buyer shall send the addendum to all interested vendors and, if necessary, extend the bid opening date. Any addendum should be received by the Purchasing Division at least fourteen (14) days prior to the bid opening date.

3. PRE-BID MEETING RESPONSIBILITIES: The Architect/Engineer shall be available to attend any pre-bid meeting for the construction or other work resulting from the plans, drawings, or specifications prepared by the Architect/Engineer.

4. AIA DOCUMENTS: All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the AIA A101-2007 and A201-2007 or the A107-2007 documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein. The terms and conditions of this document shall prevail over anything contained in the AIA Documents or the Supplementary Conditions.

4A. PROHIBITION AGAINST GENERAL CONDITIONS: Notwithstanding anything contained in the AIA Documents or the Supplementary Conditions, the State of West Virginia will not pay for general conditions, or winter conditions, or any other condition representing a delay in the contract. The Vendor is expected to mitigate delay costs to the greatest extent possible and any costs associated with Delays must be specifically and concretely identified. The state will not consider an average daily rate multiplied by the number of days extended to be an acceptable charge.

5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS: In accordance with West Virginia Code § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: Provided, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

Revised 07/07/2017

CSAPP/RxDataTrack SaaS (Software as a Service) Agreement

This Software as a Service (SaaS) Agreement (the "**Agreement**"), dated as of [DATE] (the "**Effective Date**"), is by and between MAHANTECH CORPORATION, a Delaware Corporation with offices located at 405 Capitol Street, Suite 101, Charleston, WV 25301 ("Provider") and WEST VIRGINIA BOARD OF PHARMACY ("Customer"), a West Virginia State Agency with offices located at 2310 Kanawha Boulevard East, Charleston, WV 25311.

WHEREAS, Customer wishes to procure from Provider the software services described herein, and Provider wishes to provide such services to Customer, each on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

- "**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Hosted Services.
- "**Action**" has the meaning set forth in Section 13.1.
- "**Agreement**" has the meaning set forth in the preamble.
- "**Authorized User**" means each of the individuals authorized to use the Services pursuant to Section 3.1 and the other terms and conditions of this Agreement.
- "**Availability Requirement**" has the meaning set forth in Section 5.1.
- "**Available**" has the meaning set forth in Section 5.1.
- "**Backup Policy**" has the meaning set forth in Section 6.]
- "**Confidential Information**" has the meaning set forth in Section 10.1.
- "**Customer**" has the meaning set forth in the preamble.
- "**Customer Data**" means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services [or that incorporates or is derived from the Processing of such information, data or content by or through the Services]. [For the avoidance of doubt, Customer Data [includes information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User other than Resultant Data.
- "**Customer Failure**" has the meaning set forth in Section 4.2.
- "**Customer Indemnitee**" has the meaning set forth in Section 13.1.]
- "**Customer Systems**" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.
- "**Disclosing Party**" has the meaning set forth in Section 10.1.
- "**Documentation**" means any manuals, instructions or other documents or materials [listed in Schedule C] that the Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services or

Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

- **"Effective Date"** has the meaning set forth in the preamble.
- **"Exceptions"** has the meaning set forth in Section 5.1.]
- **"Fees"** has the meaning set forth in Section 8.1.
- **"Force Majeure Event"** has the meaning set forth in Section 15.1.
- **"Harmful Code"** means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.
- **"Hosted Services"** has the meaning set forth in Section 2.1.
- **"Indemnitee"** has the meaning set forth in Section 13.3.
- **"Indemnitor"** has the meaning set forth in Section 13.3.
- **"Initial Term"** has the meaning set forth in Section 11.1.]
- **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- **"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.
- **"Losses"** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
- **"Permitted Use"** means any use of the Services by an Authorized User for the benefit of Customer solely in or for Customer's internal business operations/for any and all lawful purposes/solely for the purposes of the PMP.
- **"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.
- **"Personal Information"** means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located. Personal Information includes all "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act, "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996 "Personal Information" as defined under the Children's Online Privacy Protection Act of 1998, and all rules and regulations issued under any of the foregoing.
- **"Privacy and Security Policy"** has the meaning set forth in Section 7.1.
- **"Process"** means to take any action or perform any operation or set of operations that the SaaS Services are capable of taking or performing on any data, information or other content[, including

to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy]. "Processing" and "Processed" have correlative meanings.

- "Provider" has the meaning set forth in the preamble.
- "Provider Disabling Device" means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Provider or its designee to disable Customer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.
- "Provider Indemnitee" has the meaning set forth in Section 13.2.
- "Provider Materials" means the Service Software, Specifications, Documentation and Provider Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials [include Resultant Data [and any information, data or other content derived from Provider's monitoring of Customer's access to or use of the Services], but] do not include Customer Data.
- "Provider Personnel" means all individuals involved in the performance of Services as employees, agents or independent contractors of Provider or any Subcontractor.
- "Provider Systems" means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.
- "Receiving Party" has the meaning set forth in Section 10.1.
- "Reimbursable Expenses" has the meaning set forth in Section 8.3.
- ["Renewal Term" has the meaning set forth in Section 11.2.]
- "Representatives" means, with respect to a party, that party's employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and legal advisors.
- "Resultant Data" means information, data and other content that is derived by or through the Services from Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.
- "Scheduled Downtime" has the meaning set forth in Section 5.3.
- "Service Allocation" has the meaning set forth in Section 3.4.
- "Service Credit" has the meaning set forth in Section 5.2.
- "Service Level Failure" has the meaning set forth in Section 5.1.
- "Service Period" has the meaning set forth in Section 5.1.
- "Service Software" means the Provider software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Provider provides remote access to and use of as part of the Services.
- "Services" has the meaning set forth in Section 2.1.
- "Specifications" means the specifications for the Services set forth in Schedule C .

- **"Subcontractor"** has the meaning set forth in Section 2.5.
 - **"Support Schedule"** has the meaning set forth in Section 5.4].
 - **"Support Services"** has the meaning set forth in Section 5.4.]
 - **"Term"** has the meaning set forth in [Section 11.1/Section 11.2].
 - **"Territory"** means the United States/worldwide.
 - **"Third Party Materials"** means materials and information, in any form or medium, including any [open-source or other] software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.
2. **Services.**

2.1 **Services.** Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term, Provider shall use commercially reasonable efforts to provide to Customer and its Authorized Users the services described in the attached Schedule A and this Agreement (collectively, the **"Services"**) in accordance with the Specifications and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Authorized Users (**"Hosted Services"**) in substantial conformity with the Specifications 24 hours per day, seven days per week every day of the year, except for:

- a. Scheduled Downtime in accordance with Section 5.3;
- b. Service downtime or degradation due to a Force Majeure Event;
- c. any other circumstances beyond Provider's reasonable control, including Customer's or any Authorized User's use of Third Party Materials, misuse of the Hosted Services, or use of the Services other than in compliance with the express terms of this Agreement and the Specifications; and
- d. any suspension or termination of Customer's or any Authorized Users' access to or use of the Hosted Services as permitted by this Agreement.

2.2 **Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties:

- a. Provider has and will retain sole control over the operation, provision, maintenance and management of the Services and Provider Materials, including the: (i) Provider Systems; (ii) [location(s) where any of the Services are performed], including in the United States, in countries outside the United States, or outside the borders of the country in which Customer or the Customer Systems are located]; (iii)] selection, deployment, modification and replacement of the Service Software; and (iv) performance of

[Support Services and] Service maintenance, upgrades, corrections and repairs; and

- b. Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions or materials provided by any of them to the Services or Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions or actions based on such use.

[Notwithstanding anything to the contrary in this Agreement, all Services, including all Processing of Customer Data by or on behalf of Provider shall be provided solely from within, and on computers, systems, networks and other infrastructure located in the United States

2.3 Service Management. Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity. [The parties' initial service managers are identified in Schedule B. Each party shall use commercially reasonable/best efforts to maintain the same service manager in place throughout the Term. If either party's service manager ceases to be employed by such party or such party otherwise wishes to replace its service manager, such party shall promptly name a new service manager by written notice to the other party.

2.4 Changes. Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Provider's services to its customers, (ii) the competitive strength of our market for Provider's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes in accordance with the change procedure set forth in Schedule D. No requested changes will be effective unless and until memorialized in a written change order signed by both parties, except that Customer may increase or decrease the number of Authorized Users for any Services pursuant to Section 3.4.

2.5 Subcontractors. Provider may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").

2.6 Suspension or Termination of Services. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its [good faith and reasonable/sole] discretion, that: (i) Customer or any Authorized User has failed to comply with, any [material] term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any [material] instruction or requirement of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities[relating to or in connection with any of the Services]; or (iii) this Agreement expires or is terminated. This Section 2.6 does not limit any of Provider's other rights or remedies, whether at law, in equity or under this Agreement.

3. Authorization and Customer Restrictions.

3.1 Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Provider hereby authorizes Customer to access and use, solely in the Territory and during the Term, the Services and such Provider Materials as Provider may supply or make available to Customer solely for the Permitted Use by and through Authorized Users in accordance with the Specifications and the conditions and limitations set forth in this Agreement. This authorization is non-exclusive other than as may be expressly set forth in Section 16.8, non-transferable.

3.2 Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the Provider Materials and the Third Party Materials are and will remain with Provider and the respective rights holders in the Third Party Materials.

3.3 Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- a. copy, modify or create derivative works or improvements of the Services or Provider Materials;
- b. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, give or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- c. reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, in whole or in part;
- d. bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;
- e. input, upload, transmit or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
- f. damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Provider Systems or Provider's provision of services to any third party, in whole or in part;
- g. remove, delete, alter or obscure any trademarks, Specifications, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;
- h. access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Provider customer), or that violates any applicable Law;
- i. access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision or use of a competing software service or

product or any other purpose that is to the Provider's detriment or commercial disadvantage.

- j. access or use the Services or Provider Materials in, or in association with, the design, construction, maintenance, operation of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage.
- k. otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under Section 3.1.

4. **Customer Obligations.**

4.1 **Effect of Customer Failure or Delay.** Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

4.2 **Corrective Action and Notice.** If Customer becomes aware of any actual or threatened activity prohibited by Section 3.3, Customer shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

4.3 **Non-Solicitation.** During the Term and for two years after, Customer shall not, and shall not assist any other Person to, directly or indirectly recruit or solicit (other than by general advertisement not directed specifically to any Person or Persons) for employment or engagement as an independent contractor any Person then or within the prior six months employed or engaged by Provider or any Subcontractor and involved in any respect with the Services or the performance of this Agreement. In the event of a violation of this Section 4.4, Provider will be entitled to liquidated damages equal to the compensation paid by Provider to the applicable employee or contractor during the prior six months.

5. **Service Levels [and Credits.**

5.1 **Service Levels.** Subject to the terms and conditions of this Agreement, Provider will use commercially reasonable efforts to make the Hosted Services Available at least ninety-nine (99.0%) of the time as measured over the course of each calendar month during the

Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Hosted Services to meet the Availability Requirement. "**Available**" means the Hosted Services are available for access and use by Customer and its Authorized Users over the Internet and operating in material accordance with the Specifications. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Hosted Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the Hosted Services that is due, in whole or in part, to any: (a) act or omission by Customer or any Authorized User/access to or use of the Hosted Services by Customer or any Authorized User, or using Customer's or an Authorized User's Access Credentials, that does not strictly comply with this Agreement and the Specifications; (b) Customer Failure; (c) Customer's or its Authorized User's Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Provider pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension or termination of the Services pursuant to Section 2.6.

5.2 **Scheduled Downtime.** Provider will[use commercially reasonable efforts to; (a) schedule downtime for routine maintenance of the Hosted Services between the hours of 6 p.m. and 6 a.m., EST, and (b)] give Customer at least 24 hours prior notice of all scheduled outages of the Hosted Services ("**Scheduled Downtime**").]

5.3 **Service Support.** The Services include Provider's standard customer support services ("**Support Services**") in accordance with the Provider service support schedule in effect.

6. **Data Backup.** The Provider Systems are programmed to perform routine data backups as set out in Provider's backup policy. Provider will deliver to Customer its then most current back-ups of Customer Data as and when set forth in the Backup Policy.

7. **Security.**

7.1 **Provider Systems and Security Obligations.** Provider will employ security measures in accordance with applicable industry practice/Provider's data privacy and security policy.

7.2 **Data Breach Procedures.** Provider maintains a data breach plan in accordance with the criteria set forth in Provider's Privacy and Security Policy and shall

implement the procedures required under such data breach plan on the occurrence of a "Data Breach" (as defined in such plan). Data breach procedure outlined in RFQ.

7.3 **Access and Security.** Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services.

8. **Intellectual Property Rights.**

8.1 **Services and Provider Materials.** All right, title and interest in and to the Services and Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and the respective rights holders in the Third-Party Materials. Customer has no right, license or authorization with respect to any of the Services or Provider Materials (including Third-Party Materials) except as expressly set forth in Section 3.1 or the applicable third-party license, in each case subject to Section 3.3 All other rights in and to the Services and Provider Materials (including Third-Party Materials) are expressly reserved by Provider and the respective third-party licensors.

8.2 **Customer Data.** As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer.

8.3 **Consent to Use Customer Data.** Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to Provider, its Subcontractors and the Provider Personnel as are necessary or useful to perform the Services; and (b) to Provider as are necessary or useful to enforce this Agreement and exercise its rights and perform its hereunder.

9. **Confidentiality.**

9.1 **Confidential Information.** In connection with this Agreement each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party"). Subject to Section 10.2, "Confidential Information" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing: all Provider

Materials are the Confidential Information of Provide] and the financial terms and existence of this Agreement are the Confidential Information of Provider/each of the parties.

9.2 **Exclusions.** Confidential Information does not include information that[the Receiving Party can demonstrate by written or other documentary records]: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that[, to the Receiving Party's knowledge] was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) [the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

9.3 **Protection of Confidential Information.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for the length of the PMP contract:

- a. not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- b. except as may be permitted by and subject to its compliance with Section 10.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 10.3; and (iii) are bound by [written] confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 10.3;
- c. safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its [most/similarly] sensitive information and in no event less than a reasonable degree of care; and
- d. ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 10.

10. Term and Termination.

10.1 **Initial Term.** The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect until ____ [year[s]/months] from such date (the "[Initial] Term").

10.2 **Renewal.** This Agreement will automatically renew for up to [____] additional successive [____] [month/year] term[s] unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least [____] days prior to the expiration of the then-current term ([each a] "Renewal Term" and, collectively,) together with the Initial Term, the "Term").]

10.3 **Termination.** In addition to any other express termination right set forth elsewhere in this Agreement:

- a. Provider may terminate this Agreement, effective on written notice to Customer, if Customer[: (i) fails to pay any amount when due hereunder, and such failure continues more than [____] days after Provider's delivery of written notice thereof; or (ii)] breaches any of its obligations under Section 3.3 (Use Limitations and Restrictions)[, Section 7.3 (Prohibited Data)] or Section 10 (Confidentiality).
- b. either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured [30/[____]] days after the non-breaching party provides the breaching party with written notice of such breach; and
- c. either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

10.4 **Effect of Expiration or Termination.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- a. all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;
- b. Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) [promptly/within seven days return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Provider directly or indirectly controls[, provided that, for clarity, Provider's obligations under this Section 11.4(b) do not apply to any Resultant Data];
- c. Customer shall immediately cease all use of any Services or Provider Materials and (i) promptly/within seven days return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on [any Provider Materials or] Provider's Confidential Information[; and] (ii) permanently erase [all Provider Materials and] Provider's Confidential Information from all systems Customer directly or indirectly controls[; and (iii) certify to Provider in a signed[and notarized] written instrument that it has complied with the requirements of this Section 11.4(c)];
- d. notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information[; and (ii) Provider may retain Customer Data[; (iii) Customer may retain Provider Materials], in the case of each of subclause (i)[, and] (ii) [and (iii)] in its then current state and solely to the extent and for so long as required by applicable Law; (iv) Provider may also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (v) all information and materials described in this Section 11.4(d) will remain subject to all confidentiality, security and other applicable requirements of this Agreement;
- e. Provider may disable all Customer and Authorized User access to the Hosted Services and Provider Materials;

- f. if Customer terminates this Agreement pursuant to Section 11.3(b), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and Provider will: (i) refund to Customer Fees paid in advance for [Services that Provider has not performed as of the effective date of termination; and (ii) pay to Customer any unpaid Service Credits to which Customer is entitled;
- g. if Provider terminates this Agreement pursuant to Section 11.3(a) or Section 11.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Provider's invoice.
- h. if Customer requests in writing at least fourteen days prior to the effective date of expiration or termination,]subject to Section 11.4(d), Provider shall, within seven days following such expiration or termination, deliver to Customer the then most recent version of Customer Data maintained by Provider, provided that Customer has at that time paid all Fees and Reimbursable Expenses then outstanding and any amounts payable after or as a result of such expiration or termination, including [any expenses and fees, on a time and materials basis, for Provider's services] in transferring such Customer Data.]

10.5 **Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3.3, Section 10, Section 11.4, this Section 11.5, Section 12, Section 13, Section 14 and Section 16.

11. **Representations and Warranties.**

11.1 **Mutual Representations and Warranties.** Each party represents and warrants to the other party that:

- a. it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;
- b. it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and

authorizations it grants or is required to grant under this Agreement;

- c. the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
- d. when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2 Additional Provider Representations, Warranties and Covenants.

Provider represents, warrants and covenants to Customer that Provider will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

11.3 Additional Customer Representations, Warranties and Covenants.

Customer represents, warrants and covenants to Provider that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights [,or any privacy or other rights] of any third party or violate any applicable Law.

11.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 12.1, SECTION 12.2 AND SECTION 12.3, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES [EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS], OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY

BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

12. **Indemnification.**

12.1 **Provider Indemnification.** Provider shall indemnify, defend and hold harmless Customer [and Customer's officers, directors, employees, agents, successors and assigns (each, a "**Customer Indemnitee**")] from and against any and all Losses incurred by Customer [Indemnitee] arising out of or relating to any claim, suit, action or proceeding (each, an "**Action**") by a third party (other than an Affiliate of [a] Customer [Indemnitee]) [alleging/to the extent that such Losses arise from any allegation in such Action] that Customer's [or an Authorized User's] use of the Services (excluding Customer Data and Third Party Materials) in compliance with this Agreement (including the Specifications) infringes a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

- a. access to or use of the Services or Provider Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in [the Specifications or otherwise in] writing by Provider;
- b. modification of the Services or Provider Materials other than: (i) by or on behalf of Provider; or (ii) with Provider's written approval in accordance with Provider's written specification;
- c. failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Provider; or
- d. act, omission or other matter described in Section 13.2(a), Section 13.2(b), Section 13.2(c) or Section 13.2(d), whether or not the same results in any Action against or Losses by any Provider Indemnitee.

12.2 **Customer Indemnification.** Customer shall indemnify, defend and hold harmless Provider and its [Subcontractors and Affiliates, and each of its and their respective] officers, directors, employees, agents, successors and assigns (each, a "**Provider Indemnitee**") from and against any and all Losses incurred by such Provider Indemnitee in connection with any Action by a third party (other than an Affiliate of a Provider Indemnitee) [that/to the extent that such Losses] arise[s] out of or relate[s] to any:

- a. Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement;

- b. any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including Provider's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Provider;
- c. allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement; or
- d. [negligence/gross negligence] or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

12.3 **Indemnification Procedure.** Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 13.1 or Section 13.2, as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel [of its choice/reasonably acceptable to the Indemnitee] to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 13.3 will not relieve the Indemnitor of its obligations under this Section 13 except to the extent that the Indemnitor can demonstrate that it has been [materially] prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

12.4 **Mitigation.** If any of the Services or Provider Materials are, or in Provider's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

- a. obtain the right for Customer to continue to use the Services and Provider Materials [materially] as contemplated by this Agreement;
- b. modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing [materially] equivalent features and functionality, in which case such

modifications or replacements will constitute Services and Provider Materials, as applicable, under this Agreement; or

- c. by written notice to Customer, terminate this Agreement [with respect to all or part of the Services and Provider Materials,] and require Customer to immediately cease any use of the Services and Provider Materials [or any specified part or feature thereof], provided that if such termination occurs prior to [] years after the Effective Date, subject to Customer's compliance with its post-termination obligations set forth in Section 11.4, Customer will be entitled to a refund of _____.

THIS SECTION 13 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PROVIDER MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

13. **Limitations of Liability.**

13.1 **EXCLUSION OF DAMAGES.** [EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3,]IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: [(a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT [OR DIMINUTION IN VALUE]; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES[, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 5.2], (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d)] CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 **CAP ON MONETARY LIABILITY.** [EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3,] IN NO EVENT WILL THE [COLLECTIVE] AGGREGATE LIABILITY OF PROVIDER [AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS] UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED [[\$[AMOUNT]/[FORMULA]]. THE FOREGOING LIMITATION

APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.3 **Exceptions.** The exclusions and limitations in Section 14.1 and Section 14.2 do not apply to Provider's obligations under Section 13 (Indemnification) or liability for Provider's gross negligence or willful misconduct.]

14. **Force Majeure.**

14.1 **No Breach or Default.** In no event will [Provider/either party] be liable or responsible to [Customer/the other party], or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement[, (except for any payment obligation)], when and to the extent such failure or delay is caused by any circumstances beyond [Provider/such party]'s reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event [affecting the other party] continues substantially uninterrupted for a period of [30/[NUMBER]] days or more.

14.2 **Affected Party Obligations.** In the event of any failure or delay caused by a Force Majeure Event, [Provider/the affected party] shall give prompt written notice to [Customer/the other party] stating the period of time the occurrence is expected to continue and use [commercially reasonable/diligent] efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15. **Miscellaneous.**

15.1 **Further Assurances.** Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

15.2 **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.3 **Public Announcements.** Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed[, provided, however, that Provider may, without Customer's consent, include Customer's name [and/or other indicia] in its lists of Provider's current or former customers of Provider in promotional and marketing materials].

15.4 **Notices.** [Except as otherwise expressly set forth in this Agreement, a/A]ll notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 16.4):

If to Provider: [PROVIDER ADDRESS]

Facsimile: [FAX NUMBER]

[E-mail: [NOTICES CONTACT'S E-MAIL ADDRESS]]

Attention: [NAME AND TITLE OF OFFICER TO RECEIVE NOTICES]

If to Customer: [CUSTOMER ADDRESS]

Facsimile: [FAX NUMBER]

[E-mail: [NOTICES CONTACT'S E-MAIL ADDRESS]]

Attention: [NAME AND TITLE OF OFFICER TO RECEIVE NOTICES]

Notices sent in accordance with this Section 16.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile [or e-mail], ([in each case,] with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the [ORDINAL NUMBER] day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

Note: Notices

15.5 **Interpretation.** For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute

means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

15.6 **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.7 **Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. [In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments and appendices [(other than an exception expressly set forth as such therein)] and any other documents incorporated herein by reference], the following order of precedence governs: [(a) first, this Agreement, excluding its exhibits, schedules, attachments and appendices; (b) second, the exhibits, schedules, attachments and appendices to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

15.8 **Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Provider's prior written consent[, which consent Provider [shall not unreasonably withhold or delay/may give or withhold in its sole discretion]]. [For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which Provider's prior written consent is required.] No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section 16.8 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

15.9 **No Third-party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective [permitted] successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

15.10 **Amendment and Modification; Waiver.** No amendment to or modification of /or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15.11 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.12 **Governing Law; Submission to Jurisdiction.** This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action or proceeding arising out of this Agreement or the licenses granted hereunder shall/may be instituted in the federal courts of the United States or the courts of the State of Delaware. and each party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

15.13 **Waiver of Jury Trial.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

15.14 **Equitable Relief.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 10 or, in the case of Customer, Section 3.3, Section 4.3 or Section 7.3, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a

restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

15.15 **Attorneys' Fees.** In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

15.16 **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. [A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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

MAHANTECH CORPORATION

By _____

Name: Channa M Arjuna

Title: President

WEST VIRGINIA BOARD OF PHARMACY

By _____

Name:

Title: