



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER  
**LBS80432**

PAGE  
**1**

ADDRESS CORRESPONDENCE TO ATTENTION OF  
**ROBERTA WAGNER  
 304-558-0067**

**RFQ COPY**  
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VENDOR

SHIP TO

**HEALTH AND HUMAN RESOURCES  
 BPH - LABORATORY SERVICES  
 167-ELEVENTH AVENUE  
 SOUTH CHARLESTON, WV  
 25303 304-558-3530**

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
03/30/2008				

BID OPENING DATE: **05/01/2008** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB		493-08		
<p><b>ONE INTEGRATED PCR AND QUALITATIVE POST-PCR SYSTEM</b></p> <p>TO PROVIDE AN INTEGRATED SYSTEM DESIGNED TO PERFORM QUANTITATIVE REAL-TIME PCR (POLYMERASE CHAIN REACTION) AND QUALITATIVE POST-PCR (END-POINT) ANALYSIS PER THE ATTACHED SPECIFICATIONS. MUST ALSO BE CAPABLE OF PERFORMING NON-REAL TIME PCR, AS WELL.</p> <p>EQUIPMENT TO BE APPLIED BIOSYSTEMS 7500 FAST REAL-TIME PCR SYSTEM (PART NUMBERS 4362143, 4351106, 4381530, 4351107, 4365463, 4355464, AND 4377355) OR EQUAL, PER THE ATTACHED SPECIFICATIONS.</p> <p>THIS SYSTEM INCLUDES COMPUTER EQUIPMENT WHICH IS STAND ALONE AND WILL NOT BE HOOKED TO THE LAN.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>INQUIRIES: WRITTEN QUESTIONS SHALL BE ACCEPTED THROUGH CLOSE OF</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

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**GENERAL TERMS & CONDITIONS  
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
  2. The State may accept or reject in part, or in whole, any bid.
  3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
  4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125.00 registration fee.
- 
5. All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
  6. Payment may only be made after the delivery and acceptance of goods or services.
  7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
  8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
  9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
  10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
  11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
  12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
  13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
  14. **HIPAA Business Associate Addendum -** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.

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**INSTRUCTIONS TO BIDDERS**

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in cases of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications.

**SIGNED BID TO:**

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



State of West Virginia  
 Department of Administration  
 Purchasing Division  
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**LBS80432**

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**2**

ADDRESS CORRESPONDENCE TO ATTENTION OF  
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**304-558-0067**

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VENDOR

SHIP TO

**HEALTH AND HUMAN RESOURCES**  
**BPH - LABORATORY SERVICES**

**167-ELEVENTH AVENUE**  
**SOUTH CHARLESTON, WV**  
**25303 304-558-3530**

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
03/30/2008				

BID OPENING DATE: **05/01/2008** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
<p><b>BUSINESS ON 4/12/2008. QUESTIONS MAY</b>  <b>BE SENT VIA USPS, FAX, COURIER, OR E-MAIL. IN ORDER</b>  <b>TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO</b>  <b>SUBSTANTIVE QUESTIONS WILL BE ANSWERED ORALLY. IF</b>  <b>POSSIBLE, E-MAIL QUESTIONS ARE PREFERRED. ADDRESS</b>  <b>INQUIRIES TO:</b></p> <p><b>ROBERTA WAGNER</b>  <b>DEPARTMENT OF ADMINISTRATION</b>  <b>PURCHASING DIVISION</b>  <b>2019 WASHINGTON STREET, EAST</b>  <b>CHARLESTON, WV 25311</b></p> <p><b>FAX: 304-558-4115</b>  <b>E-MAIL: ROBERTA.A.WAGNER@WV.GOV</b></p> <p><b>PLEASE NOTE: THIS IS A RE-BID OF LBS80425.</b></p> <p><b>THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH</b>  <b>THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT</b>  <b>INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY</b>  <b>PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING</b>  <b>ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT</b>  <b>LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE</b>  <b>INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR</b>  <b>REJECTION OF THE BID. THE STATE RESERVES THE RIGHT</b>  <b>TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATION</b>  <b>IN ACCORDANCE WITH SECTION 148-1-4(F) OF THE WEST</b>  <b>VIRGINIA LEGISLATIVE RULES AND REGULATIONS.</b></p> <p style="text-align: center;"><b>VENDOR PREFERENCE CERTIFICATE</b></p>						

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 BPH - LABORATORY SERVICES**

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 SOUTH CHARLESTON, WV  
 25303 304-558-3530**

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03/30/2008				

BID OPENING DATE: **05/01/2008** BID OPENING TIME **01:30PM**

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<p>CERTIFICATION AND APPLICATION* IS HEREBY MADE FOR PREFERENCE IN ACCORDANCE WITH WEST VIRGINIA CODE, 5A-3-37 (DOES NOT APPLY TO CONSTRUCTION CONTRACTS).</p> <p>A. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>( ) 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</p> <p>( ) BIDDER IS A PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR AND HAS MAINTAINED ITS HEAD-QUARTERS 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</p> <p>( ) BIDDER IS A CORPORATION 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.</p> <p>B. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>( ) BIDDER IS A RESIDENT VENDOR WHO CERTIFIES THAT,</p>						

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**25303 304-558-3530**

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<b>03/30/2008</b>				
BID OPENING DATE: <b>05/01/2008</b>		BID OPENING TIME <b>01:30PM</b>		

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>DURING THE LIFE OF THE CONTRACT, ON AVERAGE 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 THIS BID;</p> <p>OR</p> <p>( ) 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 CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES OR BIDDERS' 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.</p> <p>BIDDER UNDERSTANDS IF THE SECRETARY OF TAX &amp; 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) RESCIND THE CONTRACT OR PURCHASE ORDER ISSUED; 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.</p> <p>BY SUBMISSION OF THIS CERTIFICATE, BIDDER AGREES TO DISCLOSE ANY REASONABLY REQUESTED INFORMATION TO THE PURCHASING DIVISION AND AUTHORIZES THE DEPARTMENT OF TAX AND 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</p>						

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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>TAXES PAID NOR ANY OTHER INFORMATION DEEMED BY THE TAX COMMISSIONER TO BE CONFIDENTIAL.</p> <p>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.</p> <p>BIDDER: -----</p> <p>DATE: -----</p> <p>SIGNED: -----</p> <p>TITLE: -----</p> <p>* CHECK ANY COMBINATION OF PREFERENCE CONSIDERATION(S) IN EITHER "A" OR "B", OR BOTH "A" AND "B" WHICH YOU ARE ENTITLED TO RECEIVE. YOU MAY REQUEST UP TO THE MAXIMUM 5% PREFERENCE FOR BOTH "A" AND "B". (REV. 12/00)</p> <p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION          PURCHASING DIVISION          BUILDING 15          2019 WASHINGTON STREET, EAST</p>						

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<b>CHARLESTON, WV 25305-0130</b>  <b>NOTE: A CONVENIENCE COPY WOULD BE APPRECIATED.</b>  <b>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</b>  <b>SEALED BID</b>  <b>BUYER:-----ROBERTA WAGNER/FILE 22-----</b>  <b>RFQ. NO.:-----LBS80432-----</b>  <b>BID OPENING DATE:---- 5/01/2008-----</b>  <b>BID OPENING TIME:----1:30 PM-----</b>   <b>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</b>  <b>-----</b>  <b>CONTACT PERSON (PLEASE PRINT CLEARLY):</b>  <b>-----</b>						

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<b>03/30/2008</b>				

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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
***** THIS IS THE END OF RFQ LBS80432 ***** TOTAL: _____						

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## SPECIFICATIONS AND REQUIREMENTS

### Test Equipment Specifications

1. Integrated system must be capable of processing 96 samples simultaneously in a 96-well plate in 30 minutes with consistent and accurate results.
2. System must be able to detect a five-color system of dyes that will not require the addition of new filter sets.
3. System must be able to use a variable excitation capacity that allows for greater sensitivity for a range of dyes such as FAM/SYBR GREEN I, VIC/JOE, NED/TAMRA/Cy3, ROX/TEXAS RED, and Cy5 or dyes specific to alternate equipment bid in place of the Applied Biosystems 7500 Fast Real-Time PCR System.
4. Once instrument is calibrated for specific dyes, the user must be able to use any of those dyes in an experiment without needing to recalibrate the instrument if there is a change to the assay's reaction volume, reaction vessel or reaction sealant.
5. System must have the following dimensions or less: 34 cm (13.99 in) x 45 cm (17.72 in) x 49 cm (19.29 in). System must weigh 34 kg (75lbs) or less.
6. System must have a temperature range of 4°C – 100°C and an accuracy of +/- 0.25°C of set point/display temperature, measured at 3 minutes after clock start.
7. Assay Reader must have a reaction volume of 10-30ul per 96 well plate.
8. Any and all validation and calibration kits needed for initial system validation must be included in total equipment cost.

### Computer Equipment Specifications

1. Computer system must be a stand alone notebook that operates independently and will not be connected to the facility LAN (Local Area Network).
2. Instrument must be supplied with specialized application software which is able to perform quantitative real-time PCS (polymerase chain reaction), Absolute Quantitation, Allelic Discrimination, Plus/Minus, Isothermal Applications, Multicomponenting Algorithm, and compare up to 10 plates of gene expression assays.
3. System must be equipped with SDS v1.4 (Sequence Detection Software or equivalent necessary to operate equipment) to ensure instrument control, data collection, and advanced data analysis.

### Installation & Training Requirements:

1. Full instrument installation and performance verification must be performed by a Certified Field Service Engineer, must be included at no additional cost and must be completed within 30 days of equipment delivery.
2. On site **hands-on** training must be performed by a Field Service Engineer at the Office of Laboratory Services, 167 11<sup>th</sup> Avenue, South Charleston, WV 25303 at no additional cost and must be completed within 30 days of equipment delivery.

- 
3. System must be supported by a Service Engineer to perform validation which includes Installation Qualification, Operational Qualification, and Instrument Performance Verification.
- 

**Warranty Requirements:**

1. Must include at least one year equipment warranty to include parts and labor and must be provided at no additional cost.

**Shipping and Delivery Requirements:**

1. Shipping terms to be F.O.B. Destination, Prepaid unless vendor states differently when submitting quotation.
2. If shipping costs are incurred they must be included as a separate line item and part of the total cost of the equipment.
3. Must be delivered within 60 days of approved purchase order.
4. Delivery must be inside delivery and must be made Monday through Friday, 8:00 a.m. through 4:00 p.m.

**Invoice and Payment Requirements:**

1. Vendor must submit an original itemized invoice for payment of equipment.
2. Payment will be made in arrears after delivery of equipment, completion of installation and training and successful implementation of the equipment has taken place.

**Basis for Contract Award:**

1. The basis for contract award will be the lowest overall total cost for equipment which meets all requested specifications and requirements.

**COST SHEET**

**LBS880432**

Item #	Equipment Description	Equipment Cost	Shipping Cost (if applicable)	Total Cost
1	Applied Biosystems 7500 Fast Real-Time PCR System or Equivalent (Applied Biosystems Part Numbers 4362143, 4351106, 4381530, 4351107, 4365463, 4355464 and 4377355 or equivalent)	\$	\$	\$

STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**West Virginia Code §5A-3-10a states:** 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 the debt owed is an amount greater than one thousand dollars in the aggregate

**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.

“Debtor” means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. “Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. “Related party” means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

**EXCEPTION:** The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this 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.

**LICENSING:** Vendors 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 agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

**CONFIDENTIALITY:** The vendor agrees that he or she 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. Vendors should visit [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy) for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor’s Name: \_\_\_\_\_

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

ATTACHMENT

P.O.# \_\_\_\_\_

This agreement constitutes the entire agreement between the parties, and there are no other terms and conditions applicable to the licenses granted hereunder.

Agreed

\_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Agency/Division

WV-96  
Rev. 10/07

**AGREEMENT ADDENDUM**

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY**: -Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA

VENDOR

Spending Unit: \_\_\_\_\_

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

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