



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

State of West Virginia
Master Agreement

Order Date: 02-14-2022

CORRECT ORDER NUMBER MUST
 APPEAR ON ALL PACKAGES, INVOICES,
 AND SHIPPING PAPERS. QUESTIONS
 CONCERNING THIS ORDER SHOULD BE
 DIRECTED TO THE DEPARTMENT
 CONTACT.

Order Number:	CMA 0212 0212 RECMGT22 1	Procurement Folder:	1005131
Document Name:	CMA 0212 RECMGT22	Reason for Modification:	AWARD OF CSSD 0212 SWC0000000008 Original PF: 999776
Document Description:	Statewide Contract: Records Management Services		
Procurement Type:	Statewide MA (Open End)		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2022-02-15
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-02-14

VENDOR				DEPARTMENT CONTACT	
Vendor Customer Code:	000000126524			Requestor Name:	Donna L Lipscomb
IRON MOUNTAIN INCORPORATED				Requestor Phone:	(304) 558-5472
PO BOX 27128				Requestor Email:	donna.m.lipscomb@wv.gov
NEW YORK	NY	100877128			
US					
Vendor Contact Phone:	304-549-6423	Extension:			
Discount Details:					
	Discount Allowed	Discount Percentage	Discount Days	<div style="font-size: 2em; font-weight: bold;">22</div> FILE LOCATION _____	
#1	No	0.0000	0		
#2	No				
#3	No				
#4	No				

INVOICE TO	SHIP TO
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER
No City WV 99999	No City WV 99999
US	US

Handwritten: 02/15/2022

Purchasing Division's File Copy

Total Order Amount:	Open End
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ENTERED

Handwritten: MA 02/14/2022

PURCHASING DIVISION AUTHORIZATION
 DATE: *2/15/2022*
 ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
 DATE: *2/15/2022*
 ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
 DATE: *2/17/2022*
 ELECTRONIC SIGNATURE ON FILE

Handwritten: 2/16/2022

Extended Description:

DIRECT AWARD STATEWIDE CONTRACT:

Records Management Services:

The Vendor, Iron Mountain Incorporated, agrees to enter with the State of West Virginia, into an open-end statewide contract to provide Records Management Services per the Direct Award Documentation Including the Vendor's submitted proposal, incorporated herein by reference and made apart hereof.

Effective Dates: February 15, 2022 - February 14, 2023

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	78131804			LS	0.000000
	Service From	Service To			

Commodity Line Description: Records Management Services

Extended Description:

See EXHIBIT_B for Contract Pricing

Document Storage Direct Award Contract
West Virginia Department of Administration, Office of Technology

This Contract is entered into by the West Virginia Department of Administration, Office of Technology (hereinafter "State" or "Agency") and Iron Mountain Information Management, LLC (hereinafter "Iron Mountain"), (both referred to as "Parties") on the date identified as the encumbrance date on the wvOASIS form preceding this Contract.

WHEREAS, Iron Mountain currently holds an emergency contract to store state records at its facility that expires on January 31, 2022.

WHEREAS, the emergency contract did not contain a contract clause governing transition to a subsequent successful bidder and the Parties were not able to establish acceptable disentanglement provisions in a time period that would allow a transition to a new record storage vendor.

WHEREAS, the Parties must establish a new contract to facilitate continued storage of existing state records that includes acceptable provisions allowing for the transition of stored records should such a transition be needed.

WHEREAS, the Parties must also establish reasonable box removal and delivery limits during normal contract operations.

WHEREAS, there is not sufficient time to competitively bid for storage services of records currently stored at Iron Mountain's facility, negotiate acceptable contract provisions, and transition to a new contract prior to the emergency contract's expiration.

The Parties agree as follows:

1. **PERFORMANCE OBLIGATIONS:** Iron Mountain will store state records during the term of this Contract and provide related storage services as more fully described in the specifications attached hereto as Exhibit A and incorporated herein by reference.
2. **PRICING; PAYMENT:** The State will pay for records storage and related services as shown on the attached Pricing Page attached hereto as Exhibit B and incorporated herein by reference.
 - a. **PRICING:** The pricing set forth in Exhibit B is firm for the life of the Contract..
 - b. **BENCHMARKING.** Each year at Customer's request, the Parties will meet to review Iron Mountain's Services and the pricing to ensure they remain competitive with comparable service offerings and the pricing then available in the marketplace for similar services and under similar terms and profiles. Such reviews may include competitive benchmarking, the use of comparative information available from independent third parties (such as consultants and industry publications), and other market-based information the Parties deem reasonably reliable and accurate. If the

review shows that pricing for a Service offered by Iron Mountain under this Agreement is less favorable than the price or service level for comparable products or services available in the marketplace under similar terms and profiles, the Parties will mutually agree in writing on pricing adjustments, which adjustments will be made only on a going forward basis.

- c. **PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later.
- d. **PAYMENT METHODS:** Iron Mountain must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)
- e. **TAXES:** The Iron Mountain shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
- f. **ADDITIONAL FEES:** Iron Mountain is not permitted to charge additional fees or assess additional charges that are not included in the Contract. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

3. CONTRACT TERM; RENEWAL; EXTENSION:

- a. **INITIAL CONTRACT TERM:** This Contract becomes effective on the date listed as the encumbrance date on the wvOASIS document, and the initial contract term extends for one year thereafter.
- b. **RENEWAL TERM:** This Contract may be renewed upon the mutual written consent of the Parties, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to Two (2) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by Iron Mountain, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)
- c. **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.

- d. **AUTHORITY TO PROCEED:** Iron Mountain is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document.
4. **EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Iron Mountain 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 Iron Mountain to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.
5. **INSURANCE:** Iron Mountain shall furnish proof of the insurance identified below and must include the State as an additional insured on the General Liability. The insurance coverages identified below must be maintained throughout the life of this contract. Within two business days prior to the expiration of the insurance policies, Iron Mountain shall provide the Agency with proof that the insurance mandated herein has been continued. Iron Mountain must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancellation, policy reduction, or change in insurers.

Iron Mountain must maintain:

- a. Commercial General Liability Insurance in an amount of: \$1,000,000 per occurrence.
 - b. Automobile Liability Insurance in an amount of: \$1,000,000 per occurrence.
 - c. Cyber Liability Insurance in an amount of: \$3,000,000 per occurrence.
 - d. **WORKERS' COMPENSATION INSURANCE:** Iron Mountain 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.
6. **INDEMNIFICATION:** The Vendor agrees to indemnify, defend and hold harmless the State and its Agencies, their officers, and employees from and against: 1) Any claims or losses for services rendered by a subcontractor, person, firm performing or supplying services, materials, or supplies in connection with the negligent performance of the

contract; 2) Any claims or losses resulting to any person or entity injured or damaged by the negligent acts of 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 or Federal law including, but not limited to labor and wage and hour laws.

7. **FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify Iron Mountain that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default. In the event that this contract expires, and Iron Mountain continues to provide storage and records management services in accordance with this contract to the State of West Virginia, Iron Mountain may pursue a claim with the West Virginia Claims Commission for payment for services rendered.
8. **CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the Iron Mountain if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to Iron Mountain in accordance with West Virginia Code of State Rules § 148-1-5.2.b.
9. **TIME:** Time is of the essence regarding all matters of time and performance in this Contract.
10. **APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.
11. **COMPLIANCE WITH LAWS:** Iron Mountain shall comply with all applicable federal, state, and local laws, regulations and ordinances. Iron Mountain acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.
 - a. **SUBCONTRACTOR COMPLIANCE:** Iron Mountain shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

12. **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 Iron Mountain, 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.
13. **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.
14. **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 Iron Mountain 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 Iron Mountain's forms does not constitute acceptance of the terms and conditions contained thereon.
15. **ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Iron Mountain 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. Except that Iron Mountain may assign any such right to an Affiliate with approval of the agency, Purchasing Division and Attorney General's office (as to form only). An "Affiliate" means those entities controlling, controlled by, under common control with, or having a common parent with, either Iron Mountain or Member as applicable. For purposes of the foregoing definition, "control" (including "controlling", "controlled by" and "under common control with") means direct or indirect ownership of: (a) not less than fifty percent (50%) of the voting stock of a corporation; (b) the right to vote not less than fifty percent (50%) of the voting stock of a corporation; or (c) not less than fifty percent (50%) ownership interest in a partnership or other business entity. The non-assigning Party shall not unreasonably withhold its consent.
16. **STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and Iron Mountain is prohibited from permitting or facilitating the same.
17. **PRIVACY, SECURITY, AND CONFIDENTIALITY:** Iron Mountain 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. Iron Mountain further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

18. **THIS CONTRACT IS A PUBLIC DOCUMENT:** This Contract and all related documents are public documents. As public documents, they will be disclosed to the public as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

IRON MOUNTAIN MUST NOT SUBMIT MATERIAL IT CONSIDERS TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any document to the Purchasing Division constitutes Iron Mountain's explicit consent to the subsequent public disclosure of the 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.

19. **LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Iron Mountain must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Iron Mountain must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Iron Mountain is licensed and in good standing with the above entities.

- a. **SUBCONTRACTOR COMPLIANCE:** Iron Mountain shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

20. **ANTITRUST:** In submitting a bid to, signing a contract with, or accepting an Award Document from any agency of the State of West Virginia, the Iron Mountain 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 Iron Mountain.

21. **IRON MOUNTAIN CERTIFICATIONS:** By signing its bid or entering into this Contract, Iron Mountain certifies (1) its offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting an offer for the same material, supplies, equipment or services; (2) that its 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 Contract in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Iron Mountain'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 Contract on behalf of Iron Mountain certifies that he or she is authorized by the Iron Mountain to execute this Contract on Iron Mountain's behalf; that he or she is authorized to bind the Iron Mountain in a contractual relationship; and that, to the best of his or her knowledge, the Iron Mountain has properly registered with any State agency that may require registration.

22. **INDEPENDENT CONTRACTOR:** The relationship of Iron Mountain 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. Iron Mountain as an independent contractor is solely liable for the acts and omissions of its employees and agents. Iron Mountain shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this contract. Neither Iron Mountain, nor any employees or subcontractors of Iron Mountain, shall be deemed to be employees of the State for any purpose whatsoever. Iron Mountain shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing. Iron Mountain 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.

23. **PURCHASING AFFIDAVIT:** In accordance with West Virginia Code §§ 5A-3-10a

and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Iron Mountains 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.

24. **CONFLICT OF INTEREST:** Iron Mountain, 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. Iron Mountain 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.
25. **REPORTS:** Iron Mountain shall provide the Agency and/or the Purchasing Division with the following reports identified below:
 - a. 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.
 - b. 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.division@wv.gov.
26. **BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.
27. **INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, Iron Mountain 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 or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.
28. **VOID CONTRACT CLAUSES –** This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

This Contract is executed on behalf of the Parties as shown below.

STATE OF WEST VIRGINIA

~~Office of Technology~~

IRON MOUNTAIN

By: Jennelle H. Jones
Name: Jennelle H. Jones

Its: State Records Admin

Date: 1/31/22

DocuSigned by:
By: Sheila Poggi
9EB1BE384BC14F3...
Name: Sheila Poggi

Its: Sr Mgr, Public Sector Contracts

Date: 27 January 2022

Approved in Form and Legal Content:
Iron Mountain Legal Department
Christine G. Jennings
Christine G. Jennings, Counsel, Public
Sector
State: West Virginia
Date: January 27, 2022

Exhibit A – Performance Specifications

EXHIBIT A

SPECIFICATIONS

1. **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.

1.1 **“Agency”** means agency, commission, authority, or other unit of the State of West Virginia authorized to utilize this Contract.

1.2 **“Contract Item”** or **“Contract Items”** means the list of items identified on the Pricing Pages and described in more detail herein.

1.3 **“Box”** means a storage container used for temporary or permanent storage of files, record, or records. A standard box size is 15”L x 12”W x 10”H equal to 1.2 cubic feet in size. All storage of Records under this Contract will be in Boxes.

1.4 **“Business Hours”** means Monday – Friday 8:00 AM through 5:00 PM EST excluding weekends and Federal and State holidays. State Holidays are as follows:

New Year’s Day (January 1)
Martin Luther King Day (Third Monday in January)
President’s Day (Third Monday in February)
Memorial Day (Last Monday in May)
West Virginia Day (June 20)
Independence Day (July 4)
Labor Day (First Monday in September)
Columbus Day (Second Monday in October)
Veterans Day (November 11)
Thanksgiving (Fourth Thursday in November)
Day After Thanksgiving (Fourth Friday in November)
Christmas Day (December 25)

1.5 **“Disaster”** means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.

1.6 **“NFPA”** means National Fire Protection Association (www.nfpa.org).

1.7 **“Pricing Pages”** means the schedule of prices, estimated order quantity and totals contained in wvOASIS or attached hereto as Exhibit B.

1.8 **“Record”** means a document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, provided to Iron Mountain for storage.

1.9 “Vendor” means Iron Mountain.

2. PROGRAM AUTHORITY:

2.1 Pursuant to the West Virginia Code §5A-8-1 through §5A-8-22, and Legislative Rules 148-CSR-12, 148-CSR-13, and 148-CSR-14, the Department of Administration is responsible for the management of the State’s day-to-day records management program and the Department of Administration is led by the Secretary of Administration. By law, Agencies are required to follow retention/destruction schedules that have been approved by the Department of Administration.

2.2 Accordingly, Vendor must provide the Secretary of Administration, or his designee, with complete and full access to any record, report, account activity, etc. for any account covered by this Contract.

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

3.1 Vendor must be Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health (HITECH) compliant. An executed Business Associate Addendum is included as Exhibit C.

3.2 Vendor must have established information security and privacy policies. Vendor must provide proof of a third-party audit of the security and privacy policies within the last 365 days upon request.

3.3 Vendor must have an established personnel security program designed to evaluate employee trustworthiness before being granted access to sensitive data. Vendor must provide documentation of security program upon request.

3.4 Vendor must have a documented plan for handling security and privacy incidents that complies with the West Virginia Notice of Confidentiality Policies and Information Security Accountability Requirements, made part of this contract through the General Terms and Conditions.

3.4.1 The Vendor’s incident management plan must define a security or privacy incident as an unauthorized access of an agency’s records or any missing agency records from the vendor’s custody.

3.4.2 The Vendor’s incident management plan must describe what steps of the process are handled internally or externally; and

3.4.3 The Vendor’s incident management plan must include timeframes or milestones.

4. GENERAL REQUIREMENTS:

4.1 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

Facility Requirements:

4.1.1 The vendor must provide a facility that will protect all records from disaster as defined in West Virginia Code §5A-8-3.

4.1.1.1 Upon the occurrence of a Disaster as defined by Section 1.5 of this Agreement, the affected party shall be excused from any further performance of its obligations pursuant to this Agreement affected by the Disaster for as long as such Disaster continues and for a reasonable period thereafter. The affected party shall promptly notify the other party of the occurrence of a Disaster and describe in reasonable detail the nature of the Disaster. The Vendor must use commercially reasonable efforts to remedy the effects of damaged records in the event of a Disaster, up to the amount of insurance required by the contract but will not be liable for special, incidental or punitive damages.

4.1.1.2 For damaged or lost records as a result of the Vendor's negligence, the Vendor assumes all costs related to lost or damaged records, including restoration or recovery and exclude special, incidental or punitive damages.

4.1.2 The vendor must provide a facility that meets the following requirements for archival storage of records:

4.1.2.1 The vendor must provide storage to accommodate a minimum of 200,000 cubic feet for the State's existing records and must have the capacity to expand or contract this storage as the State's storage requirements change.

4.1.2.2 The Vendor's storage facility must provide the following physical security measures.

4.1.2.2.1 Facility must have security locks at each exterior entrance.

4.1.2.2.2 Facility must have a 24-hour, 7 days-per-week, 365-days-per-year monitored anti-intrusion alarm system to protect against unauthorized entry.

4.1.2.2.3 Facility must have a policy for access to the records storage area to ensure only authorized individuals have access. Vendor must provide documentation of such policy prior to award.

4.1.2.3 The vendor must provide smoke detection within the entire facility in accordance with NFPA code or standards.

4.1.2.4 The vendor must provide a fire suppression system in the records storage areas.

4.1.2.5 The vendor must limit its flooding risk by storing records in a facility that is located out of the 100-year floodplain.

4.1.2.6 The vendor must keep records a minimum of one inch off the floor with the optimum of three inches. Records must be stored away from windows, steam, sewer or water pipes.

4.1.2.7 The Vendor must minimize light exposure to the records and must keep the lids on boxes at all times.

4.1.3 Records stored at the facility must only be viewed by authorized persons. The vendor must have security controls or policies to allow access only to those persons approved to retrieve/view records for their respective agency. Vendor must provide documentation of such policies and procedures prior to award.

Indexing and Invoicing:

4.1.4 The vendor must provide an indexing and tracking system that provides documentation of chain of custody from the time of acceptance by the vendor to final disposition for records inventory and must index each box submitted. The indexing system must provide a minimum of 60 characters per box or per file in the records description field.

4.1.5 Vendor will not be required to index each record contained within a Box and will only index at the Box level. Unless it is necessary for Box replacement or some other emergency preservation purpose, Vendor must not open Boxes.

4.1.6 The vendor must invoice each state agency storing records at the facility monthly in arrears.

4.1.7 The vendor must maintain a log of personnel or authorized individuals that have accessed records or boxes and must provide the log upon agency request.

4.1.8 The vendor must provide reporting on agency Boxes, including inventory, storage costs, and activity, upon request to agency-authorized personnel, and to the Department of Administration-authorized personnel within seven business days of request.

4.1.8.1 These reports shall include, but not be limited to, the following:

4.1.8.1.1 The agencies storing records in the facility and the total volume in number of boxes and cubic feet for each agency;

4.1.8.1.2 The account numbers, box numbers, date records were received by vendor, date of records, destruction dates, and full descriptions of the records;

4.1.8.1.3 The total amount of cubic feet of storage for the state;

4.1.8.1.4 The itemized cost for each for an agency;

4.1.8.1.5 The itemized cost for the State;

4.1.8.1.6 The authorized users for each account;

4.1.8.1.7 The requests for action made for each agency/account;

4.1.8.1.8 The destruction eligibility of records.

4.1.9 The vendor must make available via the IM Connect Portal to the Agency all billing activity detail for the month and a list of Boxes that are currently checked out with the date of checkout.

4.1.10 When an agency makes a request to destroy records, the Vendor must cease billing the agency for the monthly storage of the boxes to be destroyed once the boxes have been destroyed or no more than 60 calendar days after the request to destroy the boxes was made, whichever occurs first. When an agency requests that the status of boxes be changed to “permanently withdrawn”, the Vendor must cease billing the agency for the storage of those boxes on the next monthly invoice.

Requirements and Pricing for Storage, Supplies, Pick Up, Retrieval, Destruction, Transition: The items listed below are included on the Pricing Page, must be billed in accordance with the pricing page and are the only items that can be billed to an Agency under this Contract.

STORAGE:

5.2.1 Contract Item #1 - Storage: The vendor must accommodate storage of a minimum of 200,000 cubic feet for the State's records currently stored with the ability to expand or contract. The vendor must invoice each state agency storing records at the facility monthly in arrears. The unit price for Contract Item #1 is listed on the attached Exhibit B ("Pricing Page") and is based on a bundled storage program. It has been designed to include program activities over a twelve-month period based on the anticipated activity levels. The parties will review the actual activity level for the services prior to the twelve-month anniversary of the contract (i.e. the six-month anniversary).

SUPPLIES:

5.2.2 Contract Item #2A New Boxes: The vendor must provide storage boxes; Approximate dimensions: 15"L x 12"W x 10" H. Vendor shall provide replacement boxes for boxes damaged by the Vendor while in the Vendor's possession at no cost.

5.2.3 Contract Item #2B RFID tags: The vendor must provide RFID tags to attach to boxes, whether the boxes are purchased from the Vendor on this contract or purchased from another source. Customers may utilize their own boxes of the same dimensions as the boxes supplied by Iron Mountain on this contract if an RFID tag supplied by Iron Mountain to capture inventory information is affixed to the box.

PICK UP NEW RECORDS

5.2.4 Contract Item #3 – Pick Up (New Records): The vendor must pick up new records for storage within a maximum of five business days after written request by the agency. Customer is responsible for providing courier the completed transmittal form of descriptive information. Vendor will pick up records at the Agency's location.

5.2.5 Contract Item #4 - Indexing/Induction (New Records): Vendor must index all new records received from an agency and incorporate the records into the Vendor's facility and systems.

RETRIEVAL/DELIVERY

Note: For orders placed for contract items 5.2.6., 5.2.7., 5.2.8., 5.2.9., and 5.2.1.10, the Vendor commits to delivering 100 boxes per day in the aggregate across all customer agencies. The customer agrees to be bound to the service levels set out in Exhibit A which shall not exceed more than 100 boxes per day across all agencies. Additionally, the state may withdraw boxes from an Iron Mountain facility with the intent to self-store boxes on state property as part of their records transition strategy. If boxes are withdrawn from the Vendor's facility and remain in "out" status with no pending request by the State to change their status to permanently withdrawn, on the date the contract expires, the Vendor will convert the status to permanently withdrawn in the Vendor's system and invoice the customer in accordance with this Contract Item #10, Vendor Transfer Rate, regardless of whether those boxes are removed in a bulk transfer or not.

5.2.6 Contract Item #5 – Retrieval/Delivery (Agency Location): The Vendor must retrieve any box in storage and hand deliver them to the authorized agency personnel at the agency's designated location within five business days of written notification. At a minimum, Vendor commits to delivering 100 boxes per day to encompass all agency locations in this manner upon request. Records must be delivered during normal business hours. Records must be signed for by authorized personnel. For those boxes the agency decides will not be returned to the Vendor's facility, the agency will request the status of the boxes be changed to "permanently withdrawn" and the Vendor must cease billing the agency for the storage of those boxes on the next monthly invoice.

5.2.7. Contract Item #6 – Retrieval/Delivery (Vendor Loading Dock): The Vendor must retrieve any records in storage and make them available for pickup by the authorized agency personnel at the Vendor's loading dock within 5 business days of written notification. At a minimum, Vendor commits to delivering 100 boxes per day to encompass all agency requests in this manner upon request. Vendor may accommodate on occasion requests for volumes greater than 100 boxes per day with 72 hours advance notice. Requests for additional volumes must be made via email to Jamie Craig, Customer Success Manager at Jamie.craig@ironmountain.com. Records must be available for pickup during normal business hours. Records must be signed for by authorized personnel. For those boxes the agency decides will not be returned to the Vendor's facility, the agency will request the status of the boxes be

changed to “permanently withdrawn” and the Vendor must cease billing the agency for the storage of those boxes on the next monthly invoice.

OLD BOX PICKUP/RETURN

5.2.8. Contract Item #7 – Pickup and Return to Storage: The vendor must pick-up and return to storage any box previously delivered to the authorized agency personnel within five business days of written notification. Records must be picked up during normal business hours. Records may only be returned by authorized personnel as identified on the vendors Access Authorization Form. Vendor commits, at a minimum, to retrieving 100 boxes per day to encompass all agency locations in this manner upon request from an Agency’s location and receiving 1,200 boxes per week at Vendor’s loading dock

DESTRUCTION

5.2.9. Contract Item #8 – Paper Destruction: The vendor must provide paper record destruction services at the authorized agency representative’s written request. The request must include the written approval of the State Records Administrator to destroy the specified records. No records shall be destroyed without State Records Administrator approval. Records must be destroyed by a crosscut shredder for paper records. Vendor shall provide proof of destruction.

5.2.9.1 Paper must be shredded using a cross-cut shredder to achieve 5/16 inch wide or smaller strips. Alternatively, strips may be set at the industry standard of ½ inch, but when deviating from the 5/16 inch requirement, shredded paper must be safeguarded until it reaches the stage where it is rendered unreadable. Pulping of data should be accomplished only after material has been shredded.

5.2.9.2. If the Agency issues a request to destroy records, Iron Mountain will promptly comply subject to a minimum volume of 100 boxes a day to encompass all agency requests (the “Minimum Destruction Rate.”). The Agency will be obligated to pay the destruction charge, as well as the storage charges for volumes of boxes requested to be destroyed in excess of the Minimum Destruction Rate, until the destruction of the total number of requested boxes is completed. When an agency requests that the status of boxes be changed to “permanently withdrawn”, the Vendor must cease billing the agency for the storage of those boxes on the next monthly invoice. For the avoidance of doubt, the Minimum Destruction Rate applies to the total number of boxes across all State Agencies and regardless of material contained in a given box (i.e. paper or microfilm).

5.2.10 Contract Item #9 – Microfilm Destruction: The vendor must provide destruction of microfilm at the authorized agency representative's request. The agency's written request must include the written approval of the State Records Administrator to destroy the specified records. No microfilm shall be destroyed without State Records Administrator approval. Vendor shall provide proof of destruction.

5.2.10.1 Microfilm and microfiche will be incinerated.

5.2.10.2 The vendor must provide a cost per box for destruction of microfilm.

5.2.10.3 After the Agency issues a request to destroy microfilm, the Agency will be obligated to pay the destruction charge, and the Agency's obligation to pay for ongoing storage charges will cease when the microfilm is destroyed or no more than 60 calendar days after, whichever occurs first. When an agency requests that the status of boxes be changed to "permanently withdrawn", the Vendor must cease billing the agency for the storage of those boxes on the next monthly invoice.

CONTRACT TERMINATION/RECORDS TRANSITION

5.2.11 Contract Item #10 – Records Transition (Transfer to another vendor or state-owned facility & Pickup): In the event that the state enters a subsequent contract for records storage with a new vendor or elects to store the remainder of inventory at a state-owned facility, Vendor shall transfer the remaining State of West Virginia inventory to the new vendor or State by packaging the cartons on pallets and wrapping each pallet load for loading onto the new vendor's or State's trucks. The Vendor shall transfer the inventory to the new vendor or State at an average rate of 1,500 cubic feet per week.

6. ORDERING AND PAYMENT:

6.1 Ordering: Vendor shall accept orders through IM Connect, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If vendor has the ability to accept on-line orders, it should include in its response a brief description of how agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing agency orders on-line.

6.2 Payment: Vendor will be paid in accordance with the prices contained in the Pricing Page attached as Exhibit B. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

7. VENDOR DEFAULT:

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

- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance upon request.

7.2 The following remedies shall be available to agency upon default.

- 7.2.1** Immediate cancellation of the Contract if the Vendor fails to cure a default within 30 days of notice of default
- 7.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3** The following remedies are available for damages associated with a breach of protected information:

7.2.3.1 If the breach is related to a direct result of the vendor's failure to meet its contract obligation to protect personally identifiable information (PII) or otherwise prevent its release, the vendor shall bear the costs associated with (a) the investigation and resolution of the breach; (b) notifications to individuals, regulators or others required by state or federal law; (c) a credit monitoring service (d) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the PII breach (or other similar publication if the named publication has not issued an updated average per record per cost in the last 5 years at the time of the data breach); and (e) complete all corrective actions as reasonably determined by the vendor based on root cause.

7.2.3.2 Any fines or penalties levied against the State by a regulatory body.

7.2.4 Any other remedies available in law or equity.

8. MISCELLANEOUS:

8.1 Contract Manager and Customer Service Representative: During its performance of this Contract, the vendor must designate and maintain a primary contract manager responsible for overseeing the vendor's responsibilities under this Contract and must provide a dedicated customer service representative to process all requests for action by authorized agency personnel and authorized Department of Administration personnel. The Contract manager and the dedicated customer service representative must be available during normal business hours to address any customer service or other issues related to this Contract. The vendor should list its Contract manager and dedicated customer service representative and his or her contact information below.

Contract Manager: Sheila Poggi

Telephone Number: 202-503-9806

Fax Number: _____

Email Address: imgs-sledcontracts@ironmountain.com

Customer Service Representative: Jamie Craig

Telephone Number: 905-487-4367

Fax Number: _____

Email Address: jamie.craig@ironmountain.com

Approved as to Form and Legal Content
Iron Mountain Legal Department
Jamie F. Craig
Christina G. Jennings, Criminal Public
Sector
Name: West Virginia
Date: January 21, 2012

Exhibit B – Contract Pricing

Exhibit B – Pricing Page

Records Management – Offsite Storage and Destruction

This pricing is based on a 1-year period of performance (with two 1-year optional renewal terms) and is pursuant to the terms of Exhibit A (“Specifications”) to the Document Storage Direct Award Contract between West Virginia Department of Administration, Office of Technology and Iron Mountain Information Management, LLC.

Commodity Line Number	Description	Unit of Measure	Estimated Monthly Quantity	Unit Price	
Contract Item #1: Storage					
5.2.1	Monthly cost per cubic foot for storage at the facility	Per Cubic Foot	231,037 CF <small>(as of 12 Nov 2021)</small>	\$0.265	
Contract Item #2A: New Boxes					
5.2.2	New empty boxes given to Agency for storage of new records <i>(please clarify if the boxes will include the charge for RFID tags)</i>	Per Box	Uncertain	\$1.89	
Contract Item #2B: RFID Tags					
5.2.3	Radio Frequency Identification (“RFID”). RFID tags come with a chip that has a unique RFID transponder number that represents your customer SKP box number printed on the tag. When conducting an audit, the RFID reader picks up the box number automatically.	Each	Uncertain	\$0.30	
Contract Item #3: Pickup (New Records)					

5.2.4	Cost to pick up new records at Agency location	Per Cubic Foot	100	\$0	
Contract Item #4: Indexing/Induction (New Records)					
5.2.5	Cost to index new boxes.- Receiving and Entry	Per cubic foot and trip charge	500	\$0	
Contract Item #5: Retrieval/Delivery (Agency Location)					
5.2.6	Cost for delivery of stored boxes to the Agency's location	Per Cubic Foot	100	\$1.84	
Contract Item #6: Retrieval and Delivery (Vendor Loading Dock)					
5.2.7	Cost for Agency to pick up boxes at the Vendor's loading dock (<i>provide a per order max</i>)	Per cubic foot and trip charge	100 per business day	\$1.84	
Contract Item #7: Pickup and Return to Storage					
5.2.8	Cost to pickup already indexed records at Agency's location and return them to storage	Per cubic foot plus per trip	100	\$0	
Contract Item #8: Paper Destruction					
5.2.9	Cost for destruction of paper records	Per cubic foot	500	\$3.06	

Contract Item #9: Microfilm Destruction

5.2.10	Cost for destruction of microfilm (incineration)	Per cubic foot	50	\$22.50	
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Contract Item #10: Records Transition (Transfer to a state-owned or another vendor's facility)

5.2.11	Cost for Vendor to perform bulk transfer of records to a state-owned or another vendor's facility at an average rate of 1,500 cubic feet per week	Per Cubic Foot		\$5.72	
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Any service or supply requested that is not listed in this pricing schedule will not be serviced. Services can be quoted upon request and a Statement of Work will be drafted for the requested work.

Approved as to Form and Legal Content:
Iron Mountain Legal Department
Christine G. Jennings
Christine G. Jennings, Counsel, Public
Sector
Name: West Virginia
Date: January 27, 2022

Exhibit C – Business Associate Addendum

Appendix A

Name of Associate: **West Virginia Office of Technology**

Name of Covered Entities: **West Virginia Public Employees Insurance Agency, Department of Health and Human Resources, Department of Veterans Assistance**

Describe the PHI:

Any individually identifiable health information held or maintained by the above covered entities including information related to an individual's health condition, the provision of care to the individual, payment information for the provision of healthcare. The PHI may be the past, present or future protected health information of an individual in the context of this agreement. The PHI may contain individual identifiers including name, address, birthdate or Social Security numbers. This information includes but is not limited to health insurance information; testing, lab results or diagnostic information; health status; medical history including past physical or mental health conditions; healthcare providers rendering services; all related to individuals.

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
 - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
 - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
 - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
 - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

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

2. Permitted Uses and Disclosures.

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

3. Obligations of Associate.

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

f. Support of Individual Rights.

- i. Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:

 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

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

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

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

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

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

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

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

4. Addendum Administration.

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

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

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

5. General Provisions/Ownership of PHI.

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

AGREED:

Name of Agency: State of WV

Name of Associate: Sheila Poggi

Signature: 

Signature: 


Title: State Records Administrator

Title: Sr Mgr, Public Sector Contracts

Date: 1/31/2022

Date: 27 January 2022

Form - WVBA-012004
Amended 06.26.2013

APPROVED AS TO FORM THIS 26th
DAY OF Jan 20 13

Patrick Morrisey
Attorney General
BY _____