

Request for Bids	Fairmont State University Procurement Office 1201 Locust Avenue Fairmont WV 26554-2470	Bid # RFB-444
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Vendor:	For information call:
Phone:	Buyer: Monica J. Cochran
Fax:	Phone: 304-367-4711
FEIN/SSN:	FAX: 304-367-4706

Sealed requests to bid for furnishing the supplies, equipment or services described below will be received by the Institution. TO RECEIVE CONSIDERATION FOR AWARD, THE BID WILL BE SUBMITTED ON THIS FORM IN ORIGINAL AND (1) COPY, SIGNED IN FULL IN INK, AND RECEIVED IN THE PURCHASING DEPARTMENT TO HAVE A DATE/TIME STAMP AFFIXED, ON OR BEFORE THE DATE AND TIME SHOWN FOR THE BID OPENING. Prices will be based on units specified. Bidders will enter the delivery date or time for each item contained herein. The Institution reserves the right to accept or reject bids on each item separately or as a whole, to reject any or all bids, to waive informalities or irregularities and to contract as the best interests of the Institution may require.

DATE 12/4/2024	BIDS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS PRINTED ON THE NEXT PAGE HEREOF AND AS SET FORTH HEREIN.	BIDS OPEN: 2:00 pm on 12/20/2024
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Item #	Quantity	Description	Unit Price	Extended Price
		INVITATION TO BID – OPEN END CONTRACT Fairmont State University is accepting bids for captioning and interpretation services for our deaf and hearing-impaired and blind and hearing-impaired students, staff, and community. The University requests bids contain hourly rates for Typewell/C=Print, CART, remote Sign Language Interpreting for both classes and events, and in-person Sign Language Interpreting for both classes and events (including travel). Please see additional details within.		

Total	
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To the Purchasing Department,
 In compliance with the above, the undersigned offers and agrees, if this offer is accepted within ____ calendar days (30 calendar days unless a different period is inserted by the purchaser) from the bid open date, specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified.

Bidder guarantees shipment from _____ _____ within ____ days FOB _____ after receipt of order at address shown. Terms _____ BOD-37	Bidder's name _____ Title _____ Signature _____ Street address _____ City/State _____ Date _____ Phone _____
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TERMS AND CONDITIONS

1. **ACCEPTANCE:** Seller shall be bound by this Order and its terms and conditions upon receipt of this Order. This Order expressly limits acceptance to the terms and conditions stated herein. Additional or different terms proposed by the Seller are objected to and are hereby rejected, unless otherwise provided for in writing by the Buyer and approved by the Attorney General.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the Procedural Rules of the Governing Board having jurisdiction shall govern all rights and duties under the Contract, including without limitation the validity of the Purchase Order/Contract.
3. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder, may be assigned by the Seller without the Buyer's consent.
4. **BUYER:** For the purposes of these Terms and Conditions, the "buyer" means the institutional purchasing goods and services for which a Purchase Order has been lawfully issued to the Seller.
5. **CANCELLATION:** The Buyer may cancel any Purchase Order/Contract upon 30 days written notice to the Seller.
6. **COMPLIANCE:** Seller shall comply with all federal, state and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the WV Division of Labor, if applicable.
7. **DELIVERY:** For exceptions to the delivery date as specified in the Order, the Seller shall give prior notification and obtain the approval of the Buyer. Time is of the essence of this Order and it is subject to termination by the Buyer for failure to deliver on time.
8. **DISPUTES:** Disputes arising out of the agreement shall be submitted to the West Virginia Court of Claims.
9. **HOLD HARMLESS:** The Buyer will not agree to hold the Seller or any other party harmless because such agreement is not consistent with state law.
10. **MODIFICATIONS:** This writing is the parties final express of intent. No modification of this Order shall be binding unless agreed to in writing by the Buyer.
11. **NON-FUNDING:** All services performed or goods delivered under this Purchase Order/Contract are to be continued for the terms 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.
12. **ORDER NUMBERS:** Contract Order numbers or Purchase Order numbers shall be clearly shown on all acknowledgements, shipping labels, packing slips, invoices and correspondence.
13. **PAYMENTS AND INTEREST ON LATE PAYMENTS:** Payments may only be made after the delivery of goods and services; interest may be paid on late payments in accordance with the West Virginia Code.
14. **RENEWAL:** The Contract may be renewed only upon mutual written agreement of the parties.
15. **REJECTION:** All goods or materials purchased herein are subject to approval of the Buyer. Any rejection of goods or materials resulting in nonconformity to the terms, conditions or specifications of this Order, whether held by the Buyer or the Seller, will be at the Seller's risk and expense.
16. **SELLER:** For the purposes of these Terms and Conditions, the "Seller" means the vendor whose quotation, bid, proposal or expression of interest has been accepted and has received a lawfully issued purchase order from the Buyer.
17. **SHIPPING, PACKING, BILLING & PRICING:** Unless otherwise stated, all goods are to be shipped prepaid, FOB Destination. No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified. All goods and services shall be shipped on or before the date specified on this Order. Prices are those that are stated in this Order. No price increase will be accepted without written authority from the Buyer.
18. **TAXES:** The State of West Virginia (the Buyer) is exempt from Federal and State taxes and will not pay or reimburse such taxes.
19. **TERMINATION:** In the event of a breach by the Seller of any of the provisions of this contract, the Buyer reserves the right to cancel and terminate this contract forthwith upon giving written notice to the Seller. The Seller shall be liable for damages suffered by the Buyer resulting from the Seller's breach of contract.
20. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this order will: (a) conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; (b) be merchandise and fit for the purpose intended; (c) be free and clear of all liens, claims and encumbrances of any kind; and/or (d) be free from defect in material and workmanship.

Any supplier furnishing items on this purchase order covered by a Material Safety Data Sheet must provide the MSDS citing the purchase order number.

It is the policy of Fairmont State University to administer all university actions and procedures without regard to race, color, age, religion, sex, national origin, disability, veterans status or sexual orientation as identified and defined by law.

The university neither affiliates knowingly with nor grants recognition to any individual, group, or organization, including vendors that discriminate on the basis of any of the above. FSU complies with the requirements of the nondiscrimination clauses set out by the Code of Federal Regulations Title 41, Parts 60-1.4(a)(7) (equal opportunity clause), 60-250.4(m) (affirmative action for veterans), and 60-741.4(f) (affirmative action for persons with disabilities).

All items, including delivery, shall be provided in accordance with the Specifications included herein.

During the bidding process, bidders shall direct all questions to Monica Cochran, Director of Procurement at: Fairmont State University, Procurement Office, 1201 Locust Avenue, Fairmont WV. All questions shall be submitted in writing via Email at: monica.cochran@fairmontstate.edu The RFB number should be referenced in the subject line of the message.

Submission of Bids

Sealed bids will be received by Fairmont State University at the following location until 2:00 pm on **12/20/24**.

Fairmont State University
Procurement Office
Room 305 Hardway Hall
1201 Locust Avenue
Fairmont, WV 26554
(304) 367-4711

Bids shall be submitted on the Bid Form included herein. The bid shall be signed by an authorized agent of the bidder who has the authority to bind the bidder to the bid price, terms, conditions, and the requirements of the specification. The bid submitted must have an original signature.

Each bid shall be enclosed in a sealed envelope, plainly marked:

SEALED BID

Date of Bid Opening: 12/20/2024

Time of Bid Opening: 2:00 p.m.

RFB number: RFB-444

Brand names, when identified, include the standard of quality, performance or use desired. Unless otherwise noted, bids by bidders on equivalents may be considered, provided the bidder furnishes descriptive literature, technical data or actual tests performed to indicate compliance with the minimum specifications. Any alternate equipment must meet the satisfaction of the buyer. Bidders must clearly indicate any alternate equipment that will be part of their bid.

Description of Work/Purchase

Fairmont State University is accepting bids for captioning and interpretation services for our deaf and hearing-impaired and blind and hearing-impaired students, staff, and community.

The University requests bids contain hourly rates for Typewell/C-Print, CART, remote Sign Language Interpreting for both classes and events, and in-person Sign Language Interpreting for both classes and events (including travel).

At present, during the Academic Year (Fall/Spring term), we are utilizing primarily remote ASL interpreting and remote Typewell service. Our utilization is approximately 100 hours per month of remote ASL interpreting and 80 hours per month of Typewell service. We also currently have sporadic need for in-person interpretation.

Service needs and volume are subject to change, based on the number of hearing-impaired students enrollment and their preferences in method of interpreting service. Our desire is to enter into a 1-year open-end contract, with (4) optional 1-year renewals, to secure pricing for all available services.

For in-person services, please include travel costs in your hourly rate. We prefer to pay an hourly rate inclusive of travel as opposed to reimbursement of itemized travel.

Fairmont State University will provide:

- 1) The names and email addresses of students needing interpreter services as soon as possible prior to the start of each semester.
- 2) Notification in a timely manner for scheduled events on an as needed basis.

The vendor must:

- 1) Comply with federal laws governing interpreters
- 2) Comply with the WV Department of Health and Human Resources Commission for the Deaf and Hard-of-Hearing Guidelines, Title 192, Series 3
- 3) Coordinate the provision of interpreter services as identified by the University
- 4) Evaluate the appropriate level of interpreter needed, taking into consideration the level and difficulty of the course, topic or event audience
- 5) Works with the students, faculty and Accessibility Services Coordinator to evaluate and assess the effectiveness of the interpreter services.
- 6) Assist the University in addressing unresolved problems related to interpreter services
- 7) Invoice monthly in arrears for services provided.
- 8) Invoice must identify interpreter, type of service provided, activity, student's name, hours, and hourly rate
- 9) Hourly rate in in-person services must include any applicable travel (all-inclusive hourly rate)

Additional Bid Submission Requirements

Prices shall be inserted in the appropriate spaces on the Bid Form. Unit price where applicable shall prevail and all prices shall be extended and totaled.

Any equipment and material listed herein are suggested brand names. Any equipment or material proposed by the Bidder, other than specified herein, shall be supported by literature, technical data or actual tests performed to indicate compliance with the minimum specifications. Any alternate equipment must meet the satisfaction of the buyer. Bidders must clearly indicate any alternate equipment that will be part of their bid.

Vendor Registration

Prior to any award for purchases exceeding \$25,000, the apparent successful bidder must be properly registered with the WV Department of Administration, Purchasing Division, and have paid the required vendor registration fee (currently \$125). The vendor registration form is available at the following link:

<http://www.state.wv.us/admin/purchase/vrc/wv1.pdf>

Attachment B - 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 owned is an amount greater than one thousand dollars in the aggregate.

To acknowledge you are in compliance with this regulation, you must ***complete, sign and return an original "Purchasing Affidavit" to Fairmont State University Procurement Office with your signed bid.*** The "Purchasing Affidavit" is included herein.

Attachment C – Form WV-96

If it is the intent of the apparent successful vendor to require the State to execute the vendor's contract, such contract must be attached for consideration with the proposal. It will also be a requirement of the successful vendor to sign the "Agreement Addendum" form (WV-96), which is attached for your review.

Registration with the WV Secretary of State's Office

Unless a waiver is obtained from the Secretary of State's Office, every vendor organized as a business entity must have a certificate of authority and be in good standing with the WV Secretary of State's Office. The Secretary of State requirement applies generally to businesses that operate as separate legal entities and does not apply to sole proprietors and general partnerships. <https://sos.wv.gov/Pages/default.aspx>

Funding Paragraph

Services performed under the Contract are to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for these services, this Contract becomes of no effect and is null and void after June 30.

Life of Contract

This contract becomes effective on _____ and extends for a period of one (1) year.

Unless specific provisions are stipulated elsewhere in this contract document, the terms, conditions and pricing set herein are firm for the life of the contract.

Renewal

This contract may be renewed upon the mutual written consent of Fairmont State University and vendor, submitted to the Chief Procurement Officer thirty (30) days prior to the expiration date. Such renewal shall be in accordance with the terms and conditions of the original contract and shall be limited to four (4) successive one (1) year periods.

Cancellation

The Chief Procurement Officer 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.

Open Market Clause

The Chief Procurement Officer may authorize a spending unit to purchase on the open market, without the filing of a requisition or cost estimate, items specified on the contract for immediate delivery in emergencies due to unforeseen causes (including but not limited to delays in transportation or an unanticipated increase in the volume of work.)

Quantities

Quantities listed in the requisition are approximations only. It is understood and agreed that the contract shall cover the quantities actually ordered for delivery during the term of the contract, whether more or less than the quantities shown.

Bankruptcy

In the event the vendor/contractor files for bankruptcy protection, this contract is automatically null and void and is terminated without further order.

The terms and conditions contained in this contract shall supersede any and all subsequent terms and conditions which may appear on any attached printed documents such as price lists, order forms, sales agreements or maintenance agreements.

SPECIFICATIONS/ BID FORM

Service/Description	Estimated Monthly Usage*	Hourly Rate	Total Cost
American Sign Language Interpreting, remote	100 hours		
American Sign Language Interpreting, in-person (hourly rate to include travel)	10 hours		
Typewell/C-Print Services	80 hours		
CART Services	10 hours		
Total Estimated Monthly Cost			\$

***Note: the above monthly usage is an estimate only. It is understood and agreed that the contract shall cover the quantities actually ordered for delivery during the term of the contract, whether more or less than the quantities shown.**

RESPECTFULLY SUBMITTED:

Signature: _____ Date: _____

Name: _____

Title: _____

Vendor name: _____

Vendor address: _____

Telephone: _____

FAX: _____

FEIN Number: _____

EMAIL Address: _____

ATTACHMENT A: Instructions To Bidders (Purchases greater than \$25,000)

1. **BIDDER'S REPRESENTATIONS:** The bidder, by making a bid, represents that: (a) the bidder has read and understands the bidding documents, terms and conditions, and the bid is made in accordance therewith; and (b) the bid is based upon the materials, equipment, systems, printing and/or services specified.
2. **QUALITY STANDARDS:** Brand names, when identified, include the standard of quality, performance or use desired. Unless otherwise noted, bids by bidders on equivalents may be considered, provided the bidder furnishes descriptive literature and other proof required by the Institution. Samples, when required, must be furnished free of charge, including freight. In the event the Institution elects to contract for a brand purported to be an equivalent by the bidder, the acceptance of the item will be conditioned on the Institution's inspection and testing after receipt. If, in the sole judgment of the Institution, the item is determined not to be equivalent, the item will be returned at the Seller's expense and the contract terminated.
3. **SUBMISSION OF BIDS:** The bid, the bid security, if any, and other documents required to be submitted with the bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the bids and shall be identified as a "Sealed Bid," and shall include the bid number, the bid opening time, and the bid opening date. Bids shall be delivered and deposited at the designated location prior to the time and date for receipt of bids. Bids received after the time and date for the bid opening will be returned unopened. The bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids. Oral, telephonic, facsimile or telegraphic bids are invalid and will not receive consideration.
4. **MODIFICATION OR WITHDRAWAL OF BIDS:** Prior to the time and date designated for receipt of bids, a bid submitted may be modified or withdrawn by notice to the party receiving bids at the place designated for receipt of bids. Such notice shall be in writing over the signature of the bidder and shall be received prior to the designated time and date for receipt of bids. A modification shall be worded so as not to reveal the amount of the original bid. A withdrawal may be made by facsimile or electronic transmission. A modification may also be made by facsimile or electronic transmission if the final bid result is not revealed prior to the bid opening.
5. **OPENING OF BIDS:** Bids shall be publicly opened and read aloud at the designated location for receipt of bids shortly after the time and date bids are due.
6. **REJECTION OF BIDS:** The Institution shall have the right to reject any and all bids, in whole or part; to reject a bid not accompanied by a required bid security or other data required by the bidding documents; or reject a bid which is in any way incomplete or irregular.
7. **ACCEPTANCE OF BID (AWARD):** It is the intent of the Institution to award a contract to the lowest responsible and responsive bidder provided the bid does not exceed the funds available. The Institution shall have the right to waive informalities or irregularities in a bid received and to accept the bid, which in the Institution's judgment, is in the Institution's own best interests. All bids are governed by the West Virginia Code and the Procedural Rules of the Commission.
8. **VENDOR REGISTRATION:** Prior to any award for purchases exceeding \$25,000, the apparent successful bidder must be properly registered with the W. Va. Department of Administration, Purchasing Division, and have paid the required vendor registration fee.
9. **NON-FUNDING:** 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.
10. **PAYMENTS AND INTEREST ON LATE PAYMENTS:** Payment may only be made after the delivery and acceptance of goods or services. Interest may be paid for late payment in accordance with the West Virginia Code.
11. **RESIDENT VENDOR PREFERENCE:** A resident vendor preference will be granted upon written request in accordance with the West Virginia Code.
12. **TAX EXEMPTION:** The State of West Virginia, the Commission, Governing Board and its institutions are exempt from federal and state taxes and will not pay or reimburse such taxes.

ATTACHMENT B: Purchasing Affidavit

<http://www.state.wv.us/admin/purchase/vrc/pAffidavit.pdf>

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

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

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

DEFINITIONS:

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

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

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

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20__.

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

ATTACHMENT C: Addendum to Vendor's Standard Contractual Forms (WV96)

<http://www.state.wv.us/admin/purchase/vrc/wv96.pdf>

WV-96
1/1/2019

STATE OF WEST VIRGINIA ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS

State Agency, Board, or Commission (the "State"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – 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. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor 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.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strike through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: _____
By: _____
Printed Name: _____
Title: _____
Date: _____

Vendor: _____
By: _____
Printed Name: _____
Title: _____
Date: _____