

REQUEST FOR PROPOSAL
FOR
PROFESSIONAL AUDITING SERVICES

INTRODUCTION

Purpose

The purpose of this Request for Proposal (RFP) is to solicit proposals to perform the West Virginia Public Employees Insurance Agency (PEIA) and Retiree Health Benefits Trust (RHBT) annual financial statements audit for the fiscal year ending June 30, 2015. Be it known this agency administers electronic protected health information (PHI) as PEIA is a covered entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Background

PEIA is an enterprise agency of the State of West Virginia that administers benefits for approximately 75,000 active employees, COBRA participants and 110,000 dependents resulting in approximately 185,000 members being covered by the PEIA health plan. Total annual health premiums are approximately \$567 million.

A full service Preferred Provider Benefit (PPB) plan is offered to all eligible participants statewide and is administered by a third party. PEIA also offers two managed care plan options in the State. Currently, approximately 6,000 policyholders are enrolled in managed care plans, and 69,000 are enrolled in the indemnity plan.

The PEIA PPB benefit plan follows a traditional indemnity design. Health care providers are reimbursed for a broad array of covered services. Participants are responsible for some cost-sharing, in the form of premiums, co-insurance, deductibles and copayments. The PEIA PPB benefit plan also includes a lifetime maximum benefit provision, which must be tracked through various plan options. PEIA also offers a fully insured managed care organization (MCO) plan to its membership.

By law, all providers in West Virginia who treat PEIA insureds must accept assignment of benefits, and cannot bill PEIA patients for any amount by which their charges exceed the maximum fees established by PEIA for each service.

Benefits and premiums are set annually by the PEIA Finance Board, as recommended by the plan's actuary, based upon anticipated utilization and participation rates. Open enrollment is held in the spring, and the plan year coincides with PEIA's fiscal year, which runs July 1 through June 30.

State, higher education, and some public school employees participating in PEIA have the ability to pay medical and life premiums on a pretax basis via a premium conversion plan, which is an IRS-approved Section 125 Plan.

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Employees may elect to participate in Mountaineer Flexible Benefits which offers optional coverage for vision, dental, long-term disability, and medical and dependent care spending accounts. These optional benefits are funded wholly by participating employees and are administered by a separate third party. Employee premiums for these optional benefits are paid for on a pre-tax basis via a Section 125 Plan. Employees may also elect to participate in life insurance plans offered by PEIA. The majority of basic life policies are funded by the employer while any optional life products are fully funded by employee premiums.

The RHBT is a trust fund in which the West Virginia Other Post Employment Benefits (OPEB) plan is administered. The administration of the RHBT is performed by PEIA. The RHBT serves as the Trust for the WV OPEB multiple employer defined benefit plan. The RHBT bills the required OPEB expenses as required under GASB 43. PEIA contracts with an actuarial firm to provide the necessary GASB 43 valuations and disclosure data.

The RHBT consists of approximately 60,000 retirees, surviving dependents and dependents. Total annual health premiums are approximately \$243 million.

There are approximately 48,000 Medicare retiree members. Medicare retirees' healthcare coverage is provided through a capitated Medicare Advantage and Prescription Drug (MAPD) benefit. A small number of Medicare members are covered under the PEIA PPB and the RHBT does receive the Medicare Part D subsidy for their drug costs.

There are approximately 12,000 non-Medicare retiree members. The non-Medicare retiree population is covered by either the PEIA PPB Plan or the MCO plan. Premiums, OPEB funding and benefits for the retirees are also established by the PEIA Finance Board annually. Open enrollment is held in the spring for the non-Medicare retirees, and the plan year coincides with PEIA's fiscal year, which runs July 1 through June 30. Medicare retirees' open enrollment is in the fall with a calendar plan year and fiscal year of July 1 through June 30.

Issuing Agent

The issuing agent for this RFP is the PEIA. All communication, inquiries, and final proposals regarding this RFP **must** be submitted in writing to the following individual:

Jason A. Haught, CPA, Chief Financial Officer
West Virginia Public Employees Insurance Agency/
West Virginia Retiree Health Benefit Trust Fund
601 57th Street, SE, Suite 2
Charleston, West Virginia 25304-2345
Telephone: (304) 558-7850, Ext. 52642
Email: Jason.a.haught@wv.gov

All correspondence **must** be clearly marked "PEIA - Auditing Services Proposal."

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SCOPE OF WORK

PEIA and the RHBT are now accepting proposals to perform the annual audit for the year ending June 30, 2015, with renewal options for each year thereafter. These audits are to be performed in accordance with generally accepted government auditing standards.

PEIA meets the criteria for classification as a public entity risk pool, pursuant to the requirements of GASB Statements 10 and 30. As such, its activities are reported in an enterprise fund.

The RHBT meets the criteria for classification as a fiduciary fund of the State of West Virginia.

PEIA and the RHBT financial statements are also included as part of the State of West Virginia's Comprehensive Annual Financial Statements. As such, the financial reports required under the terms of this proposal must comply fully with parameters set by the State of West Virginia's Department of Administration, Financial Accounting and Reporting Section (FARS).

This will include, by way of example and not exclusively, responding to specific requests for information, preparing closing book forms, and attending conferences, meetings, or seminars held or presented by FARS regarding their requirements for report preparation, presentation, deadlines, etc.

The audited financial statements of the PEIA for the fiscal year ended June 30, 2014, reflect total assets of approximately \$198 million in cash, investments and accounts receivable. The liabilities primarily consist of claims payable of \$56 million and net assets of \$109 million.

The audited financial statements of the RHBT for the fiscal year ended June 30, 2014, reflect total assets of approximately \$703 million in cash, investments and accounts receivable. The liabilities primarily consist of claims payable of \$10.2 million and net assets held in trust of \$692 million.

For further information regarding the PEIA and RHBT financial statements, please refer to them on the PEIA website at www.wvpeia.com under the Financial Reports page.

At a minimum, the successful bidder must:

- ◆ Provide sufficient information to allow the evaluators to judge the competence, experience and capabilities of the firm submitting the bid and the personnel who will be assigned to the PEIA account.
 - The bidder must submit resumes for all persons proposed to be included on the audit team.
- ◆ Demonstrate expertise in the performance of audits in accordance with the provisions of the following:
 - Government Auditing Standards
 - Generally Accepted Auditing Standards
 - Governmental Accounting Standards Board Statements Pertaining to Enterprise Funds and Fiduciary Funds
- ◆ Demonstrate expertise and experience in the performance of audits of state agencies and for insurance carriers, including a detailed discussion of the audit approach and the timeline for interim and year-end field work.

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Any proposal submitted which is insufficient in this regard will be disqualified and excluded from the evaluation. Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between PEIA and the firm selected.

There is no express or implied obligation for PEIA to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

PEIA reserves the right without prejudice to reject any or all proposals submitted in whole or in part.

During the evaluation process, the selection committee and PEIA reserve the right, where it may serve PEIA's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of PEIA or the selection committee, proposers may be requested to make oral presentations as part of the evaluation process.

Any other contacts with PEIA concerning the award are improper. Any lobbying activity to obtain the contract is grounds for disqualification.

The proposed audits must be made in accordance with generally accepted auditing standards, which require that the firm plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue a report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.

Reporting to PEIA's Finance Board

Auditors shall ensure that the PEIA's Director and the Secretary of Administration are informed of each of the following:

- ◆ The auditor's responsibility under generally accepted auditing standards,
- ◆ significant accounting policies,
- ◆ significant disclosures not made,
- ◆ significant audit adjustments,
- ◆ other information in documents containing audited financial statements,
- ◆ disagreements with management,
- ◆ management consultation with other accountants,
- ◆ major issues discussed with management prior to retention,
- ◆ difficulties encountered in performing the audit, and
- ◆ irregularities and illegal acts.

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In addition, auditors shall be required to give a written report of all irregularities and illegal acts of which they become aware to the Director of PEIA and the Secretary of Administration, under the authority of Section 5A-2-33 of the W. Va. Code.

Status as Registered Vendor

Vendors participating in this process should complete and file a **Vendor Registration and Disclosure Statement** (Form WV-1) and remit the registration fee. Vendors are not required to be registered in order to submit proposals, but the **successful bidder must** register and pay the fee prior to the award of an actual purchase order or contract. The award of this audit contract is exempt from West Virginia Purchasing requirements.

Terms of Contract

The performance of the contract awarded pursuant to this document is contingent upon adequate funding being appropriated by the West Virginia Legislature for such purposes. In the event the Legislature fails to appropriate sufficient funds for the continuation of the contract, then the contract will be canceled without penalty at the end of the fiscal year.

The successful vendor to this solicitation will be required to sign the attached Business Associate Addendum (Attachment A).

The terms of the contract negotiated as a result of this RFP must, by State law, be consistent with the following:

- **Arbitration** – Any references to arbitration contained in the agreement are unacceptable. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
- **Hold Harmless** – Any clause requiring the Agency to indemnify or hold harmless any party is unacceptable.
- **Governing Law** – The agreement shall be governed by the laws of the State of West Virginia.
- **Taxes** – Provisions in the agreement requiring the Agency to pay taxes are unacceptable. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
- **Payment** – Any references to prepayment are unacceptable. Payment will be in arrears.
- **Interest** – Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are unacceptable.
- **Recoupment** – Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is unacceptable.
- **Statute of Limitation** – Any clauses limiting the time in which the Agency may bring suit against the vendor, lessor, individual, or any other party are unacceptable.

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- **Similar Services** – Any provisions limiting the Agency’s right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are unacceptable.
- **Attorney Fees** – The Agency recognizes an obligation to pay attorney’s fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
- **Assignment** – Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and the Vendor shall obtain the written consent of Agency prior to assigning the agreement.
- **Limitation of Liability** – The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor’s liability for direct damages or limiting the Vendor’s liability under a warranty to a certain dollar amount or to the amount of the agreement is unacceptable. In addition, any limitation is unacceptable to the extent that it precludes any action for injury to persons or for damages to personal property.
- **Right to Terminate** – The Agency shall have the right to terminate the agreement upon thirty (30) days written notice to the Vendor.
- **Termination Charges** – Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is unacceptable. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
- **Renewal** – Any reference to automatic renewal is unacceptable. The agreement may be renewed only upon mutual written agreement of the parties.
- **Insurance** – Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is unacceptable.
- **Right to Notice** – Any provision for repossession of equipment without notice is unacceptable. However, the Agency does recognize a right of repossession with notice.
- **Acceleration** – Any reference to acceleration of payments in the event of default or non-funding is unacceptable.
- **Amendments** – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties.

Right to Reject

The State reserves the right to reject any and all proposals submitted and to request additional information from all proposers.

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Joint Effort Proposals

Joint effort proposals will be considered. However, PEIA will contract only with the primary proposer. All work must be performed by actual employees of the proposer, or a subcontractor of the proposer.

Conflict of Interest

PEIA maintains, or during relevant time frames, maintained contracts with the following entities:

- Humana
- Health Plan of the Upper Ohio Valley
- Express Scripts Inc.
- HealthSmart TPA
- Fringe Benefits Management

Bidders must address any professional conflicts or potential conflicts of interest involving these or any other known PEIA contracted entities. In addition, the bidder must address potential or actual conflicts presented if the bidder has done other work for PEIA or other West Virginia State entities.

Critical Dates

Detailed client assistance packages must be received at least 21 days prior to fieldwork for both interim and year-end assistance.

A draft audit report and any related reports on reportable conditions or management letter comments will be completed by September 15, 2015. The final reports will be completed by October 15, 2015.

EVALUATION OF PROPOSALS

Time Requirements

RFP Issued	November 13, 2014
Questions submission deadline (4:00 p.m., EST)	December 1, 2014
RFP Addendum with replies to submitted questions (if applicable)	December 5, 2014
Proposals Due (4:00 p.m., EST)	January 9, 2015

In order to simplify the review process and to obtain maximum comparability, the proposals should be organized in the manner specified below:

Technical proposal:

1. An introductory section should include the proposal subject, name, address, and telephone number of the firm; name and telephone number of the contact person; and the date of submission of the proposal.
2. The body of the proposal should address the minimum requirements of the RFP.
3. An affirmative statement should be included, which states that the work will be performed within the time specified.

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- 4. Six (6) bound copies and one electronic version on CD of the response to the RFP shall be submitted.

Cost proposal:

In a separately sealed envelope clearly marked “**Cost Proposal**”, the proposing firm should include an all-inclusive price, along with projected hours by major audit area (e.g., planning, internal controls, reporting, etc.). The firm should also include hourly rates for its personnel in the event that services outside the scope of the audit are needed by PEIA.

The above material is required to be received by 5:00 p.m. EDT, January 9, 2015, for a proposing firm to be considered.

Firms submitting proposals will be selected based on the following criteria:

- A. Organization’s capacity to perform the audits. This criterion will be based on the size, structure and location of branch offices of the firm that are to be utilized in the performance of the contract (10 points).
- B. The firm’s personnel. This criterion will be based on the qualifications of staff that will be assigned to the audit as determined by resumes submitted (20 points).
- C. Audit management and administration process. This criterion will be based on the firm's understanding of the work to be performed as demonstrated by its discussion of the overall audit approach, including a detailed description of how the firm will manage the audit’s deliverables in conjunction with reporting deadlines (20 points).
- D. Prior experience of personnel in auditing government programs, insurance carriers and trusts (20 points).
- E. Proposed cost for the services.

The sum of the scores for each of criteria A through D will constitute 70% of the overall evaluation criteria, based on a total available score of 100 points. Each proposal will be evaluated on criteria A through D, respectively. Their raw scores will then be averaged to obtain a composite score. Any proposal with less than 49 of the potential 70 points for technical ability will be disqualified.

The price criteria (E) will be evaluated in terms of absolute dollars and will constitute 30% of the overall evaluation criteria. Each proposed contract price will be evaluated by use of the following formula:

$$\text{Lowest price of all proposals} \div \text{Price of proposal being evaluated} \times 30 = \text{Price Score}$$

After the technical and price evaluation have been performed, the two scores will be added together to constitute the final score for each proposal.

Technical Score	+ Price Score	= Total Score
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AUDIT SELECTION CRITERIA

RFP for Professional Auditing Services

Proposing Firm	Reviewer Name
A. Organization size, structure and location of branch offices of firm that are to be utilized in the performance of contract:	Maximum points 10
B. Qualifications of staff to be assigned work:	Maximum points 20
C. The firm's understanding of the work to be performed:	Maximum points 20
D. Prior experience of the assigned personnel in auditing state health care agencies, insurance carriers and trusts:	Maximum points 20

Criteria	Score
A	
B	
C	
D	
Total = Sum (A:D)	

Appendix A

Name of Associate: _____
(Successful Vendor Name Here)

Name of Agency: The West Virginia Public Employees Insurance Agency

Describe the PHI. If not applicable please indicate the same.

Per 45 CFR, Part 160.103

Health information means any information, whether oral or recorded in any form or medium, that:

(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Protected health information means individually identifiable health information:

(1) Except as provided in paragraph (2) of this definition, that is:

(i) Transmitted by electronic media;

(ii) Maintained in electronic media; or

(iii) Transmitted or maintained in any other form or medium.

In this agreement this shall specifically include, but not be limited to:

(1) Prescription claim information, and

(2) Underlying medical treatment and diagnosis information

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The information provided to the Associate and/or stored and/or maintained by the Covered Entity in electronic form(s) on platform(s) owned, managed and/or administered by the Covered Entity, pursuant to the Agreement for the purpose(s) of conducting a complete and thorough audit will include the minimum necessary to perform the services thereunder and will specifically include, but may not be limited to:

- a) PEIA member individually identifiable health information or protected health information relating to the payment of and for the past, present, or future payment for the provision of health care to an individual.
- b) PEIA member individually identifiable health information or protected health information, including but not necessarily limited to, name(s), names of dependent(s), specific identifying information, e.g. address(es), date(s) of birth, social security number(s), policy number(s), etc. necessary and/or needed to conduct a complete and thorough audit of PEIA and/or the Retiree Health Benefit Trust (RHBT)
- c) PEIA member individually identifiable health information or protected health information necessary to allow the Covered Entities and the Associate to perform their statutory business function(s) in accordance with State and/or Federal law(s).
- d) PEIA member individually identifiable health information protected health information used in relation to the payment of claims submitted to the Associate
- e) PEIA member protected health information needed by and/or for other identified Business Associates in the provision of their services to the Covered Entity(ies) that involves access to protected health information.
- f) PEIA member protected health information posted to file transfer protocol (FTP) site(s) for delivery, transmission, or receipt by other Business Associate(s) of the Covered Entity(ies).

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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).

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- 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.

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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.

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- 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.

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- 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,

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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

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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.

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AGREED:

Name of Agency: _____

Name of Associate: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

Form - WVBAA-012004
Amended 06.26.2013