

**REQUEST FOR PROPOSAL – WV PUBLIC EMPLOYEES INSURANCE AGENCY**



**REQUEST FOR PROPOSAL**  
WV Public Employees Insurance Agency  
**DATA WAREHOUSE SOFTWARE & SERVICES**  
ARFP PEI2000000001

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## SECTION 1: GENERAL INFORMATION

**1.1 Purpose:** The West Virginia Public Employees Insurance Agency (PEIA) is issuing this Request For Proposal (RFP) to acquire a system that will allow for the accumulation of all PEIA eligibility and claim data from disparate systems into a flexible, user friendly, centralized system capable of providing any possible scenario of data for analysis. PEIA intends to purchase or lease software and or services for the management and interpretation of data for its benefit plans. The warehouse will provide PEIA a tool that is useful in assessing provider reimbursement, provider histories, provider performance, loss ratios, member histories, premiums billed, utilization, wellness initiatives, disease state management, trend, etc. The system **shall** afford the user the ability to pare down any query result to investigate the minutest detail possibly affecting the result. In summary, the system chosen will provide PEIA a robust and flexible data warehouse capable of answering virtually any question the agency may have.

**1.2 RFP Terms:** By signing and submitting its proposal, the successful Vendor agrees to be bound by all the terms contained in this Request for Proposal (RFP).

An RFP is generally used for the procurement of services in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (“Best Value”). Through its proposal, the Vendor offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

This procurement is exempt from certain requirements of the West Virginia Purchasing Division pursuant to W. Va. Code §5A-3-10b.

**1.3 Agency Overview:** The Public Employees Insurance Agency (PEIA) is an agency of the State of West Virginia charged with the administration of the health, prescription drug and life insurance benefits to all State and local government employees, retired employees, and their eligible dependents, surviving dependents and COBRA participants. All benefits are self-insured with the exception of managed care members and Medicare primary members in the Centers for Medicare and Medicaid Services Medicare Advantage Prescription Drug (MAPD) plan.

Preferred Provider Benefit (PPB) health plans, including prescription drugs, are offered to all eligible participants statewide, and are administered by Third Party Administrators (TPAs). Health and prescription drug claims are adjudicated and paid by UMR and CVS Caremark, respectively. PEIA also offers a managed care plan option (MCO) statewide, The Health Plan of West Virginia (Health Plan). Currently, approximately 15,000 members are enrolled in the Health Plan, 162,000 are enrolled in the PPB plan and 53,000 are enrolled in the MAPD. Total enrollment, including dependents, is approximately 230,000.

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Eligibility and enrollment, along with premium billing, is maintained by PEIA on a custom designed software system called the Benefits Administration System (BAS). COBRA eligibility and premium billing is administered by the medical claims TPA, UMR.

By law, all providers in West Virginia who treat PPB Plan members must accept assignment of benefits and cannot bill PPB Plan 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. Open enrollment is held each spring. The plan year coincides with PEIA's fiscal year, which runs July 1 through June 30 for non-Medicare members. Medicare primary members' plan year runs on a calendar year with open enrollment in the fall.

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 a United States Internal Revenue Service-approved Section 125 Plan.

The following booklets describe PEIA's benefits, as well as health care and life insurance options and premiums.

- PEIA's Plan Year 2020 Summary Plan Description booklet: [https://peia.wv.gov/Forms-Downloads/Documents/summary\\_plan\\_descriptions/plan\\_year\\_2020/Summary\\_Plan\\_Description\\_ABD\\_Plan\\_Year\\_2020.pdf](https://peia.wv.gov/Forms-Downloads/Documents/summary_plan_descriptions/plan_year_2020/Summary_Plan_Description_ABD_Plan_Year_2020.pdf)
- PEIA's Plan Year 2020 Health Care Plan Shopper's Guide: [https://peia.wv.gov/Forms-Downloads/Documents/shopper%27s\\_guides/Shopper%27s\\_Guide\\_Plan\\_Year\\_2020.pdf](https://peia.wv.gov/Forms-Downloads/Documents/shopper%27s_guides/Shopper%27s_Guide_Plan_Year_2020.pdf)

### 1.4 **RFP Schedule of Events:**

RFP Issued	March 3, 2020
Non-Mandatory Bidder's Conference	March 24, 2020 (10:00 am, EST)
Questions Submitted to PEIA	March 31, 2020 (2:30pm, EST)
Notification of Interest Form	March 31, 2020 (2:30pm, EST)
Question Answers to Vendor	April 7, 2020
Proposals Due	April 28, 2020
Evaluation of Quotes	April 28-May 12, 2020
Award Contract	May 12, 2020
Contract Begins	July 1, 2020

**PEIA reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and PEIA will communicate such to prospective Bidders.

**SECTION 2: INSTRUCTIONS TO VENDORS SUBMITTING BIDS**

**2.1 REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor’s bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor’s bid.

**2.2 MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words “must,” “will,” and “shall.” Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

**2.3 PREBID MEETING:** The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening

A NON-MANDATORY PRE-BID meeting will be held at the following place and time:

VIRTUAL MEETING -  
PARTICIPATION BY  
PHONE ONLY

Participate by Phone:

Phone: 304-410-0513

Pin: 52766

March 24, 2020 10:00 am

A MANDATORY PRE-BID meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor’s bid. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor’s E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor’s responsibility to locate the attendance sheet and provide the required

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information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

- 2.4 VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this solicitation to the WV Public Employees Insurance Agency. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

*Submitted emails should have the solicitation number in the subject line.*

Question Submission Deadline: March 31, 2020 by 2:30 PM  
*EST*

**Submit Questions to:** Jason Haught  
**Physical Address:** 601 57<sup>th</sup> Street Se, Suite 2, Charleston, WV 25304  
**Fax:** 1-877-233-4295  
**Email:** jason.a.haught@wv.gov

- 2.5 BID SUBMISSION:** All bids must be signed and delivered by the Vendor to the Agency on or before the date and time of the bid opening. Any bid received by the Agency staff is considered to be in the possession of the Agency and will not be returned for any reason. The Agency will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include hand delivery, delivery by courier, or facsimile.

The bid delivery address is:

**WV Public Employees Insurance Agency**  
**Attn: Jason Haught**  
**601 57<sup>th</sup> Street SE, Suite 2**  
**Charleston, WV 25304**

Vendor shall submit:

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Five (5) physical, bound copies of EACH proposal (Cost and Technical must be prepared as separate documents and submitted under separate cover)

One (1) searchable electronic copy of EACH proposal (Cost and Technical must be prepared as separate documents and submitted as separate files)

Bids should contain the information listed below on the face of each proposal or the bid may be rejected by the Agency:

Note: Items in italics are for informational purposes only as a means of assisting Vendor in marking their bid submissions.

SEALED BID: *Brief Description of Project/Item*

SOLICITATION NO.: *Document Number from Solicitation*

VENDOR INFORMATION: *Vendor Name, Address, and Telephone Number*

CONTACT INFORMATION: *Primary Vendor Contact Name, Telephone Number, and E-mail Address*

BID TYPE: *Technical Proposal or Cost Proposal*

- 2.7 ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the PEIA. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgement Form. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.
- 2.8 BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.
- 2.9 ALTERNATES:** Any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.
- 2.10 EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any

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exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification. The PEIA is under no obligation to consider or negotiate any terms and conditions or alternative terms and conditions contained in the Vendor's proposals.

**2.11 COMMUNICATION LIMITATIONS:** Communication with the PEIA or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Solicitation contact, is strictly prohibited without prior approval by the Solicitation contact.

**2.12 REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable. Vendors may find information at:

<http://www.state.wv.us/admin/purchase/VendorReg.html>.

**2.13 UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

**2.14 PREFERENCE:** Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of W. Va. Code § 5A-3-37, and must include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at:

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

**2.14.1 RECIPROCAL PREFERENCE:** The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at:

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

**2.15 SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid, in accordance with W.Va. Code § 5A-3-37(a)(7) and W.Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W.Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority owned business must identify itself as such in writing, must submit that writing



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to the PEIA with its bid, and must be properly certified under W.Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority-owned business shall be applied in accordance with W. Va. § CSR § 148-22-9.

- 2.16 WAIVER OF MINOR IRREGULARITIES:** The PEIA Director reserves the right to waive minor irregularities in bids or specifications.
- 2.17 NON-RESPONSIBLE:** The PEIA Director reserves the right to reject the bid of any vendor as Non-responsible when it is determined that the vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.
- 2.18 RFP/RFQ WITHDRAWAL, MODIFICATION, and CANCELLATION:** The PEIA may withdraw, cancel, or modify an RFP/RFQ at any time. Submission of proposals or receipt of proposals by the PEIA confer no rights upon the Vendor and do not obligate the PEIA in any manner. Further, the PEIA may accept or reject any bid in whole, or in part.
- 2.19 YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor’s entire response to the Solicitation and the resulting Contract are considered public documents. As public documents, they will be disclosed to the public following the award of the contract, as required by the competitive bidding laws of West Virginia and the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to PEIA, the STO (State Treasurers Office) and/or the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal or document. The PEIA 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 W.Va. Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

- 2.20 INTERESTED PARTY DISCLOSURE:** West Virginia Code §6D-1-2 requires that the vendor submit to the Purchasing Division a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 Million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award. 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. A copy of that form is available from the Agency Buyer designated in Section 4 above.
- 2.21 WITH THE BID REQUIREMENTS:** In instances where these specifications require

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documentation or other information with the bid, and a vendor fails to provide it with the bid, the PEIA Director reserves the right to request those items after bid opening and prior to contract award. This does not apply to instances where state law mandates receipt with the bid.

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## SECTION 3: GENERAL TERMS AND CONDITIONS

- 3.1 CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Agency and approved as to form by the Attorney General’s office, if required, constitutes acceptance of this Contract made by and between the PEIA and the Vendor. Vendor’s signature on its bid signifies Vendor’s agreement to be bound by and accept the terms and conditions contained in this Contract.
- 3.2 DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.
- 3.2.1 “Agency”** means the Public Employees Insurance Agency (PEIA)
- 3.2.2 “Bid” or “Proposal”** means the vendors submitted response to this solicitation
- 3.2.3 “Contract”** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.
- 3.2.4 “Director”** means the Director of the West Virginia Public Employees Insurance Agency
- 3.2.5 “Award Document”** means the document signed by the Agency that identifies the Vendor as the contract holder.
- 3.2.6 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Public Employment Insurance Agency.
- 3.2.7 “Vendor” or “Vendors”** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.
- 3.2.8 “Exempt”** means the solicitation/purchase is exempt from the requirements of the West Virginia Dept. of Administration Purchasing Division as designated in W. Va. Code §5A-3-10b.
- 3.3 CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

**[X] Term Contract**

**Initial Contract Term:** This Contract becomes effective on 7/1/2020 and extends for a period of 5 year(s).

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor. Any request for renewal should be delivered to the

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Agency 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. Automatic renewal of this Contract is prohibited.

**Alternate Renewal Term**

This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor and Agency.

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

**Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within days.

**Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for \_\_\_\_\_ year(s) thereafter.

**One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

**Other:** \_\_\_\_\_

**3.4 NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

**3.5 QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

**Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

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

**Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

**One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**3.6 EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

**3.7 REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Agency by the Vendor as specified below. Failure to submit a required bond, alternate bond, or signed waiver form with the proposal at the time of bid opening will result in automatic disqualification of the vendor's proposal and the proposal will be considered non-responsive.

**PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract value. The performance bond must be received by the Agency prior to Contract award.

**LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be received by the Agency prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1(d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

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**MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Agency prior to Contract award.

**LITIGATION BOND:** Each bidder responding to this RFP is required to submit a litigation bond in the amount of 5% of submitted bid made payable to the State of West Virginia Public Employees Insurance Agency. A surety company licensed to do business in the State of West Virginia with the West Virginia Insurance Commission, on a form acceptable to the State, and countersigned by a West Virginia Resident Agent must issue this bond. The only acceptable alternate forms of the bond are (1) company certified check (not an individual), and (2) a cashier’s check.

The purpose of the litigation bond is to discourage unwarranted or frivolous lawsuits pertaining to the award of a contract from this RFP. Secondly, the bond provides a mechanism for the State of West Virginia, the participating agencies, and it’s officers, employees, or agents thereof to recover damages, including (but not limited to) attorney fees, loss of revenue, loss of grants or portions thereof, penalties imposed by the federal government and travel expenses which may result from any such litigation. A claim against the bond will be made if the bidder contests the award in a court of competent jurisdiction and the grounds are found to be unwarranted or frivolous based on the facts of the award or applicable law as determined by the court. The bond or alternate form must remain in effect for two years from the proposal submission date. After six (6) months, each bidder may request, and the State anticipates granting, a release of the litigation bond. However, the bidder will be required to provide a release (signed and notarized in a form that is acceptable to the State) prior to release of the bond which states that the bidder will not sue.

The PEIA will waive the litigation bond if the bidder submits in writing on a form acceptable to the PEIA a complete waiver of any rights to challenge the bidder award in any jurisdiction or venue. The only acceptable alternative to the litigation bond is the submission of this signed “Bidder’s Total Waiver of Legal Challenge” form included with the vendor’s bid. (See Exhibit B.)

**LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Agency.

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

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

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**3.8 INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers.

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

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of: \$ \_\_\_\_\_ per occurrence.

**Automobile Liability Insurance** in at least an amount of: \$ \_\_\_\_\_ per occurrence.

**Professional/Malpractice/Errors and Omission Insurance** in at least an amount of:  \$1,000,000  per occurrence.

**Commercial Crime and Third Party Fidelity Insurance** in an amount of: \$ \_\_\_\_\_ per occurrence.

**Cyber Liability Insurance** in an amount of: \$  1,000,000  per occurrence.

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

**Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**3.9 WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**3.10 LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor

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shall pay liquidated damages in the amount specified below or as described in the specifications:

[ ] \_\_\_\_\_ for \_\_\_\_\_

[ ] Liquidated Damages Contained in the Specifications

- 3.11 ACCEPTANCE:** Vendor’s signature on its bid, or on the certification and signature page, constitutes an offer to the Agency that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.
- 3.12 PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the Agency. A Vendor’s inclusion of price adjustment provisions in its bid, without an express authorization from the Agency in the Solicitation to do so, may result in bid disqualification.
- 3.13 PAYMENT IN ARREARS:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.
- 3.14. PAYMENT METHODS:** The preferred method of payment by the State of West Virginia is electronic funds transfer or PCard. (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.)
- 3.15 ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor’s bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.
- 3.16 TAXES:** The Vendor 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.
- 3.17 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.



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- 3.18 CANCELLATION:** The PEIA Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract.
- 3.19 TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
- 3.20 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.
- 3.21 COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.
- 3.22 ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.
- 3.23 MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor.
- 3.24 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.
- 3.25 SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
- 3.26 ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency and any other government agency or office that may be required to approve such assignments.
- 3.27 WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description

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furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

- 3.28 STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
- 3.29 PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>
- 3.30 YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the PEIA constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The PEIA 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.

- 3.31 LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. 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 Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.
- 3.32 SUBCONTRACTOR COMPLIANCE:** Vendor shall notify any and/or all subcontractors providing commodities or services related to this Contract that, as subcontractors, they too are bound by any and/or all terms, conditions, and caveats of this RFP and are required to comply with all applicable laws, regulations, and ordinances as described in section 3.21.

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The Vendor shall notify any and/or all subcontractors providing commodities or services related to this Contract that, as subcontractors, they too are required 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 as described in section 3.29. Subcontractors must further agree to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in

<http://www.state.wv.us/admin/purchase/privacy/default.html>.

Vendor shall notify any and/or 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 section 3.31.

**3.33 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 Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**3.34 VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

**3.35 VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent

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contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, 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.

Vendor shall hold harmless the State and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**3.36 INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**3.37 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, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to PEIA affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

The affidavit must be submitted prior to award but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included as Attachment F.

**3.38 CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**3.39 REPORTS:** Vendor shall provide the Agency with the following reports identified by a checked box below:

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Such reports as the Agency may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the PEIA via email at \_\_\_\_\_.

- 3.40 BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry. After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

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

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**SECTION 4: PROJECT SPECIFICATIONS**

**4.1. Background and Current Operating Environment:** PEIA’s current data warehouse maintains both eligibility and claims data. PEIA’s eligibility data is updated monthly using PEIA’s billing file from the BAS. The BAS is a COBOL program running on an IBM mainframe. PEIA users operate on current Windows desktop systems connected via a virtual local area network on a 1 gigabyte “Suddenlink” circuit shared with two other agencies.

There are approximately 10 users of the warehouse within PEIA. PEIA currently retains information in its data warehouse back to 1994. The following table outlines information currently loaded into PEIA’s data warehouse.

<b>PEIA DATA WAREHOUSE</b>					
<b>Data</b>	<b>Source</b>	<b>Medium</b>	<b>Avg. File Size</b>	<b>Avg. Number of Records</b>	<b>Frequency</b>
PEIA Health Claims	UMR	FTP	1 GB	600,000	Monthly
PEIA Rx Claims	CVS	FTP	200 MB	55,000	Weekly
PEIA Eligibility	PEIA BAS	FTP	2GB	13,000,000	Monthly
Humana Rx Claims Data	Humana	FTP	111 MB	250,000	Monthly
Humana Medical Claims Data	Humana	FTP	245 MB	350,000	Monthly
The Health Plan Claims Data	The Health Plan	FTP	50MB	70,000	Monthly
The Health Plan Rx Data	The Health Plan	FTP	Not available	Not available	Monthly
PEIA COBRA Eligibility	UMR	FTP	9,000k	14,000 lines	Daily
Labcorp	Labcorp	FTP	Not available	Not available	
Life Insurance	Minnesota Life	FTP	Not available	Not available	

**4.2. Project Goals and Mandatory Requirements:** The objective of this Request for Proposal (RFP) is to acquire a system that will allow for the accumulation of all PEIA eligibility and claim data from disparate systems into a flexible, user friendly, centralized system capable of providing any possible scenario of data for analysis by the participating agencies. PEIA intends to purchase or lease software and or services for the management and interpretation of all or most of its benefit plans. The warehouse will provide PEIA a solution that is useful in assessing data including but not limited to provider reimbursement, provider histories, provider performance, loss ratios, member histories, premiums billed, utilization, wellness

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initiatives, disease state management, trend, risk scoring, clinical program development, network development, etc. The system **shall** afford the user the ability to pare down any query result to investigate the minutest detail possibly affecting the result. In summary, the system chosen will provide PEIA a robust and flexible data warehouse capable of answering virtually any question the agency may have.

**4.2.1. System and Solution Expectations and Requirements** - PEIA's current system is utilized in a number of different ways, including but not limited to: eligibility analysis, claims analysis and financial analysis. Although not all inclusive, the following list entails general system expectations and some specific issues that the system and/or vendor will be expected to provide assistance to the agency by reporting information in a timely, consistent and reliable manner. Vendor must indicate its ability to meet the following requirements:

### General

- 4.2.1.1. Keep the design intuitive
- 4.2.1.2. Integrate a broad range of data sources requiring the appropriate mapping of data from PEIA's benefit vendors, TPAs and eligibility systems into the proper database fields
- 4.2.1.3. Be highly cost effective and provide PEIA with predictable fixed costs, monthly maintenance and database updates
- 4.2.1.4. Be backed up with strong technical support that includes help with periodic strategic assessment, and ad hoc report creation
- 4.2.1.5. Offer high uptimes and established service level agreements on system performance
- 4.2.1.6. Evaluate the interrelationships of established programs (e.g., impact of wellness and disease management programs on chronic conditions, and impact of pharmacy on medical)
- 4.2.1.7. Provide tools for user back end data access for excessively complex queries
- 4.2.1.8. Provide ad hoc data set creation for data integration both inbound and outbound
- 4.2.1.9. Provide designs and tools to combine, collate, and interrelate a member's data from multiple sources, such as prescriptions resulting from specific medical claims, one-field diagnosis look ups, and plan benefit structure effects on encounter frequency and case mix
- 4.2.1.10. Be supported by libraries of properly licensed industry-standard code sets such as ICD10, HCPCS, CPT, CMS identifiers, NDC, GPI, DRG, APC, Revenue Codes, and like for billing, clinical, and financial analysis reference
- 4.2.1.11. Allow for periodic import of agency-specific reference libraries, such as fee schedules, premium rates, department names, and other crosswalk lists
- 4.2.1.12. Offer full export capability and compatibility with Microsoft Excel and Access
- 4.2.1.13. Meet the confidentiality and security requirements of the Health Insurance Portability and Accountability Act (HIPAA) and PEIA.

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### Required Reporting

- 4.2.1.13. Provide monthly paid claims reporting by provider type and place of service with drill down capability
- 4.2.1.14. Provide supporting data such as claims detail for regular audits such as Legislative Audits or financial audit reports of independent auditors, and in support of activities such as subrogation

### Financial/Actuarial - System should allow PEIA staff to:

- 4.2.1.15. Analyze PEIA PPB plans, managed care and MAPD claims producing loss ratio analysis, and benefit, risk and case mix adjusted plan cost comparison analysis
- 4.2.1.16. Evaluate network discounting, capitation and utilization controls
- 4.2.1.17. Possess normalization functionality including age/sex adjustments, case mix, benefits, and member risk scoring
- 4.2.1.18. Evaluate health plan efficiency
- 4.2.1.19. Develop "Efficiency Factors" by geographic market and health plan that are not solely based on Plan's claim costs
- 4.2.1.20. Aid Actuarial and Underwriting Efforts Modification of plan design setting of risk targets adjusted for selection
- 4.2.1.21. Provide access of normative data (e.g., HEDIS/NCQA, M&R guidelines, etc.)
- 4.2.1.22. Data mine for health care fraud
- 4.2.1.23. Tools and support for periodic financial reconciliation to internal accounting, eligibility, claims, and other reporting systems

### Clinical/Quality Assurance – System should allow PEIA staff to:

- 4.2.1.24. Track performance-standard metrics for best practice plans according to PEIA requirements
- 4.2.1.25. Provide geographic epidemiology analysis and identification of wellness/disease management opportunities
- 4.2.1.26. Evaluate effectiveness of wellness programs
- 4.2.1.27. Evaluate disability and Workers' Compensation
- 4.2.1.28. Linkage of specific PEIA disabilities to lifestyle factors (i.e., smoking and high blood pressure)
- 4.2.1.29. Support PEIA claim departments in tracking employee data
- 4.2.1.30. Identification of Medicare primary and other COB opportunity (medical and prescription drug)
- 4.2.1.31. Offer design, development, and management assistance for clinical programs and networks.



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### Disability Management and Wellness Management

- 4.2.1.32. Disability data (short-term and long-term)
- 4.2.1.33. Wellness results
- 4.2.1.34. Case management identification opportunity
- 4.2.1.35. Identification and monitoring of disease states for PEIA members to assist in implementation of appropriate intervention strategies for target populations

### Carrier Evaluation

- 4.2.1.36. Claims and demographic reporting including case mix indexing and member risk
- 4.2.1.37. Medical loss ratio calculations

### Provider Evaluation and Capitated Reimbursement Programs

- 4.2.1.38. Development of a physician performance reporting program utilizing standardized report cards per nationally accepted criteria or PEIA specific parameters indicating physician versus peers or specialty
- 4.2.1.39. Ability to develop standardized reporting for capitated providers identifying performance based on program guidelines
- 4.2.1.40. Ability to develop standardized reporting for various quality indicators, capitation payment analysis per provider and member specific disease state profiles
- 4.2.1.41. Provider network and hospital cost comparison analysis utilizing normalization factors and episode of care development for appropriate comparative analysis

- 4.2.2. System Accessibility and User Training Requirements** - At this time, PEIA intends to utilize this software on approximately 10 workstations in its Charleston office. The vendor will be required to provide reasonable assurance regarding reliable access to their system with detailed backup and recovery plans in the event of any unforeseen issues regarding connectivity.

Additionally, a number of read-only, limited-access users will use the system as part of program participation. Currently there are approximately 90 users with this access, with the potential to grow.

It is PEIA's intention to contract with a vendor that would allow the vast majority of analytical work to be undertaken by agency staff. Due to this, mandatory training sessions will be provided as requested. These sessions shall be user specific as determined by PEIA users. However, the selected vendor's assistance and consultation may be required during the transition phase, in strategic planning, report generation, and in ensuring the value maximization of the software. Vendor must indicate its ability to meet the following requirements

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- 4.2.2.1. Provide a minimum of user training including annual, on-site training and be user-friendly
- 4.2.2.2. Provide clear written documentation and clear identification of database objects
- 4.2.2.3. Allow PEIA to utilize the system and internal financial/clinical expertise and keep ad hoc consulting fees to a minimum
- 4.2.2.4. Provide a user manual with a detailed data dictionary for all database elements, explanation of database query tools, and system navigation allowing for customer generated query development
- 4.2.2.5. System must allow for the development of project specific standardized data sets providing the user an intuitive tool for project analysis
- 4.2.2.6. Provide technical representation in support of internal program and data analysis teams for external stakeholders

### 4.2.3. System Documentation Requirements

- 4.2.3.1. The vendor must provide detailed documentation in some medium defining all attributes within the system for knowledgeable self-service query production by PEIA. All data sets of various time periods, TPAs and Pharmacy Benefits Managers (PBM) **shall** have this available.
- 4.2.3.2. The system should have user friendly help keys available that will allow the user to type in key words or acronyms to determine how it is accounted for in the data set being queried. For example, if the user is trying to assess the members' share of payment for prescription drugs in multiple fiscal periods with multiple PBMs, and the user is unsure of the location of prescription drug co-pays within the data set, the user can select the help key to ascertain where the co-pay is located in the queried section.

**4.3. Additional Mandatory Vendor Responses:** Vendor should provide information and documentation regarding its qualifications and experience in providing services or solving problems similar to those requested in this RFP. Information and documentation should include, but is not limited to, copies of any staff certifications or degrees applicable to this project, proposed staffing plans, descriptions of past projects completed (descriptions should include the location of the project, project manager name and contact information, type of project, and what the project goals and objectives where and how they were met.), references for prior projects, and any other information that vendor deems relevant to the items below.

#### Company Background/General

- 4.3.1. Provide a profile of your organization, including organization chart. Specifically, provide the titles, resumes, addresses and phone numbers of those who will be assigned to work with PEIA. Indicate the main contact.
- 4.3.2. Provide summary financial information on your company.

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- 4.3.3. How many of your clients for this product have over 20,000 employees?
- 4.3.4. How long have you been marketing this product to employer groups?
- 4.3.5. Advise of your new product releases and feature development record over the last three years. Please be specific as to timeliness and customer satisfaction.
  - a. What was the nature of these releases, (i.e., enhancements or "fixes")?
  - b. What product and service development is planned for the future?
- 4.3.6. Beyond data management and analytical services, what other services and products does your company provide?
- 4.3.7. Please provide a list of all subcontractors who provide commodities/services that will relate to this contract.

### Data Collection/Consolidation/Accessibility

- 4.3.8. What is your experience with claims level data from PEIA health care partners noted earlier (e.g., The Health Plan, UMR, Humana, CVS and Labcorp)?
- 4.3.9. What is your experience in integrating multiple file types (flat file, different delimiters, HL7) in both inbound and outbound mechanics?
- 4.3.10. Describe, in detail, your experience in standardizing and integrating data from multiple sources. Please specifically address those previously listed.
- 4.3.11. Please confirm that you can update data monthly for the data sources listed above. Are there any exceptions (e.g., quarterly/annual updates)? How soon after the close of a month is monthly data available?
- 4.3.12. Describe, in detail, how the databases are integrated.
- 4.3.13. How will your system be able to integrate eligibility and premium data with claims data for all available plans?
- 4.3.14. How easily can your system handle changes in eligibility, enrollment, and employee specific characteristics (health risk appraisal results, smoker vs. non-smoker, fitness club member, etc.)?
- 4.3.15. How easily can your system handle changes in third party administrators or pharmacy benefits managers?
- 4.3.16. How much detail can your system provide on subgroups of populations?
- 4.3.17. Describe a user's accessibility and tools to data, including front end access and back end database access. Is the system accessed via a client / service install on the user desktop, browser based, or other?
- 4.3.18. Describe your user license structure. Are there varying levels of access, such as read only, read / write, and or role-based profiles?
- 4.3.19. Current access is bogged down sometimes due to it being through the State's congested internet. This can create query failures due to time-outs. What would you recommend to avert this problem in accessing your system?
- 4.3.20. Describe the database update process.
- 4.3.21. Can the update, maintenance, and backup cycles be timed for after hours?
- 4.3.22. How many months of data are typically maintained on the production database on a mature basis (e.g., previous eight years' data available)?
- 4.3.23. How many months of data can be maintained in archive?
- 4.3.24. What is the process for retrieving or accessing data in the archive?

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### Technology

- 4.3.25. How do you ensure the confidentiality and security of member information and data?
- 4.3.26. Describe the process for creating algorithms for masking data.
- 4.3.27. Who in your firm would have access to sensitive employee healthcare and financial data?
- 4.3.28. Describe your system's software and hardware. Where are the data housed (e.g., mainframe, client server, local, data center)?
- 4.3.29. Describe your disaster recovery/backup plan, (i.e., time frame of lost data recreation).
- 4.3.30. How flexible is your system architecture?
- 4.3.31. What types of technologies are applied in data processing and data management?
- 4.3.32. Is your system in-house or out-sourced?
- 4.3.33. PEIA may change TPA vendors periodically, and the upload of data to be integrated may require major changes. Please describe your ability to handle major changes to integration processes. Any costs associated must be detailed on the pricing summary sheet.
- 4.3.34. PEIA would like to explore the option of hosting the data system with remote access provided to the successful vendor.
  - a. Would you object to the system being housed in PEIA systems (i.e., State Mainframe and/or Local Server) on-site at PEIA?
  - b. If not, how would you accommodate this? Please provide a summary level schematic and workflow of this scenario.

### Reporting Capabilities

- 4.3.35. Please provide specific examples of reporting capabilities that are already built into your computer system.
- 4.3.36. What is your current ability to provide reports that are available on a regularly scheduled basis and for downloading to a local workstation?
- 4.3.37. Describe capability to provide management reporting, dashboards, KPI development and reporting.
- 4.3.38. How many types of standard reports are available in each coverage line? Please provide samples of all standard reports that the system produces.
- 4.3.39. How able are you to support us in our need to customize reports?
- 4.3.40. What is your ability to provide ad hoc reports?
- 4.3.41. There are periods such as the Legislative Session or projects requiring new reimbursement model testing that require a high level of responsiveness (24 hour or less). What is your firm's process to assure these reporting deadlines can be met and the data is accurate?
- 4.3.42. What is your system's ability to generate non-standard reports per PEIA requirements?
- 4.3.43. What types of outcome measurements are utilized in your reporting?
- 4.3.44. How are industry clinical codes updated (e.g., ICD10, CPT-4 and DRG)?
- 4.3.45. Describe how medical claim data is mapped into diagnostic categories.

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### Health Care Analysis Products and Services

- 4.3.46.** Please provide specific examples of deliverables in the areas of managed care data analysis, Workers' Compensation, disability, quality of care and outcomes.
- 4.3.47.** What types of products and services do you provide with respect to health plan evaluation services using HEDIS based information?
- 4.3.48.** Please provide 2 ROI examples of recent client work in different types of projects, programs, or high-performance networks (i.e., provider reimbursement change evaluation, disease management, etc.).
- 4.3.49.** How do you monitor and communicate best practices regarding benefits, reimbursement, and emerging technologies across your base of clients?

### Evaluation Services

- 4.3.50.** Describe the construction of inpatient and outpatient episodes of care.
- 4.3.51.** Describe your system's normative and benchmarking capabilities and how adjustments are made for age, sex, case-mix and geographic region.
  - c.** What are your company's benchmarking capabilities and sources in regard to normative data?
- 4.3.52.** Describe your system's capabilities to track individuals across inpatient and outpatient settings and across databases.
- 4.3.53.** Describe your software developments to track the cost and effectiveness of various wellness or disease management programs.
- 4.3.54.** Describe your systems capability for assessing effectiveness of accountable care organizations and the stakeholders they service.
- 4.3.55.** Describe your system's capability for assessing effectiveness of capitated reimbursement programs and the members they service.

### Fraud Identification and Data Mining

- 4.3.56.** Please describe your system's capabilities for data mining for health care fraud and its ability to apply these processes over multiple providers.

### Modeling Capabilities

- 4.3.57.** Does your system have the capability of modeling the effects of changing the following?
  - a.** provider networks/contracts,
  - b.** provider reimbursement methodology,
  - c.** benefit adjustments, and
  - d.** policy changes;

Please describe these capabilities in detail.

### Quality Assurance

## REQUEST FOR PROPOSAL – WV PUBLIC EMPLOYEES INSURANCE AGENCY

- 4.3.58.** How would you ensure PEIA the delivery of value and results through the purchase and use of your product? Detailed, independently substantiated measurements must be provided (i.e., query failure minimums, downtime minimum guarantees).
- a.** What guarantees are offered regarding system reliability?
  - b.** What guarantees are offered regarding system accessibility?
- 4.3.59.** Describe your internal processes to assure data quality.
- 4.3.60.** Do you have a benchmark level for "clean" data before the data is loaded into the databases? Please provide a sample of these levels for each PEIA carrier you have available.
- 4.3.61.** By what process do you balance your database detail to your clients' official records (i.e., claims paid, enrollment counts, premiums billed)?

### General

- 4.3.62.** Explain your system's capabilities regarding compliance with the Health Insurance Portability and Accountability Act (HIPAA).
- 4.3.63.** Is your company willing to assign a representative to the PEIA account that will assist with both the technical and functional aspects of services requested in this solicitation?

### References

- 4.3.64.** Please provide three references of clients who are similar to PEIA in complexity and data integration needs using Attachment H.

## SECTION 5: VENDOR PROPOSAL

- 5.1. Economy of Preparation:** Proposals should be prepared simply and economically providing a concise description of the items requested in Section 4. Emphasis should be placed on completeness and clarity of the content.
- 5.2. Incurring Cost:** Neither the State nor any of its employees or officers shall be held liable for any expenses incurred by any Vendor responding to this RFP, including but not limited to preparation, delivery, or travel.
- 5.3. Proposal Format:** Vendors should provide responses in the format listed below:
- 5.3.1. Two-Part Submission:** Vendors must submit proposals in two distinct parts: technical and cost. Technical proposals must not contain any cost information relating to the project. Cost proposal must contain all cost information and must be sealed in a separate envelope from the technical proposal to facilitate a secondary cost proposal opening.
- 5.3.2. Title Page:**
- SEALED BID: *Brief Description of Project/Item*  
SOLICITATION NO.: *Document Number from Solicitation*  
VENDOR INFORMATION: *Vendor Name, Address, and Telephone Number*  
CONTACT INFORMATION: *Primary Vendor Contact Name, Telephone Number, and E-mail Address*  
BID TYPE: *Technical Proposal or Cost Proposal*
- 5.3.3. Table of Contents:** Clearly identify the material by section and page number.
- 5.3.4. Response Reference:** Vendor's response should clearly reference how the information provided applies to the RFP request. For example, listing the RFP number and restating the RFP request as a header in the proposal would be considered a clear reference.
- 5.3.5. Proposal Submission:** All proposals must be submitted to the Agency **prior** to the date and time stipulated in the RFP as the opening date. All submissions must be in accordance with the provisions listed in Section 2: Instructions to Bidders Submitting Bids.

**SECTION 6: EVALUATION AND AWARD**

- 6.1. Evaluation Process:** Proposals will be evaluated in two parts by a committee of three (3) or more individuals. The first evaluation will be of the technical proposal and the second is an evaluation of the cost proposal. The Vendor who demonstrates that it meets all of the mandatory specifications required, attains the minimum acceptable score and attains the highest overall point score of all Vendors shall be awarded the contract.
- 6.2. Evaluation Criteria:** Proposals will be evaluated based on criteria set forth in the solicitation and information contained in the proposals submitted in response to the solicitation. The technical evaluation will be based upon the point allocations designated below for a total of 70 of the 100 points. Cost represents 30 of the 100 total points.

**Evaluation Point Allocation:**

The bidder’s capacity to administer the work to be performed	20 Points Possible
The bidder’s technological capability	20 Points Possible
Qualifications of staff assigned to project, as determined by resumes submitted and the overall management and supervision to be exercised	15 Points Possible
Prior experience of bidder with government programs and insurance carriers	15 Points Possible
<u>Total Technical Score:</u>	<u>70 Points Possible</u>
<u>Total Cost Score:</u>	<u>30 Points Possible</u>

**Total Proposal Score: 100 Points Possible**

- 6.3. Technical Bid Opening:** At the technical bid opening, the Agency will open technical proposals received prior to the bid opening deadline. Once opened, the technical proposals will be provided to the Agency evaluation committee for technical evaluation.



## REQUEST FOR PROPOSAL – WV PUBLIC EMPLOYEES INSURANCE AGENCY

**6.4. Technical Evaluation:** The Agency evaluation committee will review the technical proposals, assign points where appropriate, and make a final written recommendation to the PEIA Director.

**6.5. Proposal Disqualification:**

**6.5.1. Minimum Acceptable Score (“MAS”):** Vendors must score a minimum of 70% (49 points) of the total technical points possible in order to move past the technical evaluation and have their cost proposal evaluated. All vendor proposals not attaining the MAS will be disqualified.

**6.5.2. Failure to Meet Mandatory Requirement:** Vendors must meet or exceed all mandatory requirements in order to move past the technical evaluation and have their cost proposals evaluated. Proposals failing to meet one or more mandatory requirements of the RFP will be disqualified.

**6.6. Cost Bid Opening:** The Agency will schedule a date and time to publicly open and announce cost proposals after technical evaluation has been completed. All cost bids received will be opened. Cost bids for disqualified proposals will be opened for record keeping purposes only and will not be evaluated or considered. Once opened, the cost proposals will be provided to the evaluation committee for cost evaluation.

PEIA reserves the right to disqualify a proposal based upon deficiencies in the technical proposal even after the cost evaluation.

**6.7. Cost Evaluation:** The Agency evaluation committee will review the cost proposals, assign points in accordance with the cost evaluation formula contained herein and make a final recommendation to the PEIA Director.

**Cost Evaluation Formula:** Each cost proposal will have points assigned using the following formula for all Vendors not disqualified during the technical evaluation. The lowest cost of all proposals is divided by the cost of the proposal being evaluated to generate a cost score percentage. That percentage is then multiplied by the points attributable to the cost proposal to determine the number of points allocated to the cost proposal being evaluated.

**Step 1:**  $\text{Lowest Cost of All Proposals} / \text{Cost of Proposal Being Evaluated} = \text{Cost Score Percentage}$

**Step 2:**  $\text{Cost Score Percentage} \times \text{Points Allocated to Cost Proposal} = \text{Total Cost Score}$

Example:

Proposal 1 Cost is \$1,000,000

Proposal 2 Cost is \$1,100,000

## REQUEST FOR PROPOSAL – WV PUBLIC EMPLOYEES INSURANCE AGENCY

Points Allocated to Cost Proposal is 30

Proposal 1: Step 1 –  $\$1,000,000 / \$1,000,000 =$  Cost Score Percentage of 1 (100%)  
Step 2 –  $1 \times 30 =$  Total Cost Score of 30

Proposal 2: Step 1–  $\$1,000,000 / \$1,100,000 =$  Cost Score Percentage of 0.909091 (90.9091%)  
Step 2 –  $0.909091 \times 30 =$  Total Cost Score of 27.27273

- 6.8. Availability of Information:** Proposal submissions become public and are available for review immediately after opening pursuant to West Virginia Code §5A-3-11(h). All other information associated with the RFP, including but not limited to, technical scores and reasons for disqualification, will not be available until after the contract has been awarded pursuant to West Virginia Code of State Rules §148-1-6.3.d.

**SECTION 7: CERTIFICATION AND SIGNATURE PAGE**

---

(Signature)

---

(Printed Name and Title)

---

(Address)

---

(Phone Number) / (Fax Number)

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(E-mail address)

**CERTIFICATION AND SIGNATURE:** By signing , I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the PEIA that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor’s behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

REQUEST FOR PROPOSAL – WV PUBLIC EMPLOYEES INSURANCE AGENCY

**Attachment A**  
**Notification of Interest Form**  
(Due Date: March 31, 2020)

Firms interested in submitting a proposal must return this "Notification of Interest" by March 31, 2020

To:	Jason Haught WV Public Employees Insurance Agency 601 57th Street SE, Suite 2 Charleston, WV 25304-2345 Fax 1-877-233-4295 E-mail <a href="mailto:jason.a.haught@wv.gov">jason.a.haught@wv.gov</a>
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From:	FIRM		
	MAILING ADDRESS		
	CITY	STATE	ZIP
	NAME AND TITLE OF INDIVIDUAL		
	TELEPHONE NUMBER		
	FAX NUMBER		

Please consider this Notification of Interest intent to submit a proposal to the RFP issued by the Public Employees Insurance Agency of the Department of Administration for ARFP PEI2000000001, Data Warehouse Software & Services.

SIGNED	DATE
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**REQUEST FOR PROPOSAL – WV PUBLIC EMPLOYEES INSURANCE AGENCY**

**Attachment B  
Pricing Summary Form**

The costs listed are considered firm during the awarded contract. Ancillary expenses (travel, meals, lodging, etc) are to be included in proposed rates and will not be paid directly. Additional copies of this page should be used in the event that the Vendor intends to include price adjustments over the initial Contract term (5 years).

<b>Name of Firm:</b>
----------------------

	Fee	Unit	Estimated number of Units/Month	Monthly Cost	Annual Cost
<i>Example: Warehouse Maintenance</i>	<i>\$50.00</i>	<i>hr</i>	<i>23</i>	<i>\$ 1,150.00</i>	<i>\$ 13,800.00</i>
<b>Fixed Monthly Costs:</b>					
Full Access User Licenses*		ea.	10		
Read-Only User Licenses*		ea.	90		
Regular Data File Uploads					
Architecture and Design					
Hardware and Infrastructure					
Data Integrity Processes					
Hosting and Backup and Archiving					
System and User Documentation					
Maintenance and Support					
Other (Vendor detail)***					
<b>Data Services**</b>					
Ad hoc Reporting		hour	n/a	n/a	n/a
Training		hour	n/a	n/a	n/a
Data strategy and consulting services		hour	n/a	n/a	n/a
One time or New Data Integrations		n/a	n/a	n/a	n/a
Other (Vendor detail)***		n/a	n/a	n/a	n/a
<b>Initial Implementation</b>		n/a	n/a	n/a	n/a

\*Quantities provided are estimates only, based on current usage. It is understood and agreed that additional or fewer licenses may be required over the course of the Contract.

\*\*Data services are as requested. PEIA will set the same number of units for all proposals for accurate cost comparison.

\*\*\*Vendor may add items requiring cost break-out. Vendor must indicate whether the service is included in fixed costs or is an optional service.

**Attachment C**  
**BIDDERS LITIGATION WAIVER FORM**

\_\_\_\_\_, hereinafter "Bidder," wishes to submit a Proposal in response to the Request for Proposal for ARFP PEI2000000001 issued on February 14, 2020 by the Public Employees Insurance Agency for the State of West Virginia (PEIA). The Bidder acknowledges that a mandatory requirement of the RFP is that the Bidder submit a litigation bond or waiver with its proposal.

In consideration of the waiver of said litigation bond requirement by the PEIA, and in lieu of such bond, the Bidder agrees:

That the Bidder completely waives and forgoes any and all legal right or ability it may now have, or in the future, to initiate any sort of challenge to or against the selection of a Bidder and/or the ultimate award of a contract or contracts pursuant to the RFP. This Waiver is entered voluntarily by a representative authorized to legally bind the Bidder and shall be binding on the Bidder, its successors, assigns, heirs and any others claiming under the legal rights of the Bidder. This Waiver shall apply to any and all types of action, in challenge to or seeking to attack, in any way, the RFP selection process, or the subsequent award of contract(s) to the successful Bidder, including but not limited to, administrative, judicial, or collateral actions.

<b>LEGAL NAME OF BIDDER</b>
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<b>AUTHORIZED SIGNATURE</b>	
<b>TITLE</b>	<b>DATE</b>

**APPROVED:**

**PUBLIC EMPLOYEES INSURANCE AGENCY FOR THE STATE OF WEST VIRGINIA**

<b>AUTHORIZED SIGNATURE</b>	
<b>TITLE</b>	<b>DATE</b>

**Attachment D**  
**HIPAA BUSINESS ASSOCIATE ADDENDUM**

## 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. 111<sup>th</sup> 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](http://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](mailto: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: \_\_\_\_\_

Name of Associate: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_


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

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

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

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

Form - WVBA-012004  
Amended 06.26.2013

APPROVED AS TO FORM THIS 26th  
DAY OF Jan 20 13  
**Patrick Morrissey**  
**Attorney General**  
BY 

**Attachment E**  
**HIPAA BUSINESS ASSOCIATE ADDENDUM APPENDIX A**



## Appendix A

**Name of Associate:** \_\_\_\_\_

**Name of Covered Entity Agency(ies):** The West Virginia Public Employees Insurance Agency (PEIA)

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.

The information provided to the Associate, pursuant to the Agreement for the purpose(s) of providing data warehouse services; data analytics; and healthcare claims management services will include the minimum necessary to perform the services thereunder and will specifically include, but may not be limited to the following definitions, terms, and/or conditions:

- a) 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), medical and/or pharmaceutical claim(s) information, claims payment information, PEIA system(s), etc. necessary for use by the Associate in claims management, data mining, data storage and/or backup, collating data in both an identifiable format and in de-identified format(s), filing necessary legal and/or administrative documents and/or filings, handling appeals, coordinating benefits, and/or performing other administrative functions on behalf of the Covered Entity(ies) with regard to the operation of the Plan(s).
- b) PII/PHI of members of the Covered Entity(ies) for use in assessing and/or determining trend(s) in healthcare, pharmaceutical, and disease management, including potential fraud, waste, and abuse as required by Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) under the Administrative Simplifications provisions.
- c) PII/PHI data management for use in procurement of services, claims tracking, claims modeling, data analytics, healthcare payment system(s) management, actuarial and underwriting analysis, selection bias, and plan design modeling and simulation.
- d) The PII/PHI referenced in section (a) of this Appendix A may include, but not be limited to PII/PHI provided to the Covered Entity(ies) by their benefits administrator(s) and/or managers such as those who handle and/or manage health benefits, pharmacy benefits, dental and vision benefits, retiree health benefits, or other health and wellness benefits provided by the Covered Entity(ies).
- e) PEIA member individually identifiable health information or protected health information necessary to allow the Covered Entity(ies) and the Associate to perform their statutory business function(s) in accordance with the service agreement(s) and/or State and/or Federal law(s).
- f) PEIA member individually identifiable health information protected health information used in relation to the collection(s) of benefits, fees, overpayment(s), and/or fee(s) paid on behalf of member(s) and/or dependents by the Covered Entity(ies) and/or the Associate not the responsibility of the Covered Entity(ies) and/or the Associate.
- g) PEIA member protected health information needed by and/or for the Associate in the provision of their health care operational services to the Covered Entity(ies) that involves access to protected health information.
- h) PEIA member individually identifiable health information protected health information used in relation to claims work from data analysis to claims identification, investigation and resolution including claims adjudication and enrollment design, development, and implementation.
- i) In performing the scope of work under this agreement, the Associate shall take every reasonable step to ensure that only the minimum necessary information is released and/or disclosed for purposes of performing its duties and obligations under this contract and Addendum.
- j) The Associate, including any and/or all subcontractors utilized by the Associate in the performance of this contract, agrees to comply with any and/or all applicable provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act (ARRA) of 2009, including the Omnibus Rule Provisions that went in force in 2013. Such provisions

include, but are not limited to:

- a. Adherence to NIST Standard(s) 800-53 and 800-66.
  - b. All WV PEIA data at rest shall be encrypted
  - c. Any and/or all PII/PHI data transfers performed under the scope of this contract shall occur in a secure format agreed upon by both parties.
  - d. The Covered Entities reserve the right to conduct audits of the Associate to assess compliance with HIPAA/HITECH and the Omnibus Rules. The terms and/or conditions of such audits shall be mutually agreed upon by the Associate and the Covered Entity(ies).
  - e. The Associate shall provide vendor assurance(s) that the terms and conditions of this Business Associate Agreement have been conveyed to any and/or all subcontractors who may perform work on this contract or that may have access to the PII/PHI of the Covered Entity(ies)
- k) Any and/or all PII/PHI data stored by the Associate and any and/or all subcontractors to this agreement shall be stored on servers located within the continental United States.
- l) This terms and conditions of this agreement shall continue to apply to any and/or all data still stored by the Associate that was the property of the ACCESS WV program managed by the Office of the Insurance Commissioner.

**Attachment F**  
**PURCHASING AFFIDAVIT**

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 G**  
**WV-96 AGREEMENT ADDENDUM**

**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD 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 term and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from any assertion that such third-party software 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.

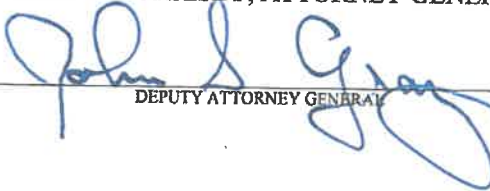
Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strike through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s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

State: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Vendor: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

This Addendum to Vendor’s Standard Forms, has been approved as to form on this 18th day of January 2019, by the West Virginia Attorney General’s office as indicated in the signature line below. Any modification of this document is void as an *ultra vires* act unless expressly approved in writing by the West Virginia Attorney General’s Office.

PATRICK MORRISEY, ATTORNEY GENERAL

BY:  \_\_\_\_\_  
 DEPUTY ATTORNEY GENERAL



## Attachment H

### Vendor Experience Reference Information

Reference #1 (Required)

Contact Person	
Position	
Address	
City, State, Zip	
Telephone Number	
E-mail Address	
Project Description	
Project Dates	
Personnel Assigned	

Reference #2 (Required)

Contact Person	
Position	
Address	
City, State, Zip	
Telephone Number	
E-mail Address	
Project Description	
Project Dates	
Personnel Assigned	

**REQUEST FOR PROPOSAL – WV PUBLIC EMPLOYEES INSURANCE AGENCY**

**Vendor Experience Reference Information**

Reference #3 (Required)

Contact Person	
Position	
Address	
City, State, Zip	
Telephone Number	
E-mail Address	
Project Description	
Project Dates	
Personnel Assigned	

Reference #4 (Optional)

Contact Person	
Position	
Address	
City, State, Zip	
Telephone Number	
E-mail Address	
Project Description	
Project Dates	
Personnel Assigned	

# Attachment I

## Vendor Personnel Resumes

Vendor Personnel Resume

Name	
Title	
Relevant Experience	
Relevant Certifications	
Education	

Vendor Personnel Resume

Name	
Title	
Relevant Experience	
Relevant Certifications	
Education	

**REQUEST FOR PROPOSAL – WV PUBLIC EMPLOYEES INSURANCE AGENCY**

Vendor Personnel Resume

Name	
Title	
Relevant Experience	
Relevant Certifications	
Education	

Vendor Personnel Resume

Name	
Title	
Relevant Experience	
Relevant Certifications	
Education	

## **Attachment J**

### **Prospective Vendor's Checklist**

**MANDATORY - THIS APPENDIX MUST BE COMPLETED WITH FINAL PROPOSAL**

\_\_\_\_\_ 1. FIRM INTRODUCTION

\_\_\_\_\_ 2. MANDATORY REQUIREMENTS RESPONSE (SECTION 4)

\_\_\_\_\_ MANDATORY PROJECT REQUIREMENTS

\_\_\_\_\_ MANDATORY QUALIFICATIONS AND EXPERIENCE

\_\_\_\_\_ 3. CERTIFICATION AND SIGNATURE PAGE (SECTION 7)

\_\_\_\_\_ 4. ATTACHMENTS

ATTACHMENT B PRICING SUMMARY FORM

ATTACHMENT C BIDDER'S LITIGATION WAIVER FORM or LITIGATION BOND

ATTACHMENT E BUSINESS ASSOCIATE INFORMATION FORM -  
APPENDIX A

ATTACHMENT F PURCHASING AFFIDAVIT

ATTACHMENT G WV-96 AGREEMENT ADDENDUM

ATTACHMENT H VENDOR EXPERIENCE REFERENCE INFORMATION

ATTACHMENT I VENDOR PERSONNEL RESUME FORM

ATTACHMENT J PROSPECTIVE VENDOR'S CHECKLIST

ATTACHMENT L ADDENDUM ACKNOWLEDGMENT FORM

ATTACHMENT O SOFTWARE AS A SERVICE ADDENDUM

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Representative Name, Title)

\_\_\_\_\_  
(Date)

## Attachment K

### VENDOR REGISTRATION REQUIREMENTS

Vendors must complete all three registrations below before an award document can be finalized. Registration is not required for bidding.

Vendors may register with the WV Secretary of State and the WV Tax Department simultaneously at <http://www.business4wv.com>, but **wvOasis Vendor Registration is a separate and distinct process.**

#### **WV STATE VENDOR REGISTRATION - WVOASIS**

Vendors doing business with the State of West Virginia are required to register with wvOasis. This consists of [at minimum]: (A) registration in the VSS system (either manually or by paper application), (B) submission of a W-9 to the State Finance Division, (C) disclosure of at least two officers and banking information, and (D) payment of a \$125 annual vendor registration fee [*Certain exemptions to the fee apply. Information below*]

Vendors may register in one of the following ways:

1. Vendor Self Service (VSS)

VSS Link: <https://prod-fin-vss.wvoasis.gov/webapp/prdvss11/AltSelfService>

VSS FAQ: <http://www.state.wv.us/admin/purchase/VendorReg.html>

Help: wvOasis Help Desk  
[helpdesk@wvoasis.gov](mailto:helpdesk@wvoasis.gov)  
304-558-6708

2. Vendor Registration and Disclosure Statement and Small, Women-, and Minority-Owned Business Certification Application

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

Send to: Purchasing Division - Vendor Registration  
2019 Washington Street East  
Charleston, WV 25305-0130

Exemption to the \$125 Vendor Registration Fee - In specific situations, the fee may be waived for vendors providing goods/services to the State of West Virginia. This exemption only applies to specific transactions. If a vendor provides an exempt service, but then wishes to provide a non-exempt service, they are required to pay the registration fee before an award can be made for a non-exempt service.

Some vendor services commodities/services solicited by PEIA will qualify for this exemption. If a vendor is unsure whether they need to pay the fee, they can contact the PEIA Procurement Officer or the RFP Coordinator of the Solicitation they are reviewing.

## REQUEST FOR PROPOSAL – WV PUBLIC EMPLOYEES INSURANCE AGENCY

### **WV SECRETARY OF STATE REGISTRATION**

Registration with the WV Secretary of State's Office is required for all Vendors doing business with the State of West Virginia, and may require a fee of \$100.00 depending on the business registration category.

Business registration with the Secretary of State falls into one of the two categories:

- a. Domestic (formed in West Virginia), or
- b. Foreign (formed out-of-state)

Vendors may complete an Application for Exemption from Certificate of Authority with the WV SOS if you feel your company qualifies. Please mail the completed form and include a check for \$25.00, made payable to WV SOS, along with a copy of the company's home state issued Certificate of Good Standing / Certificate of Corporation.

<http://www.sos.wv.gov/business-licensing/forms/Documents/Corporation/cf-2.pdf>

You may contact the WV Secretary of State's Office with your questions @ 304-558-6000

### **WV TAX DEPARTMENT**

All entities doing business in the State of West Virginia must be registered with WV TAX and pay a one-time fee of \$30.00.

An exemption with the WV Secretary of State does not mean you are exempt from registering with the WV Tax Department.

If you need to speak to someone at the WV Tax Department, please call 304-558-8683.

NOTE:

You may use the Business4WV website to register with the WV Secretary of State and the WV Tax Department simultaneously at <http://www.business4wv.com>. Please note there is a one-time fee of \$130.00.

**Attachment L**  
**ADDENDUM ACKNOWLEDGMENT FORM**  
**SOLICITATION NO. ARFP PEI200000001**

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:  
(Check the box next to each addendum received)

- |   |  |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6  |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7  |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8  |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9  |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

<b>AUTHORIZED SIGNATURE</b>	
<b>COMPANY</b>	<b>DATE</b>

NOTE: This addendum acknowledgement should be submitted with the bid to expedite document proce



## **Attachment M**

### **ADDENDUM DETAIL - ADDENDUM 1**

The purpose of this addendum is to modify the solicitation identified as ARFP PEI2000000001 ("Solicitation") to reflect the change(s) identified and described below.

#### Applicable Addendum Category

- Modify bid opening date and time
- Modify specifications of product or service being sought
- Attachment of vendor questions and responses
- Attachment of pre-bid sign-in sheet
- Correction of error
- Other

#### Description of Modification to Solicitation

1. To correct Attachment A form name to "Notification of Interest"
2. To correct Attachment A to show correct due date of 3/31/2020
3. To include call-in details for pre-bid meeting (Section 2.3)
4. To add Attachments L & M, for solicitation addenda
5. To add Attachment L to the Prospective Vendor's Checklist

#### Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor shall acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite

## **Attachment M**

### **ADDENDUM DETAIL - ADDENDUM 2**

The purpose of this addendum is to modify the solicitation identified as ARFP PEI2000000001 ("Solicitation") to reflect the change(s) identified and described below.

#### Applicable Addendum Category

- Modify bid opening date and time
- Modify specifications of product or service being sought
- Attachment of vendor questions and responses
- Attachment of pre-bid sign-in sheet
- Correction of error
- Other

#### Description of Modification to Solicitation

1. Modify Pre-Bid Details in Section 2.3 to show virtual call-in only
2. To Attachment N, Virtual Pre-Bid Meeting Agenda & Call-In Details
3. To Add Attachment O, Software as a Service Addendum

#### Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor shall acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite

**Attachment N**  
**VIRTUAL PRE-BID MEETING AGENDA & CALL-IN DETAILS**

PLEASE DO NOT ARRIVE IN PERSON DUE TO COVID-19 CONCERNS. WE ARE CONDUCTING THIS PRE-BID MEETING VIRTUALLY.

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**DATE:** March 24, 2020

**TIME:** 10:00am

**LOCATION:** Call In

**PHONE:** 304-410-0513

**PIN:** 52766

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Conference Opening

Opening Remarks

General Project Information

Introduction of Agency Representatives

Specification Discussion

Discussion of Technical Specifications

Vendor Questions

Terms and Conditions Discussion

Discussion of Terms and Conditions, Bid Format, Bid Evaluation, and Minimum Acceptable Score (MAS)

Vendor Questions

Conclusions

**Attachment O**  
**Software as a Service Addendum**

## Software as a Service Addendum

### 1. Definitions:

Acceptable alternative data center location means a country that is identified as providing equivalent or stronger data protection than the United States, in terms of both regulation and enforcement. DLA Piper's Privacy Heatmap shall be utilized for this analysis and may be found at <https://www.dlapiperdataprotection.com/index.html?t=world-map&c=US&c2=IN>.

Authorized Persons means the service provider's employees, contractors, subcontractors or other agents who have responsibility in protecting or have access to the public jurisdiction's personal data and non-public data to enable the service provider to perform the services required.

Data Breach means the unauthorized access and acquisition of unencrypted and unredacted personal data that compromises the security or confidentiality of a public jurisdiction's personal information and that causes the service provider or public jurisdiction to reasonably believe that the data breach has caused or will cause identity theft or other fraud.

Individually Identifiable Health Information means 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 (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Non-Public Data means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the public jurisdiction because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

Personal Data means data that includes information relating to a person that identifies the person by first name or first initial, and last name, and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, state identification card); financial account information, including account number, credit or debit card numbers; or protected health information (PHI).

Protected Health Information (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.

Public Jurisdiction means any government or government agency that uses these terms and conditions. The term is a placeholder for the government or government agency.

Public Jurisdiction Data means all data created or in any way originating with the public jurisdiction, and all data that is the output of computer processing or other electronic manipulation of any data that was created by or in any way originated with the public jurisdiction, whether such data or output is stored on the public jurisdiction's hardware, the service provider's hardware or exists in any system owned, maintained or otherwise controlled by the public jurisdiction or by the service provider.

Public Jurisdiction Identified Contact means the person or persons designated in writing by the public jurisdiction to receive security incident or breach notification.

Restricted data means personal data and non-public data.

Security Incident means the actual unauthorized access to personal data or non-public data the service provider believes could reasonably result in the use, disclosure or theft of a public jurisdiction's unencrypted personal data or non-public data within the possession or control of the service provider. A security incident may or may not turn into a data breach.

Service Provider means the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.

Software-as-a-Service (SaaS) means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

**2. Data Ownership:** The public jurisdiction will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access public jurisdiction user accounts or public jurisdiction data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract or (4) at the public jurisdiction's written request.

**3. Data Protection and Privacy:** Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of public jurisdiction information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of public jurisdiction information and comply with the following conditions:

- a) The service provider shall implement and maintain appropriate administrative, technical and physical security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. In Appendix A,

the public jurisdiction shall indicate whether restricted information will be processed by the service provider. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind. The service provider shall ensure that all such measures, including the manner in which personal data and non-public data are collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Addendum and shall survive termination of the underlying contract.

- b) The service provider represents and warrants that its collection, access, use, storage, disposal and disclosure of personal data and non-public data do and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations, policies and directives.
- c) The service provider shall support third-party multi-factor authentication integration with the public jurisdiction third-party identity provider to safeguard personal data and non-public data.
- d) If, in the course of its engagement by the public jurisdiction, the service provider has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, the service provider shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the service provider's sole cost and expense. All data obtained by the service provider in the performance of this contract shall become and remain the property of the public jurisdiction.
- e) All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data.
- f) Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit, in accordance with recognized industry practice. The public jurisdiction shall identify data it deems as non-public data to the service provider.
- g) At no time shall any data or process – that either belong to or are intended for the use of a public jurisdiction or its officers, agents or employees — be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the public jurisdiction.
- h) The service provider shall not use or disclose any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- i) Data Location. For non-public data and personal data, the service provider shall provide its data center services to the public jurisdiction and its end users solely from data centers in the U.S. Storage of public jurisdiction data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to *store* public jurisdiction data on portable devices, including personal computers, except for devices that are used and kept only at its

U.S. data centers. With agreement from the public jurisdiction, this term may be met by the service provider providing its services from an acceptable alternative data center location, which agreement shall be stated in Appendix A. The Service Provider may also request permission to utilize an acceptable alternative data center location during a procurement's question and answer period by submitting a question to that effect. The service provider shall permit its personnel and contractors to access public jurisdiction data remotely only as required to provide technical support.

**4. Security Incident or Data Breach Notification:** The service provider shall inform the public jurisdiction of any confirmed security incident or data breach.

- a) Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as defined by law or contained in the contract. Discussing security incidents with the public jurisdiction shall be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes defined by law or contained in the contract.
- b) Security Incident Reporting Requirements: The service provider shall report a confirmed Security Incident as soon as practicable, but no later than twenty-four (24) hours after the service provider becomes aware of it, to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at <https://apps.wv.gov/ot/ir/Default.aspx>, and (3) the public jurisdiction point of contact for general contract oversight/administration. The following information shall be shared with the public jurisdiction: (1) incident phase (detection and analysis; containment, eradication and recovery; or post-incident activity), (2) projected business impact, and, (3) attack source information.
- c) Breach Reporting Requirements: Upon the discovery of a data breach or unauthorized access to non-public data, the service provider shall immediately report to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at <https://apps.wv.gov/ot/ir/Default.aspx>, and the public jurisdiction point of contact for general contract oversight/administration.

**5. Breach Responsibilities:** This section only applies when a data breach occurs with respect to personal data within the possession or control of the service provider.

- a) Immediately after being awarded a contract, the service provider shall provide the public jurisdiction with the name and contact information for an employee of service provider who shall serve as the public jurisdiction's primary security contact and shall be available to assist the public jurisdiction twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a data breach. The service provider may provide this information in Appendix A.



- b) Immediately following the service provider's notification to the public jurisdiction of a data breach, the parties shall coordinate cooperate with each other to investigate the data breach. The service provider agrees to fully cooperate with the public jurisdiction in the public jurisdiction's handling of the matter, including, without limitation, at the public jurisdiction's request, making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law and regulation.
- c) Within 72 hours of the discovery, the service provider shall notify the parties listed in 4(c) above, to the extent known: (1) date of discovery; (2) list of data elements and the number of individual records; (3) description of the unauthorized persons known or reasonably believed to have improperly used or disclosed the personal data; (4) description of where the personal data is believed to have been improperly transmitted, sent, or utilized; and, (5) description of the probable causes of the improper use or disclosure.
- d) The service provider shall (1) cooperate with the public jurisdiction as reasonably requested by the public jurisdiction to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and prevent any further data breach at the service provider's expense in accordance with applicable privacy rights, laws and regulations and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- e) If a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state or federal law; (3) a credit monitoring service (4) 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 data 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 (5) complete all corrective actions as reasonably determined by service provider based on root cause. The service provider agrees that it shall not inform any third party of any data breach without first obtaining the public jurisdiction's prior written consent, other than to inform a complainant that the matter has been forwarded to the public jurisdiction's legal counsel and/or engage a third party with appropriate expertise and confidentiality protections for any reason connected to the data breach. Except with respect to where the service provider has an independent legal obligation to report a data breach, the service provider agrees that the public jurisdiction shall have the sole right to determine: (1) whether notice of the data breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others, as required by law or regulation, or otherwise in the public jurisdiction's discretion; and (2) the contents of such notice, whether any

type of remediation may be offered to affected persons, and the nature and extent of any such remediation. The service provider retains the right to report activity to law enforcement.

**6. Notification of Legal Requests:** The service provider shall contact the public jurisdiction upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the public jurisdiction's data under this contract, or which in any way might reasonably require access to the data of the public jurisdiction. The service provider shall not respond to subpoenas, service of process and other legal requests related to the public jurisdiction without first notifying the public jurisdiction, unless prohibited by law from providing such notice.

**7. Termination and Suspension of Service:**

- a) In the event of a termination of the contract, the service provider shall implement an orderly return of public jurisdiction data within the time period and format specified in the contract (or in the absence of a specified time and format, a mutually agreeable time and format) and after the data has been successfully returned, securely and permanently dispose of public jurisdiction data.
- b) During any period of service suspension, the service provider shall not take any action to intentionally erase any public jurisdiction data.
- c) In the event the contract does not specify a time or format for return of the public jurisdiction's data and an agreement has not been reached, in the event of termination of any services or agreement in entirety, the service provider shall not take any action to intentionally erase any public jurisdiction data for a period of:
  - 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - 30 days after the effective date of termination, if the termination is for convenience
  - 60 days after the effective date of termination, if the termination is for cause

After such period, the service provider shall have no obligation to maintain or provide any public jurisdiction data and shall thereafter, unless legally prohibited, delete all public jurisdiction data in its systems or otherwise in its possession or under its control.

- d) The public jurisdiction shall be entitled to any post-termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of the Contract.
- e) The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/ DVD, backup tape and paper, when requested by the public jurisdiction. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the public jurisdiction.

**8. Background Checks:** The service provider shall conduct criminal background checks in compliance with W.Va. Code §15-2D-3 and not utilize any staff to fulfill the obligations

of the contract, including subcontractors, who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The service provider shall promote and maintain an awareness of the importance of securing the public jurisdiction's information among the service provider's employees and agents.

**9. Oversight of Authorized Persons:** During the term of each authorized person's employment or engagement by service provider, service provider shall at all times cause such persons to abide strictly by service provider's obligations under this Agreement and service provider's standard policies and procedures. The service provider further agrees that it shall maintain a disciplinary process to address any unauthorized access, use or disclosure of personal data by any of service provider's officers, partners, principals, employees, agents or contractors.

**10. Access to Security Logs and Reports:** The service provider shall provide reports to the public jurisdiction in CSV format agreed to by both the service provider and the public jurisdiction. Reports shall include user access (successful and failed attempts), user access IP address, user access history and security logs for all public jurisdiction files and accounts related to this contract.

**11. Data Protection Self-Assessment:** The service provider shall perform a Cloud Security Alliance STAR Self-Assessment by completing and submitting the "Consensus Assessments Initiative Questionnaire" to the Public Jurisdiction Identified Contact. The service provider shall submit its self-assessment to the public jurisdiction prior to contract award and, upon request, annually thereafter, on the anniversary of the date of contract execution. Any deficiencies identified in the assessment will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

**12. Data Center Audit:** The service provider shall perform an audit of its data center(s) at least annually at its expense and provide a redacted version of the audit report upon request. The service provider may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit. Any deficiencies identified in the report or approved equivalent will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

**13. Change Control and Advance Notice:** The service provider shall give 30 days, advance notice (to the public jurisdiction of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics.

**14. Security:**

- a) At a minimum, the service provider's safeguards for the protection of data shall include: (1) securing business facilities, data centers, paper files, servers, back-up

systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (2) implementing network, device application, database and platform security; 3) securing information transmission, storage and disposal; (4) implementing authentication and access controls within media, applications, operating systems and equipment; (5) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (6) providing appropriate privacy and information security training to service provider's employees.

- b) The service provider shall execute well-defined recurring action steps that identify and monitor vulnerabilities and provide remediation or corrective measures. Where the service provider's technology or the public jurisdiction's required dependence on a third-party application to interface with the technology creates a critical or high risk, the service provider shall remediate the vulnerability as soon as possible. The service provider must ensure that applications used to interface with the service provider's technology remain operationally compatible with software updates.
- c) Upon the public jurisdiction's written request, the service provider shall provide a high-level network diagram with respect to connectivity to the public jurisdiction's network that illustrates the service provider's information technology network infrastructure.

**15. Non-disclosure and Separation of Duties:** The service provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of public jurisdiction data to that which is absolutely necessary to perform job duties.

**16. Import and Export of Data:** The public jurisdiction shall have the ability to securely import, export or dispose of data in standard format in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the public jurisdiction to import or export data to/from other service providers identified in the contract (or in the absence of an identified format, a mutually agreeable format).

**17. Responsibilities:** The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the cloud services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the service provider.

**18. Subcontractor Compliance:** The service provider shall ensure that any of its subcontractors to whom it provides any of the personal data or non-public data it receives hereunder, or to whom it provides any personal data or non-public data which the service provider creates or receives on behalf of the public jurisdiction, agree to the restrictions, terms and conditions which apply to the service provider hereunder.

**19. Right to Remove Individuals:** The public jurisdiction shall have the right at any time to require that the service provider remove from interaction with public jurisdiction any

service provider representative who the public jurisdiction believes is detrimental to its working relationship with the service provider. The public jurisdiction shall provide the service provider with notice of its determination, and the reasons it requests the removal. If the public jurisdiction signifies that a potential security violation exists with respect to the request, the service provider shall immediately remove such individual. The service provider shall not assign the person to any aspect of the contract without the public jurisdiction's consent.

**20. Business Continuity and Disaster Recovery:** The service provider shall provide a business continuity and disaster recovery plan executive summary upon request. Lack of a plan will entitle the public jurisdiction to terminate this contract for cause.

**21. Compliance with Accessibility Standards:** The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

**22. Web Services:** The service provider shall use web services exclusively to interface with the public jurisdiction's data in near real time when possible.

**23. Encryption of Data at Rest:** The service provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data.

**24. Subscription Terms:** Service provider grants to a public jurisdiction a license to:

- a. Access and use the service for its business purposes;
- b. For SaaS, use underlying software as embodied or used in the service; and
- c. View, copy, upload, download (where applicable), and use service provider's documentation.

**25. Equitable Relief:** Service provider acknowledges that any breach of its covenants or obligations set forth in Addendum may cause the public jurisdiction irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the public jurisdiction is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the public jurisdiction may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Addendum to the contrary.

**AGREED:**

Name of Agency: \_\_\_\_\_

Name of Vendor: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

## Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. Required information not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Service Provider/Vendor: \_\_\_\_\_

Name of Agency: WV PEIA

### Agency/public jurisdiction's required information:

1. Will restricted information be processed by the service provider?  
Yes   
No
2. If yes to #1, does the restricted information include personal data?  
Yes   
No
3. If yes to #1, does the restricted information include non-public data?  
Yes   
No
4. If yes to #1, may the service provider store public jurisdiction data in a data center in an acceptable alternative data center location, which is a country that is not the U.S.?  
Yes   
No
5. Provide name and email address for the Department privacy officer:  
Name: THOMAS MILLER  
Email address: thomas.d.miller@wv.gov

### Vendor/Service Provider's required information:

6. Provide name and contact information for vendor's employee who shall serve as the public jurisdiction's primary security contact:  
Name: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_