

 WEST VIRGINIA STATE UNIVERSITY		West Virginia State University Procurement Office PO Box 368 Institute, WV 25112		Request for Bid Bid # RFB-WVSU23003 Buyer: Hope Fout	
Vendor Name: Vendor Address: Vendor Phone: Vendor Fax: Vendor FEIN/SSN: Vendor Point of Contact:					
RFB DATE: 2/24/23		BID OPENING: 3:00 pm on Mar 8, 2023			
Item #	Quantity	Description	Unit Price	Extended Price	
		INVITATION TO BID West Virginia State University is accepting bids for: Vendor to furnish all materials, labor, equipment, and services necessary to resurface the following: 5 courts at the Marvin D. Mills Tennis Complex at WV-25 & Barron Dr, Dunbar, WV 25064. Pursuant to the requirements and specifications on the following pages.			
Total					
In compliance with the above, the undersigned offers and agrees, if this offer is accepted within calendar days (30 calendar days unless a different period is inserted by the purchaser) from the bid open date, specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified.					
			Bidder's name _____ Title _____ Signature _____ Street address _____ City/State _____ Date _____ Phone _____		

To receive consideration for award, the bid must be submitted on this form in Original and (1) copy, signed in full ink, and received by the WVSU purchasing department to have a date/time stamp affixed, on or before the date and time shown for the bid opening.

Bids are subject to the terms and conditions on the WV-96 form.

It is the policy of West Virginia State University to administer all university actions and procedures without regard to race, color, age, religion, sex, national origin, disability, veteran's status or sexual orientation as identified and defined by law. The university neither affiliates knowingly with nor grants recognition to any individual, group, or organization, including vendors that discriminate on the basis of any of the above. WVSU complies with the requirements of the nondiscrimination clauses set out by the Code of Federal Regulations Title 41, Parts 60-1.4(a)(7) (equal opportunity clause), 60-250.4(m) (affirmative action for veterans), and 60-741.4(f) (affirmative action for persons with disabilities).

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

During the bidding process, bidders shall direct all questions to Hope Fout, Director of Purchasing at: West Virginia State University, Purchasing Office, PO Box 368 Institute, WV 25112. All questions shall be submitted in writing via Email at: hope.fout@wvstateu.edu. The RFB number should be referenced in the subject line of the message.

Submission of Bids

Sealed bids will be received by West Virginia State University at the following location until 3:00 pm on Mar 8, 2023.

Purchasing Office
West Virginia State University
Ferrell Hall Rm 301
Institute, WV 25112

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

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

SEALED BID

Date of Bid Opening: Mar 8, 2023

Time of Bid Opening: 3:00 p.m.

Location of Bid Opening: WVSU, Ferrell Hall, Room 301, Institute, WV 25112

RFB number: RFB-WVSU23003

Special Instructions for Delivering Bids:

- Bids delivered by UPS and Federal Express: The UPS and FedEx drivers will deliver bids to the mail room at West Virginia State University PO Box 368, Institute, WV 25112.
- Hand Delivered Bids. Deliver bids to the following address:
 - WVSU, Ferrell Hall, Room 301, Institute, WV 25112
 - This is the preferred method to deliver bids
- Delivering Bids via U. S. Postal Service is not recommended. Bids may or may not arrive on time.
- Electronically transmitted Bids and late Bids will not be accepted.
- Owner reserves the right to accept or reject any/all Bids.
- All applicable federal, state, and local laws, rules and regulations apply.

Pre-bid Meeting

Not Applicable

Specifications

- 1. Purpose and Scope:** West Virginia State University is soliciting bids to establish a one-time contract to resurface the Tennis Courts at West Virginia State University for the following:

- 1.1 Vendor shall resurface 5 courts at Marvin D. Mills Tennis Complex.
- 1.2 Vendor shall remove all loose dirt, mildew, and foreign matter from courts, prep by power washing.
- 1.3 Vendor shall remove vegetation. Remove grass or other vegetation growing on the court surface, and patch with acrylic patch binder as necessary or elastic crack filler as necessary or hydraulic cement performed by contractor. Vendor shall place debris related to this project in the WVSU dumpster designated for this project.
- 1.4 Vendor shall repair all cracks. Patch cracks wider than 1/16 inch with acrylic crack filler or hydraulic cement. All filled cracks will be sanded and level with surrounding court surface.
- 1.5 Vendor shall apply over the entire court area, one (1) coat of acrylic resurfacer, a concentrated and pigmented emulsion fortified with silica sand to provide a leveling and filler coat for succeeding color applications.
- 1.6 Vendor shall apply two (2) coats of Color MP with silica sand to provide a tough, durable, textured playing surface. Standard colors must be approved by WVSU Athletic administration.
- 1.7 Vendor shall accurately locate, mark, and paint two-inch-wide playing lines, using white stripping heavy bodied acrylic latex compound with pigments and mineral filler to form a high bonding line application of asphalt or acrylic color coated surfaces.
- 1.8 Vendor shall paint the existing net post and reinstall existing tennis nets.
- 1.9 Vendor must obtain advanced approval from WVSU in writing prior to purchasing additional items that were not part of the original scope of this project.
- 1.10 Vendor shall begin and complete the installation between the dates of May 15, 2023 and August 4, 2023. Vendor must obtain written confirmation from WVSU Athletic Director to begin installation.
- 1.11 Vendor shall include a copy of any Terms and Conditions or licenses that WVSU will be asked to agree to and accept as a part of this solicitation. This information will be required before Purchase Order is issued. Failure to reach an agreement on Vendor Terms and Conditions may result in rejection of a Vendors bid.
- 1.12 Vendor shall ensure that all installation performed under this contract is performed by an appropriately licensed individual. Vendor must show proof of WV Business License and a Contractor License recognized by the WV Department of Labor.
- 1.13 Vendor shall warranty the completed project to be free of significant defects in workmanship and materials for a period of one (1) year. The warranty shall commence on the data of completion.
- 1.14 At a minimum the vendor shall provide proof of general limited liability insurance in the amount of one million dollars for each occurrence and auto insurance coverage of one million limit of liability. The insurance coverage needs to be in place for the complete term of the contract. If the insurance expires during the contract year, a new certificate must be provided to the State at least ten (10) days prior to the expiration of the current policy. The new insurance must still meet the original terms of the contract. The vendor should have continuous insurance coverage throughout the life of the contract. The vendor is required to notify the State within five (5) days of any cancellation, non-renewal or material change to the required insurance coverage. Should the vendor fail to keep the specified insurance coverage in effect at all times, the State may, in addition to any other remedies it may have, terminate the contract.

- 2. PERFORMANCE:** Vendor and WVSU shall agree upon a schedule for performance of contract services and contract services deliverables.

- 2.1. Vendor shall provide a weekly progress report to the WVSU Athletic Director in writing. This progress report should contain a weekly update for all aspects of the project including but not limited to any potential roadblocks or issues identified.
3. **PAYMENT:** WVSU shall pay the unit rate as shown on the specification/bid page, for all contract services performed and accepted under this contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.
4. **TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this contract.
5. **FACILITIES ACCESS:** Performance of contract services may require access cards and/or keys to gain entrance to WVSU's facilities. In the event that access cards and/or keys are required:
 - 5.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
 - 5.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
 - 5.3. Vendor shall notify WVSU immediately of any lost, stolen, or missing card or key.
 - 5.4. Anyone performing under this contract will be subject to WVSU's security protocol and procedures.
 - 5.5. All activities associated with this contract, including delivery and installation must be performed between the hours of 7:30 A.M. and 4:00P.M., Monday through Friday, excluding Holidays, unless WVSU Athletic Director approves work at another time.
6. **VENDOR DEFAULT:**
 - 6.1. The following shall be considered a vendor default under this contract.
 - 6.1.1. Failure to perform contract services in accordance with the requirements contained herein.
 - 6.1.2. Failure to comply with other specifications and requirements contained herein.
 - 6.1.3. Failure to comply with any laws, rules, and ordinances applicable to the contract services provided under this contract.
 - 6.1.4. Failure to remedy deficient performance upon request.
 - 6.2. The following remedies shall be available to WVSU upon default.
 - 6.2.1. Immediate cancellation of the contract.
 - 6.2.2. Immediate cancellation of one or more release orders issued under this contract.
 - 6.2.3. Any other remedies available in law or equity.

Specification/Bid Form Requirements

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

SPECIFICATIONS/ BID FORM RFB-WVSU23001

Item #	Quantity	Description	Unit \$	Total \$
	5	Resurface 5 Tennis Courts in accordance with Bid Document		

RESPECTFULLY SUBMITTED:

Signature: _____ Date: _____
Signature in blue ink

Name: _____

Title: _____

Vendor name: _____

Vendor address: _____

Telephone: _____ Fax: _____

FEIN Number: _____ Email: _____

Instructions to Bidders
(Purchases greater than \$25,000)

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

have paid the required vendor registration fee.

- 8.2. The vendor must be in compliance with the Secretary of State and should provide a copy of their business license with the bid. For more information, contact the WV Secretary of State.
- 8.3. Debarment – WV Code §5A-3-33 through §5A-3-33F. Vendors that have been debarred by the federal government are not eligible to offer on or receive contracts to supply goods or services to the state and its subdivision for a specified period of time.

9. NON-FUNDING: All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.

10. PAYMENTS AND INTEREST ON LATE PAYMENTS: Payment may only be made after the delivery and acceptance of goods or services. Interest may be paid for late payment in accordance with the West Virginia Code.

11. RESIDENT VENDOR PREFERENCE: A resident vendor preference will be granted upon written request in accordance with the West Virginia Code.

12. TAX EXEMPTION: The State of West Virginia, the Commission, Governing Board and its institutions are exempt from federal and state taxes and will not pay or reimburse such taxes.

VENDOR PREFERENCE CERTIFICATE

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

State of West Virginia
VENDOR PREFERENCE CERTIFICATE

Certification and application is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Vendor Preference, if applicable.

1. **Application is made for 2.5% vendor preference for the reason checked:**
☐ Bidder is an individual resident vendor and has resided continuously in West Virginia, or bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia, for four (4) years immediately preceding the date of this certification; or,
☐ Bidder is a resident vendor partnership, association, or corporation with at least eighty percent of ownership interest of bidder held by another entity that meets the applicable four year residency requirement; or,
☐ Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,
2. **Application is made for 2.5% vendor preference for the reason checked:**
☐ Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
3. **Application is made for 2.5% vendor preference for the reason checked:**
☐ Bidder is a nonresident vendor that employs a minimum of one hundred state residents, or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and employs a minimum of one hundred state residents, and for purposes of producing or distributing the commodities or completing the project which is the subject of the bidder's bid and continuously over the entire term of the project, on average at least seventy-five percent of the bidder's employees or the bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid; or,
4. **Application is made for 5% vendor preference for the reason checked:**
☐ Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,
5. **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**
☐ Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,
6. **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**
☐ Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.
7. **Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with *West Virginia Code* §5A-3-59 and *West Virginia Code of State Rules*.**
☐ Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.
8. **Application is made for reciprocal preference.**
☐ Bidder is a West Virginia resident and is requesting reciprocal preference to the extent that it applies.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) rescind the contract or purchase order; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____ Signed: _____

Date: _____ Title: _____

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

Purchasing Affidavit

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

Purchasing Affidavit

West Virginia Code §5A-3-10a states:

No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owned is an amount greater than one thousand dollars in the aggregate.

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

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 _____

Form WV-96 Purchasing Addendum
<http://www.state.wv.us/admin/purchase/vrc/wv96.pdf>

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

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

Vendor: _____

Contract/Lease Number ("Contract"): _____

Commodity/Service: _____

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

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**

2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.

10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.

11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that is has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikethrough~~ 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: _____