



West Virginia  
Public Employees Insurance Agency

Online Open Enrollment  
Request for Quotation

October 17, 2005

## TABLE OF CONTENTS

<b>TOPIC</b>	<b>PAGE</b>
Agency Overview	3
Objective of this Request for Quotation	4
Specific System Expectations and Requirements	4
Benefit Options	5
System Accessibility and User Training Requirements	5
Technical Support	5
Issuing Agent and Contacts	5
Time Requirements	6
Contract Period	6
Confidentiality/Public Record	6
Incurred Costs	6
Status as Registered Vendor	7
No Debt Affidavit	7
Terms of Contract	7
Right to Reject	9
Joint Effort Quotations	9
Payment Terms	9
Quotation Included as Part of Agreement	9
Acceptance of Terms	9
Litigation Bond	9
Bidder's Total Waiver of Legal Challenge	10
Mandatory Requirements	10
Specific Instructions for Responding to this RFQ	11
Evaluation Process	11
Evaluation Criteria	11
Cost Quotation	11

## TABLE OF CONTENTS (continued)

TOPIC	PAGE
Project Timeline	12
Appendix 1	
<i>PEIA Transfer Form Data Field Rules</i>	14
<i>PEIA Tobacco Affidavit and Open Enrollment Transfer Form</i>	16
<i>Mountaineer Flexible Benefits Plan Transfer Form Data Field Rules</i>	17
<i>Mountaineer Flexible Benefits Plan Enrollment Form</i>	19
Appendix 2	
<i>HIPAA Business Associate Agreement</i>	21
Appendix 3	
<i>Bidder's Total Wavier of Legal Challenge</i>	27
Appendix 4	
<i>WV-96</i>	29
Appendix 5	
<i>No Debt Affidavit</i>	31

## **Online Open Enrollment Request for Quotation**

### **Agency Overview**

The Public Employees Insurance Agency (PEIA) is the agency of the State of West Virginia that is 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.

PEIA also provides some employees an option to enroll in an United States Internal Revenue Service approved Section 125 Plan. Due to this, some employees participating in PEIA have the ability to pay medical and life premiums on a pretax basis via a premium conversion plan.

Additionally, some employees have the option of cafeteria plan benefits known as Mountaineer Flexible Benefits. If their employer participates, these employees can elect dental, vision, legal, long and short term disability benefits and set up flexible spending accounts.

Active public employees are employed by approximately 755 separate employers. Each employer has a designated “benefit coordinator” who is responsible for approving enrollments for that agency’s employees and obligating that employer to pay premiums for the employee’s chosen coverage.

A Preferred Provider Benefit (PPB) health plan is offered to all eligible participants statewide. PEIA also offers managed care plan options (MCOs) statewide. These MCOs include Carelink and The Health Plan of the Upper Ohio Valley. Currently, approximately 8,000 policyholders are enrolled in managed care plans, and 92,000 are enrolled in the PPB plan. Total enrollment, including dependents, is approximately 210,000.

The Mountaineer Flexible Benefits program (MFBP) currently has an enrollment of 15,151 participants with 28,445 individual policies. Participants are employed by 108 State Agencies, 17 Non State Agencies and 22 County Boards of Education. Details of the MFBP can be found at <http://www.westvirginia.com/peia/content/06WV%5Fbook%5F1%2Epdf>.

PEIA maintains two separate risk pools, based on employer type. The State Agency Pool is the larger of the two pools with more than 57,000 active policyholders from approximately 188 state agencies, colleges, universities and county boards of education. Employee Premiums for policyholders in the State Agency Pool are calculated on a sliding scale based on the employee’s salary. Premiums for the current plan year are detailed in the PEIA Shopper’s Guide and can be found at <http://www.westvirginia.com/peia/content/2006%20SPD%20complete%2Epdf>. The Non-state Pool is the smaller one with approximately 7,000 policyholders from approximately 567 different employers.

Last year (2004-2005) PEIA notified all members of the availability to use the open enrollment web site instead of filing the traditional paper form. Of those members, approximately 12,000 signed up to use the web site, approximately 9,000 actually used the site.

Eligibility and enrollment, along with premium billing, is maintained by PEIA on a custom designed DB II/COBOL application named Employee Insurance Administrative System (EIAS) and resides on an IBM AS400. COBRA eligibility and premium billing is administered by Acordia National.

The PEIA fiscal year is July 1 through June 30. PEIA conducts open enrollment each spring, at this time employees are given the option to choose among various health care plans. Open enrollment for Plan Year 2007 will be conducted from April 3, 2006 to May 5, 2006, with benefits effective July 1, 2006. After the close of open enrollment, PEIA staff processes data entry for paper forms submitted by employees, updates records with choices made on the online enrollment system, provides an early warning report to each participating agency and sends an individualized confirmation letter to each enrolled employee.

### **Objective of this Request for Quotation**

The objective is to allow PEIA policyholders an easier, more efficient means to perform their open enrollment while reducing PEIA administrative costs.

### **Specific System Expectations and Requirements**

#### **General**

- PEIA desires an online open enrollment site that allows employees to review current coverage, calculate premiums based on various plan choices, report tobacco status, view and update demographic information for the policyholder and enrolled dependents, add or delete dependents on existing coverage, choose a health plan, and approve their choice(s) to make it legally binding, (see Appendix 1).
- A planning and status meeting will take place 2 times per week. Vendor is required to attend in person or via telephone.
- Site tested and PEIA trained before benefit coordinator training. March 13-24, 2006

#### **Technical**

- Sub 3 second response for any transaction.
- Contractor will host website application.
- Any links to the open enrollment site from other Official State of West Virginia sites/portals must operate properly, examples: wvpeia.com, www.wv.gov, etc.
- Must be able to receive PEIA and FBMC eligibility data and interface in PEIA/FBMC specific format and securely transfer to PEIA and FBMC.
- Compliant for user operation utilizing IE v5 or better and Netscape v6 or better.
- User ability to print the selections for their records.
- Site operation testing parameters will be specified by the vendor and approved by PEIA.
- The site must provide the functionality for benefit coordinators to approve or disapprove enrollments, track which employees have accessed the site and completed their

enrollment, and provide feedback to an employee via e-mail if an enrollment is disapproved. PEIA currently has approximately 755 employers.

- Self service password help utilizing two (2) forms of authentication. Password must be at least 8, no more than 15 character in length, alpha-numeric.

#### **Benefit Options**

- System must accommodate 15 different benefit options consisting of a minimum of:
  - ✓ 9 health and prescription drug benefit options maintained by PEIA and,
  - ✓ 7 Flexible benefit options maintained by a PEIA vendor
- 3 of the health and prescription drug benefits are limited to a certain demographic based on location of residence.
- All of the flexible benefits will be limited to a certain demographic based on employer participation in the program.

#### **System Accessibility and User Training Requirements**

- Application must be available for users and fully operational between the hours of 5 am and 3 am Eastern Standard Time, seven days a week for the duration of the open enrollment period.
- Vendor must supply user, benefit coordinator, PEIA staff and administration manual.
- PEIA office staff will require training on basic site navigation and operation for basic site customer service.

#### **Technical Support**

Vendor will provide application technical support for PEIA customer service staff and users referred by the PEIA customer service staff. Vendor will not be required to support any PEIA content.

#### **Issuing Agent and Contacts**

The issuing agent for this RFQ is Mr. J. A. Haught, Chief Financial Officer. All communication, inquiries, and final Quotations regarding this RFQ must be submitted in writing to the following individual:

J. A. Haught, Chief Financial Officer  
West Virginia Public Employees Insurance Agency  
State Capitol Complex, Building 5, Room 1001  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0710  
Telephone: (304) 558-7850, Ext. 242  
Fax: (304) 558-4969  
Email: [jhaught@wvadmin.gov](mailto:jhaught@wvadmin.gov)

All correspondence must be clearly marked "PEIA - Online Enrollment Request for Quotation".

PEIA will provide an opportunity for bidders to submit questions. Bidders will receive all copies of inquiries and responses. Quotations are due no later than 4:00 p.m., November 21, 2005.

→ **Time Requirements** ←

RFQs Issued	10/17/05
Question submission deadline	10/24/05, 4:00 p.m.
RFQ Addendum	10/31/05, 4:00 p.m.
Quotations Due	11/21/05, 4:00 p.m.
Award contract	11/30/05

An original and five (5) copies of your company's Quotation and all accompanying material must be enclosed in a sealed package plainly marked "PEIA- Online Enrollment Request for Quotations". **This package must be received no later than 4:00 p.m., November 21, 2005 at West Virginia Public Employees Insurance Agency, State Capitol Complex, Building 5, Room 1001, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305.** Should you choose to forward your Quotations by mail, you should bear in mind that it must be mailed on a timely basis to assure receipt by the PEIA by the time and date specified. **No bids will be considered if received after this time and date.**

**Contract Period**

The contract period will be for one calendar year with renewal options. Renewal options will be negotiated at a later date to the mutual agreement of the parties.

**Confidentiality/Public Record**

PEIA requests that all information provided to prospective firms as part of this RFQ, as well as all subsequent evaluations and discussions be used exclusively for purposes of responding to the RFQ and any subsequent discussions related thereto.

News releases pertaining to this RFQ or contract resulting there from will not be made without prior approval of the State of West Virginia, and then only in coordination with PEIA.

Ownership of all data, materials and documentation originated and prepared for PEIA pursuant to the RFQ shall belong exclusively to the State and be subject to public inspection in accordance with West Virginia State Code. Trade secrets or proprietary information submitted by the Bidder shall not be subject to public disclosure under the West Virginia Freedom of Information Act; however, the contractor must identify the data or other materials to be protected and state the reason why protection is necessary.

**Incurred Costs**

The State of West Virginia and PEIA are not liable for any expense incurred in the preparation, submission, or presentation of Quotations.

### **Status as Registered Vendor**

All vendors competing for State business must be registered prior to the award of an actual purchase order or contract. The vendor must complete a Vendor Registration and Disclosure Statement, Form WV-1, and remit the required annual registration fee.

### **No Debt Affidavit**

Vendors are required to submit an executed No Debt Affidavit (Appendix 5).

### **Terms of Contract**

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

HIPAA Business Associate Agreement (BA) will have to be executed between the contractor and PEIA. An example of the agreement is included in Appendix 2.

The terms of the contract must be consistent with the following:

Vendor must provide properly executed WV-96, see Appendix 4.

Arbitration – Any references to arbitration contained in the agreement are unacceptable. The vendor shall present disputes arising out of the agreement to the West Virginia Court of Claims.

Hold Harmless – Any clause requiring the Agency to indemnify or hold harmless any party is unacceptable. The vendor must hold harmless the Agency from any liability arising from the vendor's performance of services.

Governing Law – The agreement shall be governed by the laws of the State of West Virginia.

Taxes – Provisions in the agreement requiring the Agency to pay taxes are unacceptable. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.

Payment – Any references to prepayment are unacceptable. Payment will be in arrears.

Interest – Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are unacceptable.

Recoupment – Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is unacceptable.

Statute of Limitation – Any clauses limiting the time in which the Agency may bring suit against the vendor, lessor, individual, or any other party are unacceptable.

Similar Services – Any provisions limiting the Agency’s right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are unacceptable.

Attorney Fees – The Agency recognizes an obligation to pay attorney’s fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.

Assignment – Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.

Limitation of Liability – The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor’s liability for direct damages or limiting the Vendor’s liability under a warranty to a certain dollar amount or to the amount of the agreement is unacceptable. In addition, any limitation is unacceptable to the extent that it precludes any action for injury to persons or for damages to personal property.

Right to Terminate – Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.

Termination Charges – Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is unacceptable. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.

Renewal – Any reference to automatic renewal is unacceptable. The agreement may be renewed only upon mutual written agreement of the parties.

Insurance – Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is unacceptable.

Right to Notice – Any provision for repossession of equipment without notice is unacceptable. However, the Agency does recognize a right of repossession with notice.

Acceleration – Any references to acceleration of payments in the event of default or non-funding is unacceptable.

Amendments – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties.

Indemnification – The Vendor agrees to indemnify, defend and hold harmless the State and the Agency, their officers, and employees from and against any and all claims arising from the vendors acts or failure to act including but not limited to: (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; (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 laws.

### **Right to Reject**

The State reserves the right to reject any and all Quotations submitted and to request additional information from all Bidders or to withdraw the Quotation if in the interests of the Agency.

### **Joint Effort Quotations**

Joint effort Quotations **will not** be considered.

### **Payment Terms**

Payments to vendor will be phased per agreed upon scheduled deliverables and a 20% holdback will be enforced until acceptance of total project.

### **Quotation Included as Part of Agreement**

PEIA anticipates making this RFQ and respondent's Quotation part of the actual contractual agreement by reference.

### **Acceptance of Terms**

Submission of a Quotation indicates acceptance by the firm of the conditions contained in this RFQ, unless clearly and specifically noted in the Quotation submitted and confirmed in the contract between PEIA and the firm selected.

### **Litigation Bond**

Each bidder responding to this RFQ 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 RFQ. Secondly, the bond provides a mechanism for the State of West Virginia, the Agency, and its 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 Quotation 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. Failure to submit an appropriate bond or alternate bond with the Quotation at the time of bid opening will result in automatic disqualification of the Bidder's Quotation and the Quotation will be considered non-responsive.

### **Bidder's Total Waiver of Legal Challenge**

Bidder may be relieved of this requirement by completing the waiver form that is attached to this document as Appendix 3.

### **Mandatory Requirements**

In order to bid on this RFQ, the firm must meet the following mandatory requirements:

1. Must have successfully designed, hosted and implemented large-scale online open enrollments. Provide descriptions of one successfully completed web enrollment application implementation within the past 3 years for a plan that has a minimum of 50,000 policyholders and 2 other successfully completed projects of the same nature with no minimum requirements. The 2 other projects may have less policyholders. Implementations must entail the following information:

Contact:  
Name  
Title  
Phone number  
Address

2. Vendor must have implemented online enrollment applications compliant with HIPAA regulations.
3. Vendor must have experience implementing online enrollment applications for clients with multiple worksites interfacing the system.
4. Vendor must have experience administering multiple user types with different roles and access to the online enrollment system.
5. Proposed system must provide standard statistical data reports of enrollment activity and be capable of ad-hoc reporting.
6. Vendor Quotation must include a link to an example of a previously developed application that will be similar to the PEIA proposed site. This application must be operable for testing by PEIA.
7. Proposed application must be mature and been implemented successfully for a period of at least 2 years.

8. Vendor proposed application must be capable of handling multiple eligibility attributes and rules that will affect the user's online enrollment options such as: location of policyholder's residence and Medicare eligibility.

### **Specific Instructions for Responding to this RFQ**

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

An introductory section should include the proposal subject, name, address, and telephone and fax numbers of the firm; name and telephone number of the contact person; and the date of submission of the Quotation. Your Quotation must be signed by an individual who is capable of legally binding your firm.

An affirmative statement should be included, which states that the work will be performed within the time specified.

An affirmative statement should be made for each of the mandatory requirements. In addition to the affirmative statement, the vendor shall provide the names of clients (if applicable) for which this mandatory requirement was achieved.

Failure on the part of the vendor to respond to specific requirements detailed in the RFQ may be a basis for disqualification of the Quotation.

### **Evaluation Process**

Upon confirmation of the mandatory requirements the price criteria will be evaluated in terms of absolute dollars and the contract will be awarded based solely on cost.

### **Evaluation Criteria**

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

- A. Confirmation the vendor has met all mandatory requirements.
- B. Proposed cost for the services.

PEIA reserves the right to retain all Quotations submitted and the use of any idea in a Quotation regardless of whether that Quotation is selected. During the evaluation process, the selection committee and PEIA reserves the right, where it may serve PEIA's best interest, to request additional information or clarifications from bidders, or to allow corrections of errors or omissions.

### **Cost Quotation**

In a separately sealed envelope clearly marked "cost Quotation", the proposing firm should include an all-inclusive price.

**Project Timeline: (Tentative unless noted otherwise)**

Event/Task	Beginning	End	Responsible Party
Preliminary Discussions – Rules development, data dictionary, etc.	11/23/05	12/14/05	All
System Development	12/07/05	1/27/06	Vendor
Data Transfer from PEIA/Vendor	12/14/05	12/29/05	PEIA
System Testing – Internal	02/01/06	02/15/06	Vendor
System Testing – External (Firm)	02/16/06	02/28/06	PEIA
Operational (Firm)	03/06/06	05/05/06	Vendor
Final System Rollout (Firm)	03/10/06	n/a	Vendor

# **Appendix 1**

*PEIA Transfer Form Data Field Rules*  
*PEIA Tobacco Affidavit and Open Enrollment Transfer Form*  
*Mountaineer Flexible Benefits Plan Transfer Form Data Field Rules*  
*Mountaineer Flexible Benefits Plan Enrollment Form*

## **PEIA Transfer Form Data Field Rules**

**Below is a list of rules that are required but not all inclusive.**

### **Policyholder Information:**

Policyholder Name (last, first mi, generation) can be edited online

Policyholder SSN: CANNOT be edited online.(click here button for instructions on how to change the SSN)

Policyholder address, city, state, zip: can be edited online, and if it is, system must check to see if new address is within service area of plan policyholder is choosing.

County of residence: can be edited online, and if it is, system must check to see if new address is within service area of plan policyholder is choosing.

Home phone: can be edited online, but not a required field.

Work phone: can be edited online, but not a required field.

Date of birth: can be edited online.

Relationship (defaulted to self)

Gender – M/F editable check box.

### **Tobacco Affidavit**

Affidavit: one box must be checked. May check policyholder or dependents or both, if either of these is checked, then “No Tobacco Users...” cannot be checked, and vice versa.

### **Dependent Demographic Information**

Dependent name can be edited online

Dependent relationship can be edited online.

Dependent SSN: CAN be edited online.

Dependent address, city, state, zip: can be edited online. (checkbox for “same as member”)

Dependent birth date can be edited online

Dependent gender can be edited online.

### **Plan Selection**

Policyholder can choose any plan for which he or she is geographically qualified.(will we put rules in RFQ?) Currently, one plan is available only in limited areas of the state. Policyholder’s plan choice must match up with county of residence to qualify for plan enrollment.

PCP Selection: may be left blank if joining the PEIA PPB plans or a PPO, or if continuing coverage in the same HMO. Must be completed for each enrolled family member separately if joining an HMO and not currently a member of that HMO.(cannot be different than member for dependants)

### **Other Insurance Information:**

Must be completed for each family member if joining the PEIA PPB Plan.

### **Dependent Add:**

Policyholder may add spouse or child(ren) by completing the demographic information.

Dependent Name must be added

Dependent SSN must be added if spouse, may be added if child. If not added for child, policyholder must be warned to provide as soon as available.

Dependent address must be added if different from policyholder. . (checkbox for “same as member”)

Relationship: choices are spouse, biological child, adopted child, and other. If other, policyholder must be warned that addition will not be complete until dependent child affidavit (which should pop up on screen) is completed and provided to benefit coordinator. (must have ability for user to print all info.)

Legal binding checkbox stating if this box is checked the member has acknowledged selections are binding and final.

West Virginia Public Employees Insurance Agency  
Plan Year 2006 Health and Life Insurance  
**Tobacco Affidavit and Open Enrollment Transfer Form**

To report your tobacco status for life and health insurance premium purposes, complete and sign the Affidavit section and return this form to your benefit coordinator – even if you are not changing plans. If you wish to change your health care plan, please complete all sections of this form except the Agency section and return the completed form to your benefit coordinator. If any of the pre-printed information about you or your dependents is incorrect, please correct it by marking the changes clearly on this form, and return the form to your benefit coordinator. Retirees are not eligible for HMOs if Medicare will be primary coverage for you or your dependents during Plan Year 2006.

County of Residence
Home Phone ( )
Work Phone ( )

<b>Affidavit</b>	<b>Tobacco Affidavit</b>
	<p>Every plan member must complete this affidavit. Please mark which members of the family use tobacco and sign the affidavit. If none of the people enrolled on your PEIA coverage uses tobacco, you will receive the discount on your health and life insurance premiums. To receive the discount, please mark the No Tobacco Users box and sign the affidavit.</p> <p>Who uses tobacco: <input type="checkbox"/> Policyholder <input type="checkbox"/> Dependent (spouse and/or children) <input type="checkbox"/> No Tobacco Users as of January 1, 2005.</p> <p>I certify that this information is correct, and agree that if this information changes before July 1, 2005, I will notify the plan of such change in writing. I acknowledge by signing this form that WVPEIA or its agents have access to my medical records to check my tobacco use status. I certify that the above information is true and correct and understand that providing false information on this form is illegal and that those who provide false information may be prosecuted. I hereby authorize, for myself and my covered dependents, release to PEIA and to the plan I have selected all medical and prescription drug information needed to process claims, determine coverage, review utilization, investigate complaints, assess quality of care, evaluate plan performance or any other process involved in my treatment, payment of claims or health care operations.</p> <p>Employee Signature _____ Date _____</p>

**Open Enrollment Transfer Information**

Type of Coverage:

<b>Family Information</b>	Name (Last, First, MI) Use a separate sheet of paper for additional dependents	Relationship & Category	Sex (M/F)	Birth Date	Social Security Number	Other Insurance Information
	Policyholder					
	Address _____ PCP Selection for HMO only (indicate physician name and location)					
Dependent						Do you have other medical or prescription drug coverage? <input type="checkbox"/> yes <input type="checkbox"/> no
	Address _____ PCP Selection for HMO only (indicate physician name and location)					
Dependent						Do you have other medical or prescription drug coverage? <input type="checkbox"/> yes <input type="checkbox"/> no
	Address _____ PCP Selection for HMO only (indicate physician name and location)					
Dependent						Do you have other medical or prescription drug coverage? <input type="checkbox"/> yes <input type="checkbox"/> no
	Address _____ PCP Selection for HMO only (indicate physician name and location)					
Dependent						Do you have other medical or prescription drug coverage? <input type="checkbox"/> yes <input type="checkbox"/> no
	Address _____ PCP Selection for HMO only (indicate physician name and location)					

<b>Plan Selection</b>	You are CURRENTLY enrolled in:					
	If you wish to select a different plan for Plan Year 2006 (for benefits beginning July 1, 2005), please indicate your selection clearly by checking the box beside the plan name:					
	<input type="checkbox"/> Carelink HMO Plan 1	<input type="checkbox"/> The Health Plan HMO Plan A	<input type="checkbox"/> PEIA PPB Plan A			
	<input type="checkbox"/> Carelink HMO Plan 2	<input type="checkbox"/> The Health Plan HMO Plan B	<input type="checkbox"/> PEIA PPB Plan B			
	<input type="checkbox"/> Carelink PPO	<input type="checkbox"/> The Health Plan PPO	<input type="checkbox"/> Cancel health coverage. Keep life insurance only.			
I accept the choices indicated above effective through June 30, 2006, and authorize payroll deduction for my contribution. I understand that PEIA may change the number of plans offered or the types, levels or costs of benefits. I hereby authorize, for myself and my covered dependents, release to PEIA and to the plan I have selected all medical and prescription drug information needed to process claims, determine coverage, review utilization, investigate complaints, assess quality of care, evaluate plan performance or any other process involved in my treatment, payment of claims or health care operations. I understand that this change is binding through June 30, 2006, unless there is a qualifying event.						
Employee Signature _____			Date _____			

<b>Agency</b>	To be completed by the benefit coordinator:		
	Agency Name	Account Number	Coverage Code
Authorized Signature		Date	

WHITE - PEIA                      PINK - Payroll Location                      GOLDENROD - Employee

**Mountaineer Flexible Benefits Plan  
Transfer Form  
Data Field Rules**

*Enrollment is for changes only. If participants wish to continue their benefits as is, no enrollment is necessary. Verifying dependent information is strongly suggested.*

Only the following groups need to complete the enrollment process:

Employees who want to add, change or cancel coverage  
New participants who want to enroll for the first time

**Initial Selection –**

1. State Employee with existing coverage (we have eligibility information)
2. State Employee with no coverage (we have eligibility information)
3. New Employee, or Employee of County Board of Education, or Non-State Agency employee (We will not have eligibility information. Employee must populate personal information and designate work location)
4. Retiree (we may or may not have eligibility information)

**Enrollment Form Section 1 –**

Complete/Update all personal information. Changes may be made to all fields, except social security number

**Enrollment Form Section 3 –**

For each benefit you are adding, changing or canceling, you must check the appropriate box next to the corresponding benefit. For the benefit selection you are not altering, check the “keep coverage” box.

If you currently have a benefit and do not elect to Keep, Change or Cancel, the current benefit/coverage level will be kept for the new plan year.

If you elect a Medical FSA, you must explicitly elect either “Yes, I want the EZ Reimburse Card” or “No, I do not want to receive the EZ Reimburse Card”

After selecting which program and plan level, you must select a coverage tier.

**Enrollment Form Section 4 –**

Add/update all dependent information. All fields may be changed/updated.

If you select dependent coverage for dental, vision or legal, you must complete the Dependent Information.

Dependent rules for Dental: If you elect Employee & Spouse coverage level, you must list a dependent with a relationship of “Spouse”. If you elect Employee and Child(ren) coverage level, you must list at least one dependent child. If you elect Employee and Family coverage level, you must list at least one dependent Spouse and one dependent son, daughter, stepson, stepdaughter.

Dependent Rules for Vision: If you elect Employee and Family coverage level, you must list at least one dependent. The relationship code can be either Spouse, Son or Daughter, Stepson, Stepdaughter.

Dependent coverage is not available for Long-term or Short-term Disability.

Dependent coverage is automatic for any eligible family members listed as dependents for other benefits.

PLEASE PRINT USING A BALLPOINT PEN. PRESS FIRMLY; THE LAST COPY IS YOURS.

**1**

SOCIAL SECURITY #		E-MAIL		TYPE OF FORM <input type="checkbox"/> OPEN ENROLLMENT <input type="checkbox"/> OS <input type="checkbox"/> NEW HIRE <input type="checkbox"/> TRANSFER			
LAST NAME			FIRST NAME			MI	
HOME ADDRESS (STREET)				CITY		STATE	ZIP
BIRTH DATE / /		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	<input type="checkbox"/> MARRIED <input type="checkbox"/> SINGLE	DATE EMPLOYED / /		SALARY	
						HOME PHONE	
						OFFICE PHONE	

**INSTRUCTIONS**

- 2 WHO NEEDS TO COMPLETE AN ENROLLMENT FORM?**
- New participants who want to enroll for the first time
  - Employees who want to add, change or cancel coverage of other benefits
  - Employees who wish to participate in the EZ REIMBURSE® MasterCard® Card program for the first time or current participants who wish to cancel.
  - **EXISTING BENEFITS NOT INDICATED ON THIS FORM WILL CONTINUE AS ENROLLED FOR THE 2005/2006 PLAN YEAR.**

**HOW TO ENROLL IN THE MOUNTAINEER FLEXIBLE BENEFITS PLAN:**

- **IMPORTANT:** If you want to add, change or cancel coverage, you must check the box beside the appropriate benefit in Section 3.
- Indicate coverage levels and any other pertinent information.
- If you select family coverage for any benefit, you must provide dependent information in Section 4.

RETURN COMPLETED FORM TO YOUR BENEFITS COORDINATOR NO LATER THAN MAY 6, 2005.

**Mountaineer Flexible Benefits**  
 Tax-Free Benefits Paid by Employees

**3**

KEEP COVERAGE	ADD COVERAGE	CHANGE COVERAGE	CANCEL COVERAGE	BENEFITS		COST PER PAY PERIOD
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>DELTA DENTAL</b> <small>(Unless you are a new hire, you must have prior coverage in the Delta Basic plan or Delta Dental Assistance plan to enroll in the Delta Enhanced plan.)</small> <input type="checkbox"/> Dental Assistance <input type="checkbox"/> Basic <input type="checkbox"/> Enhanced		<input type="checkbox"/> Employee Only <input type="checkbox"/> Employee & Spouse* <input type="checkbox"/> Employee & Children* <input type="checkbox"/> Employee & Family*
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>VISION CHOOSE ONE VISION OPTION:</b> <input type="checkbox"/> Full Service <input type="checkbox"/> Exam Plus		<input type="checkbox"/> Employee Only <input type="checkbox"/> Employee & Family*
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>LONG-TERM DISABILITY INCOME PLAN Employee Only</b> <small>(If you enroll in this benefit, please be sure to provide your birthdate and salary in the space provided above in Section 1.)</small>		<input type="checkbox"/> 60% of salary coverage <input type="checkbox"/> 40% of salary coverage
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>SHORT-TERM DISABILITY INCOME PLAN Employee Only</b> <small>(If you enroll in this benefit, please be sure to provide your birthdate and salary in the space provided above in Section 1.)</small>		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>MEDICAL EXPENSE FLEXIBLE SPENDING ACCOUNT</b> Use cost per-pay-period from your Worksheet. ALL CLAIMS MUST BE SUBMITTED BY September 30, 2006.		<input type="checkbox"/> I elect to receive the EZ REIMBURSE® Card. If you choose the card, you will be assessed a \$30 per-plan-year annual fee. <input type="checkbox"/> I currently have the EZ REIMBURSE® Card and wish to cancel it for the 2005/2006 Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT</b> <input type="checkbox"/> Married, filing separately <input type="checkbox"/> Married, filing jointly <input type="checkbox"/> Single, head of household		Use cost per-pay-period from your Worksheet. ALL CLAIMS MUST BE SUBMITTED BY September 30, 2006.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>LEGAL (Post-tax)</b>		
<b>TOTAL PER-PAY-PERIOD FSA ADMINISTRATIVE FEE</b>						
<b>TOTAL SALARY DEDUCTION AMOUNT PER PAY PERIOD</b>						

\*IF YOU SELECT DEPENDENT COVERAGE FOR DENTAL, VISION OR LEGAL, YOU MUST COMPLETE THE INFORMATION BELOW.

**4**

DEPENDENT INFORMATION						
DEPENDENT NAME	RELATIONSHIP	BIRTH DATE	SOCIAL SECURITY #	CHECK COVERAGE SELECTED		
				DENTAL	VISION	LEGAL
	SPOUSE					Automatic
						Automatic
						Automatic
						Automatic
						Automatic

I hereby authorize my Employer to reduce my gross salary (before federal and state income and Social Security taxes are calculated) by the total per pay period cost of my Flexible Benefits. I understand that I CANNOT CHANGE THE AMOUNT OF THE REDUCTION OR REVOKE THIS AGREEMENT DURING THE PLAN YEAR UNLESS THERE IS A CHANGE IN STATUS AS DEFINED BY IRS RULES. I further understand that any amount remaining in my Flexible Spending Accounts that is not used during this plan year CANNOT BE ACCUMULATED AND CARRIED FORWARD TO THE NEXT PLAN YEAR BUT WILL REVERT TO THE PLAN.

The Premium Deduction "total salary deduction" amount specified above will continue in effect until I discontinue or modify my Agreement for a subsequent plan year, terminate employment, or take an unpaid leave of absence from employment. I UNDERSTAND AND AGREE THAT PBA AND FRINGE BENEFITS MANAGEMENT COMPANY, THE CONTRACT ADMINISTRATOR, WILL BE HELD HARMLESS FROM ANY LIABILITY RESULTING FROM EITHER MY PARTICIPATION IN MOUNTAINEER FLEXIBLE BENEFITS OR MY FAILURE TO SIGN OR ACCURATELY COMPLETE THIS ENROLLMENT FORM. I hereby appoint my Plan Sponsor to serve as Agent to receive dividends, premiums, refunds, rate reductions or any other funds that might be returned from the benefit plans, and to use these funds in the best interest of the employees for the purpose of reducing future premiums and improving benefits on behalf of employees, defraying administrative costs, or for such other purpose as permitted under applicable state and federal law.

TURN COMPLETED FORM INTO YOUR BENEFITS COORDINATOR NO LATER THAN MAY 6, 2005.

**FOR BENEFITS COORDINATOR USE ONLY (COMPLETE IN FULL)**

FEIN# _____
AGENCY# & NAME _____
EFFECTIVE DATE _____
NO. PAY DEDUCTIONS _____
GROSS ANNUAL SALARY _____
BENEFIT COORDINATOR SIGNATURE _____
BENEFIT COORDINATOR PHONE# ( ) _____
BENEFIT COORDINATOR FAX# ( ) _____
LOCATION TYPE <input type="checkbox"/> WVU <input type="checkbox"/> STATE AGENCIES, COLLEGES & UNIV SCHOOLS <input type="checkbox"/> COUNTY BOARDS OF EDUCATION <input type="checkbox"/> OTHER
APPLICATIONS SHOULD BE MAILED TO FBMC TWICE EACH WEEK DURING OPEN ENROLLMENT. MUST BE RECEIVED AT FBMC BY MAY 13, 2005.

EMPLOYEE SIGNATURE _____	DATE SIGNED _____
--------------------------	-------------------

**FBMC USE ONLY**

DATA ENTRY	VERIFICATION	SCANNED	INDEXED	SPECIAL NOTES
------------	--------------	---------	---------	---------------

FBMC/WV/0505    WHITE COPY-EMPLOYER    YELLOW COPY-FBMC    PINK COPY-PAYROLL OFFICER    GOLDENROD COPY-EMPLOYEE

# **Appendix 2**

*HIPAA Business Associate Addendum*

## **HIPAA Business Associate Addendum**

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum (“Addendum”) supplements and is made a part of the Agreement (“Agreement”) by and between Public Employees Insurance Agency, the (“Covered Entity”) and [NAME OF VENDOR], Business Associate (“Associate”) and is in effect on the effective date of the Agreement.

Whereas the parties have a business relationship; and

Whereas it is desirable, in order to further the continued efficient operations of Covered Entity 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 Rule, 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.**

- a. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy Rule.
- b. **Privacy Rule.** Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended.
- c. **Security Rule.** Security Rule means the standards for the security of electronic protected health information found at 45 CFR Part 164, subpart C, as amended.
- d. **Required by Law.** Required by Law shall have the meaning set forth in 45 CFR 164.103.

### **2. PHI Disclosed; Permitted Uses.**

a. **PHI Described.** PHI (as defined in 45 CFR 160.103) disclosed by the Covered Entity to the Business Associate, PHI created by the Business Associate on behalf of the Covered Entity, and PHI received by the Associate from a third party on behalf of the Covered Entity are disclosable under this Addendum. The disclosable PHI is limited to the minimum necessary to complete the tasks, or to provide the services, associated with the terms of the Agreement.

b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, the Covered Entity for the purposes

necessary to complete the tasks associated with, and required by the terms of the Agreement, if such use or disclosure of the PHI would not violate the Privacy or Security Rules if done by Covered Entity or violate state law or violate the minimum necessary policies and procedures of the Covered Entity.

### 3. **Obligations of Business Associate.**

(a) **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than stated in this Agreement 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 Agreement or as required or permitted by law.

(c) **Safeguards.** The Associate will use appropriate safeguards to prevent use or disclosure of the PHI except as provided for in this Agreement, as stated in 164.504(e)(2)(ii)(B). Associate shall maintain an appropriate level of administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI it creates, receives, maintains or transmits on behalf of Covered Entity in accordance with, at a minimum, the Security Rule. This shall include, but not be limited to:

(i) Limitation of the groups of its employees or 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;

(ii) Appropriate notification and training of its employees or agents to whom the PHI will be disclosed in order to protect the PHI from unauthorized disclosure;

(iii) Maintenance of a comprehensive 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.

(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 to which Associate is subject relating to confidentiality of PHI, as a business associate of Covered Entity.

(e) **Report of Disclosure and Security Incident.** The Associate will promptly report to the Covered Entity, in writing, any use or disclosure of the PHI not provided for by this Addendum of which it becomes aware. Moreover, the Associate agrees to promptly report to the covered entity any "security incident," as defined by 45 CFR §164.304, as amended, of which it becomes aware.

(f) **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.

(g) **Documentation.** Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §§164.528 and 164.316. 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: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) 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.

(h) **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 Covered Entity the PHI required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 CFR § 164.528.

(i) **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524.

(j) **Amendment of PHI.** Within ten (10) days of receipt of a request from Covered Entity 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 Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR § 164.526.

(k) **Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the PHI required under Section 3.g. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required of Associate under state law.

(l) **Agents, Subcontractors Compliance.** The Associate will ensure that any of its agents, including any 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 Covered Entity, agree to the restrictions and conditions which apply to the Associate hereunder.

(m) **Amendments.** The Associate shall make available to the specific Individual to whom it applies any PHI; make such PHI available for amendment; and make available the PHI required to provide an accounting of disclosures, all to the extent required by 45 CFR §§ 164.524, 164.526, and 164.528 respectively.

(n) **Federal Access.** The Associate shall make its internal practices books, and records relating to the use and disclosure of PHI received from, or created or received by the Associate

on behalf of the Covered Entity available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504.

#### 4. **Termination.**

(a) **Duties at Termination.** Upon any termination of this Addendum, if feasible, the Associate shall return or destroy all PHI received from, or created or received by the Associate on behalf of the Covered Entity 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 Covered Entity with any HIPAA required accounting of disclosures survives the termination of this Addendum.

(b) **Termination For Cause.** Covered Entity may terminate this Addendum if at any time it determines that the Associate has violated a material term of the Addendum. Covered Entity may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.

(c) **Survival.** The respective rights and obligations of Associate under Section 3.k. of this Addendum shall survive the termination of this Addendum.

#### 5. **General Provisions/Ownership of PHI.**

(a) **Retention of Ownership.** Ownership of the PHI resides with the Covered Entity and is to be returned on demand.

(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 Covered Entity.

(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 not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Covered Entity.

(d) **No Sales.** Reports or data containing the PHI may not be sold without Covered Entity'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 Covered Entity, 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 Agreement, as amended.

**AGREED:**

[NAME OF VENDOR]

\_\_\_\_\_

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

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

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

Public Employees Insurance Agency

\_\_\_\_\_

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

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

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

## **Appendix 3**

*Bidder's Total Wavier of Legal Challenge*

## **Bidder's Total Waiver of Legal Challenge**

(Legal Name of Proposing Entity), hereinafter "Bidder," wishes to submit a Quotation in response to the Request For Quotation For Online Enrollment Web Services (the RFQ) issued \_\_\_10/11/2005\_\_\_ by the State of West Virginia Public Employees Insurance Agency. The Bidder acknowledges that a mandatory requirement of the RFQ is that the Bidder submit a litigation bond with its Quotation.

In consideration of the waiver of said litigation bond requirement by the West Virginia Public Employees Insurance Agency (PEIA), and in lieu of such bond, the Bidder agrees:

That the Bidder completely waives and foregoes any and all legal right or ability it may now have, or in the future acquire, 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 RFQ. 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 RFQ selection process, or the subsequent award of contract(s) to the successful bidder, including but not limited to, administrative, judicial, or collateral actions.

\_\_\_\_\_  
(Legal Name of Bidder)

By: \_\_\_\_\_  
(Authorized Signature)

Title: \_\_\_\_\_  
(Title of Authorized Representative)

### **Approved:**

\_\_\_\_\_  
(Legal Name of Accepting Authority)

By: \_\_\_\_\_  
(Authorized Signature)

Title: \_\_\_\_\_  
(Title of Authorized Representative)

## **Appendix 3**

*WV-96*

**AGREEMENT ADDENDUM**

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **ARBITRATION** - Any references to arbitration contained in the agreement are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOURPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages or limiting the Vendor's liability under a warranty to a certain dollar amount or to the amount of the agreement is hereby deleted. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:  
**STATE OF WEST VIRGINIA**

**VENDOR**

Spending Unit: \_\_\_\_\_

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

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

# **Appendix 5**

*Affidavit*

## 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.

**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.

“Debtor” means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions.

“Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities.

“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 exceed five percent of the total contract amount.

**Exception:**

The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this 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.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the bidder and all related parties do not owe any debts or, if a debt is owed, that the provisions of the exception clause above apply; and all state licensing requirements are in compliance.

Vendor’s Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_