

**WEST VIRGINIA STATE TREASURER'S OFFICE
ADDENDUM TO VENDOR'S CONTRACT/CONTRACTUAL FORMS**

Contract/Purchase Order/Lease Number (Contract): _____

The West Virginia State Treasurer's Office (STO) and the Vendor whose name is stated at the end of this Addendum are entering into the Contract/Purchase Order/Lease Number (Contract) stated above. The Vendor desires to incorporate one or more documents, contracts or contractual terms (Forms) it created into the Contract. Vendor's Forms include one or more contractual terms and conditions that the STO cannot or will not accept. In consideration for the STO incorporating Vendor's Forms into the Contract, Vendor enters into this Addendum which specifically amends, eliminates and/or alters the Vendor's Forms and the legal enforceability of the terms and conditions contained in Vendor's Forms.

1. **TERM** – The term of the Contract shall be as set forth in the Contract. Any provision seeking 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 and issuance of a change order to the Contract.
2. **ORDER OF PRECEDENCE:** This Addendum amends, alters, modifies and supersedes any provision contained on Vendor's Forms, regardless of whether the Forms are submitted before or after the signing of this Addendum. IN THE EVENT OF ANY CONFLICT BETWEEN THE STO BID DOCUMENTS, VENDOR'S OFFER, VENDOR'S FORMS AND THIS ADDENDUM, THE ORDER OF PRECEDENCE IS (1) ANY REVISIONS TO VENDOR'S OFFER OR THE BID DOCUMENTS, (2) THIS ADDENDUM, (3) VENDOR'S OFFER, AND (4) VENDOR'S FORMS.
3. **USE OF CONTRACT** – The Parties to the Contract are the only entities with any rights under or ability to enforce the Contract. Any provision to the contrary is deleted. The Parties may agree to extend use of the Contract and rights thereunder to other governmental entities in writing executed by both Parties and included in the Contract or a change order to the Contract.
4. **DELIVERY** - All deliveries under the Contract will be FOB destination unless the STO expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
5. **FISCAL YEAR FUNDING** – The Contract is continued contingent upon funds being appropriated by the West Virginia Legislature or otherwise being available for the Contract. In the event funds are not appropriated or otherwise available, the Contract is terminated, of no effect and null and void after June 30 of the current fiscal year. If that occurs, the STO 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.
6. **PAYMENT** - Payments for goods and services provided pursuant to the Contract will be made in arrears only upon acceptance of the goods and services provided and receipt of an invoice acceptable to the State Auditor. Any reference to advance payments is deleted. The Contract may provide for progress payments correlated to the percentage of work completed to the work required under the Contract. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually or quarterly in advance. Any language imposing any interest or charges due to late payment is deleted. Vendor's name, address and EIN must be the same on its registration with the West Virginia Secretary of State, Tax Commissioner, Department of Administration Purchasing Division and any invoices.
7. **LEGAL EXPENSES** – Any language obligating the STO to pay costs of collection, court costs, attorney's fees or other legal expenses is deleted. The STO will only pay the costs of collection, court costs, attorney's fees or other legal expenses ordered by a court of competent jurisdiction.
8. **TAXES** - Any provisions requiring the STO or the State of West Virginia to pay or reimburse any Federal, State or local taxes or to file tax returns or reports on behalf of Vendor are deleted. The STO will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
9. **DISPUTES** - Any language requiring the STO to waive any rights, claims or defenses, including, without limitation, the right to a jury trial, is deleted. Any language requiring the STO to participate in any arbitration or to abide by any decision of any arbitration board, commission, panel or other entity is deleted. Any language requiring or permitting disputes under the 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 STO 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 STO to agree to or be subject to any form of equitable relief not authorized by the Constitution or laws of the State of West Virginia is deleted.

10. **RISK SHIFTING** - Any provision requiring the STO to bear the costs of all or a majority of business or legal risks associated with the Contract, to indemnify the Vendor, or to hold the Vendor or a third party harmless for any reason is hereby deleted.
11. **LIMITING LIABILITY** - Any language limiting the Vendor's liability for direct damages to person or property is deleted.
12. **STATUTE OF LIMITATIONS** - Any clauses limiting the time in which the STO may bring suit against the Vendor or any other party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the prior written consent of the STO, which will not be unreasonably delayed or denied, and issuance of a change order to the Contract reflecting the assignment. The STO reserves the right to assign this Contract to another state agency, board or commission upon thirty (30) days written notice to the Vendor.
14. **INSURANCE** - Any provision requiring the STO to maintain any type of insurance for either its or the Vendor's benefit is deleted, unless specifically agreed to in a writing signed by the STO and made part of the Contract.
15. **RIGHT TO REPOSSESSION NOTICE** - Any provision for repossession of property without notice is hereby deleted. However, the STO does recognize a right of repossession with notice.
16. **CONFIDENTIALITY** - Any provision regarding confidentiality or non-disclosure of the terms and conditions of the Contract are hereby deleted. STO contracts are public records under the West Virginia Freedom of Information Act (FOIA) in W.Va. Code §29B-1-1 et seq. Vendor may propose a document regarding confidentiality or non-disclosure as to matters related to the Contract which the STO will consider; if the document complies with the laws of the State of West Virginia and the STO determines the document is appropriate, the STO will execute the document and include it in a change order to the Contract. The STO will use its best efforts to not disclose any provision of the Contract exempt under the FOIA and indicated as exempt in the Contract. This Contract with any information exempt under the FOIA redacted and other public records may be disclosed without notice to the Vendor at the sole discretion of the STO.
17. **RIGHT TO TERMINATE** - The STO reserves the right to terminate the Contract upon thirty (30) days written notice to the Vendor with or without cause. If this right is exercised, the State agrees to pay the Vendor only for all undisputed goods received and services rendered before the effective date of the termination. All provisions are deleted that seek to require the STO 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 prior to completion of performance under the Contract. Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
18. **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.
19. **THIRD-PARTY SOFTWARE** - If the Contract contemplates or requires 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 the third-party software conflict with any provision of this Addendum or that it has the authority to modify the terms and conditions of the software to be subordinate to this Addendum. The Vendor shall indemnify and defend the STO against all claims resulting from an assertion that the 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, signed by both Parties and included in a change order to the Contract. Any language to the contrary is deleted. Notwithstanding the foregoing, this Addendum shall only be amended by (1) identifying the amendments, modifications, alterations or changes to it in a separate document and not on or in the Addendum itself, and (2) having the STO Counsel acknowledge in writing approval of the amendments.

West Virginia State Treasurer's Office

Vendor: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____