



REQUEST FOR PROPOSALS #63000

Learning Management System, 2026

Table of Contents

Section 1	General Information and Standard Terms and Conditions.....	Page 2
Section 2	Eligibility Requirements.....	Page 11
Section 3	Background Information	Page 11
Section 4	Scope of Services	Page 12
Section 5	Vendor Information and Qualifications.....	Page 21
Section 6	Bidder Responses and Evaluation Criteria.....	Page 21
Section 7	Additional Information.....	Page 22

Exhibits:

Exhibit A	Title Page
Exhibit B	Addendum Acknowledgement
Exhibit C	Designated Contact Page
Exhibit D	Taxpayer Identification Form (W-9)
Exhibit E	Purchasing Affidavit
Exhibit F	Agreement Addendum (WV-96)

REQUEST FOR PROPOSALS

RFP #63000

SECTION 1: GENERAL INFORMATION AND STANDARD TERMS AND CONDITIONS

1.1 Purpose: This Request for Proposal (RFP) is issued by the West Virginia Network (WVNET), under the direction of the West Virginia Higher Education Policy Commission, and is a state-wide request for the planning, configuration, implementation, training, and ongoing support of a Learning Management System (LMS) to be made available as the primary learning platform to be used by an undetermined number of the colleges within the system.

The purpose of this RFP is to provide interested parties with information to enable them to prepare and submit proposals for a comprehensive enterprise Learning Management System, including a hosted environment and all other requested services and support. WVNET intends to use the results of this RFP to award a contract for these products and services.

Respondents to this RFP should propose services and systems which:

1. Facilitate the teaching and learning functionality described in the use cases herein;
2. Provide course and content migration from all current local and hosted instances of Brightspace and other LMS’;
3. Integrate with other academic and administrative technologies used across West Virginia;
4. Provide user training to the targeted groups of faculty, instructional coordinators, instructional administrators, and technical support staff; and
5. Provides the colleges with a student-centered mobile and online learning platform with state-of-the-art functional and technical capabilities.

This document outlines pertinent background information, describes the goals and specific objectives for the LMS, describes desired functionality through specifications and a self-assessment, and specifies requirements and instructions for all submitted proposals.

1.2 Schedule of Events:

Release of RFP: April 8, 2026
Question Deadline: 5:00 P.M. (EST) on April 17, 2026
Addendum/Response to Questions: April 22, 2026
Proposal Due Date: 1:00 P.M. (EST) on May 6, 2026
Target Award Date: June 1, 2026

1.3 Bidder’s Point of Contact: The sole point of contact for questions, clarification and inquiries concerning this Request for Proposal (RFP) is:

Philip Snitz
Manager of Business Operations

837 Chestnut Ridge Road
Morgantown, WV 26505
E-mail:psnitz@staff.wvnet.edu
Phone: 304-293-5192 x 50483

1.4 Posting of Information: This RFP and any addenda, including answers to questions, will be posted to: <https://wvnet.edu/wvnet-bids/>

1.5 Questions and Answers: Questions concerning this RFP will be received in writing, via e-mail, by the point of contact, until the deadline identified in Section 1.2. When submitting questions, please reference RFP #63000 in the subject line. Questions, if any, will be answered by addendum and posted to the webpage identified in Section 1.4 above.

1.6 Proposal Format: Vendor should provide responses in the format listed below:

1.6.1 Two-Part Submission: Vendors must submit proposals in two distinct parts: Technical and Cost. Technical proposals must not contain any cost information relating to this project. Cost proposal must contain all cost information and must be sealed in a separate envelope from the technical proposal.

1.6.2 Title Page: The Title Page should include the RFP Number, Addenda Received check boxes, the Bidder's business name, business address and telephone number, a contact name and e-mail address and includes a signature line and date for the individual authorized to obligate the business.

1.6.3 Table of Contents: Clearly identify the material by section and page number.

1.6.4 Response Reference: Vendor's response should clearly reference how the information provided applies to the RFP request. Vendor should reference the section of the RFP that the information provided in the bid is referencing.

1.7 Proposal Submission: Deliver one (1) original and one (1) copy of the proposal on or before the date required in Section 1.2. The outside of the envelope should be clearly marked with the RFP number, the bid opening date/time, and Manager of Business Operation's name, Philip Snitz.

**NOTE: ALL PRICES ARE TO BE PROVIDED IN A SEPARATE SEALED ENVELOPE
LABELED AS PRICING INFORMATION.**

In addition, a digital copy of the proposal should be submitted; the preferred method for submission of the digital copy is by flash/thumb drive which should be included with the original bid.

**PROPOSALS RECEIVED AFTER THE DUE TIME AND DATE WILL NOT BE
CONSIDERED. IT IS THE BIDDER'S SOLE RESPONSIBILITY TO ENSURE TIMELY
DELIVERY OF THE PROPOSAL.**

1.8 Proposals shall remain in effect for ninety (90) days from the submission date.

STANDARD TERMS AND CONDITIONS

1. CONTRACTUAL AGREEMENT: Issuance of a Purchase Order signed by the Commission/Institution's Chief Procurement Officer or Director of Purchasing, or their designee, and approved as to form by the Attorney General's Office constitutes acceptance by the Commission/Institution of this Contract made by and between the Commission/Institution and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid RFP/RFB, signifies vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this RFP/RFB/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this RFP/RFB/Contract.

2.1. "Agency" or "Agencies" means the agency, institution, board, commission, or other entity of the State of West Virginia that is identified on the first page of the RFP/RFB or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this RFP/RFB.

2.3. "Chief Procurement Officer" or "Director of Purchasing" means the individual authorized to sign Purchase Order/Contracts.

2.4. "Commission/Institution" means the entity identified on the first page of the RFP/RFB who is issuing the solicitation.

2.5. "Contract" or "Purchase Order" means the binding agreement that is entered into between the Commission /Institution and the vendor to provide the goods or services requested in the RFP/RFB.

2.6. "Award Document" means the document signed by the Commission/Institution and approved as to form by the Attorney General, that identifies the vendor as the contract holder.

2.7. "RFP/RFB" means the official notice of an opportunity to supply the Commission/Institution with goods or services.

2.8. "State" means the State of West Virginia and/or any of its agencies, institutions, commissions, boards, institutions etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the RFP/RFB, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

Term Contract

Initial Contract Term: The Initial Contract Term will be for a period of 5 years _____. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Commission/Institution, and the Vendor, with approval of the Attorney General's Office (Attorney General approval is as to form only) for 2 successive years. Any request for renewal should be delivered to the Commission/Institution thirty (30) days prior to the expiration date of the contract.

Automatic renewal of this Contract is prohibited.

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

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

Other: Contract Term specified in _____.

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract upon receipt of a signed Purchase Order.

5. QUANTITIES: The quantities required under this Contract shall be identified in the RFP/RFB/Purchase Order.

6. REQUIRED DOCUMENTS: All of the items checked in this section must be provided to the Commission/Institution by the vendor as specified:

BID BOND (Construction Only): Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

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

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

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in

lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provides a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

MAINTENANCE BOND: The apparent successful Vendor shall provide a two (2) year maintenance bond. The maintenance bond must be issued and delivered to the Commission/Institution prior to Contract award.

LICENSE(S) / CERTIFICATIONS / PERMITS: In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the licenses, certifications, and/or permits requested in the RFP/RFB.

7. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the Commission/Institution as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, vendor shall provide the Commission/Institution with proof that the insurance mandated herein has been continued. Vendor must also provide the Commission/Institution with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award.

Vendor must maintain:

Commercial General Liability Insurance in at least an amount of \$1,000,000 per occurrence.

Automobile Liability Insurance in at least an amount of _____ per occurrence.

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

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

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

9. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the Commission/Institution's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

_____ for _____ .

Liquidated Damages Contained in the Specifications.

Liquidated Damages Are Not Included in this Contract.

10. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page,

constitutes an offer to the Commission/Institution that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the RFP/RFB for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the RFP/RFB unless otherwise indicated.

11. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this RFP/RFB/Contract by the Commission/Institution. A vendor may request the inclusion of price adjustment provisions in its bid, but final approval of any price adjustments will be made by the Commission/Institution. Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

12. PAYMENT IN ARREARS: 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 maintenance, licenses, or subscriptions may be paid annually in advance.

13. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and/or P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

14. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

15. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not expressly provided for in the RFP/RFB.

16. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the Commission/Institution 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.

17. CANCELLATION: The Commission/Institution reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract.

18. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution or West Virginia Code, is void and of no effect.

19. COMPLIANCE WITH LAWS: Vendor or approved Subcontractor shall comply with all

applicable federal, state, and local laws, regulations, and ordinances. By submitting a bid, vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

20. ARBITRATION: Any references made to arbitration contained in this Contract, vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

21. MODIFICATIONS: Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Commission/Institution and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

22. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

23. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by vendor to the Commission/Institution such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

24. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the vendor without the express written consent of the Commission/Institution and the Attorney General's Office (as to form only).

25. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Commission/Institution; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

26. STATE EMPLOYEES: State employees (including Commission/Institution employees) are not permitted to utilize this Contract for personal use and the vendor is prohibited from permitting or facilitating the same.

27. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Commission/Institution, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Commission/Institution's policies, procedures, and rules.

28. LICENSING: Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia,

including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the vendor must provide all necessary releases to obtain information to enable the Commission/Institution to verify that the vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up to date on all state and local obligations as described in this section. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

29. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Purchase Order with the Commission or any Institution of the State of West Virginia, the vendor agrees to convey, sell, assign, or transfer to the institution all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the Commission/Institution. Such assignment shall be made and become effective at the time the Commission/Institution tenders the initial payment to vendor.

30. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFP/RFB in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Commission/Institution. The individual signing this bid or offer on behalf of the vendor certifies that he or she is authorized by the vendor to execute this bid or offer, or any documents related thereto on vendor's behalf; and that he or she is authorized to bind the vendor in a contractual relationship.

31. VENDOR RELATIONSHIP: The relationship of the vendor to the Commission/Institution shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this RFP/RFB and resulting contract. Neither the vendor, nor any employees or subcontractors of the vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or

other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

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

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

33. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Commission/Institution affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

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

35. BACKGROUND CHECK: In accordance with W. Va. Code §15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Commission/Institution based upon results addressed from a criminal background check.

36. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to the Commission/Institution a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre- award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this RFP/RFB or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

37. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly

permitted in the RFP/RFB published by the Commission/Institution, vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

38. VOID CONTRACT CLAUSES – The Commission/Institution is requiring the vendor to follow the provisions of West Virginia Code §5A-3-62, which automatically voids certain contract clauses that violate State law.

SECTION 2: ELIGIBILITY REQUIREMENTS

2.1 Vendor Registration – WV Code § 5A-3-12. The West Virginia Code requires that all vendors be registered with the WV Department of Administration, Purchasing Division, prior to receiving a purchase order for competitive products and/or services exceeding \$25,000. See: <http://www.state.wv.us/admin/purchase/VendorReg.html> for additional vendor registration information.

2.2 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.

2.3 West Virginia Secretary of State. The vendor must be in compliance with the Secretary of State and should provide a copy of their business license with the proposal. For more information, contact the WV Secretary of State.

2.4 Taxpayer Identification Information. The Internal Revenue Service (IRS) requires WVNET to request a taxpayer identification number (TIN) for tax reporting purposes. IRS Form W9 is used to obtain this information. (Exhibit D)

2.5 Purchasing Affidavit – WV State Code §5A-3-10a. WV State Code requires all vendors to submit an affidavit regarding any debt owed to the State. The Affidavit should be completed, signed, notarized, and returned with the bidder's proposal. (Exhibit E)

SECTION 3: BACKGROUND INFORMATION

The West Virginia Network (WVNET), under the direction of the West Virginia Higher Education Policy Commission (WVHEPC), is a research education network that works to provide consortium prices and IT services to K12 and Higher Education in the state of West Virginia. This is a Request for Proposal (RFP) for Learning Management System (LMS) Software issued by WVNET through the West Virginia Higher Education Policy Commission.

WVHEPC serves numerous two and four-year colleges and universities who can opt into the LMS license. WVNET will serve as the main administrator for the LMS. Each campus will also have local administrators.

Vendors responding to this RFP are encouraged to present their compelling software and implementation services to best meet the needs of the West Virginia College System. A

fundamental requirement of any solution will be ease of use for students, faculty and staff; the solution needs to be available anytime, from any device, using an intuitive interface.

Additionally, it’s essential that solutions enable well-aligned processes to streamline administrative efforts, freeing up faculty and staff to focus on activities that promote student success. In addition, WVNET will consider solutions that can be delivered off-premise and in a cloud environment. The implementation approach and timeline needs to outline the solution over a general 6 - 12 month duration. While WVNET would like to move quickly through this project, that progress needs to be balanced with the ability of the colleges to absorb this transition. Vendors are encouraged to submit their most competitive, service-oriented programs forward. A critical element of the implementation approach and timeline must include a mandatory plan for the new solution by October 1, 2026.

This software is expected to be a commercial off-the-shelf (COTS) product. It is expected to need only minor modifications for use with this specific workforce/content. WVNET will offer basic technical support (Tier 1), while the vendor is expected to offer advanced technical support (Tier 2/Tier 3). Any products which are not included in the original contract and purchased at a later date will require a separate contract.

SECTION 4: SCOPE OF SERVICES

Vendors are directed to the following “LMS Vendor Self-Assessment” matrix which outlines the specific needs from an LMS. Vendors are asked to complete the self-assessment document in full, explain if their LMS meets each line-item requirement, and if so, in what capacity, with a brief description of the functional performance and quote for any additional costs associated with the function.

The following functions have been prioritized and should be carefully considered:

1. Course migration from existing Brightspace courses
2. LMS Transition Plan

LMS VENDOR SELF-ASSESSMENT

Vendors are asked to complete this self-assessment and provide sufficient details to answer each question. You may use separate pages to provide additional details. Be sure to reference the number of the specific question at the beginning of each response.

CATEGORY	YES/NO	DETAILED RESPONSE
END-USER FEATURES AND TOOLS		
1.1 Migration of Content		
1.1.1 Describe the migration of content from our current LMS to your LMS for the following areas:		
Organization/course/college homepages (multi-institution branding)		
System tools (configurations)		
CATEGORY	YES/NO	DETAILED RESPONSE

Course content (local/3 rd party)		
Quizzes (question types)		
Assignments (question types)		
Discussions		
1.1.2 How do we merge course sections together?		
1.1.3 Are LTI 1.1 or 1.3 tools included in the migration process?		
1.1.4 Does your LMS offer support for migration of multi-tenant configurations?		
1.2 Multi-Browser Support		
1.2.1 Please list which browsers are supported, including browser versions.		
1.2.2 What is the preferred browser for your LMS?		
1.2.3 Please list end user system requirements for the LMS.		
1.3 User Interface		
1.3.1 Does the LMS provide user permissions for multiple system roles		
1.3.2 Can learners, instructors, and administrative roles customize components of the LMS? If so, which areas can be customized?		
1.3.3 Does the LMS provide course-wide search?		
1.3.4 Does the LMS provide a search function across multiple courses?		
1.3.5 Does the LMS offer messaging for users?		
1.3.6 Does the LMS offer system/custom widgets?		
1.3.7 Does the LMS allow for site wide notifications to all users?		
1.3.8 Does the LMS interface include custom user menus? If so, do these change with user role? Additionally, please describe this process.		
1.4 Mobile Learning Applications		
1.4.1 Does the LMS support mobile learning?		
1.4.2 Describe the mobile learning app availability (Ios, Android, WebOS).		
1.4.3 Is the mobile learning app an additional cost or part of the base product?		
1.4.4 Describe the security features of the mobile app.		

CATEGORY	YES/NO	DETAILED RESPONSE
1.4.5 Does the mobile learning app have the same features as the LMS?		
1.4.6 Can multiple institutions apply branding to the mobile learning app?		
1.5 Class Management		
1.5.1 Does the LMS have an early warning alert feature for student performance? If so, please describe.		
1.5.2 Can instructors view reports showing time, date, and frequency of individual access to course content and tools?		
1.5.3 Does the LMS have an adaptive release feature for content?		
1.5.4 Does the LMS have a Learning Object Repository (LOR)?		
1.5.5 Does the LMS support downloading assignments to be graded offline?		
1.5.6 Describe types of tracking reports available to instructors and/or administrators.		
1.5.7 Does the LMS offer attendance tracking?		
1.5.8 Does the LMS offer a way to manage course dates en mass?		
1.5.9 Does the LMS track user's completion of content items?		
1.6 Assessment		
1.6.1 Does your LMS have an export/import feature for assessments? If yes, describe this feature.		
1.6.1.1 Is the export/import feature user-friendly?		
1.6.2 Does the LMS have a powerful, flexible and rigorous rubric feature?		
1.6.2.1 Can instructors create rubrics inside the LMS?		
1.6.2.2 Can instructors tie rubrics to the gradebook?		
1.6.2.3 Can instructors tie rubrics to learning outcomes?		
1.6.4 Does the LMS have survey tools inside and/or outside courses? If so, can surveys be used at organizational, college, department, course levels?		

CATEGORY	YES/NO	DETAILED RESPONSE
1.6.5 Does the LMS gradebook require setup by the instructor? If so, please describe in detail.		
1.6.5.1 Does the gradebook offer multiple grade schemes?		
1.6.6 What types of assessments does the LMS offer? For example, quizzes, assignments, discussions, surveys, etc.		
1.6.7 Can assessments be shared among courses?		
1.6.8 Does the LMS allow for the use of 3rd party assessments? If so, please describe the process.		
1.6.9 Can the LMS apply grades to the assessment of examples listed above?		
1.6.10 Can the LMS release assessments by date and time?		
1.6.10.1 Does the LMS offer the ability to use release conditions for assessments?		
1.6.10.2 Does the LMS allow instructors to set submission restrictions on assessments?		
1.6.10.3 Does the LMS offer the ability to add multiple evaluators for user feedback?		
1.6.10.4 Does the LMS allow for anonymous marking of assessment?		
1.6.10.5 Does the LMS allow graders to annotate assessments?		
1.6.10.6 Does the LMS offer video/audio feedback for assessments?		
1.6.11 Does the LMS send notifications to users based on assessment results?		
1.6.12 Does the LMS allow the use of question libraries? If so, Can the user import/export 3rd party resources, as well instructor-created question libraries?		
1.7 Content Organization & Creation		
1.7.1 Describe how instructors import, export, and copy courses.		

CATEGORY	YES/NO	DETAILED RESPONSE
1.7.2 Does the LMS have content areas/learning modules?		
1.7.3 Does the LMS support multiple file types?		
1.7.4 What file types can be added to the learning modules?		
1.7.5 Does the LMS have deep linking capabilities?		
1.7.6 Does the LMS have an equation editor?		
1.7.7 Can instructors share files between class sections? If so, can the files be shared publicly?		
1.7.8 Does the LMS integrate multimedia (A/V) easily?		
1.7.9 Describe how instructors upload files (one file at a time, drag & drop, or zipped files).		
1.7.10 Does the LMS have web link options available?		
1.7.11 Does the LMS offer a way to use webcam/video recordings as content items and if so, does it support closed captioning?		
1.7.12 Does the LMS have a student workspace?		
1.7.13 Does the LMS allow registration/use of LTI 1.1/1.3 tools for multiple tenants. If so, how?		
1.7.14 Does the LMS allow us to link course items with Quicklinks in the content editor? If so, what items can be linked?		
1.7.15 Does the LMS allow for HTML edits to content?		
1.7.16 Does the LMS have a word count tool in the content editor?		
1.7.17 Does the LMS offer date restrictions for content items?		
1.8 Communication & Collaboration Tools		
1.8.1 Does the LMS have communication and collaboration tools? List and describe them.		
1.8.2 Does the LMS have an internal whiteboard feature?		
1.8.3 Does the LMS have an internal chat tool?		
1.8.4 Does the LMS have a synchronous and/or asynchronous conference tool?		

CATEGORY	YES/NO	DETAILED RESPONSE
1.8.5 Can instructors set up collaboration groups inside the LMS for group projects?		
1.8.6 Does the LMS have a user-friendly threaded discussion board?		
1.8.7 Does the LMS support multimedia integration in the discussion board?		
1.8.8 Does the LMS have a self-contained, FERPA-compliant, secure email feature? If so, can we manage incoming/outgoing settings?		
1.8.9 Does the LMS support localization for language teaching (e.g., Spanish, French, German)?		
1.8.10 Can announcements in the LMS be delivered system-wide?		
FUNCTIONALITY		
2.1 Integration with Banner		
2.1.1 Describe system integration with Banner for course creation, enrollments, and grade publication.		
2.1.2 Is the integration real-time or batch processed?		
2.1.3 Does integration send information both directions?		
2.1.4 Does the LMS integrate with external email systems?		
2.1.5 Does the system authenticate against LDAP/AD/Federation Service?		
2.1.6 Does the system use standard SSO protocols (CAS, SAML)?		
2.1.7 Is your company an Ellucian partner?		
2.1.8 Can the institution customize the integration via API or other means?		
2.1.9 What are costs involved if the college does not customize integration?		
2.1.10 What are costs if the vendor performs customization?		
2.1.11 How does the LMS handle a dropped course?		
2.2 Anti-plagiarism Tools		
2.2.1 Do you support any plagiarism checkers? List and describe them.		

2.3 Integration with Web Services		
2.3.1 Does the LMS integrate with web services?		
CATEGORY	YES/NO	DETAILED RESPONSE
2.3.2 How do you integrate?		
2.3.3 Describe your integration.		
2.3.4 What other integrations are possible?		
2.3.5 Do we have backend access to the LMS data? If so, what are the options to access? Is this included in the base price?		
2.3.6 Do we have the capability to read, write, and modify our data? If so, please explain the process of accessing it.		
2.3.7 Does the LMS offer SSO/SAML capabilities for 3rd party tools?		
2.3.8 Does the LMs use OAUTH 2.0 for managing automated authorization?		
2.3.9 Does the LMS use extensions to connect to 3rd party applications?		
2.3.10 Is your LMS currently partnered with any 3rd party tools? If so, which tools?		
2.4 Multi-tenant Solutions		
2.4.1 Do you support a multi-tenant environment?		
INFRASTRUCTURE AND SYSTEM ADMINISTRATION		
3.1 Self-Hosted vs. Vendor-Hosted		
3.1.1 State whether the proposal is for self-hosted or vendor-hosted. Submit separately if offering both.		
3.2 For Self-Hosted Proposals		
3.2.1 Provide software and hardware requirements to host in an enterprise environment.		
3.2.2 Provide recommended testing/development environment details.		
3.2.3 Describe the System Administrator support process and resources.		
3.2.4 How often are software updates released? Describe the release process.		
3.2.5 Describe technical support for institution-hosted LMS, including installation assistance.		
3.2.6 Provide information regarding backup and restoration procedures.		

3.2.7 Briefly describe additional self-hosted LMS information.		
CATEGORY	YES/NO	DETAILED RESPONSE
3.2.8 Does the system call for a hosting provider?		
3.2.9 How is application management done?		
3.2.10 Specify application, content, and database backup procedures.		
3.3 For Vendor-Hosted Proposals		
3.3.1 Describe the data center location and security protocols.		
3.3.2 Describe throughput guarantees, bandwidth requirements, uptime, and maintenance schedule.		
3.3.3 Describe redundancy, backup, archiving, and disaster recovery processes.		
3.3.4 Describe space allocation and procedures to request additional space.		
3.3.5 How often are software updates deployed?		
3.3.6 Can you commit to a response time?		
3.3.7 Describe access to server, application, and database files.		
3.3.8 Provide additional related information.		
3.3.9 How is data retrieved? Can data be archived offline?		
3.3.10 How do we receive LMS updates? How often?		
3.3.11 What cloud service are you using, if not your own infrastructure?		
3.4 System Administration		
3.4.1 Does the LMS use Roles and Permissions for users? If so, please explain this feature.		
3.4.2 Are there administrative settings that lock down the look and features of the user interface?		
3.4.3 Describe available customizations to allow institutional branding.		
SYSTEM SUPPORT/TRAINING		
4.1 General Support		
4.1.1 Does the company provide general overview materials?		
4.1.2 Describe the end user support plans available.		

4.1.3 Describe online support materials for students, faculty, and administrators.		
CATEGORY	YES/NO	DETAILED RESPONSE
4.2 IT Help Desk Support		
4.2.1 Is help desk service an extra cost?		
4.2.2 What tiers of support are offered?		
4.2.3 Is 24x7x365 support available?		
4.2.4 What contact methods are available?		
4.3 System Training		
4.3.1 Describe training for LMS and system administrators, including costs.		
4.3.2 Describe other training/support materials and cost structure.		
5.1 Accessibility		
5.1.1 Does the LMS comply with WCAG 2.1 or 2.2 AA standards?		
5.1.2 Does the LMS support extended testing time for individual students within assessments?		
5.1.3 Does the LMS offer special access to users for assessments		
5.1.4 Does the LMS offer an accessibility checker in the content creation tool?		
5.1.5 What other tools does the LMS offer for accessibility?		

SECTION 5: VENDOR INFORMATION AND QUALIFICATIONS

Provide a statement/response to each of the following:

5.1 Identify and provide a statement of qualifications of individuals to be assigned direct responsibility for the services.

5.2 Describe the experience that key personnel have, their length of service with the firm, as well as other relevant skills.

5.3 Describe any related experience.

5.4 Provide a complete description of how the work will be conducted including all quality assurances that are provided in the firm's process for this type of work and detail the amount of time and effort that will be required of WVNET's personnel.

5.5 Provide a proposed schedule that ensures completion of the services by the timeframes as stated in Section 4.

5.6 Provide the names, telephone numbers and mailing addresses of at least one, but no more than three, higher education clients and the contact person from whom references may be obtained for both the firm and the key personnel assigned to the engagement. References should be from clients comparable to the type and scope of services solicited in this RFP.

SECTION 6: BIDDER RESPONSE AND EVALUATION CRITERIA

6.1 Economy of Preparation: Proposals should be prepared simply and economically, providing a straightforward, concise description of the bidder's ability to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

**NOTE: ALL PRICES ARE TO BE PROVIDED IN A SEPARATE SEALED ENVELOPE
LABELED AS PRICING INFORMATION.**

6.2 Proposals should not exceed one hundred (100) pages. Additional material may be included as exhibits to the main proposal.

6.3 A Title Page should be provided. The Title Page is the preferred method of providing the bidder's information. If the bidder does not utilize the Title Page, the bid must provide a cover letter with, at a minimum, the signature of an individual authorized to obligate the company and a date. (Exhibit A)

6.4 The proposal will be evaluated on a one hundred (100) point scale with points assigned as outlined below.

Vendors failing to score at least 70% (or 49 points) for Sections 6.4.1 and 6.4.2 will not be considered to have met the minimum acceptable score. Any vendor not meeting the minimum acceptable score will NOT have their prices opened and will NOT be considered for award of the bid.

6.4.1 Qualifications, Experience and Company Background – 40 points. Responses to Section 5 will be reviewed and evaluated here.

6.4.2 Services – 30 points. Responses to Section 4 will be reviewed and evaluated here.

6.4.3 Price – 30 points. The low bid will receive the full 30 points. Each higher bid will receive a percentage of the 30 points on a ratio basis compared to the low bid cost.

6.4.4 Vendor is to provide an estimated total cost for the services requested. Costs should be broken down into tasks/deliverables. The costs, as proposed in the response, will be used as a basis for payment. In addition, hourly rates for the various levels of staff to be utilized for this project are requested.

6.5 Award will be made to the bidder receiving the highest point total.

6.6 In the event that mutually acceptable terms cannot be reached within a reasonable period of time, with the highest ranked bidder, WVNET reserves the right to undertake negotiations with the next highest ranked bidder and so on until mutually acceptable terms can be reached.

SECTION 7: ADDITIONAL INFORMATION

7.1 By submitting a proposal in response to this RFP, a firm shall be deemed to have accepted all the terms, conditions, and requirements set forth in herein unless otherwise clearly noted and explained in writing. Any exception(s) or additional terms and conditions a firm wishes to offer for consideration must be clearly itemized and explained. Otherwise, the RFP in total shall be incorporated into the contract by reference. The Systems may accept or reject the Firm's proposed exceptions as it deems appropriate and in the best interests of the Systems.

7.2 The State's Agreement Addendum (WV-96) includes the State law and guidelines which must be adhered to in any contracts presented to the Systems for execution. A copy of additional terms and conditions that a firm wishes to offer for consideration should be enclosed with the proposal. The West Virginia Attorney General's Office will review and accept or reject any proposed modifications to the WV-96. (Exhibit F)

TITLE PAGE

The undersigned declares that he/she has read the RFP and that the following proposal is submitted as a good faith response.

The undersigned declares that he/she has the authority to obligate the company.

The undersigned acknowledges receipt of the following addenda, if released. If no addenda are released, this section is to be left blank:

Addendum 1 _____ (initial receipt)

Addendum 2 _____ (initial receipt)

Addendum 3 _____ (initial receipt)

(Signature of Signee)

(Name of Signee)

(Title)

(Company Name)

(Street Address)

(City, State, Zip)

(Telephone Number)

(E-mail)

(Date)

West Virginia Network (WVNET)

Request For Proposals #63000
Learning Management System

EXHIBIT E: ADDENDUM ACKNOWLEDGEMENT

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

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

Addendum Numbers Received:

(Check the box next to each addendum received)

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

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

Vendor/Company Name

Authorized Signature

Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Name, Title)

(Printed Name and Title)

(Address)

(Phone Number) / (Fax Number)

(email address)

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

By signing below, I further certify that I understand the Commission/Institution is requiring the vendor to follow the provisions of WV State Code 5A-3-62 which automatically voids certain contract clauses that violate State law.

(Company)

(Authorized Signature) (Representative Name, Title)

(Printed Name and Title of Authorized Representative)

(Date)

(Phone Number) (Fax Number)

must obtain your correct taxpayer identification number (TIN), which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid).
- Form 1099-DIV (dividends, including those from stocks or mutual funds).
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds).
- Form 1099-NEC (nonemployee compensation).
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers).
- Form 1099-S (proceeds from real estate transactions).
- Form 1099-K (merchant card and third-party network transactions).
- Form 1098 (home mortgage interest), 1098-E (student loan interest), and 1098-T (tuition).
- Form 1099-C (canceled debt).
- Form 1099-A (acquisition or abandonment of secured property).

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

Caution: If you don't return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued);
2. Certify that you are not subject to backup withholding; or
3. Claim exemption from backup withholding if you are a U.S. exempt payee; and
4. Certify to your non-foreign status for purposes of withholding under chapter 3 or 4 of the Code (if applicable); and
5. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting is correct. See *What Is FATCA Reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding. Payments made to foreign persons, including certain distributions, allocations of income, or transfers of sales proceeds, may be subject to withholding under chapter 3 or chapter 4 of the Code (sections 1441–1474). Under those rules, if a Form W-9 or other certification of non-foreign status has not been received, a withholding agent, transferee, or partnership (payor) generally applies presumption rules that may require the payor to withhold applicable tax from the recipient, owner, transferor, or partner (payee). See Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

The following persons must provide Form W-9 to the payor for purposes of establishing its non-foreign status.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the disregarded entity.
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the grantor trust.
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust and not the beneficiaries of the trust.

See Pub. 515 for more information on providing a Form W-9 or a certification of non-foreign status to avoid withholding.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person (under Regulations section 1.1441-1(b)(2)(iv) or other applicable section for chapter 3 or 4 purposes), do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515). If you are a qualified foreign pension fund under Regulations section 1.897(l)-1(d), or a partnership that is wholly owned by qualified foreign pension funds, that is treated as a non-foreign person for purposes of section 1445 withholding, do not use Form W-9. Instead, use Form W-8EXP (or other certification of non-foreign status).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a saving clause. Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if their stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first Protocol) and is relying on this exception to claim an exemption from tax on their scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include, but are not limited to, interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third-party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester;
2. You do not certify your TIN when required (see the instructions for Part II for details);
3. The IRS tells the requester that you furnished an incorrect TIN;
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only); or
5. You do not certify to the requester that you are not subject to backup withholding, as described in item 4 under "*By signing the filled-out form*" above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier.

What Is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all U.S. account holders that are specified U.S. persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you are no longer tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

• **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note for ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040 you filed with your application.

• **Sole proprietor.** Enter your individual name as shown on your Form 1040 on line 1. Enter your business, trade, or “doing business as” (DBA) name on line 2.

• **Partnership, C corporation, S corporation, or LLC, other than a disregarded entity.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

• **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. Enter any business, trade, or DBA name on line 2.

• **Disregarded entity.** In general, a business entity that has a single owner, including an LLC, and is not a corporation, is disregarded as an entity separate from its owner (a disregarded entity). See Regulations section 301.7701-2(c)(2). A disregarded entity should check the appropriate box for the tax classification of its owner. Enter the owner’s name on line 1. The name of the owner entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For

example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2. If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, enter it on line 2.

Line 3a

Check the appropriate box on line 3a for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3a.

IF the entity/individual on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation.
• Individual or • Sole proprietorship	Individual/sole proprietor.
• LLC classified as a partnership for U.S. federal tax purposes or • LLC that has filed Form 8832 or 2553 electing to be taxed as a corporation	Limited liability company and enter the appropriate tax classification: P = Partnership, C = C corporation, or S = S corporation.
• Partnership	Partnership.
• Trust/estate	Trust/estate.

Line 3b

Check this box if you are a partnership (including an LLC classified as a partnership for U.S. federal tax purposes), trust, or estate that has any foreign partners, owners, or beneficiaries, and you are providing this form to a partnership, trust, or estate, in which you have an ownership interest. You must check the box on line 3b if you receive a Form W-8 (or documentary evidence) from any partner, owner, or beneficiary establishing foreign status or if you receive a Form W-9 from any partner, owner, or beneficiary that has checked the box on line 3b.

Note: A partnership that provides a Form W-9 and checks box 3b may be required to complete Schedules K-2 and K-3 (Form 1065). For more information, see the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

If you are required to complete line 3b but fail to do so, you may not receive the information necessary to file a correct information return with the IRS or furnish a correct payee statement to your partners or beneficiaries. See, for example, sections 6698, 6722, and 6724 for penalties that may apply.

Line 4 Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third-party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space on line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).

- 2—The United States or any of its agencies or instrumentalities.
- 3—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities.
- 5—A corporation.
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or territory.
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission.
- 8—A real estate investment trust.
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940.
- 10—A common trust fund operated by a bank under section 584(a).
- 11—A financial institution as defined under section 581.
- 12—A middleman known in the investment community as a nominee or custodian.
- 13—A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
• Interest and dividend payments	All exempt payees except for 7.
• Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
• Barter exchange transactions and patronage dividends	Exempt payees 1 through 4.
• Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5. ²
• Payments made in settlement of payment card or third-party network transactions	Exempt payees 1 through 4.

¹ See Form 1099-MISC, Miscellaneous Information, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) entered on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37).

B—The United States or any of its agencies or instrumentalities.

C—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i).

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i).

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state.

G—A real estate investment trust.

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940.

I—A common trust fund as defined in section 584(a).

J—A bank as defined in section 581.

K—A broker.

L—A trust exempt from tax under section 664 or described in section 4947(a)(1).

M—A tax-exempt trust under a section 403(b) plan or section 457(g) plan.

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, enter "NEW" at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have, and are not eligible to get, an SSN, your TIN is your IRS ITIN. Enter it in the entry space for the Social security number. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/EIN. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or Form SS-4 mailed to you within 15 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and enter "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, you will generally have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon. See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier, for when you may instead be subject to withholding under chapter 3 or 4 of the Code.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third-party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABL accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))**	The grantor*

For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing Form 1041 or under the Optional Filing Method 2, requiring Form 1099 (see Regulations section 1.671-4(b)(2)(i)(B))**	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name on line 1, and enter your business or DBA name, if any, on line 2. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

* **Note:** The grantor must also provide a Form W-9 to the trustee of the trust.

** For more information on optional filing methods for grantor trusts, see the Instructions for Form 1041.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information, such as your name, SSN, or other identifying information, without your permission to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax return preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity, or a questionable credit report, contact the IRS Identity Theft Hotline at 800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 877-777-4778 or TTY/TDD 800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Go to www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and territories for use in administering their laws. The information may also be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payors must generally withhold a percentage of taxable interest, dividends, and certain other payments to a payee who does not give a TIN to the payor. Certain penalties may also apply for providing false or fraudulent information.

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 _____

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

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

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service: Learning Management System

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 12. **STATUTE OF LIMITATIONS** - Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT-The** Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** - Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** - Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** -All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** - Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

- 19. **THIRD-PARTY SOFTWARE-If** this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's 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 ~~striketrough~~ 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: _____

Vendor: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____