

REQUEST FOR PROPOSAL

BRIM RFP #RIM11012023

West Virginia Board of Risk and Insurance Management – Broker Services RFP

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SECTION 1: GENERAL INFORMATION

Introduction:

The West Virginia Board of Risk and Insurance Management (BRIM) is issuing this solicitation as a request for proposal ("RFP") for Broker Services in accordance with the provisions of Section 5, Article 12, Chapter 29 of the W. Va. Code and Title 115 of the WV Code of State Rules, Series 9.

The RFP is a procurement method in which vendors submit proposals in response to the request for proposal published by BRIM. It requires an award to the highest scoring vendor, rather than the lowest cost vendor, based upon a technical evaluation of the vendor's technical proposal and a cost evaluation. This is referred to as a best value procurement. Through their proposals, vendors offer a solution to the objectives, problem, or need specified in the RFP, and define how they intend to meet the RFP requirements.

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of the RFP. Emphasis should be concentrated on conformance and clarity of content.

RFP Schedule of Events:

RFP Released to Public.....	November 14, 2023
Vendor's Written Questions Submission Deadline.....	December 1, 2023
Addendum Issued.....	December 15, 2023
Bid Due Date.....	January 5, 2024
Oral Presentations.....	January 16 – January 19, 2024
Contract Award Target Date.....	March 1, 2024

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SECTION 2: INSTRUCTIONS TO VENDORS SUBMITTING BIDS

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

2. MANDATORY TERMS: The Solicitation may contain mandatory provisions identified using the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

3. PREBID CONFERENCE: The item identified below shall apply to this Solicitation.

☒ A **pre-bid conference** will **not** be held.

☐ A **MANDATORY PRE-BID conference** will be held virtually at the following place and time:

4. VENDOR QUESTION DEADLINE: Vendors may submit questions relating to this Solicitation to BRIM. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are non-binding.

Submitted e-mails should have the solicitation number in the subject line.

Question Submission Deadline: December 1, 2023

Submit Questions to:

WV Board of Risk and Insurance Management

1124 Smith Street, Suite 4300

Charleston, WV 25301

Email: briminquiries@wv.gov

5. VERBAL COMMUNICATION: Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by BRIM is binding.

6. BID SUBMISSION: All bids must be signed and delivered by the Vendor to BRIM at the address listed below on or before the date and time of the bid opening. Any bid received by BRIM staff is in the possession of BRIM and will not be returned for any reason. BRIM will not accept bids, modification of bids, or addendum acknowledgment forms via email. Acceptable delivery methods include hand delivery, delivery by courier or U.S. Mail.

The bid delivery address is:

WV Board of Risk and Insurance Management

1124 Smith Street, Suite 4300

Charleston, WV 25301

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A bid should contain the information listed below on the face of the envelope or the bid may be rejected by BRIM.

SOLICITATION NO: BRIM RFP#RIM11012023

BID DUE DATE: January 5, 2024

For Request for Proposal ("RFP") Responses Only: If Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus four (4) convenience copies of each to BRIM at the address shown above. Additionally, the Vendor should clearly identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal.

7. BID DUE DATE: Bids submitted in response to this Solicitation are due at the location identified below on the date and time listed below. Delivery of a bid after the bid due date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when the bid is time stamped by BRIM.

Bid Due Date and Time:

Bid must be Submitted by 3:00 pm (eastern daylight time) on January 5, 2024, at this location:

WV Board of Risk and Insurance Management
1124 Smith Street, Suite 4300
Charleston, WV 25301

8. ADDENDUM ACKNOWLEDGEMENT: Changes or revisions to this Solicitation will be made by an official written addendum issued by the BRIM. Vendors should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement form should be submitted with the bid to expedite document processing.

9. BID FORMATTING: Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

10. EXCEPTIONS AND CLARIFICATIONS: The Solicitation contains the specifications that shall form the basis of a contractual agreement. The vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

11. COMMUNICATION LIMITATIONS: In accordance with West Virginia Code of State Rules §115-9-5.1.8., communication with the State of West Virginia or any of its employees regarding this Solicitation outside of the process set forth herein during the solicitation, bid, evaluation, or award periods is strictly prohibited.

12. REGISTRATION: Prior to the Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must pay the \$125 fee, if applicable.

13. WAIVER OF MINOR IRREGULARITIES: BRIM reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 115-9-5.1.4.

14. NON-RESPONSIBLE: BRIM reserves the right to reject the bid of any vendor as non-

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responsible in accordance with W. Va. Code of State Rules § 115-9-7.9., when BRIM determines that the vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.

15. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part in accordance with the W.Va. Code of State Rules § 115-9-5.1.2.

16. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as provided by West Virginia Code of State Rules § 115-9-7.14. and the Freedom of Information Act in West Virginia Code §§ 29B-1-1 *et seq.*

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

Submission of any bid, proposal, or other document to BRIM constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. BRIM will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 *et seq.* All submissions are subject to public disclosure without notice.

17. INTERESTED PARTY DISCLOSURE: West Virginia Code § 6D-1-2 requires that the vendor submit a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 Million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to the contract award. A copy of that form is included with this solicitation 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.

18. WITH THE BID REQUIREMENTS: In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, BRIM reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under W. Va. Code of State Rules § 115-9-5.1.4. This authority does not apply to instances where state law mandates receipt with the bid.

SECTION 3: GENERAL TERMS AND CONDITIONS

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the BRIM Executive Director, or his/her designee, constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

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

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the

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State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Approach" or "methodology" means a detailed statement that accurately and fully explains a process, practice, or rule that will be used by the vendor to accomplish the goals or deliverables set forth in the RFP. A statement that a goal can be accomplished without providing the approach or methodology to do so will be insufficient.

2.3. "Award Document" means the document signed by BRIM that identifies the Vendor as the contract holder.

2.4. "Bid" or "Proposal" means the vendor's submitted response to this solicitation.

2.5. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.6. "Director" or "Executive Director" means the Executive Director of BRIM.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by BRIM.

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

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

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined as set forth below:

Term of Contract

Initial Contract Term: This Contract is anticipated to become effective on March 1, 2024, for a one (1) year term.

Renewal Term: This Contract may be renewed upon the mutual written consent of BRIM and the Vendor. Any request for renewal should be delivered to BRIM thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified herein, renewal of this Contract is limited to four (4) successive one-year renewal periods. Automatic renewal of this Contract is prohibited. Renewals must be approved in writing by the Vendor, BRIM, and any other state entity that may be required.

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

5. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior

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to Contract award. The insurance coverage identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendors must also provide the Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancellation, 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 the Contract award regardless of whether that. Insurance requirements are listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1 million per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: \$1 million per occurrence

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

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of _____ per occurrence.

☒ **Cyber Liability Insurance** in at least an amount of: \$1 million per occurrence.

☐ **Builder's Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: _____per occurrence.

☐ **Unmanned Aircraft Aviation Liability** in an amount of: \$1 million per occurrence.

☐ **Employer Liability** in an amount of: \$1 million per occurrence.

Notwithstanding anything contained in this section to the contrary, BRIM reserves the right to waive or modify the insurance requirements if the Director finds that doing so is in the State's best interest.

6. WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall comply with all laws relating to workers' compensation and shall maintain workers' compensation insurance as required by statute.

7. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

8. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.

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9. PAYMENT IN ARREARS: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices in arrears.

10. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer 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.)

11. 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.

12. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia or included in the bid that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of the vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

13. 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.

14. CANCELLATION: BRIM 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. BRIM may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 115-9-6.5. and in accordance with the WV 96 form attached.

15. TIME: Time is of the essence regarding all matters of time and performance in this Contract.

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

17. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations, and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

18. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or other documents pertaining to this Contract are hereby deleted, void, and of no effect.

19. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract, to the contrary no modification of this Contract shall be binding without

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mutual written consent of BRIM and the Vendor. Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by BRIM prior to the implementation of the change or commencement of work affected by the change.

20. 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.

21. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede all subsequent terms and conditions which may appear on any form documents submitted by Vendor to BRIM 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.

22. 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 BRIM and any other government agency or office that may be required to approve such assignments.

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

24. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

25. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

26. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as provided in West Virginia Code of State Rules § 115-9-7.14. and the Freedom of Information Act in West Virginia Code §§ 29B-1-1 *et seq.*

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

Submission of any bid, proposal, or other document to BRIM constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. BRIM will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 *et seq.* All submissions are subject to public disclosure without notice.

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27. LICENSING: In accordance with West Virginia Code of State Rules § 115-9-7.11., Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable BRIM 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. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

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

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

The 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 should be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

30. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers'

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Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

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

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

32. PURCHASING AFFIDAVIT, WV 96 Form and Code: In accordance with West Virginia Code §5A-3-10a and §5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. Vendors are required to sign, notarize, and submit the Purchasing Affidavit affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state. In addition, Vendor must sign the WV 96 Form attached, the terms of which are non-negotiable.

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

34. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

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

35. 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 Agency a supplemental disclosure of interested parties reflecting any new or differing interested

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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 solicitation 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.

36. VOID CONTRACT CLAUSES: This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

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.

(Printed Name, Title)

(Address)

(Phone Number, FAX Number)

(Email Address)

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

(Company)

(Authorized Signature)

(Printed Name, Title of Authorized Signature)

(Phone Number, FAX Number)

(Date)

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ADDENDUM ACKNOWLEDGEMENT FORM SOLICITATION NO.:

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

Acknowledgement: 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)

- ☐ Addendum No. 1
- ☐ Addendum No. 2
- ☐ Addendum No. 3
- ☐ Addendum No. 4
- ☐ Addendum No. 5
- ☐ Addendum No. 6
- ☐ Addendum No. 7
- ☐ Addendum No. 8
- ☐ Addendum No. 9
- ☐ Addendum No. 10

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

(Company)

(Authorized Signature)

(Date)

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

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SECTION 4: PROJECT SPECIFICATIONS

4.1. Background:

BRIM operates one office that is located at Suite 4300, 1124 Smith Street, Charleston, West Virginia 25301. Fully staffed, BRIM has 27 staff members organized into the following departments: Executive (3 employees), Claims (6 employees), Finance (5 employees), Underwriting (5 employees), Loss Control (5 employees), and the State Privacy Office (3 employees).

BRIM is responsible for the Insurance and Risk Management needs of the State of West Virginia, except for Workers Compensation coverage and state employee health insurance. BRIM secures property and casualty insurance coverage for West Virginia state agencies. All state agencies are required to obtain liability and property coverage through BRIM. In addition to the state insurance program, BRIM is authorized to provide property and liability insurance to political subdivisions, charitable or public service organizations and emergency services agencies, if they request BRIM to do so, under the non-state program (BRIM's Public Entities Program). The non-state program functions as an alternative to the commercial market for political subdivisions, charitable or public service organizations, and emergency services agencies. BRIM provides coverage to approximately 170 state agencies through the state program and approximately 1,000 non-state entities through the public entities program. Like state entities, the Boards of Education are required to purchase their liability coverage from BRIM; this coverage is also provided through the non-state program. The Boards of Education may, but are not required to, purchase property insurance through BRIM.

BRIM currently provides liability (commercial general liability, personal injury liability, professional liability, stop gap liability, and wrongful act liability) and auto coverages, as well as Boiler and Machinery, Aviation Fleet, Statutory Bond, and Cyber Liability Coverage. BRIM is required by statute to also provide excess liability coverage in the amount of \$5 million for Boards of Education. BRIM also provides flood coverage for state agencies consistent with FEMA requirements.

4.2. Project Goals and Mandatory Requirements: BRIM invites proposals from qualified applicants for broker services.

This bid will result in a contract with one firm. No market contract is authorized for the purpose of responding to this RFP.

The vendor's proposal should clearly describe in detail its approach and methodology to providing the services sought in this solicitation and how its proposed solution will solve any problems described to meet the goals/objectives identified below. The vendor's response should include any information about how the proposed approach is superior or inferior to other possible approaches.

4.2.1. Goals and Objectives – The project goals and objectives are listed below.

4.2.1.1. This solicitation seeks the services of an insurance broker to develop an understanding of BRIM's current liability program (Appendix A).

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4.2.1.2. The solicitation services include evaluating current manuscript insurance policies and making recommendations concerning any gaps, changes or modifications in the terms, conditions and coverage limits needed to protect the interests of the two programs.

4.2.1.3. The solicitation services include designing specifications for marketing BRIM's liability insurance program, including developing and maintaining underwriting related information, assisting in the completion of all applications, documents and gathering data, which may be requested by insurance companies. This will include a true-transfer program and current program format. This process will also be required for each renewal.

4.2.1.4. The solicitation services include providing insurance expertise and evaluation of insurance market proposals received, negotiating changes for the benefit of BRIM, and verifying reasonableness of the price for coverage provided options.

4.2.1.5. The solicitation services include administering and placing liability coverages and provide original binders, policies, and endorsements. This will also include review of Binders with BRIM and requesting any endorsements, changes and revisions that may be required.

4.2.1.6 The solicitation services include obtaining from the insurer(s) the insurance policies, endorsements, and related documentation. BRIM will review all documents and advise if any revision is needed. The broker would facilitate such revisions.

4.2.1.7. The solicitation services include monitoring the financial strength of the insurance company and updating BRIM in the event the A.M. Best rating reduces below "A-".

4.2.1.8 The solicitation services include preparation of an insurance schedule of policies, names of carrier(s), term, limits of liability, deductibles, retentions, payment plans and estimated annual premium.

4.2.1.9. The solicitation services include recommending alternative risk financing vehicles to reduce BRIM's cost of risk.

4.2.1.10. The vendor must submit a proposal that illustrates that it has the resources to provide the services sought, and that describes how it will provide the services to meet the goals/objectives described in part 4.2.1. of this solicitation.

4.2.1.11. The vendor must designate a contact person for administrative purposes throughout the term of the contract.

4.2.2. Mandatory Project Requirements – The following mandatory requirements must clearly and concisely illustrate how the vendor will meet the goals and objectives described above, which are the services expected from this RFP. Failure to comply with mandatory requirements will lead to disqualification, but the approach/methodology that the vendor uses to comply will be

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included in technical scores where appropriate. The mandatory project requirements are listed below.

4.2.2.1. The vendor and its staff assigned to perform services under the contract must have at least 5 years of experience in providing broker services.

4.2.2.2. The vendor must provide three (3) examples of current clients that are like BRIM and serviced by the same personnel proposed to be directly assigned to service BRIM's account. Indicate lines of coverage, services offered, size and nature of client.

4.2.2.2. The vendor must provide a minimum of 3 references from prior clients.

4.2.2.3. The vendor must clearly and concisely describe how the vendor will meet each of the goals and objectives set forth in 4.2.1. above. If the vendor is unable to provide services designed to meet each of the goals and objectives, the vendor must identify those and provide any alternatives approaches that the vendor may suggest that BRIM consider achieving the overall goals and objectives.

4.3. Qualifications and Experience: Vendor should provide information and documentation regarding its qualifications and experience in performing liability and claims audits of state insurance programs and self-insured entities. Information and documentation should include, but is not limited to, copies of any staff certifications or training applicable to this project, proposed staffing plans, descriptions of past similar projects completed (descriptions should include the location of the project, project manager name and contact information, and how the goals of the project were met), references for prior projects, and any other information that vendor deems relevant to the items identified as desirable or mandatory below.

4.3.1. The vendor should provide information relevant to this RFP about vendor and vendor's firm or organization, including:

- The organization's structure, ownership, control, history, and staffing numbers.
- The organization's experience and capabilities in providing services sought in this proposal.
- All qualifications, education, degrees, certifications, resumes, curriculum vitae, licenses, length of time in profession, and any other information or background regarding the vendor and staff that would be assigned to this RFP that the vendor believes would set itself apart from other vendors, and include copies of any staff certifications, degrees, licenses, and the like.

If any vendor currently or in the past has provided services to BRIM, it will not suffice to merely reference that relationship without providing further evidence to meet qualification and experience requirements.

4.3.2. Mandatory Qualification/Experience Requirements The following mandatory qualification/experience requirements must be met by the Vendor as a part of its submitted proposal. Vendor should describe how it meets the mandatory requirements.

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Failure to comply with mandatory qualification/experience requirements will lead to disqualification. The mandatory qualifications/experience requirements are listed below.

4.3.2.1. The vendor needs to provide a description of their insurance marketing philosophy, office structure, and describe their access to the global marketplace. Additionally provide commentary on how your firm stays abreast of changes in the marketplace.

4.3.2.2. The vendor needs to describe market strategy, how renewal processes are managed, incorporate analytics, and holds team members accountable for meeting deadlines.

4.3.2.4. The Vendor must demonstrate that it has the training, licenses, and experience necessary to meet all the project goals and objectives in section 4.2.1 and must provide resumes or CVs for staff that will provide services under the contract.

4.4. Oral Presentations (Agency Option): The Agency has the option of requiring oral presentations of all Vendors participating in the RFP process. If this option is exercised, it would be listed in the Schedule of Events (Section 1) of this RFP. During oral presentations, Vendors may not alter or add to their submitted proposal, but only clarify information. Consistent with BRIM's commitment to the safety of its staff and that of vendors during the COVID-19 pandemic, oral presentations will be conducted virtually. The Vendor will be expected to respond to questions from BRIM to clarify the Vendor's bid submission and to address any ambiguity.

SECTION 5: VENDOR PROPOSAL

5.1. Economy of Preparation: Proposals should be prepared simply and economically providing a concise description of the items requested in Section 4. Emphasis should be placed on completeness and clarity of the content.

5.2. Incurring Cost: Neither the State nor any of its employees or officers shall be held liable for any expenses incurred by any Vendor responding to this RFP, including but not limited to preparation, delivery, or travel.

5.3. Proposal Format: Vendors should provide responses in the format listed below:

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

5.3.2. Title Page: State the RFP subject, number, Vendor's name, business address, telephone number, fax number, name of contact person, e-mail address, and Vendor signature and date.

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

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5.3.4. Response Reference: Vendor's response should clearly reference how the information provided applies to the RFP request. For example, listing the RFP number and restating the RFP request as a header in the proposal would be considered a clear reference.

5.3.5. Proposal Submission: All proposals must be submitted to BRIM by the time and date and time stipulated in the RFP as the opening date. All submissions must be in accordance with the provisions listed in Section 2: Instructions to Bidders Submitting Bids.

SECTION 6: EVALUATION AND AWARD

6.1. Evaluation Process: Proposals will be evaluated in two parts by a committee of three (3) or more individuals. The first evaluation will be of the technical proposal and the second is an evaluation of the cost proposal. The Vendor who demonstrates that it meets all the mandatory specifications required, attains the minimum acceptable score, and attains the highest overall point score of all Vendors shall be awarded the contract.

6.2. Evaluation Criteria: Proposals will be evaluated based on criteria set forth in the solicitation and information contained in the proposals submitted in response to the solicitation. The technical evaluation will be based upon the point allocations designated below for a total of 70 of the 100 points. Cost represents 30 of the 100 total points.

Evaluation Point Allocation:

Project Goals and Proposed Approach (§ 4.2)	
- Approach & Methodology to Goals/Objectives (§ 4.2.1)	15 Points Possible
- Approach & Methodology to Compliance with Mandatory Project Requirements (§ 4.2.2)	15 Points Possible

Qualifications and experience (§ 4.3)	
- Qualifications and Experience Generally (§ 4.3.1)	10 Points Possible
- Mandatory Qualification/Experience Requirements (§ 4.3.2)	10 Points Possible

<u>Oral Presentation (§ 4.4)</u>	<u>20 Points Possible</u>
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<u>Total Technical Score:</u>	<u>70 Points Possible</u>
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<u>Total Cost Score:</u>	<u>30 Points Possible</u>
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<u>Total Proposal Score:</u>	<u>100 Points Possible</u>
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6.3. Technical Bid Opening: The BRIM evaluation committee will open the technical bids after passage of the bid submission deadline. Only bids received prior to the deadline will be opened.

6.4. Technical Evaluation: The BRIM evaluation committee will review the technical proposals, assign points where appropriate, and make a final recommendation to BRIM management.

6.5. Proposal Disqualification:

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

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

6.6. Cost Bid Opening: The BRIM evaluation committee will schedule a date to open cost proposals after the technical evaluation has been completed and the technical recommendation of the evaluation committee has been made. All cost bids received will be opened. Cost bids for disqualified proposals will be opened for record-keeping purposes only and will not be evaluated or considered.

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

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

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

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

Example:

Proposal 1 Cost is \$1,000,000

Proposal 2 Cost is \$1,100,000

Points Allocated to Cost Proposal is 30

Proposal 1: Step 1 – $\$1,000,000 / \$1,000,000 = \text{Cost Score Percentage of 1 (100\%)}$

Step 2 – $1 \times 30 = \text{Total Cost Score of 30}$

Proposal 2: Step 1 – $\$1,000,000 / \$1,100,000 = \text{Cost Score Percentage of 0.909091}$

(90.9091%)

Step 2 – $0.909091 \times 30 = \text{Total Cost Score of 27.27273}$

6.8. Availability of Information: Entire proposal submissions become public and are available for review immediately after opening pursuant to West Virginia Code of State Rules §115-9-7.14. All other information associated with the RFP, including but not limited to, technical scores and reasons for disqualification, will not be available until after the contract has been awarded.

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By signing below, I certify that I have reviewed this Request for Proposal in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that, to the best of my knowledge, the bidder has properly registered with any State agency that may require registration.

(Company)

(Signature)

(Printed Name, Title)

(Contact Phone Number, Fax Number)

(Date)

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Attachment A: Cost Sheet

THE PRICE QUOTED ABOVE SHOULD INCLUDE ALL EXPENSES, INCLUDING BUT NOT LIMITED TO, TRAVEL, LODGING, OVERHEAD, STAFF, ETC. NO SEPARATE BILLING WILL BE ALLOWED

Outline all costs to be incurred by the state:

Total costs for year 1 of the contract period:

Total cost for year 2 of the contract period:

Total cost for year 3 of the contract period:

Total cost for year 4 of the contract period:

All travel, overhead, and other general business costs must be included in the total annual costs set forth for each year.

Fees may not be increased during the term of the contract unless agreed to in writing by the parties.

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Appendix A – Current Liability Program

The liability insurance coverage program currently includes:

- Automobile physical damage and liability coverage for all state-owned and leased vehicles, and vehicles owned or leased by non-state entities that participate in the casualty insurance program.
- Professional liability, including medical professional liability specifically for the teaching universities.
- General liability.
- Wrongful acts liability, including police professional liability.
- Personal injury liability.
- Stop Gap (deliberate intent) liability.
- \$5 million Excess liability for k-12 boards of education
- \$1 million shared limit per occurrence for all liability coverage (see explanation below) except for a higher professional liability limit for the three medical schools and other select organizations.
- \$2,500 deductible applies to the liability claims of non-state entities. Currently, no deductible applies to the liability claims of state agencies.
- \$1,000 deductible applies to all automobile physical damage claims.

BRIM's liability policy is made up of five separate coverage parts; each of which could stand as its own policy. Each has its own insuring agreement, conditions, and exclusions. The policy has common conditions, definitions, and endorsements. The Wrongful Acts Liability Insurance coverage part deserves special mention. A Wrongful Act is defined as "...any actual or alleged act, breach of duty, neglect, error, misstatement, misleading statement, or omission by the **"insured(s)"** in the performance of their duties for the **"Named Insured"**, individually or collectively, or any matter claimed against them solely by reason of their being or having been **"insured(s)"**." Although there are limitations to the coverage, it does encompass many diverse types of claims.

BRIM's policy only pays such sums as the insured is legally obligated to pay as damages. The most we will pay as damages is \$1,000,000 per occurrence, regardless of the number of multiple insureds that are involved in the same occurrence. The limit of liability is exclusive of defense costs.

The State of West Virginia is constitutionally immune to any damages not covered by insurance. In the absence of legal liability, injured parties may make a claim with the West Virginia Court of Claims, which was established to address the moral obligations of the State of West Virginia Legislative Claims Commission.

In addition to constitutional immunity, political subdivisions (other than the state) enjoy the statutory immunities provided in W. Va. Code § 29-12A-1 *et seq.* These immunities were created by the legislature at the time BRIM became involved in insuring these subdivisions. There was a liability insurance crisis at the time and coverage was virtually non-existent for such entities. This code section was enacted to limit a political subdivision's liability and to make them more attractive to the commercial insurance market. The state Supreme Court has consistently upheld these immunities.

BRIM assesses state agencies and non-state entities an annual premium to participate in the casualty insurance program. State agency premiums amount to approximately \$52 million annually. Non-state entities' premiums amount to approximately \$38 million annually. Administrative expenses to operate the casualty insurance program are proportionately spread amongst all the programs BRIM operates.

In the mid 1970's, BRIM entered into an agreement with Continental Casualty Company (CNA) as our "fronting" liability insurance carrier. The contract was written on an incurred loss basis with a Loss Conversion Factor (LCF). This arrangement existed for approximately 20 years with minor modifications.

For the fiscal year starting July 1, 1995, BRIM chose AIG to be the carrier for our fronted casualty insurance program. This fronted arrangement is a vehicle that essentially allows BRIM to self-fund its own risks. The contract is a modified paid loss retrospectively rated program and is still in existence currently. The contract is due to expire on June 30, 2025.

The AIG contract for the years 1995-2005 required an annual premium deposit of \$24 million to AIG. For years 2006 to current, BRIM fully funds trusts maintained by the Bank of New York based on an annual actuarial projection. Our insurer is the beneficiary of the trust and is allowed to draw down from the trust to pay losses

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from the liability program. A Loss Provision Escrow Account is held by AIG to avoid risk to the principal. If additional monies are needed in any particular year, beyond that originally projected, BRIM provides that money. AIG is compensated for claim handling by a flat fee.

On March 19, 1997, BRIM entered into a separate agreement with AIG and CNA, whereby all open claims that existed and were currently being handled by CNA, were novated to AIG. AIG assumed handling of the open claims that were previously handled by CNA, on April 4, 1997, at 5:00 p.m.

The policies of insurance are written on AIG paper (National Union Fire Insurance Company of Pittsburgh). There exists one auto and one other liability policy each for state and non-state entities, respectively, for a total of four (4) policies. These master policies are issued to the State of West Virginia and individual certificates of insurance are issued to each additional insured participating in the liability program.

State insurance coverage is centralized under the control of BRIM. The Legislature has found that "good business practices and insurance practices and principles necessitate the centralization of responsibility for the purchase, control and supervision of [state] insurance coverage...and the cooperation and coordination of all state officials, departments and employees in the development and success of a centralized state insurance program," *W. Va. Code §29-12-1*. BRIM "has, without limitation and in its discretion as it deems necessary for the benefit of the insurance program, general supervision and control over the insurance of state property, activities and responsibilities..." *W. Va. Code §29-12-5(a) (1) [2004]*. BRIM is separate and apart from the West Virginia Office of the Insurance Commissioner and is not subject to those statutes that govern commercial carriers.

There is an office situated in Charleston, West Virginia dedicated to claim processing, reserving, adjudication, and payment of all claims generated by the BRIM casualty insurance program. Adjusters attend mediations, hearings, etc., throughout the state and have a valid West Virginia adjuster's license issued by the Office of the West Virginia Insurance Commissioner. BRIM will not permit, except in special circumstances and with BRIM's prior permission, any claim to be handled by an adjuster located outside the State of West Virginia.

The current program uses Special Claim Handling Instructions and a well-planned litigation management program. AIG provides an on-line, real-time read only access risk management information system (claim information system), that includes adjuster notes and a SAS-70 type-11 audit. AIG provides financial claim detailed information on a daily transactional basis on claims that includes but is not limited to payment and reserve information. AIG utilizes a third-party to collect the \$2,500 liability deductible: collecting from the insured within 30 days and providing a monthly accounting of results to BRIM. BRIM will terminate an entity's participation in the program with 30 days' notice if the entity defaults in making reimbursement. AIG is also responsible for collecting all subrogation and reporting on the recovery efforts and amount.

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Appendix B

West Virginia Code §5A-3-10a

WV Purchasing Affidavit

WV – 96

WEST VIRGINIA CODE: §5A-3-62

§5A-3-62. Prohibited contract clauses.

(a) Any term or condition in any contract entered into by the state shall be void ab initio to the extent that it requires the state to:

- (1) Indemnify or hold harmless any entity;
- (2) Agree to binding arbitration or any other binding extra-judicial dispute resolution process;
- (3) Limit liability for direct damages for bodily injury, death, or damage to property (tangible or intangible) caused by the negligence or willful misconduct of such person's employees or agents;
- (4) Agree to shorten statutes of limitation established by this code;
- (5) Allow automatic renewal of contracts without express written consent of the state;
- (6) Agree to payment in advance (unless specifically authorized by statute or the policy of the West Virginia State Auditor);
- (7) Agree to jurisdiction anywhere other than a court authorized by the West Virginia Legislature to hear the dispute;
- (8) Be governed by any law other than the laws of the State of West Virginia or required federal law;
- (9) Pay court costs;
- (10) Pay taxes;
- (11) Waive defenses;
- (12) Permit assignment of contracts without express written consent from the state;
- (13) Treat information as confidential contrary to the state's disclosure responsibilities under any applicable bid disclosure laws and the Freedom of Information Act;
- (14) Agree to unsigned third-party terms and conditions;
- (15) Limit the state's ability to cancel a contract for convenience with 30 days' notice;
- (16) Give up its ownership rights or interest in any information or data, including confidential information, provided to, or collected by, a vendor on behalf of the state;

(17) Maintain any type of insurance; or

(18) Permit modification of contract terms without prior approval from the state.

(b) No official, employee, agent, or representative of the state has the authority to contravene this section, and no oral or written expression of consent to any term or condition declared void ab initio by this section, or signature on a contract, may be deemed as such. Any contract that contains a term or condition declared void ab initio by this section shall otherwise be enforceable as if it did not contain such term or condition. All contracts entered into by the state, except for contracts with another government, shall be governed by West Virginia law notwithstanding any term or condition to the contrary.

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code §61-5-3*) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20____.

My Commission expires _____, 20____.

AFFIX SEAL HERE

NOTARY PUBLIC _____

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

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

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that 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 ~~strike through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: _____

Vendor: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____