

1. **Acceptance of Terms:** By fulfilling a Marshall University Purchase Order (PO), the party to which this PO is issued ("Vendor") agrees to furnish the goods or services covered by this PO and to be bound by and to comply with the terms and conditions herein, including all particulars. Written acceptance (including, but not limited to, signature on this PO or any related proposal, addendum, agreement or contract) or shipment of all or any portion of the goods or the performance of all or any portion of the services covered by this PO shall constitute unqualified acceptance of the terms and conditions herein. No other terms or conditions shall be binding upon the parties unless such terms and conditions have expressly been agreed to in writing and signed by both parties. The terms and conditions of this PO shall prevail should any contradiction arise between any terms and conditions provided by the Vendor. The terms and conditions of any proposal, bid or contract referred to in this PO are included and made part of the PO only to the extent of specifying the nature of the goods or services ordered, the price thereof and delivery date, and then only to the extent that such terms are consistent with the terms and conditions herein.
2. **Modifications:** This writing is the parties' final expression of intent. No modification of this PO shall be binding unless agreed to in writing by Marshall University and Vendor.
3. **Subsequent Forms:** These terms and conditions shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the University such as price lists, order forms, invoices, sales agreements, service agreements, or maintenance agreements, and includes internet websites or other electronic or linked documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
4. **Packing and Shipping:** All items must be suitably packed and prepared for shipment to secure the lowest transportation rates and comply with carrier regulations. No charges will be paid by Marshall University for packing, crating, or cartage unless stated in the order. All shipments to be forwarded on one day via one route must be consolidated. Vendor must ship goods through a properly insured carrier. The Vendor shall be totally responsible for any damages to Marshall University property during delivery, assembly, installation/placement of the goods and/or the furnishing of the services described herein and shall repair or cause to be repaired at its expense any such damages in a manner satisfactory to Marshall University.
5. **Delivery, Inspection and Acceptance:** All deliveries will be "Free on Board "(FOB) destination unless Marshall University expressly and knowingly agrees otherwise, in writing. Any contrary delivery terms are hereby deleted. All pricing must be delivered priced. All deliveries are at risk of loss and/or title to the goods will not pass to Marshall University until the goods are accepted at the delivery destination, subject to inspection for hidden damage or failure to meet specifications and acceptance as defined herein. Damaged/unacceptable goods shall be rejected and will be returned at Vendor's expense for full credit or replacement, at Marshall University sole option. Marshall University reserves the right to test any goods, or services delivered to determine that specifications have been met. No goods returned as defective shall be replaced without Marshall University written authorization. If Vendor fails to cure defect within ten (10) calendar days, Marshall University reserves the right to purchase on the open market and Vendor shall be liable for any excess price paid for the replacement, plus applicable expenses, if any. Delivery time is of the essence and delivery or performance shall be strictly in accordance with the schedules, terms and conditions and exact quantities as specified in the Purchase Order. The failure of Vendor to meet delivery schedules, as interpreted by Marshall University, failure to make replacement of rejected goods or services as directed by Marshall University, or non-performance or violation of contract provisions shall permit Marshall University at its discretion, to rescind or cancel the contract or PO without any liability and purchase comparable goods or services on the open market and Vendor shall be liable for any excess price paid for the replacement, plus applicable expenses, if any. Whenever Vendor has knowledge that any situation or condition will delay or threaten the time performance of this order, Vendor shall immediately give

notice thereof, including all relevant information with respect there, too, to Marshall University . Neither Marshall University , nor Vendor shall be liable for any default due to acts of God, war, fire, flood, epidemic, strikes or freight, embargo, or other causes beyond control and without fault or negligence. Acceptance by Marshall University of late delivery of either whole or part of this purchase order shall not constitute a waiver of its claim for any damages resulting from late delivery.

6. **Quantities:** The quantity of goods or services specified on this PO must not be exceeded or reduced without first obtaining written consent of Marshall University. Marshall University will not be responsible for any materials or services furnished without a written change order being issued by the Marshall University Office of Purchasing.
7. **Permits, Licenses and Taxes:** Vendor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments in which work under this PO is performed. The Vendor shall pay any sales, use, personal property, and other taxes arising out of this PO and the transactions contemplated hereby. Any other taxes levied upon this PO, the transaction, or the equipment, goods or services delivered pursuant hereto shall be the responsibility of the Vendor. Marshall University is exempt from Federal and WV State taxes and will not pay or reimburse such taxes.
8. **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. A valid PO number must be shown on all acknowledgments, shipping labels, packing slips, invoices, and correspondence associated with the PO. This order must not be invoiced at prices higher than those appearing without authority and in writing from Marshall University pursuant to W. Va. Code § 12-3-10, payment may only be made after the receipt of goods or services. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.
9. **Additional Fees:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Requesting such fees or charges be paid after the contract has been awarded or PO has been issued may result in cancellation of the contract or PO. Any references contained in the Contract, Vendor's bid, Vendor's terms & conditions, or in any American Institute of Architects documents obligating the University to pay or to compensate Vendor, in whole or in part, for lost profit, pay a termination fee, pay liquidated damages if the Contract is terminated early, seeking to accelerate payments in the event of Contract or PO termination, default, or non-funding, costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is hereby deleted. Any language imposing and interest or charges due to late payment is deleted.
10. **Warranties:** Seller expressly warrants that all articles, material, and work offered shall conform to each and every specification, drawing, sample, or other description which is furnished to or adopted by Marshall University and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Such warranty shall survive this contract and shall not be deemed waived either by Marshall University's acceptance of said materials or goods, in whole or in part, or by payment for them, in whole or in part. The Vendor further warrants all articles, material and work performed for a period of one (1) year, unless otherwise stated, from date of acceptance of the items delivered and installed. All repairs, replacements or adjustments during the warranty period shall be at Vendor's expense.
11. **Indemnification:** The Vendor agrees to indemnify, defend, and hold harmless the State and the University, their Board of Governors, officers, agents, and employees from and against: (1) Any claims, demands, causes of action, losses, costs and expenses, including without limitation reasonable attorneys' fees and costs of defense, arising out of or incident to losses for services rendered by any subcontractor, person, agents or firm performing or

supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage, and hour laws; (4) the presence of Vendor, its employees, agents or invitees on Marshall University premises; (5) any breach of any warranty of Vendor contained herein, and (6) any claim of patent, trademark, copyright, franchise or other intellectual property infringement by goods and/or service provided by Vendor hereunder; provided that Vendor shall not be liable for losses to the extent caused by the negligence or willful misconduct of any Indemnified Party. W. Va. Const. Art. VI § 35 and Art. X § 6 does not allow Marshall University to hold harmless or indemnify Vendor.

12. **Independent Contractor:** Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Vendor nor any agent or employee of Vendor shall be deemed to be an agent or employee of Marshall University. Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through Marshall University and Marshall University shall not pay for or otherwise provide such coverage for Vendor or any of its agents or employees. Vendor shall pay when due all applicable federal and state employment taxes.
13. **Compliance:** Vendor shall strictly comply with all applicable federal and state laws, rules and regulations in effect or hereafter established, including, without limitation, the Americans with Disabilities Act, laws applicable to discrimination, unfair employment practices, the use or handling of toxic or hazardous substances, and prevailing wage rates of the W. Va. Division of Labor if applicable. Vendor shall comply with all rules and regulations, policies and requirements set forth by the West Virginia Auditor's Office as applicable to purchasing. In addition, Vendor shall comply with all rules and regulations of Marshall University while on Marshall University premises.
14. **Insurance:** The Vendor shall procure and maintain, at its expense, at all times during the term of this PO, insurance as specified in the solicitation or PO. If insurance requirements are not specified in the solicitation or PO, the Vendor represents that at the time of acceptance of this order the Vendor maintains, at a minimum, comprehensive general liability insurance including coverage for premises-operations, products-completed operations and personal injury in an amount not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate; worker's compensation insurance as required by West Virginia law; and automobile liability insurance in the amount of \$1,000,000 combined single limit and \$3,000,000 annual aggregate for all vehicles to be used by the Vendor in the performance of services under this PO.
15. **Termination:**
 - a. **Termination for Cause:** Marshall University reserves the right to cancel/terminate the Contract or PO immediately upon written notice to the Vendor if (1) Vendor fails comply with any of the terms and conditions of the Contract or PO, including, without limitation, late delivery or performance, the delivery of defective or non-conforming goods or services, or failure to provide Marshall University with reasonable assurances of future performance; (2) the materials or workmanship supplied do not conform to the specifications contained in the Contract. In the event of termination for cause, Marshall University shall not be liable to Vendor for any amount, and Vendor shall be liable to Marshall University for any and all damages sustained by reason of the default which gave rise to the termination; and (3) if a Vendor fails to honor any contractual term or condition, the Chief Procurement Officer may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder in accordance with the Marshall University Board of Governors Rule No. FA-3 Purchasing Policy, section 7.4.1.
 - b. **Termination for Convenience:** The University may also cancel any purchase or Contract upon thirty (30) days written notice to the Vendor. In the event of early cancellation, Marshall University 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 loss 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.

16. **Fund Availability:** If performance of this Contract or PO extends beyond the current fiscal year (ending June 30), Vendor acknowledges that financial obligations of Marshall University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, budgeted or otherwise available for these goods or services, this Contract or PO becomes void and of no effect after June 30.
17. **Choice of Law:** The laws of the State of West Virginia and the Marshall University Board of Governors Rule No. FA-3 Purchasing Policy shall govern all rights and duties under this Contract or PO, including without limitation, the validity thereof. Any provision incorporated herein by reference which purports to negate this or any other provision in this Contract or PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Vendor hereby expressly consents to the jurisdiction of the Legislative Claims Commission of the State of West Virginia.
18. **Assignment:** Vendor may not assign this Contract or PO or any moneys due or to become due hereunder without the prior written consent of Marshall University, and any assignment made without such consent shall be void. Marshall University may assign this Contract or PO to any affiliate, or successor in interest to all or any part of its operations without prior notice to Vendor.
19. **Non-collusion:** Vendor certifies that it has neither agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the bid or offer being submitted herewith. Vendor also certifies that it has not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the bid price or price proposal of the Vendor or offeror herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with contract for which the within bid or offer is submitted.
20. **West Virginia Freedom of Information Act:** All records, documents, and information in Marshall University's possession, including any document related to the performance of this PO, are subject to disclosure pursuant to the West Virginia Freedom of Information Act (W. Va. Code § 29B-1-1 *et seq.*).
21. **Non-Waiver of Default:** Waiver by Marshall University of any default hereunder by Vendor shall not be deemed waiver of any subsequent default nor will it be deemed to be evidence of a course of conduct implying waiver of defaults of Vendor on any other transaction.
22. **Survival of Obligations:** The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this PO shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by Indemnification and warranty provisions contained herein.
23. **Right to Audit/Access to Records:** Vendor shall preserve and permit Marshall University or any of Marshall University duly authorized representatives to examine and audit all directly pertinent books, documents, papers and records of Vendor involving transactions related to this PO for the purpose of making audits, examinations,

excerpts and transcripts for a period of three (3) years after final payment hereunder. Supplier agrees to refund to Marshall University any overpayments disclosed by any audit.

24. **Marshall University's Information Technology Services and Support Department (IT) Fees:** If a vendor requires services through the Marshall University's IT Department, they must reimburse the University at the IT Rate Schedule which is located at: <https://www.marshall.edu/it/rates/>.
25. **Publicity:** Vendor shall not, in any way or in any form, publicize or advertise the fact that Vendor is supplying goods or services to the University without the express written consent of the Marshall University Brand Department. Requests should be sent to ucomm@marshall.edu.
26. **University Marks, Logos, Branding:** Vendor shall not, in any way or in any form use the Marshall University's trademarks or other intellectual property without the express written consent of the Marshall University Brand Department. Requests should be sent to ucomm@marshall.edu.
27. **Intellectual Property:** Marshall University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising out of the agreement, and Vendor will execute any assignments of other documents necessary for the University to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such intellectual property terms to apply to subcontractors.
28. **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.
29. **Small and Diverse Business Program** Marshall University voluntarily maintains a Small and Diverse Business Program in accordance with the Marshall University Policy No. UPFA-8 (Small and Diverse Business Program). As part of its efforts to increase participation of small, local, minority, veteran, and women owned businesses. Vendor agrees to disclose on its invoice any of these certifications. Vendor will also disclose any contractor or sub vendor with any said certifications utilized in the performance of this PO.
30. **Price Warranty:** Vendor warrants that the price(s) for the goods or services sold to Marshall University hereunder are not less favorable than those extended to any other customer for the same or similar goods or services in similar quantities. In the event Vendor reduces its price(s) for such goods or services during the term of this contract Vendor agrees to reduce the prices hereof accordingly. Vendor warrants that prices shown on this contract shall be complete, and no additional charges of any type shall be added without Marshall University express written consent.
31. **FERPA:** Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA"). To the extent that Vendor receives personally identifiable information from education records as defined in FERPA, Vendor agrees to abide by the limitations on re-disclosure set forth in which states that the officers, employees and agents of a party that receives education record information from Marshall may use the information, but only for the purposes for which the disclosure was made.

32. **Communications:** All communications and acknowledgments concerning this Contract or PO must be directed to the Buyer whose name appears on the face of this PO. Information, advice, approvals, or instructions by Marshall University personnel or representatives, other than the Buyer, shall be deemed expressions of personal opinions only and shall not affect Marshall University and Vendor's rights and obligations hereunder unless set forth in a writing which is authorized by Marshall University Buyer, and which expressly states that it constitutes an official amendment or change order to this Contract or PO.
33. **University Employees:** University employees are not permitted to utilize the Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
34. **Representative of Buyer:** Buyer designates in writing those persons authorized to sign purchase orders, contracts, or any legal binding document. All communications regarding the Order must be routed through the authorized representative of buyer referenced on the Order or Buyer's Procurement Department.
35. **Discrimination:** If applicable pursuant to regulations, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.