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SERVICES AGREEMENT

This Master Services Agreement (“MSA”) is entered into and effective as of June 4, 2020, (“Effective Date”), by and between Apogee Telecom, Inc., a Texas corporation (“Apogee”) and Marshall University (“Customer”).

- 1. **Recital:** Customer wishes to obtain from Apogee and Apogee wishes to provide Customer with technology and other related services that are more specifically described in the Appendices to this Agreement (collectively the “Services”). Apogee and Customer, agree as follows:
- 2. **Initial Term:** This Agreement shall continue in force and effect from the date of execution. Monthly billing will begin on the date of activation of new recurring services and continue for an initial term of twelve (12) months (the “Initial Term”).
- 3. **Renewal:** The Agreement may be renewed upon the mutual written consent of the Customer and Apogee at the end of the Initial Term, and if applicable, at the end of each Renewal Term, for three (3) successive Terms of twelve (12) months each (each a “Renewal Term”) provided that the multiple renewal periods do not exceed 36 months in total. (The Initial and Renewal Terms shall be referred to in this Agreement collectively as the “Term”). Any request for renewal should be submitted to the customer 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.
- 4. **Services:** Apogee shall provide the Services to Customer and Customer shall purchase and pay for those Services in accordance with the terms of this Agreement.
- 5. **Notices:** All notices required under this Agreement shall be in writing and shall be deemed to have been duly given when sent to each party as set forth below by courier service, first class U.S. mail or email.

If to Customer:  
 Marshall University  
 Office of Purchasing  
 Old Main Room 125  
 One John Marshall Drive  
 Huntington, WV 25755  
 Telephone: 304-696-3157  
 Attention: Assistant Director of Purchasing  
 Email: tbrowndolinski@marshall.edu and  
 himes1@marshall.edu

If to Apogee:  
 21750 Hardy Oak Blvd  
 Ste 104 #93612  
 San Antonio, TX 78258-4946  
 Telephone: 512-478-8858  
 Contact: Legal Department  
 Email: legal@apogee.us

- 6. **Appendices:** The following Appendices are attached to and made a part of this Agreement:

- Appendix I: General Terms and Conditions
- Appendix II: Fees
- Appendix III: Programming Services
- Appendix IV: Stream2 IPTV Services

Marshall University  
 By: *Angela White Negley*  
 Name: Angela White-Negley  
 Title: Director of Purchasing

Apogee Telecom, Inc.  
 DocuSigned by:  
 By: *Mark Holt*  
 Name: Mark Holt  
 Title: CFO

**APPENDIX I  
GENERAL TERMS AND CONDITIONS**

1. **Property Access and Existing System:** Customer shall provide Apogee with 24/7 access to a headend location that is cooled, powered, and secured. The “Existing System” shall mean any existing customer equipment such as but not limited to earth stations, antenna, fiber, and distribution facilities, conduit, raceways, network/distribution closets and other existing wires. Unless otherwise indicated elsewhere in this Agreement, Apogee shall make use of the Existing System. Customer shall be responsible, at its sole cost and expense, for the repair or replacement of any defective components in the Existing System. Customer shall provide escorts to rooms and access to key personnel as necessary.

2. **Provision of Equipment:** Apogee shall own all equipment that Apogee installs at the Property under this Agreement unless and until such time as that Equipment is purchased by Customer. It is understood and agreed that the equipment is not and shall not be deemed to be attached to or a fixture on the Property and, except for any Equipment that has been purchased or is required to be purchased by Customer, Apogee shall be entitled to remove the equipment from the Property upon expiration or termination of this Agreement. Customer shall use commercially reasonable efforts to ensure that none of its employees, students, residents, contractors and/or visitors to the Property: (i) use any devices that cause frequency interference; (ii) move alter or change any Equipment; (iii) connect, directly or indirectly, additional devices to any Equipment; (iv) or authorize or permit any person to tamper or perform unauthorized modifications to the equipment.

3. **Equipment Management:** From time to time during the Term Customer may request a modification of Services or the provision of additional Services through an amendment. Apogee may, as it deems necessary, modify Equipment not owned by Customer. If Apogee dispatches a technician at the Customer’s request and the outage is solely controlled by the Customer, then Customer will be invoiced for the service call. See the Scope of Work section of this agreement for other equipment management terms that may apply.

4. **Limited Warranty:** Apogee will maintain Apogee-owned equipment for term of the service agreement. This Apogee-owned equipment warranty is void if the malfunction or defect is the result of tampering, alternation, or repair of the equipment by anyone other than Apogee. All installation services shall be free from defects in workmanship and material for a period of thirty (30) days from the date of completion. Apogee will pass through manufacturer warranties on Customer purchased equipment. At Customer’s request, Apogee can troubleshoot, repair or replace the Existing System on a time and materials basis. APOGEE DOES NOT WARRANT THAT CUSTOMER’S USE OF THE SERVICES OR ANY EQUIPMENT WILL BE UNINTERRUPTED OR ERROR FREE. APOGEE’S WARRANTY OBLIGATIONS ARE EXPRESSLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE APOGEE-OWNED EQUIPMENT OR THE CORRECTION OF INSTALLATION SERVICES.

5. **Force Majeure:** This Agreement may be suspended upon the occurrence and continuation of an “Event of Force Majeure,” and for a reasonable start-up period thereafter. An “Event of Force Majeure” is one that prevents Apogee from performance due to an uncontrollable event. An event of Force Majeure may be caused by, but is not limited to, acts of God or war, change in controlling law or regulations, governmental action, severe weather conditions, civil disorder, earthquakes, fire, flood, atmospheric or satellite disturbance, epidemics, quarantines, and freight restrictions. During a Force Majeure event, late payments and installed equipment investment costs, and financed builds shall not be excused. Apogee may mitigate costs during the suspension period.

6. **Fees and Taxes:** Apogee shall deliver to Customer Services described in this Agreement and Customer shall purchase and pay the charges for the Services as set forth in Appendix II. To maintain the quality of the Services Customer shall promptly, and no later than 30 calendar days after the Customer becomes aware of any performance failures, give Apogee notice of any failure of duty. In the absence of timely notice, the Services and Apogee’s performance shall be deemed to be in full compliance with the Agreement. Fees quoted do not include applicable taxes. Customer may be exempt with proof of certification of its exemption from such taxes.

7. **Termination/Cancellation:** In the event either party breaches a material provision of this Agreement and fails to correct or cure that breach within 60 days after receipt of written notice, the other party may terminate this Agreement. Customer acknowledges that provision of Services is predicated upon Customer's commitment to purchase those Services from Apogee for the full duration of the Initial Term or any Renewal Term then

Initial: Customer Am APOGEE DS In MA  
Ver. May 2020

the event Customer cancels any Services without cause, Customer shall pay Apogee the value of the contract. Payment will be due within 30 calendar days following the date on which the Services are cancelled. Apogee shall retrieve installed equipment within 30 calendar days of cancellation. Customer may apply the remaining recurring fees toward a new Apogee service.

**8. Invoicing and Payment:** Apogee shall invoice Customer for any installation, repair or other nonrecurring charges as and when Services are rendered. Apogee shall invoice recurring charges under this Agreement in advance of the service month. Customer shall remit payment within thirty (30) days. In the event Customer disputes in good faith a portion of any Apogee invoice, Customer shall remit the undisputed portion within the thirty (30) day period. In the event Customer fails to pay any invoice within the thirty (30) day period, the overdue amount shall then accrue interest at a rate which is the lesser of 1.5% per month or the maximum rate permitted by law. Customer shall reimburse Apogee for reasonable attorney’s fees and any other costs incurred by Apogee to collect any payments under this Agreement.

**9. Assignment:** Neither party shall assign or otherwise transfer this Agreement without the other party's prior written consent, which shall not be unreasonably withheld or delayed, except that Apogee may assign this Agreement, in whole or in part, without Customer’s consent to (a) any firm or corporation controlled by, in control of, or under common control with Apogee, or (b) any entity that acquires all or substantially all of that portion of Apogee’s assets to which this Agreement applies. Any purported assignment in the absence of the requisite consent shall be null and void. This Agreement shall be binding on and shall inure to the benefit of the permitted successors and assigns of the parties.

**10. Amendments:** This Agreement may be amended only by a written amendment that is signed by the authorized representatives of Apogee and Customer, except that a change to the Programming that has no associated effect on pricing and requires no additional equipment may be confirmed by an exchange of electronic correspondence.

**11. LIMITATION OF LIABILITY: NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR FOR LOSS OF REVENUE, DATA, OR PROFITS, EVEN IF THE POSSIBILITY OF DAMAGES OR LOSS HAD BEEN DISCLOSED OR REASONABLY COULD HAVE BEEN FORESEEN. APOGEE SHALL NEVER BE LIABLE FOR END USER CLAIMS OR ABUSE OF SERVICES. THESE LIMITATIONS SHALL APPLY REGARDLESS OF FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

**12. Authority and Independent Contractor:** Each of the parties represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations and that its execution of this Agreement and performance of its obligations does not and will not violate any law or result in a breach of or default under the terms of any contract or agreement by which such party is bound. Apogee and Customer are and shall remain independent contractors. Nothing in this Agreement shall be deemed or construed to create for any purpose an employer/employee, joint venture, partnership or agency relationship between the Apogee and Customer.

**13. Sole Provider:** During the Term of this Agreement, Customer designates Apogee as the official provider of the Services and will not render or permit any other Person or Entity to render any services similar to the Services. To protect the quality of the Services and Apogee’s Proprietary Information, Customer shall not (i) supplement, modify or provide alternatives to the Services, System or Equipment, (ii) permit any other Person to access, install, configure, maintain, supplement, modify or provide the same services or any other alternatives to any of the Services, Equipment or Systems without Apogee’s prior written consent, or (iii) take any action which reduces the scope, availability or quality of the Services, System or Equipment to the Customer or the students or increases Apogee’s costs to maintain or provide the scope, availability or quality of Services, System or Equipment to the Property, students, faculty or staff (“Users of the System”).

**14. Modifications:** Apogee will not be responsible for costs associated with modifications to the Property or changes to the campus fiber plant, Ethernet plant, layer two transport infrastructure, or any other after-installation occurrence. If modification to the Services is necessary and requires the removal and re-installation of equipment, Apogee will have an opportunity to provide a proposal for expanding Apogee service offerings to the new or remodeled facilities. Customer shall promptly notify Apogee of any increases to the Unit count or Bed count on the Property.



15. **Third Party Vendor Prohibition:** All communication regarding services must be with Apogee only. Customer shall not have any unauthorized communication, disclose contract terms, or make any requests directly to Apogee vendors. Customer shall execute such forms as may be required by third party vendors.

16. **Confidentiality:** Each recipient of Proprietary Information agrees that it shall (and shall cause its respective officers, directors, employees, agents, Affiliates and any other Persons obtaining Proprietary Information from such recipient to): (i) make no use of or disclose any Proprietary Information belonging to the other Party except as necessary for the performance of its obligations under the Agreement; (ii) take such precautions as it normally takes with its own confidential and proprietary information to prevent disclosure of Proprietary Information to third parties; and (iii) upon request or upon the expiration or termination of the Agreement for any reason, promptly return any Proprietary Information and all copies thereof or, upon the written request of the other Party, destroy all such materials and to certify in writing such destruction.

16.1 **Exceptions.** Notwithstanding any of the foregoing, the obligations this section shall not apply to the extent the receiving party can prove by clear and convincing evidence that such information was: (i) at the time of disclosure is publicly available or public knowledge other than as a result of a violation of the Agreement; (ii) possessed by the receiving Party at the time of disclosure as evidenced by pre-existing written records; (iii) acquired from a third party who has a right to disclose such information; or (iv) disclosed in response to a valid order of a court or other governmental body of the United States or any political subdivisions thereof.

16.2 **Group Purchasing.** Customer may disclose contract terms if the purpose is to allow other schools or entities under the same college or university system of group, state, or country to procure services through Apogee using this agreement.

16.3 **Additional Service Option.** Customer may add Video, ResNet or Admin services to this contract at any point in the contract term at the then negotiated rate for service.

16.4 **Proprietary information:** Apogee asserts that the descriptions of Services found in the Addendums to this Agreement, the Apogee RFP response and pricing/performance data are trade secret and proprietary. If applicable, Customer shall immediately notify Apogee of any Freedom of Information Law (FOIL) request relating to this Agreement. In accordance to FOIL laws, Customer shall give Apogee the opportunity to respond before disclosing contract information.

17. **Use of the School's Marks.** Customer hereby grants to Apogee a non-exclusive, royalty free, nontransferable license to use the trademarks, service marks and logos it provides to Apogee for use in connection with provision of the Services. Customer grants Apogee permission to disclose Customer's name on a client list. Customer grants Apogee permission to use marks it provides to Apogee in promotional materials such as our website, banners, and sales demonstrations.

18. **Laws, Compliance, & Conflicting Laws.** This Agreement shall be governed by the laws of the state in which the Services are rendered without reference to its conflict of law rules. Each party shall comply with all federal, state and local laws and regulations applicable to the performance of this Agreement. In the event of a conflict between any terms in this Appendix I and those contained in another Appendix, the terms in that other Appendix as the case may be, shall prevail to the extent of the conflict. This Agreement shall prevail over the preprinted terms of any purchase order, work order or other document issued by Customer. If any terms of this Agreement shall be adjudged to be unenforceable, the parties shall endeavor in good faith to agree upon the requisite modifications to those terms, provided that with or without those modifications all other terms and provisions shall remain valid and enforceable.

19. **Customer Use:** Customer certifies that it has read and will make available to its users the End User Agreements affiliated with the Services. The End User Agreement is located on the Apogee Portal. Customer hereby verifies and acknowledges that all services are being installed and or provided for use in campus residential areas and/or for university-related purposes only. Customer is not authorized to re-sell any of the services provided. If Customer is receiving video content off-the-air, Customer acknowledges that the property owns, or has the option to own, the receiving equipment and is distributing it to the campus at no cost, as a convenience of occupancy. If Customer is receiving internet services, Customer will cooperate with Apogee to (and gives Apogee permission to)

enforce the Communications Assistance for Law Enforcement Act (“CALEA”) and the regulations and orders relating thereto.

20. **University Records:** It is expressly agreed that Customer will not provide to Apogee, and Apogee will never seek to access, any Customer records that contain personally identifiable information regarding any individual that is not available to any requestor, including “directory information” of any student who has opted to prohibit the release of their “directory information” as that term is defined under the Family Education Rights and Privacy Act (FERPA). To gain access to Apogee services, students may independently disclose their contact information to Apogee through the Apogee online portal. Apogee may turn over this self-reported student information to Customer if the Customer deems its use to be for emergencies related to health and safety.

21. **Miscellaneous:** (a) The terms of this Agreement that expressly or by their nature are contemplated to survive this Agreement, including without limitation the provisions regarding Limitations of Liability will survive the expiration or termination of this Agreement for any reason. (b) The headings of the Sections are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement. (c) This Agreement, including all Appendices, constitutes the entire agreement between the parties and supersedes all previous understandings, commitments or representations concerning this subject matter.



**APPENDIX II  
FEES**

Non-Recurring Charges will be invoiced prior to the performance of work. Recurring Charges will be billed monthly in advance in twelve (12) equal payments over the Term of this Agreement.

Apogee will not be responsible for the physical and/or operational condition of any equipment installed by others. Apogee can repair problems in Customer owned equipment on a time and materials basis.

1. **Non-Recurring Charges:** \$0
2. **Recurring Video Service Fees:**

In consideration for the Services, Customer will pay Apogee the sum of \$180,480.70 per year and that amount will be billed monthly in advance in twelve (12) equal payments of \$15,040.06 per month over the Term of this Agreement. All of the foregoing charges are subject to the following adjustments:

- 2.1 Apogee will invoice the current rate of \$23,555.07 per month for the existing service. Once the new service is active Apogee will invoice the new rate for a twelve month contract term.
- 2.2 Programming fees assume that Customer will receive local channels over the air. In the event that over the air reception of all or any local channels is unachievable, or becomes unachievable in the future, Customer's programming rate may increase to reflect the recurring programming fees for the local channels received via satellite.
- 2.3 Apogee may increase the aggregate monthly and annual fees to reflect all incremental pass-through rate increases from a third party service upon thirty (30) days prior written notice to Customer, provided that Apogee shall not impose such increase more than once in any rolling twelve (12) month period.

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**APPENDIX III  
PROGRAMMING SERVICES**

1. **Scope of Work:** Apogee will perform the following under this agreement:

Apogee can provide RF cable television service to locations served by the Marshall University distribution plant. Apogee can provide Stream2 IPTV to residential, academic and administrative locations served by the University network. Apogee can provide invoicing to individual buildings/departments as a subset of Housing at the University's request.

Apogee will perform the following functions to add Stream2 IPTV to the existing RF headend at Marshall University (MU). Apogee will utilize the existing satellite antennas, OTA antennas, local origination hardware currently in use and will upgrade the remote monitoring hardware for enhanced performance at MU. Apogee will utilize the MU data network to deliver IPTV services. Apogee will continue to utilize the existing MU owned RF distribution system to deliver traditional RF/CATV.

**RF HEAD END DETAIL**

Apogee will utilize all existing RF hardware currently in place. Apogee will update the remote monitoring hardware to enhance remote capabilities and speed.

**S2 IPTV DETAIL**

Apogee will install one (1) rack of IPTV equipment co located with the CATV rack at the current head end location. •Apogee will provide streaming video via a 10 GIG link for ingestion by the MU core switch. The current MU data network will be utilized for distribution of IPTV services. Power requirements at the IPTV rack location are (1) dedicated 120-volt L5-20R receptacle in addition to the existing power for the RF hardware. The HVAC must be capable of dissipating 9353 BTU/hr in addition to the existing RF hardware.

Apogee will not be responsible for physical or operational equipment installed by others. Apogee will not be responsible for existing equipment deemed defective. Apogee can repair or replace this equipment on a time and material basis.

Over the Air Digital offers high picture quality in SD, as well as HD, where available, without incurring additional HD activation programming charges. Programming is delivered using roof top antennas to capture local SD and HD broadcast signals. While most major stations offer HD, availability varies by market. A site survey may be necessary to determine if there is acceptable reception for off air digital channels.

Apogee will not be responsible for the physical and/or operational condition of cable and/or equipment installed by others. Apogee can repair technical problems encountered during the course of this installation on a time and materials basis.

2. **Provision of Video Services:** Video related services fees include account management, customer service, third party billing, maintenance, and other jobs as may be described by this Agreement. Customer acknowledges that Apogee does not resell programming. Apogee passes the programming costs directly from the satellite provider to Customer.

3. **Loss of Programing:** Apogee is not obligated to extend fee credits in connection with any downtime, failure or delay in programming. Customer may select another channel within the current programming packages to replace lost programming or can purchase additional packages. Failure to provide a program shall not be a breach of this Agreement

4. **Over the Air Channel Detail:** Apogee will perform signal testing to determine if Customer can receive local channels over the air via a master antenna that is owned or leased by Customer. In the event that over the air reception of all or any local channels is unachievable or the quality is unacceptable, those channels must be received via satellite

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antenna(s). In this case, Customer’s programming rate may increase to reflect the recurring programming fees and applicable HD access charges for the local channels received via satellite.

5. **Clear QAM Advisory:** Not all digital television tuners have the same ability to access unencrypted “clear” QAM signals. A small percentage of receiving devices may experience clear QAM tuning issues such as an inability to recognize the video and audio streams; the channel numbering format, the channel description, emergency alert screen message display, or the channel programming detail. This is a fluid situation since we expect that affected manufacturers will endeavor to remedy clear QAM issues as new television models are released. Please visit Apogee’s Customer Service page for information on QAM compatible devices.

6. **Video Services:** Customer shall receive services marked with a X:

X	<b>RF Services:</b> Apogee will deliver bulk video service to buildings on the fiber/coax system.
X	<b>Internet Protocol Television (IPTV):</b> Stream2 is Apogee’s IPTV technology that allows Customer’s bulk video and authorized broadcast content to be viewed over Customer’s internet distribution network. If selected, Terms and Conditions are described in an Appendix to this agreement.
	<b>Custom Digital Signage Service:</b> OrcaTV is Apogee’s solution to creating media rich and well informed campuses. OrcaTV curates student flyers, videos, and social media and generates a “Campus Life Channel” that is circulated across cable TV, IPTV digital signage and web portals. If selected, Terms and Conditions are described in an Appendix to this Agreement.
X	<b>Call Center Service:</b> Apogee will support a 24/7/365 toll free number. Apogee will assist with phone support for headend, distribution and devise/TV tuning issues. If Apogee is not providing service, the call center will open a support ticket with Customer's designated Help Desk to enable dedicated Customer personnel to respond. Email support is also available on our website. School must comply with Apogee’s prescribed ticket path – notice to customer, resolution, and confirmation back to Apogee of resolution. <input checked="" type="checkbox"/> University Personnel and Student Support
X	<b>Preventative Maintenance:</b> Apogee will perform signal level testing on Apogee-owned headend equipment. Apogee will test and balance the Equipment to achieve design parameters.  Apogee can repair or replace customer owned equipment on a Time and Materials Basis.

7. **Active Units:** Customer represents that the Active Units are at the following locations on the Property. The unit count can be changed if a residential building is added or if a residential building is taken off line for renovation or demolition. Changes to active units that effect pricing will be adjusted by amendment signed by both parties.

Building	Units
Twin Towers East	254
Twin Towers West	254
Buskirk	126
Haymaker	30
Willis	30
Gibson	30
Wellman	30
Capstone FY North	209
Capstone FY South	209
Fairfield Housing	196
<b>Total</b>	<b>1368</b>

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Additional Buildings to Receive Service:

Edwards Stadium
Project Hope
Medical Center
Proact Building

8. **Channel Lineup:**

- A. Apogee will provide Stream2 IPTV and RF Service. \*FOX Sports Ohio is currently in contract dispute with Dish Network, this channel will become available when the dispute is resolved.
- B. Customer acknowledges and accepts that the channel lineup may change over time based on Customer request or satellite provider limitations.

Stream2 IPTV Services			
Section A - Please Choose 80 Channels			
Section B - Please Choose 14 Channels for IPTV, All Channels on RF			
Section A			Section B
CBS Sports	Eternal World TV	MTV Live	WSAZ-NBC
A&E	FM	MTV2	WSAZ-MNT
ACC Network	Food Network	NASA TV	WCHS-ABC
AMC	Fox Business Network	National Geographic	WVAH-FOX
Animal Planet	Fox News	NBA TV	WVAH-ASN
AXS TV	Fox Sports 1	NBC Sports Network	WVAH-Comet
BBC America	Fox Sports 2	NFL Network	WOWK-CBS
BET	Fox Sports Ohio *	NHL Network	WOWK-Weather
Big Ten Network	Free Speech TV	Nick Jr	WQCW-CW
Bloomberg Television	Freeform	Nickelodeon	WPBY-PBS
Bravo	FUSE	Nicktoons	WPBY-Create
BYUTV	FX	OWN	Cheddar U
Cartoon Network	FXX	Oxygen	University Channel 1
CGTN	getTV	PAC-12 Network	University Channel 2
Christian TV Network	Golf Channel	Paramount Network	University Channel 3
CMT	Hallmark Channel	Pop TV	University Channel 4
CNBC	Hallmark Movies and Mysteries	Pursuit TV	University Channel 5
CNN	HGTV	Reelz	
Comedy Central	History Channel	Russia Today	
Cooking Channel	HITN	SEC Network	
C-SPAN	HLN	SyFy Channel	
C-SPAN2	IFC	TBN	
Daystar	In Country Network	TBS	
Discovery Channel	Inspiration Network	Teen Nick	

Disney Channel	ION	The Weather Channel		
Disney Jr	Lifetime	TLC		
Disney XD	Link TV	TNT		
E! Entertainment	LOGO	Travel Channel		
ESPN	Longhorn Network	Tru TV		
ESPN2	MLB Network	TV Land		
ESPNNews	MotorTrend	USA Network		
ESPNU	MSNBC	VH1		
	MTV	Women's Entertainment		

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**APPENDIX IV**  
**IPTV STREAM2 TERMS AND CONDITIONS**

1. **Service Description.** Stream2 is Apogee's IPTV technology that allows Customer's bulk video and authorized broadcast content to be viewed over Customer's internet distribution network. A user of Stream2 must have access to their own permitted device, be located within the Campus network, and be authorized to view Customer's video content.
2. **Acknowledgement:** Customer acknowledges that IPTV service involves components that are not fully controlled by Stream2 technology. This includes programming content availability, the campus network, or, if available, the campus single sign on system. As such, Apogee shall not be obligated to extend fee credits in connection with any downtime, failure or delay in service.
3. **Features of Stream2:**
  - a. **Enrollment:** To become a User the person must register on the MyPortal.Apogee.us website, or if available, the Customer will integrate Stream2 with its single sign on system. Enrollment is limited to Users who have the right to view Customer's bulk programming. Apogee will limit the number of Users to coincide with the number of bulk programming units subscribed to.
  - b. **Permitted Devices:** Access can only be accomplished through a user owned Permitted Device. This may be a laptop, personal computer, tablet, phone, set-top box connected to a television monitor, any other internet-connected device on which the Stream2 application has been installed. A user may register up to 3 permitted devices. Stream2 may not be viewed simultaneously on multiple devices.
  - c. **Time Shifting:** Apogee will provide DVD recording functions.
4. **Customer Responsibilities:**
  - a. **Contact:** Customer will designate a contact person to assist Apogee's Student Services division in the set up and maintenance of Stream2.
  - b. **Unit Count Compliance:** Customer must submit its list of Authorized Users to Apogee's Student Service's division. Customer will update the list at appropriate intervals.
  - c. **No Public Viewing:** Customer shall not permit Stream2 to be delivered to any device in an area that charges a fee for viewing the Programming Services or areas deemed Public Areas such as stadiums, restaurants, or theatres.





## CHANNEL LISTING

Item #	Basic
1	A&E
2	ACC Network+AA2:A48
3	AMC
4	Animal Planet
5	BBC America
6	BET
7	Big Ten Network
8	Cartoon Network
9	CBS Sports
10	CMT
11	CNN
12	Comedy Central
13	Discovery
14	Disney
15	E! Entertainment
16	ESPN
17	ESPN 2
18	ESPNews
19	ESPN U
20	Food Network
21	FoxNews
22	Fox Sports 1
23	Fox Sports 2
24	Fox Sports Ohio
25	FreeForm
26	FX

Item #	Basic
27	Hallmark
28	HGTV
29	Investigation Discovery
30	Lifetime
31	Logo
32	Longhorn Network
33	MLB Network
34	MSNBC
35	MTV
36	MTV 2
37	NBA TV
38	NBC Sports Network
39	NFL Network
40	NHL Network
41	Nickelodeon
42	PAC-12 Network
43	Pop TV
44	SEC Network
45	Sports
46	SyFy
47	TBS
48	TLC
49	TruTV
50	TV Land
51	USA
52	VH1

Item #	Local Channels
1	WCHS – ABC
2	WOWK – CBS
3	WPBY-Create
4	WPBY-PBS
5	WQCW – CW
6	WSAZ-MNT
7	WSAZ – NBC
8	WVAH-ASN
9	WVAH-Comet
10	WVAH – FOX

Item #	University Channels
1	Cheddar U/MTVU
2	Campus Digital Signage
3	Rec Center Digital Signage

## MARSHALL UNIVERSITY GENERAL TERMS AND CONDITIONS

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document constitutes acceptance of this contract (the Contract) made by and between Marshall University (University or Marshall) and the Vendor. Vendor's signature to the Contract signifies Vendor's agreement to be bound by and accept the terms and conditions contained in the Contract. Therefore, the parties agree that the following contractual terms and conditions are dominate over any competing terms made a part of the Contract. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THESE GENERAL TERMS AND CONDITIONS, THESE GENERAL TERMS AND CONDITIONS SHALL CONTROL**

**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, if applicable, included with the Solicitation/Contract.

**2.1 "Award Document"** means the document that identifies the Vendor as the Contract holder when signed by the Vendor and Marshall University's Office of Purchasing and, when necessary, approved as to form by the Attorney General.

**2.2 "Bid" or "Proposal"** means the Vendor's verbal bid or written bid provided in response to a solicitation by the University.

**2.3 "Board"** means the Governing Board of Marshall University.

**2.4 "Buyer"** means an individual designated by a Chief Procurement Officer to perform designated purchasing and acquisition functions as authorized by the Chief Procurement Officer.

**2.5 "Chief Procurement Officer"** means the individual designated by the President of Marshall University to manage, oversee and direct the purchasing and acquisition of supplies, equipment, services, and printing for the University.

**2.6 "Contract"** means the binding agreement that is entered between the University and the Vendor to provide requested goods and/or services requested in the Solicitation.

**2.7 "Governing Board"** means the Marshall University Board of Governors as provided for in the West Virginia state code.

**2.8 "Higher Education Institution"** means an institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended.

**2.9 "Office of Purchasing"** means the section within Marshall University headed by the Chief Procurement Officer and its personnel.

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**2.10 "Purchasing Card" or "P-Card"** means 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.

**2.11 "Responsible Bidder" and "Responsible Vendor"** mean a person and/or vendor who have the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.

**2.12 "Responsive Bidder" and "Responsive Vendor"** mean a person and/or a vendor who has submitted a bid which conforms in all material respects to the invitation to bid.

**2.13 "Solicitation"** means the notice of an opportunity to supply the University with goods and services.

**2.14 "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, departments or divisions as context requires.

**2.15 "University"** means Marshall University or Marshall.

**2.16 "Vendor" or "Vendors"** means any entity providing either a verbal or written 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.

**2.17 "Will", "Shall" and "Must"** identifies a mandatory item or requirement that concludes the duty, obligation or requirement imposed is mandatory, as opposed to being directory or permissive.

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

**Term Contract**

**Initial Contract Term:** The Contract becomes effective on December 10, 2020 and extends for a period of 1 year(s).

**Renewal Term:** The Contract may be renewed upon the mutual written consent of the University and the Vendor. Any request for renewal should be submitted to the University 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. Renewal of the Contract is limited to 3 successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed 36 months in total. Automatic renewal of the Contract is prohibited.

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Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period form term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.

**Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor and Agency.

**Fixed Period Contract:** The Contract becomes effective upon Vendor’s receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

**Fixed Period Contract with Renewals:** The Contract becomes effective upon Vendor’s receipt of the notice to proceed and part of the Contract must be completed within \_\_\_ days. Upon completion, the Vendor agrees that maintenance, monitoring, or warranty services will be provided for \_\_\_\_\_ successive one-year periods or multiple periods of less than one year provided that the multiple renewal periods do not exceed \_ months in total.

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

**Other:** See attached.

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

**5. QUANTITIES:** The quantities required under the Contract shall be determined in accordance with the category that has been identified as applicable to the Contract below.

**Open End Contract:** Quantities stated in the solicitation are approximations only, based on estimates supplied by the University. It is understood and agreed that the Contract shall cover the quantities ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

**Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

**Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

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**One-Time Purchase:** The Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under the Contract without an appropriate change order approved by the Vendor, University, and/or when necessary, the Attorney General's office.

**6. EMERGENCY PURCHASES:** The Chief Procurement Officer may suspend the use of a university wide mandatory contract (the University's Office of Purchasing has created standard specifications that are establish University wide contracts for commonly used commodities and services that are needed on a repetitive basis), or the competitive bidding process to allow a Department to purchase goods or services in the open market if for immediate or expedited delivery in an emergency.

Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work, provided that a required University emergency purchase with another vendor does not cause a breach of contract.

**7. REQUIRED DOCUMENTS:** All the items checked below must be provided to the University by the Vendor as specified below.

**PERFORMANCE BOND:** The Vendor shall provide a performance bond in the amount of \_\_\_\_\_ . The performance bond must be received by the University prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

**LABOR/MATERIAL PAYMENT BOND:** The Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Marshall University Office of Purchasing Office prior to Contract award. Only required if installation/construction results during the life of the contract.

**MAINTENANCE BOND:** The successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the University prior to Contract award.

**LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the University.

**INSERT ADDITIONAL CONDITIONS BELOW:**

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications prior to Contract award regardless whether that requirement is listed above.

**8. INSURANCE:** The Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, Vendor shall provide the University with proof that the insurance mandated herein has been continued. Vendor must also provide with immediate notice of any changes in its insurance policies mandated herein, including but not limited to, policy cancelation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of the contract. The Vendor shall also furnish proof of any additional insurance requirements prior to the Contract award regardless of whether that insurance requirement is listed in this section.

Any provisions requiring the University to maintain any type of insurance for either of its or the Vendors benefit is deleted.

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of: See Below \_\_\_\_\_ per occurrence and an aggregate of \_\_\_\_\_. The minimum insurance requirements shall provide coverage as follows: General Liability: Each Occurrence: \$1,000,000 : Damages to Premises: \$50,000.00 : Medical Expense \$5,000 (any one person) : Personal & Adv Injury \$1,000,000 : General Aggregate \$2,000,000 : Products COM/OP AGG \$2,000,000 : Automobile Liability: \$1,000,000 : Excess/Umbrella Liability: \$1,000,000 : Workers Compensation and Employers' Liability: \$500,000 (each accident), \$500,000 (E. L. Disease Each Employee), \$500,000 (E.L Disease Policy Limit) **MANDOLIDIS COVERAGE MANDATORY.**

**Cyber Liability Insurance** in an amount of: \$5,000,000 per occurrence and an aggregate of \_\_\_\_\_. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in performance of the Contract and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

**Builders Risk Insurance** in an amount equal to 100% of the amount of the Installation. \_\_\_\_\_ per occurrence and an aggregate of \_\_\_\_\_.

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

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

\_\_\_\_\_ for \_\_\_\_\_

**Liquidated Damages Contained in the Specifications**

**11. ACCEPTANCE:** Vendor's signature on the certification and signature page, constitutes an offer to the University that cannot be unilaterally withdrawn, signifies that the product or service proposed by Vendor meets the mandatory requirements for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions unless otherwise indicated.

**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. PRICING/BEST PRICE GUARANTEE:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation by the University. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the University and invoice at the lower of the contract price or the publicly advertised sale price.

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

**15. PAYMENT METHODS:** The Vendor must accept payment by electronic funds transfer or P-Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's P-Card or by electronic funds transfer as payment for all goods and services for the reason(s) stated below:

\_\_\_\_\_  
\_\_\_\_\_

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**16. 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 may result in cancellation of the contract. Any references contained in the Contract, Vendor's bid, or in any American Institute of Architects documents obligating the University to pay 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 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.

**17. 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.

**18. 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.

**19. LIMITING LIABILITY:** Any language limiting the Vendor's liability for direct damages is deleted.

**20. TAXES:** The Vendor shall pay any applicable sales, use, personal property or other taxes arising out of the Contract and the transactions contemplated hereby. The University is exempt from federal and state taxes and will not pay or reimburse such taxes. The University will, upon request, provide a tax-exempt certificate to confirm its tax-exempt status.

**21. FISCAL YEAR FUNDING:** The Contract shall continue for the term stated herein, contingent upon funds being appropriated by the WV Legislature or otherwise being made 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 University 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.

**22. CANCELLATION/RIGHT TO TERMINATE:** The University reserves the right to cancel/terminate the Contract immediately upon written notice to the Vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The University may also cancel any purchase or Contract upon thirty (30) days written notice to the Vendor. In the event of early cancellation, the University agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are delete 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.

In the event that 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 Policy No. FA-9 Purchasing Policy, section 7.4.1

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

**23. RIGHT OF FIRST REFUSAL** Any language seeking to give the Vendor a Right of First Refusal is hereby deleted.

**24. DISPUTES** – Any language binding the University 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 University shall be brought in the West Virginia Legislative 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.

**25. TIME:** Time is of the essence with regard to all matters of time and performance in the Contract.

**26. 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.

**27. APPLICABLE LAW:** The 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, W. Va. Code or Marshall University Board of Governors Policy No. FA-9 Purchasing Policy is void and of no effect. 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

**28. COMPLIANCE WITH GOVERNING 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. 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.

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

**30. MODIFICATIONS:** Notwithstanding anything contained in the Contract to the contrary, no modification of the Contract shall be binding without mutual written consent of the University, and the Vendor.

**31. 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.

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**32. NO WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of the 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.

Any provisions requiring the University to waive any rights, claims or defenses is hereby deleted.

**33. SUBSEQUENT FORMS:** The terms and conditions contained in the Contract 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, 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.

**34. ASSIGNMENT:** Neither the Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the University and any other government or office that may be required to approve such assignments.

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.

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

**36. 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.

**37. 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 University, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the University's policies, procedures, and rules.

**Proposals are NOT to be marked as confidential or proprietary** 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-1-1, et. seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the University's sole discretion. The University shall not be liable in any way for disclosure of any such records

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Any provisions regarding confidentiality of 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.

**38. 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 required by the competitive bidding laws of W. Va. Code §18B-5-4 and the Freedom of Information Act in W.Va. Code Chapter 29B.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, CONTAINING A TRADE SECRET(S), OR IS OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Marshall University Office of Purchasing constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document.

**39. LICENSING:** Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local University 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 University or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the University to verify that the Vendor is licensed and in good standing with the above entities.

**40. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting an Award Document from Marshall University, the Vendor agrees to convey, sell, assign, or transfer to the University 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 Marshall University. Such assignment shall be made and become effective at the time the University tenders the initial payment to Vendor.

**41. 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 is 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.

**42. 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.

**43. VENDOR CERTIFICATIONS:** By signing its bid or entering into the 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 the Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity

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that could be considered a violation of law; and (4) that it has reviewed the Contract in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the University. 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 the all State agencies as required.

**44. VENDOR RELATIONSHIP:** The relationship of the Vendor to the University shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the University for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing. Vendor shall hold harmless the State, and shall provide the State and University with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**45. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the University, 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.

**46. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code §18B-5-5 and §5A-3-18 the University is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Marshall University Office of Purchasing affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

**47. WEST VIRGINIA DRUG-FREE WORKPLACE CONFORMANCE AFFIDAVIT** West Virginia Alcohol and Drug-Free Workplace Act requires public improvement contractors to have and implement a drug-free workplace policy that requires drug and alcohol testing. This act is applicable to any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract for which the value of contract is over \$100,000. No public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the

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contractor and its subcontractors to implement and maintain a written drug-free workplace policy and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy.

**48. DISCLOSURE OF INTERESTED PARTIES** A state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of \$1,000,000 or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract.

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

**50. 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/>.

**51. 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 Communications Department. Requests should be sent to [ucomm@marshall.edu](mailto:ucomm@marshall.edu).

**52. UNIVERSITY MARKS:** Vendor shall not, in any way or in any form use the University's trademarks or other intellectual property without the express written consent of the Marshall University Communications Department. Requests should be sent to [ucomm@marshall.edu](mailto:ucomm@marshall.edu).

**53. INTELLECTUAL PROPERTY:** The 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.

**54. 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.

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**55. REPORTS:** Vendor shall provide the University with the following reports identified by a checked box below:

- Such reports as the University may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by University, etc.
- Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by University.

**56. PREFERENCE FOR THE USE OF DOMESTIC STEEL PRODUCTS IN STATE CONTRACT PROJECTS:** Pursuant to W.Va. Code §5A-3-56, (a)(1) Except when authorized pursuant to the provisions of subsection (b) of this section, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W.Va. Code §5A-3-56. As used in this section (2):

(A) "State contract project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after the effective date of this section on or after June 6, 2001.

(B) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, the Director of the West Virginia Department of Administration, Purchasing Division ("Director of the Purchasing Division") may, in writing, authorize the use of foreign steel products if:

(1) The cost for each contract item used does not exceed one tenth of one percent of the total contract cost or \$2,500, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

(2) The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**57. PREFERENCE FOR DOMESTIC ALUMINUM, GLASS AND STEEL PRODUCTS:**

In Accordance with W. Va. Code § 5-19-1 et seq.,

(a) Every state spending unit, as defined in chapter five-a, shall require that every contract or subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works contain a provision that, if any aluminum, glass or steel products are to be supplied in the performance of the contract, or subcontract, only domestic aluminum, glass or steel products shall be supplied unless the spending officer, as defined in chapter five-a, determines, in writing, after the receipt of offers or bids, that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest or that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements: Provided,

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That this article applies to any public works contract awarded in an amount more than \$50,000, and with regard to steel only, this article applies to any public works contract awarded in an amount more than \$50,000 or requiring more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products.

This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

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**ADDITIONAL TERMS AND CONDITIONS (Construction Contracts Only)**

**1. CONTRACTOR’S LICENSE:** W. Va. Code § 21-11-2 requires that all persons desiring to perform contracting work in the State of West Virginia be licensed. The West Virginia Contractors Licensing Board is empowered to issue the contractor’s license. Applications for a contractor’s license may be made by contacting the West Virginia Division of Labor. W. Va. Code § 21-11-11 requires any prospective Vendor to include the contractor’s license number on its bid. If an apparent low bidder fails to submit a license number in accordance with this section, the Marshall University Office of Purchasing will promptly request by telephone and electronic mail that the low bidder and the second low bidder provide the license number within one business day of the request. Failure of the bidder to provide the license number within one business day of receiving the request shall result in disqualification of the bid. Vendors should include a contractor’s license number in the space provided below.

Contractor’s Name: \_\_\_\_\_  
 Contractor’s License No.: WV- \_\_\_\_\_

The apparent successful Vendor must furnish a copy of its contractor’s license prior to the issuance of a contract award document.

**2. DRUG-FREE WORKPLACE AFFIDAVIT:** W. Va. Code § 21-1D-5 provides that any solicitation for a public improvement contract requires each Vendor that submits a bid for the work to submit an affidavit that the Vendor has a written plan for a drug-free workplace policy. If the affidavit is not submitted with the bid submission, the Marshall University Office of Purchasing shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the affidavit within one business day of the request. Failure to submit the affidavit within one business day of receiving the request shall result in disqualification of the bid. To comply with this law, Vendor should complete the enclosed drug-free workplace affidavit and submit the same with its bid. Failure to submit the signed and notarized drugfree workplace affidavit or a similar affidavit that fully complies with the requirements of the applicable code, within one business day of being requested to do so shall result in disqualification of Vendor’s bid. Pursuant to W. Va. Code § 21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is \$100,000 or less or temporary or emergency repairs.

**2.1. DRUG-FREE WORKPLACE POLICY:** Pursuant to W. Va. Code § 21-1D-4, Vendor and its subcontractors must implement and maintain a written drug-free workplace policy that complies with said article. The awarding public authority shall cancel this contract if: (1) Vendor fails to implement and maintain a written drug-free workplace policy described in the preceding paragraph, (2) Vendor fails to provide information regarding implementation of its drug-free workplace policy at the request of the public authority; or (3) Vendor provides to the public authority false information regarding the contractor's drug-free workplace policy.

Pursuant to W. Va. Code §21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is \$100,000 or less or temporary or emergency repairs.

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**3. DRUG FREE WORKPLACE REPORT:** Pursuant to W. Va. Code § 21-1D-7b, no less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. For contracts over \$25,000, the public authority shall be the Marshall University Office of Purchasing. For contracts of \$25,000 or less, the public authority shall be the Department issuing the contract. The report shall include:

- (1) Information to show that the education and training service to the requirements of W. Va. Code § 21-1D-5 was provided;
- (2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests;
- (3) The average number of employees in connection with the construction on the public improvement;
- (4) Drug test results for the following categories including the number of positive tests and the number of negative tests: (A) Pre-employment and new hires; (B) Reasonable suspicion; (C) Post-accident; and (D) Random.

Vendor should utilize the attached Certified Drug Free Workplace Report Coversheet when submitting the report required hereunder. Pursuant to W. Va. Code §21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is \$100,000 or less or temporary or emergency repairs.

**4. AIA DOCUMENTS:** All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the attached AIA documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein.

**4A. PROHIBITION AGAINST GENERAL CONDITIONS:** Notwithstanding anything contained in the AIA Documents or the Supplementary Conditions, the State of West Virginia will not pay for general conditions, or winter conditions, or any other condition representing a delay in the contracts. The Vendor is expected to mitigate delay costs to the greatest extent possible and any costs associated with delays must be specifically and concretely identified. The state will not consider an average daily rate multiplied by the number of days extended to be an acceptable charge.

**5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS:** In accordance with W. Va. Code § 22- 29-4, all new building construction projects of public agencies shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: Provided, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

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Marshall University General Terms and Conditions

**6. LOCAL LABOR MARKET HIRING REQUIREMENT:** Pursuant to W.Va. Code §21-1C-1 et seq., Employers shall hire at least seventy-five percent of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of Workforce West Virginia of the number of qualified employees needed and provide a job description of the positions to be filled.

If, within three business days following the placing of a job order, Workforce West Virginia is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then Workforce West Virginia shall issue a waiver to the employer stating the unavailability of applicant and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

Any employer who violates this requirement is subject to a civil penalty of \$250 per each employee less than the required threshold of seventy-five percent per day of violation after receipt of a notice of violation.

Any employer that continues to violate any provision of this article more than fourteen calendar days after receipt of a notice of violation is subject to a civil penalty of \$500 per each employee less than the required threshold of seventy-five percent per day of violation.

The following terms used in this section have the meaning shown below.

(1) The term “construction project” means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than \$500,000. The term “construction project” does not include temporary or emergency repairs;

(2) The term “employee” means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry; The term “employee” does not include:(i) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;(ii) Bona fide independent contractors; or(iii) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

(3) The term “employer” means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

(4) The term “local labor market” means every county in West Virginia and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia;

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(5) The term “public improvement” includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

**7. DAVIS-BACON AND RELATED ACT WAGE RATES:**

The work performed under this contract is federally funded in whole, or in part. Pursuant to \_\_\_\_\_, Vendors are required to pay applicable Davis-Bacon wage rates.

The work performed under this contract is not subject to Davis-Bacon wage rates.

**8. SUBCONTRACTOR LIST SUBMISSION:** In accordance with W. Va. Code § 5-22-1, the apparent low bidder on a contract valued at more than \$250,000.00 for the construction, alteration, decoration, painting or improvement of a new or existing building or structure shall submit a list of all subcontractors who will perform more than \$25,000.00 of work on the project including labor and materials. (This section does not apply to any other construction projects, such as highway, mine reclamation, water or sewer projects.) The subcontractor list shall be provided to the Marshall University Office of Purchasing within one business day of the opening of bids for review. If the apparent low bidder fails to submit the subcontractor list, the Marshall University Office of Purchasing shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid.

If no subcontractors who will perform more than \$25,000.00 of work are to be used to complete the project, the apparent low bidder must make this clear on the subcontractor list, in the bid itself, or in response to the Marshall University Office of Purchasing’s request for the subcontractor list.

- a. Required Information. The subcontractor list must contain the following information:
  - i. Bidder's name
  - ii. Name of each subcontractor performing more than \$25,000 of work on the project.
  - iii. The license number of each subcontractor, as required by W. Va. Code § 21-11- 1 et. seq.
  - iv. If applicable, a notation that no subcontractor will be used to perform more than \$25,000.00 of work. (This item iv. is not required if the vendor makes this clear in the bid itself or in documentation following the request for the subcontractor list.)

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b. Subcontractor List Submission Form: The subcontractor list may be submitted in any form, including the attached form, as long as the required information noted above is included. If any information is missing from the bidder's subcontractor list submission, it may be obtained from other documents such as bids, emails, letters, etc. that accompany the subcontractor list submission.

c. Substitution of Subcontractor. Written approval must be obtained from the State Spending Unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

- i. The subcontractor listed in the original bid has filed for bankruptcy;
- ii. The subcontractor in the original bid has been debarred or suspended; or
- iii. The contractor certifies in writing that the subcontractor listed in the original bid fails, is unable, or refuses to perform his subcontract.

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

\_\_\_\_\_  
 (Name, Title)  
 Mark Holt, Vice President

\_\_\_\_\_  
 (Printed Name and Title)  
 1905 Kramer Lane, Suite A100, Austin TX 78758

\_\_\_\_\_  
 (Address)  
 512-478-8858  
 (Phone Number) (Fax Number)  
 info@apogee.us  
 (Email Address)

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through BONFIRE, 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 Marshall University 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 will properly register with the WV Purchasing Division and Marshall University.

Apogee Telecom, Inc.  
 (Company) 

\_\_\_\_\_  
 (Authorized Signature)  
 Mark Holt, Vice President

\_\_\_\_\_  
 (Printed Name and Title of Authorized Representative)  
 03/16/2020  
 (Date)  
 512-478-8858  
 (Phone Number) (Fax Number)

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Marshall University General Terms and Conditions

## LIFE OF CONTRACT PAGE

**LIFE OF CONTRACT:** This contract becomes effective on July 1, 2020 and extends for a period of **one (1) year** or until such reasonable time thereafter as is necessary to obtain a new contract. Such "reasonable time" shall not exceed twelve (**12**) months upon expiration of one (**1**) year from the effective date of this contract by giving the Director of Purchasing thirty (**30**) days written notice.

**RENEWAL:** This contract may be renewed upon mutual written consent, submitted to the Director of Purchasing thirty (30) days prior to the date of expiration. Such renewal shall be in accordance with the terms and conditions of the original contract and shall be limited to three (3) successive one (1) year periods.

**CANCELLATION:** The Director of Purchasing reserves the right to cancel this contract immediately upon written notice to the vendor if the commodities or services supplied are of an inferior quality or do not conform to the specifications of the bid and contract herein.

**OPEN MARKET CLAUSE:** The Director of Purchasing may authorize a spending unit to purchase in the open market, without the filing of a requisition or cost estimate, items specified on this contract for immediate delivery in emergencies due to unforeseen causes (including but not limited to delays in transportation or an unanticipated increase in the volume of work).

**TIME:** Time consumed in delivery or performance is of the essence.

**ORDERING PROCEDURE:** Departments shall submit a requisition for commodities covered by this contract to the Purchasing office. Purchasing will then issue a purchase order to the vendor as authorization for shipment. If the vendor accepts credit cards, purchases may also be made using the P-card up to the established transaction limit for the department.

**FUNDING PARAGRAPH:** Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for these services, this contract becomes of no effect and is null and void after June 30.

**INTEREST:** Should this contract include a provision for interest on late payments, the agency agrees to pay the maximum legal rate under West Virginia Law. All other references to interest charges are deleted.

**CONTRACT PRICING:** Unless otherwise allowed by the Director of Purchasing, price increases will be approved only at the beginning of each renewal period. All adjustments will be made in dollars, not per cent. Requests for price increases must be received in writing by the Director at least thirty (**30**) days in advance of the effective date. Vendors may add products throughout the term of this contract when it is in the best interest of the University.

The Director at Marshall University will determine which products will be added. Price decreases will be "passed through" to Marshall University.

<b>Request for Proposal</b>		<b>Marshall University</b>	MU21TVSVC of 40
		<b>Office of Purchasing</b> One John Marshall Drive Huntington, WV 25755-4100	MU21TVSVC
		Direct all inquiries regarding this order to: (304) 696-3157	

<b>Vendor:</b>	<b>Phone:</b>	<b>Buyer:</b> Tracey Brown-Dolinski
	<b>Email:</b>	<b>Phone:</b> (304) 696-3157
<b>FEIN/SSN:</b>	<b>Fax:</b>	<b>Email:</b> <a href="mailto:browndolinsk@marshall.edu">browndolinsk@marshall.edu</a>

Sealed requests for proposals furnishing services described below will be received by the Institution. TO RECEIVE CONSIDERATION FOR AWARD, UNLESS OTHERWISE NOTED, THE PROPOSAL WILL BE SUBMITTED ON THIS FORM, SIGNED IN FULL IN INK AND NUMBER OF COPIES REQUESTED IN THE PROPOSAL, AND SUBMITTED IN BONFIRE BY PROPOSAL OPENING TIME AND DATE. The Institution reserves the right to accept or reject proposals separately or as a whole, to reject any or all proposals, to waive informalities or irregularities and to contract as the best interests of the Institution may require. PROPOSALS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN.

<b>DATE</b> 3/5/2020	Delivery Requirements Technical Question Deadline: March 17, 2020, at 9:00 a.m., LPT	<b>DEPARTMENT REQUISITION NO.</b>	<b>Proposal OPEN:</b> 3:00 PM on April 2, 2020	<b>BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID</b>
Item #	Quantity	Description	Unit Price	Extended Price
		<p align="center"><u>Request for Proposals</u></p> <p>Marshall University, on behalf of the Governing Board, is soliciting proposals from qualified firms for the following Project:</p> <p><b>Project Name:</b> Radio Frequency (RF) and Internet Protocol (IP) Cable Services</p> <p><b>Deadline for Questions:</b> March 17, 2020, at 9:00 a.m., Local Prevalent Time (LPT)</p> <p><b>Proposal Time and Date:</b> April 2, 2020, at 3:00 p.m., LPT</p>		
<b>Total</b>				

To the Purchasing Department,

In compliance with the above, the undersigned offers and agrees, if this offer is accepted within \_\_\_\_ calendar days (30 calendar days unless a different period is inserted by the purchaser) from the bid open date, specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified.

Bidder guarantees shipment from _____	Bidder's name Vendor _____
_____ within _____ days	Signed By _____
FOB _____ After receipt of order at address shown	Typed Name _____
Terms _____	Title _____
	Email _____
	Street Address _____
	City/State/Zip _____
	Date _____ Phone _____
BOG 43	Fein _____

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## **PART 1 - COST:**

### **Financial Model**

Apogee is a managed services provider and delivers bulk programming to our video service clients. Our solutions offer a turnkey, all-inclusive model that includes all costs associated with delivering our solution. Pricing includes all programming, licenses, equipment, installation, support and maintenance fees.

Apogee's pricing is based on residential door count. Non-residential locations requiring programming are provided at no extra cost.

The price quoted is based on a twelve (12) month billing cycle over a one (1) year service agreement with three (3) one (1) year option(s) to renew. The programming portion of the cost is calculated based on 1652 active living units. This rate has been seasonally adjusted for lower occupancy in the summer and holidays.

Apogee passes along programmer rate increases / (decreases) once annually with 30 days' notice. If in any given year programmers do not increase rates, the university will not see an increase.

Prices do not include applicable sales, use, communications or other taxes imposed on the Apogee services, excluding income taxes.

Termination for Convenience-Due to the large capital investment to initiate this managed service, in the event of cancelation without cause, Apogee will provide the University with a termination fee based upon the unamortized portion of the investment Apogee has made. This investment would include but not be limited to hardware, software, design and installation costs, and programming commitments.

Terms and conditions of the attached contract will apply as part of our response. If Apogee is the successful bidder, we are confident that any conflicts with the university's terms and conditions can be reconciled to our mutual satisfaction.

This proposal is confidential between the University and Apogee.

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: Apogee Telecom Inc

Authorized Signature: [Signature] Date: 5-15-2020

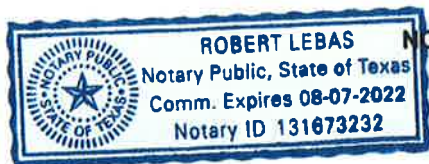
State of TX

County of Travis, to-wit:

Taken, subscribed, and sworn to before me this 15 day of May, 2020.

My Commission expires 08-07, 2022.

AFFIX SEAL HERE



NOTARY PUBLIC

[Signature]