



AGREEMENT
BoG-48 (Rev.03/2020)

Purchase Order #

I, _____, agree to perform
(Name and address)
the following service(s) for Marshall University at _____
(Department and/or Location)

(Detailed description of services to be performed)

Date(s) of Service: from _____ to _____.
The rate of pay shall be _____ per _____ not to exceed \$ _____ for
the entire term of the contract.

NOTE: Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the State
and is the sole responsibility of the vendor.
The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.
Please check the appropriate box below:
[] I am not currently a full-time employee of the State of West Virginia;
[] I am currently a full-time employee of the State of West Virginia (complete certification below).
It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the
full-time duties of the employee and the amount of annual compensation received by the above named
vendor from the State of West Virginia for full-time employment during the current fiscal year will be
\$. The vendor serves as _____
(Position)
with the title of _____, certified by _____
(Supervisor's Signature)

GENERAL TERMS AND CONDITIONS: The General Terms and Conditions for Purchase Order/
Contract listed on page 2 are hereby made a part of this agreement and are specifically incorporated
herein by reference. By signing this agreement, Vendor certifies that it has reviewed the Terms and
Conditions, fully understands them, and agrees to be bound by their provisions.

APPROVED BY:
Agency: Marshall University

(Authorized Signature of Agency)

(Title)

(Date)
Vendor: _____

(Vendor's Signature)

(Social Security or FEIN)

(Date)

TERMS AND CONDITIONS

- 1. ACCEPTANCE:** Vendor shall be bound by this Purchase Order/ Contract ("Order") and its terms and conditions upon receipt of this Order. This Order expressly limits acceptance to the terms and conditions stated herein. Additional or different terms proposed by the Vendor are objected to and are hereby rejected, unless otherwise provided for in writing by Marshall University and approved by the West Virginia Attorney General's office. IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THESE TERMS AND CONDITIONS, THESE TERMS AND CONDITIONS SHALL CONTROL.
- 2. APPLICABLE LAW:** The laws of the State of West Virginia and the Procedural Rules of the Marshall University Board of Governors, whichever has jurisdiction pursuant to W. Va. Code, shall govern all rights and duties under the Order, including without limitation the validity of this Order.
- 3. ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder, may be assigned by the Vendor without Marshall University's consent.
- 4. CANCELLATION:** Marshall University may cancel any Order upon 30 days written notice to the Vendor.
- 5. COMPLIANCE:** Vendor shall comply with all federal, state and local laws, regulations and ordinances, if applicable.
- 6. CONFIDENTIALITY:** The Vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information (PII) or other confidential information gained from Marshall University, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to Marshall University's policies, procedures, and rules. Notwithstanding the foregoing, any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Order are hereby deleted. Marshall University's Orders are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Order and other public records may be disclosed without notice to the vendor at Marshall University's sole discretion.
- 7. DELIVERY:** For exceptions to the delivery date as specified in the Order, the Vendor shall give prior notification and obtain the approval of Marshall University. Time is of the essence of this Order and it is subject to termination by Marshall University for failure to deliver on time.
- 8. DISPUTES:** Any language binding Marshall 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 Order 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 Marshall 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 Marshall University 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.
- 9. RISK SHIFTING:** Any provision requiring Marshall University to bear the costs of all or a majority of business/legal risks associated with this Order, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
- 10. MODIFICATIONS:** This writing is the parties' final expression of intent. No modification of this Order shall be binding unless agreed to in writing by Marshall University.
- 11. NON-FUNDING:** All services performed, or goods delivered under this Order are to be continued for the term of the Order, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Order becomes void and of no effect after June 30.
- 12. ORDER NUMBERS:** Order numbers (Contract and/or Purchase Order numbers) shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices and correspondence.
- 13. PAYMENTS:** 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. Any language imposing any interest or charges due to late payment is deleted.
- 14. 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.
- 15. RENEWAL:** This Order may be renewed only upon mutual written agreement of the parties.
- 16. REJECTION:** All goods or materials purchased herein are subject to approval of Marshall University. Rejection of goods or materials due to nonconformity with the terms, conditions or specifications of this Order, whether held by Marshall University or returned to the Vendor, will be at the Vendor's risk and expense.
- 17. VENDOR:** For the purposes of these Terms and Conditions, the "Vendor" means the vendor or seller whose quotation, bid, proposal or expression of interest has been accepted and has received a lawfully issued Purchase Order from Marshall University.
- 18. SHIPPING, PACKING, BILLING & PRICING:** Unless otherwise stated, all goods are to be shipped prepaid, FOB destination. No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified. All goods or services shall be shipped on or before the date specified in this Order. Prices are those that are stated in this Order. No price increase will be accepted without written authority from Marshall University.
- 19. TAXES:** Marshall University as an agency of the State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes. Marshall University will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
- 20. TERMINATION:** In the event of a breach by the Vendor of any of the provisions of this Order, Marshall University reserves the right to cancel and terminate this Order forthwith upon giving written notice to the Vendor. The Vendor shall be liable for damages suffered by Marshall University resulting from the Vendor's breach of contract.
- 21. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Order will: (a) conform to the specifications, drawings, samples or other description furnished or specified by Marshall University; (b) be merchantable and fit for the purpose intended; (c) be free and clear of all liens, claims and encumbrances of any kind; and/or (d) be free from defect in material and workmanship.
- 22. GOVERNING LAW:** Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Order is deleted. The Order shall be governed by the laws of the State of West Virginia.
- 23. LIMITING LIABILITY:** Any language limiting the Vendor's liability for direct damages to person or property is deleted.
- 24. NO WAIVER:** Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.
- 25. 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.
- 26. 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.