

MARQUETTE UNIVERSITY
CONSTRUCTION SERVICES PURCHASE ORDER
TERMS AND CONDITIONS (Rev. 09/2021)

1. DEFINITIONS

Authorized Representative(s) means the person(s) designated by a party from time to time as its authorized representative in connection with this Construction Purchase Order. A party may designate one or more Authorized Representatives, provided that each Authorized Representative will have full authority to act on behalf of a party under this Construction Purchase Order.

Contract Documents means this Construction Services Purchase Order; the Contractor's proposal, hereby incorporated by reference; and all Contract Schedules, drawings, and specifications approved from time to time by the Authorized Representative of Marquette.

Contract Price means the total amount due from Marquette to Contractor for the Contract Work.

Contract Schedule means the dates by which specific Milestones must be completed if set forth in the Contract Documents or approved by Marquette in writing.

Contract Work means the construction, engineering services, or other activities or deliverables set forth in the Contract Documents.

Contractor means the Contractor and all subcontractors.

Final Completion Date is the date on which the Notice of Final Acceptance is issued.

Losses means any actions, litigation, claims, suits liabilities, losses, damages, expenses, or costs, including attorney's fees, incurred by a Party.

Milestone means specific portions of the Contract Work to be completed by Contractor as specified in the Contract Schedule.

Notice of Final Acceptance means the written notice provided by Marquette to Contractor acknowledging that the Contract Work has been finally accepted.

Progress Payment means a portion of the Contract price that is payable to Contractor upon the completion of a

portion of the Contract Work.

Site means the Marquette location at which the Contract Work is to be performed.

Substantial Completion Date means the date on which Marquette has the beneficial use of the Contract Work for its intended purpose.

2. CONTRACT WORK

2.1 Contractor will provide all design, supervision, labor, materials, equipment, tools, incidentals, and other items, and perform all work, necessary to complete the Contract Work as described in the Contract Documents to the reasonable satisfaction of the Authorized Representative of Marquette.

2.2 The Contract Work will conform to the Contract Documents. No deviations from the Contract Documents may be made by Contractor without the advance written consent of the Authorized Representative of Marquette.

2.3 Except as otherwise set forth in the Contract Documents, Contractor will provide all temporary sheds, offices, or other structures required for the performance of the Contract Work and will arrange for all required temporary connections and lines for water, electricity, telephone, gas, compressed air, steam, heat, and similar services. The Contractor will bear all costs associated with the temporary structures and services. Upon the completion of the Contract Work, Contractor will remove all temporary structures, connections, and lines from the Site.

2.4 Contractor will, at all times, protect the Contract Work, the Site, and all materials, equipment, and other items of Contractor from damage, deterioration, contamination, corrosion, and exposure. All reasonable requests of the Authorized Representative of Marquette to enclose or otherwise to protect the Contract Work will be complied with by the Contractor at no additional cost to Marquette.

2.5 Contractor will, at no additional cost to Marquette, obtain all licenses and permits that may be required for the performance of the Contract Work. Marquette will provide reasonable assistance as requested by Contractor.

2.6 Contractor will at all times use reasonable precautions to prevent injury and illness to persons and to protect property and the environment in, about, or near the Contract Work. Contractor's activities will at all times conform to Contractor's written safety policies and plans. Contractor's safety policies, plans, and practices will at a minimum meet the requirements of applicable federal, state, and local environmental, health, and safety laws, regulations, and requirements, as well as the Marquette University Contractor Safety, Health, and Environmental Guidebook as it is then in effect and provided to Contractor. Contractor and Contractor's subcontractors at all tiers will also comply with directions given by Marquette's Representatives during the course of the Contract Work to eliminate, to correct, or to prevent unsafe conditions in, about, or near the Contract Work. Contractor will designate in writing a competent person at the Site responsible for assuring that the requirements of this section are met and with the authority to take any required corrective or preventive action. Contractor's written safety policies and plans will be readily available for inspection at all times, and records of Contractor's safety training, OSHA logs, and first aid treatment records for Contractor's on-site personnel will be made available to Marquette upon request within a reasonable time.

2.7 Contractor will, upon the written request of Marquette, provide Marquette with Material Safety Data Sheets (MSDS) for the materials incorporated into the Contract Work.

2.8 Contractor will comply at all times with all security directives and policies of Marquette applicable to the Site, including any reasonable instructions given by a Marquette Authorized.

2.9 Contractor will keep the Site free of any debris from the Contract Work and will leave the Site in a broom-clean and neat condition.

2.10 Contractor will remove from the Site any persons as Marquette may direct and will not allow those persons to return to the Site without the advance written permission of Marquette, which may be granted or withheld in Marquette's sole discretion.

2.11 Contractor acknowledges that additional contractors may be responsible for the performance of work associated with the Contract Work. Contractor will cooperate with the Authorized Representative of Marquette and with other contractors to permit the efficient and timely performance of the Contract Work
OGC(09.2021)

and of the work of other contractors. Contractor will inform the Authorized Representative of Marquette in writing if other contractors at the Site are interfering in any way with the Contract Work or if the Contract Work is expected to interfere, or does interfere, with the work of other contractors.

3. SUBCONTRACTORS AND MATERIAL SUPPLIERS

3.1 Prior to the commencement of the Contract Work, Contractor will provide Marquette with a complete list of the subcontractors and material suppliers to be used. The list will include the name, address, and materials and services being provided by each subcontractor and material suppliers.

3.2 Contractor will include in each subcontract and material order for the Contract Work a provision that permits Contractor to assign the subcontract or material order to Marquette upon written notice by Marquette.

4. CLARIFICATIONS AND CHANGES

4.1 If Contractor believes that there is or may be a conflict within the Contract Documents, or if Contractor has any doubt as to the meaning of the Contract Documents, Contractor will immediately submit a written request for clarification and direction to the Authorized Representative of Marquette, who will provide any clarification required. Any work performed by Contractor prior to receipt of, or contrary to, any required clarification will be at Contractor's sole risk and expense.

4.2 Marquette reserves the right, by written notice to Contractor, to request changes to the Contract Work; to change the Contract Schedule; or to modify, change, omit, add to, or suspend the Contract Work.

4.3 To the extent that any proposed changes to the Contract Work will result in a change to the cost of Contractor's performance, there will be an equitable adjustment in the Price; except that, no increase in the Contract Price will be made unless Contractor has fully performed all of its obligations under this Construction Purchase Order. Contractor will advise Marquette in writing, within ten (10) days of the receipt of Marquette's notice, of any proposed change in the Contract Price as a result of Marquette's proposed change in the Contract Work, along with a detailed explanation of the basis for the change in the Contract Price. Within ten (10) days of the receipt of Contractor's information, Marquette will advise Contractor of the approved revision to the Contract Price. If the revised Contract Price is accepted by Contractor, an Amendment will be executed by the Parties to show the changed Contract Price. If the revised

Contract Price is rejected by Contractor, the Parties will negotiate in good faith concerning a revised Contract Price. If the Parties are unable to agree on the revised Price, Marquette may, by written notice to Contractor, either (a) direct the Contractor to complete the Contract Work in accordance with the proposed changes, with the dispute between the Parties concerning the Contract Price to be submitted for resolution in accordance with Section 17.3, or (b) terminate this Construction Purchase Order for the convenience of Marquette under Section 20.3.

5. CONTRACT SCHEDULE

5.1 Time is of the essence in the performance by Contractor of this Construction Purchase Order, including the date of commencement and the time of completion of the Contract Work. Contractor will perform, continue, and complete its obligations under this Construction Purchase Order all strictly in accordance with the Construction Schedule.

5.2 Notwithstanding any other provision of this Construction Purchase Order, Contractor waives any equitable adjustments for any increase in the cost of performing the Contract Work resulting from the failure of Contractor to comply with the Contract Schedule, including but not limited to the cost of delays and costs of accelerating the Contract Work if required as a result of Contractor's failure to comply with the Contract Schedule.

5.3 Contractor will, within ten (10) days after receiving the Notice of Commencement from the Authorized Representative of Marquette, proceed with the Contract Work at the Site or other specific locations as the Authorized Representative of Marquette may designate, and will continue to prosecute the Contract Work in a prompt and diligent manner, in addition to its obligations under Section 5.1.

5.4 Except as otherwise set forth in the Contract Documents or directed in writing by the Authorized Representative of Marquette, all Contract Work will be performed during regular business hours. If Contractor desires to perform Contract Work outside regular business hours, Contractor will give written notice to the Authorized Representative of Marquette, which the Authorized Representative of Marquette may approve or disapprove in his or her sole discretion. If the request is approved, Contractor will be responsible for all additional costs, including overtime, that may result from the request.

5.5 Contractor will attend periodic meetings upon notice from the Authorized Representative of Marquette and will provide any information requested in order to determine the progress of the Contract Work.

5.6 Marquette may require Contractor to use critical path method scheduling and other project management techniques in the administration of the Contract Work, at no additional cost to Marquette.

5.7 At a minimum, Contractor will provide progress reports to the Authorized Representative of Marquette not later than the tenth (10th) of each month that will specify, as of the end of the previous month, the progress of the Contract Work by percentage by Milestone and both the projected costs and the actual costs incurred in performing the Contract Work that has been completed.

6. INSPECTION, ACCEPTANCE, AND WARRANTY

6.1 All aspects of the Contract Work are subject to inspection and testing by Marquette at all reasonable times and places. Contractor will promptly correct all defects or nonconformities identified as a result and will provide notice to Marquette of the correction. The failure of Marquette to notify Contractor of any failure will not relieve Contractor of any of its duties under this Construction Purchase Order.

6.2 If the Contract Work is determined at any time to be defective or nonconforming in any respect, Contractor will, at its sole expense, perform all necessary repairs and reconstruction and perform re-testing or re-inspection.

6.3 Prior to the Final Acceptance Date, Contractor will bear all risk of any loss or destruction or damage to the Contract Work and to any materials, equipment, or other property of the Contractor at the Site. Title and risk of loss will pass to Marquette only on the Final Completion Date. Contractor will protect the Equipment at all times before the Final Completion Date from all hazards and risks, and Marquette will provide its reasonable cooperation as requested by Contractor.

6.4 Within ten (10) days after the Substantial Completion Date, Marquette will provide written notice to Contractor of any remaining work or deficiencies in previous work of which Marquette is aware. Contractor will complete the remaining work and remedy all deficiencies within thirty (30) days after the Substantial Completion Date.

6.5 Contractor warrants that the Contract Work will comply with the Contract Documents and will be free of defects in material and workmanship for a period of one (1) year from the Final Acceptance Date. In addition, Contractor hereby assigns to Marquette the benefit of all manufacturer's warranties for products and equipment incorporated into the Contract Work or delivered by Contractor to Marquette and billed under this Contract Purchase Order.

7. PRICE AND PAYMENT TERMS

7.1 Marquette will pay Contractor the Contract Price for the Contract Work in accordance with this section, subject to any adjustments permitted in this Construction Purchase Order. All applications for payment will be submitted in accordance with the directions of the Authorized Representative of Marquette.

7.2 The Contract Price will constitute Contractor's full compensation for Contractor's obligations under this Construction Purchase Order. Contractor acknowledges and agrees that the intent of the Contract Documents is to include all labor, materials, equipment, tools, plans, water, light, power, and other items necessary for Contractor to provide a complete and finished project. As a result, Contractor waives any right to additional compensation on account of any missed description in, or omission from, the Contract Document of details of the Contract Work that are plainly necessary to carry out the general intent of the Contract Documents or that are customarily performed or furnished by contractors for a complete and finished object.

7.3 Prior to the submission of Contractor's first request for payment, Contractor will submit to Marquette a breakdown of the Contract Price, specifying an apportionment of the Contract Price among any identified Milestones. No portion of the Contract Price will be allocated to mobilization in the breakdown, and demobilization will be listed as a Milestone with a portion of the Contract Price apportioned to demobilization. Marquette will review the submission and advise Contractor of the approved apportionment of the Contractor Price among the Milestones that will be used for the calculation of progress payments to Contractor under this Construction Purchase Order.

7.4 Contractor will be entitled to request monthly progress payments by submitting an invoice not later than the tenth (10th) day of the calendar month following the month for which the Progress Payment is sought. Lien waivers from Contractor and from all subcontractors who have performed work at the Site and all material suppliers who have provided materials that have been delivered to the Site, substantially in the form set forth in this Construction Purchase Order, effective through thirty (30) days prior to the last day of the calendar month for which the Progress Payment is sought, will accompany the Progress Payment request unless waived by the Authorized Representative of Marquette in writing. The Authorized Representative of Marquette will determine the progress of the Contract Work at the end of each

calendar month and will revise the Progress Payment request as necessary to conform to such determination, which will be binding on Contractor.

7.5 Unless waived in whole or in part by the Authorized Representative of Marquette in writing, ten percent (10%) of each Progress Payment up to fifty percent (50%) completion of the Contract Work will be retained by Marquette until final payment.

7.6 Payment terms are net 45 days or Net 15 if Contractor accepts Virtual Pay (virtual credit card payments). No interest will be payable with respect to any amounts due Contractor under this Construction Purchase Order. All invoices will refer to the Marquette Construction Purchase Order Number and will be emailed to invoices@marquette.coupahost.com unless otherwise set forth in the Contract Documents.

7.7 Final payment will be made to Contractor forty-five (45) days after the latter of (a) the Final Completion Date or (b) the date on which Contractor submits final conditional lien waivers and releases from all subcontractors and material suppliers.

7.8 Final unconditional lien waivers from Contractor and proof of payment of the amounts stated in the final conditional lien waivers of all subcontractors and material suppliers will be submitted by Contractor to the Authorized Representative of Marquette within ten (10) days of receipt by Contractor of final payment.

7.9 The making of any payment to Contractor under this Construction Purchase Order will not constitute evidence of satisfactory performance of any obligation of Contractor under this Construction Purchase Order or of acceptance of any defective or incomplete Contract Work.

7.10 The acceptance of any payment by Contractor will constitute a release of Marquette by Contractor of any and all liability, except for amounts expressly retained, for any reason arising or incurred during the period to which the payment relates, other than claims or disputes expressly reserved in writing in the request for payment. Acceptance of final payment by Contractor constitutes a general release under this Construction Purchase Order.

8. AUDIT AND RECORDS

8.1 Marquette will have the right, upon reasonable notice of not less than seven (7) days and during regular business hours, to audit all of Contractor's records concerning this Construction Purchase Order. Contractor will provide all reasonable assistance as may be required.

8.2 Contractor will provide Marquette with all information necessary to permit Marquette to allocate costs between structural and non-structural components and for purposes of determining related income, sales, use, or ad valorem taxes. Contractor will also furnish Marquette, upon request, affidavits of status of accounts and releases of liens as may be deemed necessary by Marquette.

9. SETOFFS AND COUNTERCLAIMS

9.1 Unless provided by the Contract Documents, Marquette will be entitled to exercise a right of setoff or counterclaim with respect to any amounts due Contractor under this Construction Purchase Order without otherwise being considered in breach of its obligations under this Construction Purchase Order. The setoff right may be exercised as Marquette may deem reasonably necessary to protect Marquette from any actual or potential liability or damage arising out of or related to this Construction Purchase Order for which Contractor may be liable.

9.2 More specifically, and without limiting the foregoing, and in addition to Contractor's obligations under Section 12, upon the filing of any laborer, material supplier, or mechanic liens on the Equipment or on the Site as a result of the work performed by Contractor under this Construction Purchase Order, if Contractor fails to secure the release of all liens, Marquette may, upon ten (10) days advance notice to Contractor, take all necessary steps, including but not limited to payment, to secure the release of the lien, and any amount paid by Marquette, including reasonable attorney's fees and costs, will be paid by Contractor to Marquette or, in the absence of payment and at Marquette's election, Marquette may deduct the amounts from amounts owed Contractor under this Construction Purchase Order. Contractor agrees that, in such event, Contractor will look only to the person responsible for the lien for recovery.

10. PERFORMANCE AND PAYMENT BONDS

Upon the written request of Marquette, Contractor will provide Marquette with payment and performance bonds, from a good and sufficient surety approved in advance by the Authorized Representative of Marquette, to secure its obligations under this Construction Purchase Order. Upon proof of payment of the premiums associated with the bonds, Marquette will reimburse Contractor for the cost of the bonds.

11. REPRESENTATIONS AND WARRANTIES

11.1 Contractor represents that it is a corporation in good standing in the state in which it is incorporated; that the person designated to act on behalf of the Contractor is authorized to do so; and that it is unaware of any governmental action or pre-existing obligation that would prevent it from performing its obligations as set forth in this Construction Purchase Order.

11.2 Contractor represents and warrants that the Contract Work and Contractor's performance of it will comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations.

11.3 Contractor represents and warrants that neither the Contract Documents prepared by Contractor nor the Contract Work performed by Contractor will infringe any United States patent or any other intellectual property right of a third person.

11.4 Contractor represents and warrants that it will not permit or allow any laborer, mechanic, or material supplier liens upon the Site arising out of the Contract Work or out of any labor, materials, or equipment furnished by any person under this Contract.

11.5 Contractor represents that Contractor has had a full and complete opportunity to examine both the Site of the Contract Work and all of the Contract Documents and that Contractor is satisfied as to the character, quality, and quantity of the Contract Work required to be performed under this Construction Purchase Order, as well as the materials, equipment, and other items that may be required of Contractor as a result and the conditions for the performance of the Contract Work that will be encountered at the Site that may affect the cost or difficulty of performing the Contract Work.

12. INDEMNIFICATION

12.1 To the fullest extent permitted by law, Contractor will indemnify, defend, and hold Marquette, its Trustees, officers, employees, subsidiaries, affiliates, successors, assigns, and agents harmless from all Losses, to the extent that the Losses arise out of or are related to (a) the performance of the Contract Work, including claims of damage to property or personal injury by employees of Contractor, employees of Marquette, or any other person except to the extent caused by Marquette; and (b) Contractor's breach of its representations and warranties under Section 11. Nothing in this section will be limited in any way by any limitation on the amount or type of damages, compensation, or benefits paid to any person under worker's compensation, disability benefits, or other employee benefit acts.

12.2 Marquette will provide Contractor with prompt notice of any Loss. Contractor will have the exclusive right to control the defense of any Loss, including but not limited to the exclusive right to settle or to compromise any Loss, except as otherwise set forth in this Construction Purchase Order. Marquette will provide reasonable assistance to Contractor with respect to the defense of any Loss, including making documents and witnesses available to Contractor without cost.

13. PUBLIC STATEMENTS AND PRESS RELEASES

Any press release or public announcement related to this Construction Purchase Order or to the terms and conditions of this Construction Purchase Order must be agreed upon by the Parties before it is issued, except to the extent required by law.

14. FORCE MAJEURE

Neither Party will be liable for any failure to perform under this Construction Purchase Order to the extent such failure is the result of causes beyond the control and without the fault or negligence of the non-performing Party, including but not limited to wars, strikes, fires, acts of God, acts of a public enemy, terrorism or threats of terrorism, labor difficulties, shortages of raw materials or components, or freight embargoes. A Party seeking the benefit of this provision will provide prompt written notice to the other Party when a force majeure event has occurred and when the force majeure event has terminated.

15. INSURANCE

Contractor will provide to Marquette, at the time that Contractor returns an executed copy of this Construction Purchase Order, a Certificate of Insurance evidencing its insurance coverage(s) then in effect. All insurance coverage(s) will be with a reputable insurer and will not be less than those that may be specified by Marquette from time to time in writing to Contractor. Coverage will include, at a minimum, worker's compensation insurance, including employer's liability insurance, as statutorily required, as well as (a) comprehensive general bodily injury liability insurance and comprehensive general property liability insurance of not less than Two Million Dollars (\$2,000,000) Combined Single Limit per occurrence and (b) comprehensive automobile liability insurance of not less than Two Million Dollars (\$2,000,000) Combined Single Limit per occurrence. These coverages can be supplemented with an Umbrella policy. Comprehensive general liability provisions will include Premises/Operations, Contractual Liability, Fire Legal Liability, Independent Contractors, Products Liability, and Completed Operations coverage for not less than three (3) years after the completion of the Contract Work. The Certificate of Insurance will also name Marquette and its subsidiaries and affiliates as additional insureds or certificate holders with thirty (30) days advance written notice of cancellation or non-renewal. Contractor will provide information concerning policy form, retroactive date, discovery provisions, and retention upon request. Use of purchasing or retention groups and requests for waiver of other requirements in this Section 15 will be submitted in writing in advance of commencement of the Contract Work. Contractor will, to the extent that its insurance coverage(s) may be modified from time to time prior to the completion of the Contract Work, promptly provide revised Certificates of Insurance to Marquette. If Contractor fails to maintain the required insurance coverage(s) in force at all times prior to the Termination Date, Marquette may treat the failure as a default under Section 20.4 and provide notice as permitted under that section. Marquette reserves the right not to pay any invoice from Contractor unless Marquette has received a valid Certificate of Insurance in accordance with this section and, in addition, to obtain the required insurance on behalf of the Contractor and to charge the Contractor with the cost of that insurance.

16. EQUAL EMPLOYMENT

16.1 Contractor will comply with all laws, rules, and regulations related to employment, including but not limited to Executive Order No. 11246, Equal Employment Opportunity, effective October 24, 1965; the Vietnam Era Readjustment Assistance Act of 1974 and Executive Order 11701, relating to the employment of veterans; the Rehabilitation Act of 1973 and Executive Order No. 11758, related to the employment of handicapped persons; all amendments to the above; and all applicable state and local statutes, regulations, and ordinances related to employment.

16.2 Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, religion, gender, age, national origin, or sexual preference. Contractor will require each of its subcontractors to comply with this section.

17. GOVERNING LAW, JURISDICTION, AND DISPUTES

17.1 This Construction Purchase Order will be construed and interpreted in accordance with the laws of the State of Wisconsin, without regard to its choice of law provisions.

17.2 Each Party consents to the non-exclusive jurisdiction of the courts of Wisconsin for resolution of disputes arising out of or related in any way to this Construction Purchase Order.

17.3 Contractor will continue to perform its obligations under this Construction Purchase Order during the pendency of any dispute. Contractor will comply with all reasonable orders issued by the Authorized Representative of Marquette during the pendency of any dispute. No order will prejudice the rights of either Party regarding the dispute or be interpreted as an admission by Marquette. The failure of Contractor to continue to perform its obligations or to comply with any order may be treated by Marquette as a default under this Construction Purchase Order.

18. ATTORNEY'S FEES

If either Party employs an attorney to enforce any of the provisions of this Construction Purchase Order, or to protect its interests in any manner arising out of this Construction Purchase Order, or to recover damages as a result of the breach of this Construction Purchase Order by Contractor, or to prosecute or to defend any litigation or legal action as a result of this Construction Purchase

19. ASSIGNMENT

Neither Party may assign this Construction Purchase Order or any rights or obligations under this Construction Purchase Order, and any assignment without the express written consent of the other Party will be invalid; except that a Party will be permitted to assign this Construction Purchase Order to any wholly-owned subsidiary without obtaining prior approval.

20. TERM, TERMINATION, AND SURVIVAL

20.1 Acceptance of this Construction Purchase Order occurs when (a) Contractor acknowledges acceptance in writing or (b) Contractor commences any part of the Contract Work, including placing orders for materials to be incorporated into the Contract Work. This Construction Purchase Order will continue in effect until Final Acceptance, unless terminated earlier in accordance with this section.

20.2 If a force majeure event continues for a period of more than thirty (30) days, the Party not claiming the benefit of force majeure will have the right to terminate this Construction Purchase Order for its convenience immediately, without any further liability to the Party claiming the benefit of force majeure.

20.3 Marquette may, at any time and for its convenience, terminate this Construction Purchase Order in whole or in part by written notice to the Contractor. Upon the receipt of the notice, Contractor will discontinue the terminated Contract Work at the time and in the manner set forth in the notice, or if none, immediately; place no further material orders and enter into no further subcontracts, except as may be necessary to complete the portion of the Contract Work not terminated; direct all subcontractors to suspend the portion of the Contract Work that has been terminated; and perform any additional work necessary to preserve and to protect the Contract Work in progress and to protect materials and equipment at the Site. Upon the request of Marquette, Contractor will also make all commercially reasonable efforts to secure the cancellation of any subcontract and material orders not fully performed on terms satisfactory to Marquette. Contractor will be entitled to receive progress payments for all completed Work; unrecovered costs associated with the cancellation of outstanding subcontracts and material orders; and costs of demobilization.

20.4 Either Party may terminate this Construction Purchase Order for default by written notice to the other Party, provided that the terminating Party will give at least thirty (30) days advance written notice of its intent to terminate this Construction Purchase Order for default and the defaulting Party has failed to cure the defaults within the required time, or, if a cure cannot reasonably be accomplished within thirty (30) days, the defaulting Party has not taken all commercially reasonable action to cure the default at the earliest commercially reasonable time and does not continue to cure the defect diligently until the defaults are cured.

20.5 If it is determined that Marquette has wrongfully terminated the Construction Purchase Order in accordance with this

Section 20, Contractor will be entitled to compensation as set forth in Section 20.3 as its sole and complete remedy.

20.6 Upon the expiration or termination of this Construction Purchase Order, each Party will promptly pay to the other Party any unpaid and undisputed amounts due as of the Termination Date. Each Party will provide written notice to the other within thirty (30) days of the Termination Date of any amounts claimed by the other Party that remain unpaid and disputed, including with specificity the reasons why the amounts have not been paid; but the failure to give notice will not, in and of itself, waive any right under this Construction Purchase Order to recover the outstanding amount.

20.7 In addition, upon the termination of this Construction Purchase Order for any reason, and upon the written request of the Authorized Representative of Marquette at the time that the notice of termination is given, Contractor will assign the subcontracts and material orders to Marquette.

20.8 Upon the expiration or termination of this Construction Purchase Order, Marquette's obligation to pay for completed Contract Work in accordance with the terms of this Construction Purchase Order will survive, as well as the obligations of the Parties set forth under the Warranty, Consequential Damages, Setoffs and Counterclaims, Insurance, Indemnification, Public Statements and Press Releases, Confidentiality, Governing Law, Jurisdiction, and Disputes, and Miscellaneous provisions of this Construction Purchase Order.

21. MISCELLANEOUS

21.1 All notices under this Construction Purchase Order must be in writing. Notices will be sent to the addresses indicated on the signature page of the Construction Purchase Order. All Amendments to this Construction Purchase Order must be in writing and signed by the Parties.

21.2 This Construction Purchase Order does not create any agency, employment, partnership, joint venture, or other relationship. The Parties are independent contractors. No Party has any authority to bind any other Party. Marquette does not reserve, and does not have, any right to exercise any control over, or to direct in any respect, the performance of the Contract Work. The entire responsibility for direction of the activities of Contractor under this Construction Purchase Order remains with the Contractor.

21.3 If any provision of this Construction Purchase Order is held illegal, invalid, or unenforceable in whole or in part under applicable law, the provision or portion thereof will be ineffective to the extent of its illegality, invalidity, or unenforceability, and the provision will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the Parties. The illegality, invalidity, or unenforceability of a provision will not in any way affect the legality, validity or enforceability of any other provisions of this Construction Purchase.

21.4 The Contract Documents are intended to be construed as a whole. The Contract Documents are complementary, so that what is called for by any one of the Contract Documents will be as binding as if it were called for by all of the Contract Documents. If there is a conflict within the Contract Documents, the provisions of this Construction Purchase Order will govern.

21.5 The failure of any Party to assert any of its rights under this Construction Purchase Order, including the right to terminate the Construction Purchase Order in the event of breach or default by another Party, will not be deemed to constitute a waiver by that Party of its right thereafter to enforce each and every provision of this Construction Purchase Order in accordance with their respective terms.

21.6 Nothing in this Construction Purchase Order will prevent or restrict either Party from entering into agreements for the provision of products and services of the same or similar nature as those provided under the Construction Purchase Order with any other person.

21.7 A facsimile version, including a facsimile signature, will be considered the same as an original for all purposes. The headings in this Construction Purchase Order are for reference purposes only and will not affect the interpretation of this Construction Purchase Order.

21.8 Marquette University enforces a no weapons policy, which can be found at www.marquette.edu/weapons-policy. Pursuant to the Weapons Policy, Contractor, Contractor employees, and subcontractors and subcontractor employees may not:

- Carry any weapons on University property except as expressly permitted by applicable State law.
- Openly carry any weapons on University property.
- Carry any weapons in any University building or leased space or at any University special event marked with signage specifying “WEAPONS ARE PROHIBITED IN THIS BUILDING.”
- Carry or store any weapon in a University owned or leased vehicle.
- Park any personally owned or contractor vehicle on University property that contains a weapon.
- Possess unloaded ammunition on University property.
- Imply possession of, threaten to use, display, brandish, use, or discharge a weapon on University property for any purpose or reason except lawful self-defense or lawful defense of others.
- Sell or serve alcohol on University property or at a University event not on University property to any person whom the contractor or contractor employee knows or has reason to know is carrying a concealed weapon.

- Fail to report timely to the University Department of Public Safety the presence on University property of any person whom the contractor or contractor employee has reason to believe is in possession of or carrying a weapon in violation of University policy, unless doing so would subject the Contractor or Contractor employee to the threat of physical harm, or take other action in response to the presence of any person whom the Contractor or Contractor employee has reason to believe is in possession of or carrying a weapon in violation of University policy except for reporting the presence of the weapon to the University Department of Public Safety.

The University considers this provision to be a material term of the agreement. Contractor is responsible for educating Contractor employees on the requirements of this provision. Contractor will immediately and permanently exclude from University property any Contractor or subcontractor personnel in violation of this provision. Contractor acknowledges that there is no adequate cure for even a single breach of this provision and hereby waives any right to notice or to cure for violations of this provision in advance of University's termination of this agreement for default for violation of this provision.

21.9 This Construction Purchase Order, including the Contract Documents, constitutes the entire understanding of the Parties with respect to the subject matter thereof and will supersede all previous and contemporaneous communications, representations, or understandings, either oral or written, between the Parties relating to that subject matter.

END OF TERMS AND CONDITIONS

**CONSTRUCTION SERVICES AGREEMENT
FORM OF AFFIDAVIT AND WAIVER OF LIEN**

STATE OF _____
COUNTY OF _____, 20__

_____, being first duly sworn, states as follows:

1. I am _____ (job title) of _____ (“Contractor”) and am familiar with the facts stated in this Affidavit.

2. Contractor has performed for Marquette Corporation certain labor or furnished certain supplies, materials, equipment, or facilities, or both, or by others for it, in connection with _____ (“the Project”), and payment less retainages has been made by all such others for all labor, supplies, materials, equipment, and other facilities furnished by them.

3. Contractor has no lien rights on account of any labor, supplies, materials, equipment, or facilities furnished by it, or by others for it, in connection with the Project.

4. In consideration for payment of _____ Dollars (\$_____), Contractor hereby waives all liens against Marquette, its premises, its assets, and its property, through _____, 200__.

5. Contractor will indemnify, defend, and hold Marquette harmless against any and all liens, claims, and suits that may now or hereafter may be asserted on account of any labor, supplies, materials, equipment, or facilities furnished by it, or by others for it, in connection with the Project, including but not limited to all expenses, costs, and attorney’s fees associated with any such liens, claims, or suits.

Contractor

Subscribed and sworn to before me
this ___ day of _____, 20__.

Notary Public, State of _____
My commission _____.