Terms and Conditions for Purchase Orders for Services

PURCHASE ORDER
These Terms and Conditions shall apply to all Purchase Orders for Services issued by Marquette University (Purchaser or University) to the services provider (Provider). A Purchase Order shall consist of (1) these Terms and Conditions; (2) the Statement of Work agreed by the Purchaser and the Provider, in the form prescribed by Purchaser, that references a University Purchase Order by number; and (3) any separate terms and conditions required by Provider in connection with the Purchase Order that references a University Purchase Order by number.

EFFECTIVE DATE OF PURCHASE ORDER
A Purchase Order shall become effective when (1) Provider notifies Purchaser in writing of its acceptance of a Purchase Order; (2) both Provider and Purchaser sign the Statement of Work that references a Purchase Order by number; and (3) both Provider and Purchaser sign any separate terms and conditions required by Provider in connection with a Purchase Order.

CONFLICTS
Each term or condition of the Statement of Work agreed to by the Purchaser and the Provider, as well as each separate term or condition required by Provider in connection with a Purchase Order, shall apply, but only to the extent that there is no conflict with the terms set forth in these Terms and Conditions, which shall govern this transaction; except that, if the Statement of Work or separate agreement between Provider and Purchaser contains the following language, to the extent that there is a conflict, the terms of the agreement containing the following language shall apply: “Notwithstanding the terms and conditions of Purchase Order No. [enter PO number] of Marquette University, and subject to the written approval of the Marquette University Office of General Counsel, the following identified terms shall prevail over any conflicting terms in Purchase Order No. [enter PO number] of Marquette University:”

CHANGES
Changes to a Purchase Order can only be made in writing.

NOT-TO-EXCEED AMOUNT
The amount set forth on a Purchase Order for Services to which these Terms and Conditions apply is a not-to-exceed amount. Under no circumstances shall the total amount to be paid by Purchase exceed the amount set forth on a Purchase Order for Services to which these Terms and Conditions apply without the issuance of a new or revised Purchase Order for Services increasing the not-to-exceed amount.

PAYMENT AND EXTRA CHARGES
The amount due from Purchaser and payable to Provider under a Purchase Order shall be determined based on the Statement of Work agreed by the Purchaser and the Provider that references a Purchase Order by number, subject to the not-to-exceed amount set forth on the Purchase Order. In addition, no additional charges of any kind will be allowed unless specifically set forth in the Statement of Work agreed by the Purchaser and the Provider that references a Purchase Order by number.

TAXES AND TAX EXEMPTION
Purchaser is a § 501(c)(3) not-for-profit tax-exempt entity, and taxes for which Purchaser is not liable may not be included as part of the compensation for services and may not be added to any invoice. Appropriate documentation will be given to Provider upon request.

SUBCONTRACTING AND ASSIGNMENT
Provider shall not contract, subcontract or assign to a third party any part of a Purchase Order or any rights arising thereunder.

INVOICE AND SHIPMENT

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Invoices must be sent to P.O. Box 1881, Milwaukee, WI 53201-1881, Attention: Comptroller’s Office.

Separate invoices must be issued in connection with each Purchase Order. All invoices not referencing a Purchase Order number or more than one Purchase Order number will be rejected. The total amount invoiced under any Purchase Order may not be greater than the amount stated on the Purchase Order. Provider’s complete name and address for remittance must appear on each invoice. If a Purchase Order is not for a firm fixed amount due for specified services, a complete description of labor performed, time expended, and each element of the charge must be provided on the invoice. All payment terms are net 45 days.

**INSURANCE**

During the term of each Purchase Order in an amount in excess of $2,000, Provider shall maintain the following insurance policies from insurers licensed to do business in the State of Wisconsin: (a) commercial general liability (CGL) insurance of not less than $1,000,000/occurrence and $2,000,000 aggregate; (b) worker compensation insurance in accordance with applicable state statutory limits; (c) automobile insurance in the amount of $1,000,000 (including coverage for insured, uninsured, underinsured, owned and non-owned vehicles). Certificates of insurance shall be provided upon request. Where liability insurance is required, Purchaser shall have no duty to pay any invoice until proof of liability insurance with appropriate minimum limits is provided to Purchaser by Provider.

To the extent that Provider is an individual person or sole proprietorship and that Provider has no employees except for the individual performing the services, the preceding Insurance provision shall not apply, but the following language shall apply. Provider and Purchaser are independent contractors. Nothing in these Terms and Conditions shall be understood or construed to create or imply any relationship between Purchaser and Provider in the nature of any joint venture, employer/employee, principal/agent, or partnership. Neither Purchaser nor Provider shall have the authority to, nor shall either attempt to, assume any obligation by or on behalf of the other. Provider shall in no way become an employee of the Purchaser by performing services under a Purchase Order and is not eligible for worker compensation benefits from Purchaser. Therefore, Provider agrees and understands that, as an independent contractor, Provider may be required by applicable law to provide Provider’s own Worker Compensation insurance coverage. See, e.g., § 102.04(1)(b)2, Wis.Stats. Provider or Provider’s worker compensation insurer shall be responsible for health and medical bills for sickness and injury, including sickness or injury that may be suffered by Provider while working on or arising from activities covered by a Purchase Order. Provider also understands the need to purchase, and has considered the purchase of, individual health insurance and benefit coverage as may be applicable to Provider’s needs, apart from worker compensation insurance coverage. In addition, Provider understands and agrees that financial responsibility for Provider’s legal liability arising from Provider’s actions and activities shall rest with the Provider. The Purchaser’s financial responsibility for legal liability arising from its actions and activities shall rest with Provider, except as otherwise set forth in these Terms and Conditions. Therefore, Provider should effect and maintain any insurance coverage, including but not limited to General Business and Automobile Liability policies, necessary to assure Provider’s financial obligations and legal liability. Personal liability coverage afforded by standard Homeowners/Rental Owners and Automobile policies may meet this obligation if endorsed for business use. Provider should obtain whatever review by Provider’s insurer or agent of Provider’s insurance needs as Provider deems necessary to assure that adequate insurance coverage and protection has been obtained by Provider.

**TERMINATION FOR CONVENIENCE OR CAUSE**

Purchaser may terminate a Purchase Order or any part thereof for its sole convenience. Upon notice
of such termination, Provider shall immediately stop all work thereunder and cause its suppliers and subcontractors to cease their work against the Purchase Order. Provider shall be paid for the reasonable value (including profit) of all work performed prior to notice of termination, plus actual direct costs resulting from termination. Provider shall not be paid for work performed or costs incurred after receipt of notice of termination or for costs incurred by Provider's suppliers unless such costs could not have reasonably been avoided.

Purchaser may terminate a Purchase Order or any part hereof for cause if Provider defaults, fails to comply with any terms and conditions of the Purchase Order, becomes insolvent, ceases operations, liquidates, or files for bankruptcy protection. Performance of services that are defective or do not conform to a Purchase Order shall also, without limitation, be causes allowing Purchaser to terminate the Purchase Order for cause.

**FORCE MAJEURE**

Neither party shall be considered in default in the performance of its obligations under this Purchase Order, and either party may cancel without penalty by notice to the other party without liability, if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause that is beyond the reasonable control of the party affected, including but not limited to, war, hostilities, terrorism, revolution, civil commotion, strike, lockout, epidemic, accident, severe weather, fire, wind or flood or any act of God. A party becoming aware of any Force Majeure condition that may affect a performance under this Purchase Order shall seek promptly to give the other party notice of such condition.

**DISPUTES**

In case of a legal action initiated by either party arising out of a Purchase Order or the transaction contemplated thereunder, the prevailing party agrees to pay the prevailing party’s costs and expenses associated with the legal action, including without limitation, reasonable attorney’s fees.

**SET-OFF**

Purchaser shall at all times have the right to set-off any amount owing from the Provider to Purchaser against any amount owing from Purchaser to the Provider. At Purchaser’s option, repayment, in lieu of setoff, may be requested.

**REMEDIES**

No remedy herein provided shall be deemed exclusive of any other remedy allowed by law.

**LIMITATIONS OF LIABILITY**

Neither party shall be entitled to recover any incidental, special, punitive, or consequential damages under any Purchase Order, under any legal theory of recovery in any action related in any way to any Purchase Order.

**LIMITATIONS OF ACTIONS**

Claims under any Purchase Order may be brought at any time within the applicable statute of limitations.

**INDEMNITY**

Provider shall indemnify, defend, and hold Purchaser, its trustees, officers, employees, agents, and students harmless from all loss, cost, or expense of any kind arising out of or related to personal injury or property damage to the extent caused or alleged to have been caused by the negligence or willful misconduct of the Provider, its employees, or its agents; any alleged or actual intellectual property infringement in connection with the services; as well as any breach of applicable law by Provider. Nothing in these Purchase Order Terms and Conditions shall constitute a waiver by the Purchaser of any right of indemnification, contribution, subrogation, or other remedy available to the Purchaser at law or in equity.

Purchaser shall indemnify, defend, and hold Provider, its directors, officers, and employees harmless from all loss, cost, or expense of any
kind arising out of or related to personal injury or property damage to the extent caused or alleged to have been caused by the negligence or willful misconduct of the Purchaser, its employees, its agents, or its invitees; any alleged or actual intellectual property infringement by Purchaser in connection with the services; as well as any breach of applicable law by Purchaser. Nothing in these Purchase Order Terms and Conditions shall constitute a waiver by the Provider of any right of indemnification, contribution, subrogation, or other remedy available to the Provider at law or in equity.

PUBLICITY AND PRESS RELEASES

Purchaser shall have advance notice of, and the right to approve, all publicity and press releases related to any Purchase Order.

AUDIT

Provider shall keep accurate records of all services provided or invoiced under each Purchase Order. Purchaser shall have the right, for three (3) years from the completion of all services or the payment of the final invoice, whichever is later, to obtain copies of all records and documentation related to each Purchase Order and to audit all such records at reasonable times upon reasonable advance notice for the purpose of confirming the performance of all obligations in accordance with the terms and conditions of each Purchase Order.

GOVERNING LAW AND INTEGRATION

Provider shall comply with all applicable laws, rules and regulations relating to the services described herein. The validity, interpretation and performance of this Purchase Order shall be governed and construed in accordance with the laws of the State of Wisconsin.

The Purchase Order as defined in the “Purchase Order” provision above shall constitute the complete agreement of the parties with respect to its subject matter and shall supersede any and all previous commitments or understands, oral or written.

WEAPONS POLICY

Marquette University enforces a no weapons policy, which can be found at www.marquette.edu/weapons-policy. Pursuant to the Weapons Policy, Provider, Provider 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 Provider or its employee has reason to believe is in possession of or carrying a weapon in violation of University policy, unless doing so would subject the Provider or its employee to the threat of physical harm, or take other action in response to the presence of any person whom the Provider or its 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. Provider is responsible for educating its employees on the requirements of this provision. Provider shall immediately and permanently exclude from University property any of its personnel or its subcontractor’s personnel who are in violation of this provision. Provider 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.

**SEVERABILITY**

If any part of a Purchase Order is found to be illegal or unenforceable, that part shall be severed from the Purchase Order, and the rest of the Purchase Order shall be enforceable as written.

**NON-DISCRIMINATION**

All services provided under any Purchase Order shall be provided without regard to the race, color, creed, sex, age, disability status, or national origin of participants requiring such services. Notices will be posted by Provider in compliance with applicable state and federal laws in conspicuous places, available for employees and applicants for employment of Provider, setting forth the provisions of this nondiscrimination clause, as required by law.

**MARQUETTE UNIVERSITY:**

By ____________________________

Its ____________________________

**PROVIDER:**

By ____________________________

Its ____________________________

05/2017