WEST VIRGINIA HIGHER EDUCATION CONSTRUCTION PURCHASE ORDER TERMS AND CONDITIONS

ACCEPTANCE OF TERMS. Construction Services furnished by the Contractor shall be subject to and in accordance with this Construction Purchase Order. Contractor's acceptance of this Construction Purchase Order shall constitute agreement to be bound by and to comply with all the terms and conditions set forth herein. Written acceptance or the performance of all or any portion of the construction services covered by this Construction Purchase Order by the Contractor shall constitute unqualified acceptance of all its terms and conditions. Any additional or different terms and conditions which may appear in any communication from the Contractor or in any printed form of the Contractor are hereby rejected and shall not be effective unless specifically agreed to in writing by Owner. No such additional or different terms or conditions shall be a part of the Construction Purchase Order despite Owner's receipt thereof unless Owner specifically agrees in writing to their inclusion.

HAZARDOUS MATERIALS/SUBSTANCES. Contractor shall identify material containing a hazardous substance including, but not limited to, those governed by the Resource Conservation and Recovery Act, Hazardous Materials Transportation Act, and Toxic Substance Control Act and any similar acts and regulations thereunder. Each self-contained unit and carrier shall be marked identifying the existence of a hazardous material or substance and its name. All products/materials used pursuant to this Construction Purchase Order shall be new and contain less than 1% asbestos as determined in accordance with methods specified in 40 CFR 763, Subpart E, Section 1.

PAYMENTS. Payments for construction services furnished under this Construction Purchase Order will be due thirty (30) days after receipt of proper invoicing for such goods or services and receipt of all documents required by the Construction Purchase Order. Progress payments may be made under this Construction Purchase Order when the period of performance exceeds 30 calendar days. All required documentation shall not be limited to, proof of payment of Business & Occupation Tax, consent of surety, or other Owner required documents must be received prior to making final payment. In addition, the Contractor shall remove and dispose of all materials and other debris from the work site and shall dispose of such materials pursuant to all applicable federal, state, and local laws, regulations and ordinances. Interest may be paid on late payments in accordance with West Virginia State Code and payments will be subject to the Prompt Payment Act of WV.

SPECIFICATIONS, DRAWINGS AND OTHER DOCUMENTS. All specifications, drawings, and other documents provided by the Owner to the Contractor in connection with this Construction Purchase Order shall be used by the Contractor solely for the purpose of carrying out the work and for no other purpose and shall remain the property of the Owner and be returned to the Owner upon request. Contractor is responsible for all field verification of all site work where applicable, and shall not rely upon Owner provided information or representations.

CONDUCT, QUALITY, AND INSPECTION OF WORK. The Contractor agrees to carry out the work diligently and to provide efficient supervision and inspection thereof and warrants, without restricting the generality of the foregoing, that the work is of proper quality, material and workmanship and in full conformity with any specifications, drawings, models or samples, if any, exceeds or meets Owner standards, and is fit for the purpose intended by Owner. The materials supplied hereunder shall be of good quality, free from any faults and defects, in conformance with this Construction Purchase Order, and shall at all times be subject to Owner's inspection before acceptance by Owner. Materials or products identified by reference are Owner standard products. Substitution of alternate products will be rejected by the Owner and such shall be cured by Contractor at its sole and absolute cost, unless otherwise agreed to in writing by Owner. Neither, however, Owner's inspection nor failure to inspect shall relieve Contractor of any obligations, representations or warranties hereunder. If the materials fail to conform to Owner's specifications or are otherwise defective, Contractor shall promptly replace same at Contractor's sole expense. All services not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective and Contractor shall promptly correct such defective services at Contractor's sole expense. No payment for or acceptance of materials, including services or construction, by Owner hereunder shall constitute a waiver of any of the foregoing nor shall anything herein contained be construed to exclude or limit any or Contractor's warranties implied by law. Acceptance shall take place only after completion and inspection of all work required by the Construction Purchase Order or that portion of the work as determined, by Owner, can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Owner's rights under any warranty or guarantee.

WAIVER. The waiver of any breach of the terms of this Construction Purchase Order by Owner shall not constitute a waiver of any of its terms or any subsequent breach, nor shall any payment for goods delivered, services or construction performed constitute such waiver.

WARRANTIES. Contractor shall honor standard commercial guarantees and warranties offered by the manufacturer, and any other specific warranty or guarantee specified elsewhere in this Construction Purchase Order. Contractor warrants that all construction work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the requirements of this Construction Purchase Order. Without waiving any other term of the Construction Purchase Order or any conditions, warranty, or provision implied or imposed by law, the Contractor shall, if requested by the owner to do so at any time within twelve months from date of delivery as specified in the Construction Purchase Order, repair or replace, at its own expense, any work and each article or part and any material included in the work which becomes defective or fails to conform to the Construction Purchase Order requirements as a result of faulty or inefficient manufacture, material or workmanship, such replacement to be made by delivering the replaced work or material to the delivery point set out in the Construction Purchase Order.

COMPLIANCE. The Contractor, subcontractor, and other persons performing work pursuant to this Construction Purchase Order shall be in compliance with all federal, state, and local laws, rules, regulations, and ordinances including, but not limited to, contractor licensing, prevailing wage rates, workers compensation, vendor registrations, and the West Virginia Drug-Free Workplace Act, if applicable. Proof of compliance with this Section is required prior to purchase order issuance.

HEALTH AND SAFETY. Contractor acknowledges that it has a primary duty to prevent on the job accidents and to protect the health and safety of its employees. Contractor understands and acknowledges that its Construction Purchase Order may entail work at sites that pose potential exposure to hazardous materials and that such work is inherently dangerous. As such, Contractor understands that accidents, bodily injury or property damage could result from human errors in judgment, mistakes, carelessness, forgetfulness, sloppiness, and work performed in haste. It is the duty and responsibility of Contractor to train and supervise all its personnel and activities to prevent such occurrences. Contractor further acknowledges that Owner bears no duty or legal responsibility to supervise Contractor's personnel. Contractor represents that it has the requisite corporate resources and expertise to perform the work.

LIENS OR CLAIMS. Contractor warrants the equipment, articles and/or materials furnished under the terms of this Construction Purchase Order are unencumbered and not subject to any lien or claim.

ASSIGNMENT. This Construction Purchase Order, including the right to receive payment, is not transferable or otherwise assignable without the express prior written consent of Owner. Requests for transfer or assignment must be in writing, and in advance.

AUTHORITY. The Project Manager or representative(s) whose name appears on the face of this Construction Purchase Order has authority to act as agent for Owner.
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Contractor is cautioned that instructions contrary to the provisions of this Construction Purchase Order, which are received from Owner employees not specifically delegated authority to act in this matter, are not valid or binding on Owner, and are a violation of Owner policy and procedures.

CHANGES IN SCOPE. The Contractor shall not increase or decrease the scope of work covered by this Construction Purchase Order without the prior written consent of the Owner. If the Owner at any time during the progress of the work requires any alteration, addition or omission from the work contracted for, it shall be done, and in so doing it shall not affect or cancel this Construction Purchase Order and the cost thereof shall be added to or deducted from the Construction Purchase Order price as the case may be, upon reasonable notice. All such changes shall be formalized by issuance of a Change Order to the Construction Purchase Order.

SUBCONTRACTING. The Contractor may subcontract such portions of the work as is customary in the carrying out of similar work, but must first provide the Owner with a list of the subcontractors. The Owner may, within two days of receiving the above list, reject any intended subcontractor. No subcontracting shall relieve the Contractor from any of its obligations under this Construction Purchase Order or impose any liability upon the Owner to a subcontractor. The contractor shall enter into contracts or written agreements with subcontractors and suppliers to require them to perform their work as provided in this Construction Purchase Order. Such agreements shall incorporate the terms and conditions of this Construction Purchase Order into all contracts or written agreements with subcontractors and suppliers. Contractor shall be as fully responsible to the Owner for acts and omissions of subcontractors, suppliers, and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.

INDEMNIFICATION. Contractor agrees to hold harmless Owner, its Board of Governors, officers, agents and employees from, and to defend it against, any and all claims arising from the purchase, installation, and/or use of the equipment, articles and/or materials or services which are furnished by the Contractor under this Construction Purchase Order. Contractor assumes all risk of damage or injury to Contractor's own employees, property or person acting for or on behalf of Contractor from whatever cause. Nothing herein shall be construed so as to relieve Owner from liability arising solely as a result of its own gross negligence.

TIME OF ESSENCE. Time shall be deemed to be of the essence of this Construction Purchase Order for both parties, and they mutually agree to see to the performance of their respective work and the work of their Contractors so that the work is completed within the time provided to complete the work.

FORCE MAJEURE. Contractor or Owner may delay delivery or acceptance occasioned by causes beyond Contractor's or Owner's reasonable control. If such delay exists beyond a period of five (5) working days, Owner, at its own option, shall have the right to: (a) terminate the Construction Purchase Order, in whole or in part, (b) suspend the Construction Purchase Order for the duration of the delaying cause, (c) resume performance under the Construction Purchase Order once the delaying cause ceases, or (d) extend the effective dates up to the length of time the contingency endured, all without liability to the Contractor.

TERMINATION, DELAYS AND EXCUSED PERFORMANCE. Owner may, by written notice stating the extent and effective date, terminate this Construction Purchase Order for convenience, in whole or in part, at any time. Owner shall pay the Contractor as full compensation for performance until such termination the unit or pro rata price for the delivered and accepted portion. Owner may, by written notice, terminate the Construction Purchase Order for Contractor's default, in whole or in part, at any time, if the Contractor refuses or fails to comply with the provisions of the Construction Purchase Order or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time or fails to make delivery or perform within the time specified or any written extension thereof. In such event, the Contractor shall be liable for any and all damages incurred by Owner including but not limited to cost of inspections, receipt, transportation, care, custody and cover cost. Contractor shall also be liable for any and all consequential damages incurred by Owner that are related to such breach. If performance is delayed through no fault, and for reasons beyond the reasonable control of the Contractor, an extension of time may be granted for completion. If a delay is determined to have been caused by Owner, the time for performance, and the price of the Construction Purchase Order may be subject to adjustment. Contractor shall in any event notify Owner IMMEDIATELY when Contractor has reason to believe performance will or may be delayed, failure to do so shall waive any and all claims associated therewith.

INSTRUMENTS OF SERVICE. All right, title and interest in the instruments of Service and other such documents owned by the Contractor and made to perform the work/services hereunder are hereby conveyed, assigned and transferred by Contractor to Owner. Owner shall retain legal title to all such documents, whether or not the project for which they were made is completed, provided that the Contractor has been paid all compensation due hereunder for the work/services actually completed by Contractor. No further compensation shall be due to Contractor for Owner's use of such documents, whether during the performance of this Construction Purchase Order or after its termination or completion. Owner may use such documents for any purpose, and all such documents shall be furnished to Owner in the format requested by Owner without additional cost.

DISPUTES. Any dispute which may arise between the Contractor and Owner, in any manner concerning this Construction Purchase Order, shall be submitted to the West Virginia Court of Claims if filed on behalf of Contractor and may be filed by Owner in any court having proper jurisdiction.

APPLICABLE LAW. The laws of the State of West Virginia and the Procedural Rules of the Higher Education Policy Commission shall govern all rights and duties under this Construction Purchase Order, including without limitation its validity.

INSURANCE. All Contractors, subcontractors, or other persons performing construction services shall purchase and maintain for the duration of the work hereunder insurance coverage for not less than the minimum limits required by law. Upon request, the Contractor shall furnish a copy of its proof of coverage to the Owner. All such insurance policies shall provide for at least thirty (30) days prior written notice of cancellation to the Owner. The Certificate of Coverage shall be signed by an authorized agent and shall list the Owner as additional insured. 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 COMOP 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. Proof of compliance with this Section is required prior to purchase order issuance.

NOTICE. Any notice to the Contractor hereunder shall be effectively given if sent by letter or by facsimile address to the Contractor at his address as given in the Construction Purchase Order or, if no address is so given, at his address as shown by the records of the Owner. Any notice so given shall be deemed to have been received by the Contractor at the time when in the ordinary course such letter or facsimile should have reached its destination.

NON-FUNDING. All services performed or goods delivered under this Construction Purchase Order are to be continued for the term of the Construction Purchase 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 Construction Purchase Order becomes void and of no effect after June 30.