

**PURCHASING AGREEMENT
BETWEEN
MIDWESTERN STATE UNIVERSITY
AND**

Choose an item.

This Standard Purchasing Agreement ("Agreement") is entered into between the **Midwestern State University ("University") and, ("Contractor")**. University and Contractor may be referred to singularly as a "Party" and collectively as the "Parties." The Parties mutually agree and covenant as follows:

1. **TERM:** The term of this Agreement ("Term") will begin on _____, and end on _____, unless terminated earlier pursuant to the terms of this Agreement or extended by mutual written agreement of the Parties.

2. **GOODS/SERVICES :**

Check here if an exhibit, offer, proposal or other similar document (collectively, "Attachment") is being added as part of this Agreement. Any such Attachment: (i) should be described above in this Section 2 and attached to this Agreement; and (ii) is hereby incorporated by reference. In the event of any inconsistency between the Attachment and this Agreement, or any other similar document of Contractor and this Agreement, this Agreement will prevail.

3. **COMPENSATION:** Check one box only:

This is a fixed price contract. University will pay Contractor the amount of **\$0.00**.

This is not a fixed price contract. University will pay Contractor an amount not to exceed \$ _____ based on an hourly fee and /or other method of calculation as follows:

This is not a fixed price contract and will be performed on a service-order basis. University will pay Contractor an amount not to exceed \$ _____ (based on service order form(s) to be completed and signed by the Parties, a version of which will be provided to Contractor by University). University will engage Contractor on an "as-needed if needed" basis and does not guarantee the purchase of any quantity or dollar amount of services.

4. **PAYMENT TERMS:** Contractor shall submit detailed invoices to University describing the services rendered the times when such services were performed, compensable expenses and the amount due. University will pay undisputed amounts within thirty (30) days of receiving goods or invoices, whichever occurs later. Payment terms are subject to Chapter 2251 of the *Texas Government Code*. Contractor understands and agrees that payments under the Agreement may be subject to the withholding requirements of §3402(t) of the *Internal Revenue Code*. University, an agency of the State of Texas, is exempt from Texas sales and use tax on goods and services in accordance with §151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (TAC) Section 3.322.

Notwithstanding any contrary provision of this Agreement, each payment obligation of the University created by this Agreement is conditioned upon the availability of funds that are appropriated or allocated for the payment of the goods or services. If such funds are not allocated and available, this Agreement may be terminated by the University. The University shall notify Contractor at the earliest possible time before such termination. No penalty shall accrue to the

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University in the event this provision is exercised, and the University shall not be obligated or liable for any future payments due or any damages as a result of termination under this section. This provision shall not be construed so as to permit the University to terminate this Agreement in order to purchase, lease, or rent similar goods or services from another party.

5. **ELIGIBILITY TO RECEIVE PAYMENT:** In accordance with Section 231.006 of the *Texas Family Code* and Sections 2155.004 and 2155.006 of the *Texas Government Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is or becomes inaccurate. Contractor acknowledges that, in accordance with Section 403.055 of the *Texas Government Code*, as applicable, if the Texas Comptroller of Public Accounts is currently prohibited from issuing a warrant to Contractor, Contractor agrees that payment under this Agreement will be applied to the debt or delinquent taxes are paid in full. And pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
6. **CONTRACTOR'S STATUS AND RESPONSIBILITIES:** In performing the services, Contractor will be deemed an independent contractor and not the University's agent or employee. This Agreement will not be construed to create any partnership, joint venture or other similar relationship between the Parties. As an independent contractor, Contractor will be solely responsible for determining the means and methods for performing the services. Contractor shall perform the services in strict accordance with this Agreement and in accordance with the highest standards of care, skill, diligence and professional competence applicable to contractors engaged in providing similar services.
 Check here if Contractor is an individual and has been a temporary or permanent employee of the State of Texas (including any employment with Midwestern State University) within the past two (2) years; if so, Contractor must attach a separate statement setting for the name of the agency or department by which Contractor was employed, the dates of employment, the annual rate(s) of compensation during such employment and the nature of the Contractor's duties.
7. **INTELLECTUAL PROPERTY:** Contractor represents that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement.
8. **OWNERSHIP OF WORK PRODUCT:** All work products, including any software, research, reports, studies, data photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligation under this Agreement will be deemed work for University upon completion, termination or cancellation of this Agreement. Any program data or other materials furnished by University for use by Contractor in connection with the services performed under this Agreement will remain University's property.
9. **INDEMNITY:** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless University, and each of their directors, officers, agents and employees from and against all liability, loss, expense (including reasonable litigation costs and attorney fees), or claims for injury or damages arising out of the performance of this Agreement (collectively, "Claim") to the extent the Claim arises from the negligence, willful act, breach of contract or violation of law by Contractor, its employees,

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agents, contractors or subcontractors.

10. **INSURANCE:** Unless an appropriate University representative agrees to waive the requirements by initialing the designated space near the signature block below, Contractor shall comply with general liability insurance coverage of \$1,000,000 per occurrence. If, during the term, Contractor will enter University property, Contractor shall also maintain the following insurance: (i) worker's compensation coverage as required by law with statutory limits for the State of Texas, including employers liability coverage of \$500,000 per accident; (ii) commercial automobile liability coverage of \$1,000,000 combined single limit; (iii) for engineers and architects only: professional liability coverage of \$5,000,000 per occurrence; and (iv) for builders only: builders risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against University. Comprehensive general liability and commercial automobile liability policies must name University as additional insured. Contractor shall provide certificates of Insurance evidencing the insurance requirements prior to the start of work.
11. **INSPECTION AND ACCEPTANCE OF SERVICES:** University reserves the right to inspect the services provided under this Agreement at all reasonable times and places during the term. If any of the services do not conform to the requirements set forth in this Agreement, University may (i) require Contractor to perform the services again in conformity with such requirements, with no additional charge to the University; or (ii) equitably reduce payment due Contractor to reflect the reduced value of the Services performed. These remedies do not limit other remedies available to University in this Agreement or otherwise available at law.
12. **RISK OF LOSS:** All work performed by Contractor pursuant to this Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by University. In the case of any loss or damage to the work prior to the University's acceptance, such loss or damage will be Contractor's responsibility. Delivery of any goods to University pursuant to this Agreement must be FOB destination.
13. **COMPLIANCE:** Contractor shall observe and abide by all applicable state and federal law requirements and University policies and procedures. Contractor shall certify that he/she or it is in compliance with all applicable state and federal laws as it relates to the terms and conditions of this Agreement.
14. **CONFIDENTIALITY; DATA PROTECTION:** Subject to the Texas Public Information Act and any similar legal requirements, neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval. As applicable, Contractor shall maintain and process all information it receives in compliance with all applicable data protect/privacy laws and regulations and University policies.
15. **PUBLICITY:** Contractor shall not use University's name, logo or other likeness in any press release, marketing material or other announcement without University's prior written approval.
16. **SUBCONTRACTORS:** If Contractor is permitted to subcontract any of the services, Contractor shall ensure that each subcontractor complies with all provisions of this Agreement. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of

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the services.

17. **PRODUCTS AND MATERIALS PRODUCED IN TEXAS:** In performing its obligations under this Agreement, Contractor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas. [Section 2155.4441 of the Texas Government Code]
18. **TRAVEL EXPENSES:** In the event the Agreement requires the University to reimburse Contractor for travel expenses, then reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.
19. **BONDS:** If applicable to the Services and this Agreement, Contractor shall secure payment and/or performance bonds in accordance with Section 2253.021 of the Texas Government Code upon executing this Agreement.
20. **AUDIT:** Execution of this Agreement constitutes Contractor's acceptance of the authority of University, the Texas State Auditors and/or their designated representative (collectively, "Auditor") to conduct audits or investigations in connection with this Agreement. Contractor agrees to cooperate with the Auditor conducting such audits or investigations and to provide all information and documents reasonably requested.
21. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.
22. **DEFAULT:** A party will be in default of this Agreement if such Party fails to comply with any obligation in this Agreement and such failure continues for ten (10) days after receiving written notice from the non-defaulting Party. In the event of default, upon written notice to the defaulting Party, the non-defaulting Party may terminate this Agreement as of the date specified in the notice, and may seek other relief as provided by law.
23. **TERMINATION FOR CONVENIENCE:** University may terminate this Agreement in writing at any time upon providing at least thirty (30) days written notice to Contractor. University will only be liable for payment for Services received prior to the effective date of such termination.
24. **NOTICE:** Any notice required or permitted by this Agreement must be in writing and addressed to the Party at the address set forth below, or such other address as is subsequently specified in writing. Notice will be effective at the date: (i) delivered by national courier service or Registered/Certified Main, postage prepaid, return receipt required, or (iii) received by facsimile.
25. **BREACH OF CONTRACT CLAIMS:** To the extent Chapter 2260 of the *Texas Government Code* is applicable to this Agreement and is not preempted by other law, the dispute resolution process provided by Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260 will be used by the Parties to attempt to resolve any claim for breach of contract made by Contractor against University that cannot be resolved in the ordinary course of business. An event or claim for breach of contract is not grounds for Contractor to suspend performance under this Agreement. The Parties specifically agree that (1) neither the execution of the Agreement by

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University nor any other conduct, action or inaction of any representative of University relating to the Agreement constitutes or is intended to constitute a waiver of University's or the State's sovereign immunity to suit; and (2) University has not waived its right to seek redress in the courts.

26. **FUNDING CONTINGENCY:** University's performance under this Agreement may be dependent upon appropriation of funds by the Texas State legislature ("Legislature") and/or allocation of funds by University's Board of Regents ("Board"). If the Legislature fails to appropriate the necessary funds or the Board fails to allocate the necessary funds, University may terminate this Agreement without liability by providing written notice to Contractor.
27. **CONTRACTOR REPRESENTATIONS:** If Contractor is a business entity, it represents that: (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) it is authorized and in good standing to conduct business in the State of Texas; (iii) it has all necessary power and has received all necessary approvals to execute and perform its obligations in this Agreement; and (iv) the individual executing this Agreement on behalf of Contractor is authorized to do so. If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code*, then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
28. **WAIVER:** Waiver by either Party of a breach or violation of any provision of this Agreement will not operate as waiver of any subsequent breach.
29. **SURVIVAL:** Termination or expiration of this Agreement will not affect the Parties' rights obligations that, by their nature and context, are intended to survive termination or expiration.
30. **ELECTRONIC DELIVERY:** Execution and delivery of this Agreement by exchange of email or fax copy containing the signature of a Party will constitute a valid and binding execution and delivery of this Agreement by such Party.
31. **LIMITATIONS:** The University is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on the University property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; indemnities; and confidential information. Terms and conditions of this Agreement relating to these limitations will only be binding on the University to the extent permitted by the Constitution and the laws of the State of Texas.
32. **JURISDICTION AND VENUE; GOVERNING LAW:** It is expressly understood and agreed that the location and place of performance for this Agreement is stipulated to be in Wichita Falls, Wichita County, Texas, and the proper place of venue for suit of all disputes arising under this Agreement shall solely be in Wichita County, Texas. This Agreement and all of the rights and obligations of the Parties thereto and all of the terms and conditions hereof will be construed, interpreted and applied in

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accordance with and governed under the laws of the State of Texas.

33. **AUTHORITY:** The person signing below on behalf of the University and Contractor warrants that he/she has the authority to execute this Agreement according to its terms.
34. **OFFICIAL NOT TO BENEFIT:** No trustee, officer, director, regent, employee, administrator and representative of University shall be admitted to any share or part of this Agreement or to any benefit that may arise there from.
35. **NONDISCRIMINATION:** Contractor shall comply with State of Texas and federal civil rights laws and University policies prohibiting discrimination and harassment. Contractor shall not discriminate against an employee or applicant for employment with respect to the hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, gender, national origin, age, sexual orientation, veteran status, or disability that is unrelated to the individual's ability to perform the duties of a particular position. A breach of this covenant may be regarded as a material breach of this Agreement.
36. **NON-ASSIGNABLE CONTRACT:** This Agreement cannot be assigned, in whole or in part, by either party.
37. **MISCELLANEOUS:** This Agreement, together with any Attachment(s), constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior contracts, agreements, representation and understanding made by the Parties relating to such subject matter. This Agreement may not be waived, altered, amended or otherwise modified except by the written agreement of both Parties. Contractor may not assign this Agreement with University's prior written consent. The invalidity or unenforceability of any provision(s) of this Agreement will not impair the validity and enforceability of the remaining provisions.
38. **EFFECTIVE DATE:** This Agreement shall be deemed to be effective on _____ and is signed by the respective Parties on the dates of their respective signatures as appear below.

<p>INSURANCE REQUIREMENTS WAIVER - IF the Insurance Requirements are not applicable to the services or if University otherwise chooses to waive such requirements for purposes of this <u>Agreement</u>, the appropriate University representative may waive the requirements by initialing here -----> _____. Otherwise, Contractor must satisfy the insurance requirements specified in this Agreement.</p>

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IN WITNESS WHEREOF:

Midwestern State University:

_____ ::

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE