

PRODUCTS AND SERVICES AGREEMENT

This _____ Products and Services Agreement (“Contract”) is entered into as of the date of last signature (“Effective Date”) between Midwestern State University, a Texas public institution of higher education located in Wichita Falls, Texas (“University”) and Full Legal Name of Contractor, a Type of Entity (e.g., a Texas corporation) with a principal office located at Contractor’s Address (“Contractor”). University and Contractor may be referred to herein individually each as a “Party” or together as the “Parties.”

Background

- University sought a qualified vendor to provide the products and services described in this Contract to University in its Request for _____ 20__ - ____ (“Solicitation”).
- Contractor is a qualified vendor that provides the products described in Section 2.1 and services described in Section 2.2 of this Contract and submitted a proposal (“Proposal”) to University’s Solicitation.
- University has selected Contractor to provide the products and services described in this Contract based on its best value to University.

Agreement

Now therefore, for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article 1

Incorporated Terms and Order of Precedence

- 1.1 **Incorporated Terms.** The Parties acknowledge and agree that the Required Contract Terms set forth at <http://www.texastech.edu/ogc/contracting/required-contract-terms.pdf> and the MSU purchase order terms and conditions are incorporated by reference into this Agreement. They are found at <https://msutexas.edu/purchasing/assets/files/purchasing-general/msu-tc-for-po-rev-02-24-2023.pdf>
- 1.2 **Order of Precedence.** To the extent they do not conflict with the terms of this Contract, Section(s) _ of the Solicitation and Contractor’s Proposal are incorporated as if stated verbatim herein. In the event of any conflict between the terms and requirements of this Contract (including the terms incorporated in Section 1.1) and the Solicitation, the terms and requirements of this Contract shall control. In the event of any conflict between the terms and requirements of the Solicitation and the Proposal, the terms and requirements of the Solicitation shall control. The Parties agree that any conflict in terms not resolved by the order of precedence set forth herein shall be resolved at the University’s discretion.

Article 2

Contractor’s Product and Service Requirements

- 2.1 **Products.** Contractor agrees to provide and deliver the following products to University (collectively, the “Products”).
 - 2.1.1 [Describe products]; and
 - 2.1.2 All other products required for Contractor to perform the Services.
- 2.2 **Services.** Contractor agrees to provide the services described in this Section 2.2 and in Section 2.3 and Section 2.4 of this Contract (collectively, the “Services”).
 - 2.2.1 Contractor shall provide Services to University under the terms of this Contract on an as-needed basis.
 - 2.2.2 The Parties agree that this Contract shall not necessarily be for only one (1) specific project.
 - 2.2.3 [Customize this section to specifically describe the services to be provided by Contractor].
- 2.3 **Quality Measures.**

- 2.3.1 All Services provided by Contractor are subject to inspection and approval by University.
- 2.3.2 If University is not satisfied with the Services, Contractor shall coordinate with University to resolve the problem(s) at no additional cost to University, unless otherwise agreed upon in writing by University.

2.4 Labor, Supervision, and Coordination.

- 2.4.1 **Materials and Equipment.** Contractor shall provide all necessary labor, materials, and equipment required for Services, including but not limited to special tools.
- 2.4.2 **Location.** Contractor shall provide Services to University, at its main campus, at regional University campus sites, and/or at other University-affiliated locations as requested by University.
- 2.4.3 **Scope.** Contractor shall coordinate Services with University prior to beginning any Services.
 - 2.4.3.1 Contractor shall confirm the scope of work and requirements for Services by consulting with University.
 - 2.4.3.2 Contractor shall submit a written quote for Services to University detailing Services to be provided, all rates, fees, and expenses, and referencing this University Agreement number (“Quote”). Contractor’s maximum fee rates and chargeable costs are attached hereto as “Exhibit A.”
 - 2.4.3.3 Once a Quote for Services has been reviewed and approved, University shall submit a purchase order (“Purchase Order”) to Contractor prior to Contractor’s commencement of Services.
 - 2.4.3.4 University shall not pay for any portion of Services not specifically detailed on Contractor’s Quote and formalized by the issuance of a University-approved Purchase Order.
 - 2.4.3.5 Any alterations or modifications of Services shall be requested by University by change order and approved in writing by both University and Contractor. Said change order shall be processed by University’s procurement office prior to commencement of any alterations or modifications.
- 2.4.4 **Supervision.** University shall not be responsible for the performance of the Services or the quality of Services provided. Contractor shall provide identification badges or other forms of identification for all its employees, subcontractors, agents, and affiliate personnel performing or supervising Services on University property. No employee of Contractor shall be permitted on University property without proper identification.

2.5 **No Guarantee.** University does not guarantee minimum or maximum compensation or requests for Products or Services under this Contract.

**Article 3
Financial Arrangement**

3.1 **Fees/Billing Rates.** Unless otherwise mutually agreed upon in writing by the Parties, Contractor shall be compensated by University for Products and Services in accordance with the schedule of costs and fees described on the attached Exhibit A. No modifications, revisions, amendments, or other changes to Exhibit A shall be enforceable against University without University’s prior written approval and signed authorization.

3.2 **Invoice.** Upon delivery of Products and completion of Services, Contractor shall submit an invoice by electronic means to University for all Products delivered and Services completed and each itemized expense. Each invoice shall include supporting documentation for the invoiced amounts. Invoices should be submitted as follows:

[Insert University-specific information here]

3.3 **Payment.** Invoices will be paid net thirty (30) days in compliance with Texas law. All invoices must reference a valid Purchase Order, or the invoice will be returned as non-compliant. In the event University is making payment on funds appropriated by the State of Texas, payment may be made net thirty (30) days as required by law. University will submit an electronic check remittance to the email address on record for all Automated Clearing House and Single Use Account payments.

Article 4 Term and Termination

- 4.1 **Term.** This Contract shall begin on the Effective Date and will expire one (1) year later, unless the Contract is earlier terminated pursuant to its terms. The Contract may renew for up to three (3) additional one (1) year terms, unless either Party provides written notice of its intent to not renew this Contract at least sixty (60) days prior to the end of the then-current term. The provisions of this Section shall not limit any Party's right to terminate expressly provided elsewhere in this Contract.
- 4.2 **Termination for Material Breach.** Either Contractor or University may terminate this Contract upon **thirty (30) days** prior written notice to the other, if the other Party fails to perform or comply with any of the material terms, covenants, agreements, or conditions hereof, and such failure is not cured during such **thirty (30) day** period.
- 4.3 **Termination upon Contractor's Insolvency.** University may terminate this Contract immediately and without notice if Contractor: (i) petitions for reorganization under the United States Bankruptcy Code or is adjudged bankrupt; (ii) becomes insolvent or a receiver is appointed due to insolvency; or (iii) makes a general assignment or sale of Contractor's assets or business for the benefit of creditors.
- 4.4 **Termination for Convenience.** University may terminate this Contract for any reason by giving Contractor **thirty (30) days** prior written notice.
- 4.5 **Effect of Termination.** In no event shall termination by University as provided for under this Contract give rise to any liability on University's part including, but not limited to, Contractor's claims for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. University's sole obligation hereunder is to pay Contractor for Products and Services received prior to the date of termination.

Article 5 General Terms

- 5.1 **Standard of Care.** Contractor agrees that it possesses the requisite experience and skills to perform the Services under this Contract and it shall do so with the professional care, diligence, and skill that a reasonable professional performing the same task would use.
- 5.2 **Contractor Insurance.** If an Insurance Addendum is attached hereto, Contractor shall obtain and maintain the minimum insurance coverage set forth therein. If no such addendum is attached, Contractor shall obtain and maintain the minimum insurance coverages required by the Texas Tech University System Office of Risk Management, set forth at http://www.texastech.edu/offices/risk-management/Vendor%20Agreement%20Guides_TTUS%20ORM.PDF.
- 5.3 **Indemnification.** Contractor agrees to indemnify, defend, and hold harmless University, the Texas Tech University System, and their respective affiliated enterprises, regents, attorneys, employees, representatives, and agents, against any and all liability, claims, suits, losses, costs, and legal fees caused by, arising out of, or resulting from any act or omission of Contractor in the performance or failure to perform within the Contract including but not limited to the negligent acts or omission of any subcontractor or any direct or indirect employees of the Contractor or subcontractors. The indemnification obligations set forth in the Contract shall survive termination or expiration of the Contract.
- 5.4 **Acceptance of Services.** Services to be provided under this Contract shall be to the satisfaction of University and in accordance with the specifications, terms, and conditions of the Contract and any resulting Purchase Order. University reserves the right to inspect the Services provided and to determine the quality, acceptability, and fitness of such Services.
- 5.5 **Warranties.** With respect to Services to be provided under this Contract, Contractor warrants to University that (i) Contractor shall provide the Services using personnel of requisite skill, experience, and qualifications and in a professional and workmanlike manner in accordance with general recognized industry standards for similar services and in accordance with any and all specifications of the Solicitation, Proposal, Quote, and/or Purchase Order, as applicable, an (ii) Contractor shall devote adequate resources to meet its obligations under the Contract. University may provide Contractor with notice of any defect or nonconformance on or before the time period set forth the Contract. Contractor shall correct or reperform, at no cost to University, any work that does not conform to the requirements of the Contract.

- 5.6 **Time of Performance.** Contractor agrees to perform all obligations and provide Services on the schedules set by University. University shall have no obligation to accept late performance by Contractor.
- 5.7 **Additional Fees.** Any reference to payment or reimbursement of additional, future, or undefined Contractor fees in the Contract (e.g., travel expenses) is agreed to only if pre-approved in writing by University prior to invoicing.
- 5.8 **Venue; Governing Law.** The County in which University's main campus or primary office in the State of Texas is located shall be the sole proper place of venue for any legal action or proceeding arising out of this Contract or the enforcement of any provision in this Contract. This Contract and all of the rights and obligations of the parties and any claims arising from this Contract will be construed, interpreted, and governed by the laws of the State of Texas.
- 5.9 **Notices.** Notices shall be effective under this Contract when they are reduced to writing and delivered by next day delivery service, with proof of delivery, or mailed certified or registered mail, return receipt requested, to the appropriate Party at the address stated below. Notice shall be deemed given on the date delivered or the date of attempted delivery if service is refused.

[Contractor Name]
 Attention: _____
 Title _____
 Address _____
 Address _____
 Email Address _____

University
 Department
 Department or ATTN
 Address
 Address
 Email

- 5.10 **Execution.** This Contract may be executed in any number of counterparts (including electronically scanned and emailed PDF copies, faxed copies, and any similarly signed and electronically transmitted copies), each of which shall be deemed to be an original and all of which shall constitute together one and the same agreement.

University:

Contractor:

 Signature

 Signature

 Name

 Name

 Title

 Title

Exhibit A
to Products and Services Agreement
Contractor's Maximum Fee Rates and Chargeable Costs

Sample