

# TEXAS WOMAN'S UNIVERSITY PURCHASE ORDER TERMS AND CONDITIONS

## 1. DEFINITIONS

- 1.1 Amendment: An agreed addition to, deletion from, correction, or modification of a contract signed by all authorized parties. An amendment may include a renewal or extension of a contract.
- 1.2 Change Order: A written alteration that is issued to modify or amend a purchase order.
- 1.3 Construction Project: A building construction project that is financed wholly or partly by a specific appropriation, a bond issue, or federal money.
- 1.4 Contract: A legally binding written agreement executed between TWU and a third party in which the parties agree to perform in accordance with the obligations therein. Contracts include, but are not limited to: letter agreements, co-operative agreements, memorandums of understanding (MOU), Interagency Contracts, Inter-local Contracts, easements, licenses, leases, and purchase orders.
- 1.5 Contractor: An entity or individual that has a contract to provide goods or services to TWU.
- 1.6 Employees: means officers, faculty, and staff of TWU.
- 1.7 Environmental Law: means any federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health, natural resources and/or the environment now or hereafter in effect including, without limitation, any and all claims or causes of action based upon such governmental statute, regulation, law or ordinance.
- 1.8 Goods: Supplies, materials, or equipment as defined in Texas Government Code §2155.001. Goods do not include services or real property.
- 1.9 Hazardous Substance: means any pollutant, contaminant, hazardous or toxic substance or waste, solid waste, petroleum or any byproduct thereof, or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.
- 1.10 Historically Underutilized Business (HUB): A for-profit entity with its principal place of business in the State of Texas that is at least 51% owned by a Black American, Hispanic American, woman, Asian Pacific American, Native American or disabled veteran as defined in Texas Government Code §2161.001. See also Texas Comptroller HUB website.
- 1.11 Procurement (Procure): Purchasing, renting, leasing, or otherwise acquiring any goods and services, including all functions that pertain to the acquisition through contract close-out.
- 1.12 Proposal: A Response to a Request for Proposals (RFP) and intended to be used as a basis to negotiate a contract award.
- 1.13 Purchase Order: A legal document issued to a Contractor which formalizes the terms and conditions of any purchase of goods or services.
- 1.14 Quote: A document setting forth an offer to sell goods or services at a certain price under specified conditions.
- 1.15 Response: A submission to TWU from a potential Contractor in response to a solicitation.
- 1.16 Scope of Work ("SOW"): A detailed, written description of the conceptual requirements contained within the specifications.
- 1.17 Service(s): The furnishing of labor, time, and effort by a Contractor, including a construction project, which may involve to a lesser degree, the delivery or supply of goods.
- 1.18 Solicitation: A method or process used to obtain responses for the purpose of gathering information or entering into a contract.
- 1.19 Specification(s): Description of the requirements for goods or services including the scope of work, to be fulfilled by a Contractor.
- 1.20 Subcontractor: An individual or business entity retained by a Contractor to perform part of a Contractor's duties under a contract.
- 1.21 TWU shall mean Texas Woman's University, an institution of higher education in the State of Texas.

## 2. ACCEPTANCE

- 2.1 This purchase order is an offer by TWU to purchase goods or services (as applicable) from the Contractor in accordance with and subject to the terms herein. This purchase order is binding when it is accepted by Contractor. Contractor will be deemed to have accepted this purchase order when it: (i) sends TWU notice of acceptance in writing, (ii) starts to perform the services in accordance with the terms of this purchase order, and/or (iii) delivers any or all of the goods covered by this purchase order, whichever occurs first. TWU may withdraw the purchase order at any time before it is accepted by Contractor. No contract will exist except as herein provided.
- 2.2 Contractor's acceptance is expressly limited to the terms herein. Any proposal, scope of work, quote, invoice, acknowledgement or other communication issued by Contractor in connection with, or otherwise incorporated by reference into this purchase order will be for the purposes of describing in greater detail the goods or services (as applicable) to be provided and any terms or conditions set forth in such communication from the Contractor will not apply to this purchase order and will not be considered to be Contractor's exceptions to these terms. Any

additional or different terms proposed by Contractor (including, without limitation, any terms contained in any document incorporated by reference into this purchase order) are objected to and rejected and will be deemed a material alteration hereof, unless expressly assented to in writing by TWU. Furthermore, TWU will not be bound by, any “disclaimers” or “click to approve” terms or conditions now or hereafter contained in any website used by TWU in connection with the goods or services (as applicable) or this purchase order.

- 2.3 This purchase order, together with any documents agreed to by the parties, incorporated by reference and executed by Contractor and TWU, constitute the sole and entire agreement of the parties with respect to the purchase and sale of the goods or services (as applicable), and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of this purchase order.
- 2.4 Contractor agrees that it will comply with federal, state, or local laws or regulations applicable to Contractor’s performance under the purchase order. Contractor further agrees that it will comply with applicable TWU Operating Policies located at <https://twu.edu/policy>.
- 2.5 Neither the purchase order nor any of the rights and obligations of TWU hereunder may be assigned or transferred by Contractor without the prior written consent of TWU. The purchase order will be binding upon and inure to the benefit of parties and their respective successors and permitted assigns and no other person will have any right, obligation or benefit hereunder. Any attempted assignment or transfer in violation of this section will be void.
- 2.6 All communication related to this purchase order must be in writing and delivered to the following address: Texas Woman’s University, Procurement and Contract Services, P.O. Box 425439, Denton, Texas 76204-5439, emailed to [procure@twu.edu](mailto:procure@twu.edu), or hand delivered to TWU, Procurement and Contract Services, Bralley Annex, 411 Texas Street, Denton, Texas 76201. The Contractor must provide this purchase order number for reference purposes.

### **3. SPECIFICATIONS**

- 3.1 Unless otherwise provided in the quote or specifications or agreed upon in writing by the parties, all goods must be new, unused and, of current production.
- 3.2 All electrical items must meet all applicable OSHA standards and regulations and bear the appropriate listing from a nationally recognized testing laboratory (NRTL). Acceptable NRTLs may be found at: <http://www.osha.gov/dts/otpca/nrtl/index.html>.
- 3.3 Samples, when requested, will be furnished without expense to TWU. If not destroyed in examination, samples will be returned to the Contractor, on request, at Contractor’s expense. Samples requiring return must be identified with Contractor’s name and address.

### **4. DELIVERY, INSPECTIONS, AND TESTS**

- 4.1 Delivery of the goods (if any) covered by this purchase order will be made F.O.B. Destination, freight prepaid, if from U.S. locations and DAP or DDP, if from international locations, (in accordance with Incoterms 2010) unless otherwise agreed in writing by the TWU Chief Procurement Officer or his/her designee.
- 4.2 Time is of the essence in the rendering of services and delivery of goods under this purchase order. Contractor will deliver the goods and/or perform the services (as applicable) on the date(s) specified in the specifications, the quote, or on this purchase order (the “Delivery Date”). If no delivery date is specified, Contractor will deliver the goods or services (as applicable) within thirty (30) days of Contractor’s receipt of the purchase order (which date will be the Delivery Date). If Contractor fails to deliver the goods or services (as applicable) in full on the delivery date, TWU may terminate the purchase order immediately by providing written notice to Contractor and Contractor will indemnify TWU against any losses, claims, damages, and reasonable costs and expenses directly attributable to Contractor’s failure to deliver the goods or services (as applicable) on the delivery date. In addition, TWU has the right to return any goods delivered prior to the delivery date at Contractor’s expense and Contractor will redeliver such goods on the delivery date.
- 4.3 Delivery must be made to the “Ship To” address located on the purchase order. Failure to deliver to the appropriate address will not be grounds for reimbursement for shipping cost and will result in delay of payment.
- 4.4 Delivery must be made during normal working hours only, unless prior written approval has been obtained from TWU. No collect shipments will be accepted.
- 4.5 If delay is foreseen, Contractor shall give written notice to TWU Procurement and Contract Services. Contractor must keep TWU advised at all times of status of order. Default in promised delivery date (without accepted reasons) or failure to meet specifications authorizes TWU to procure goods or services (as applicable) elsewhere and charge any increase in cost and handling to defaulting Contractor.
- 4.6 Title to the goods covered by the purchase order (if any) passes to TWU upon delivery of the goods to the delivery location (the ship-to address provided on this purchase order). Delivery of the goods is not complete until such goods have actually been received and accepted by TWU. Contractor bears all risk of loss or damage to the goods until delivery of the goods to the delivery location.

- 4.7 Contractor shall replace any lost or damaged media containing licensed software or data upon request at a price not exceeding the reasonable cost of media duplication, packaging, and shipping.
- 4.8 TWU shall have 30 days after receipt of any goods or completion of services to inspect the goods or services rendered by Contractor. All goods or services (as applicable) are subject to TWU's right of inspection and rejection on or after the delivery date. TWU, at its sole option, may inspect all or a sample of the goods, and may reject all or any portion of the goods if it determines the goods are defective or otherwise do not conform to the descriptions and specifications delivered in connection with the purchase order or otherwise communicated to Contractor in writing. If TWU rejects any portion of the goods or services (as applicable), TWU has the right, effective upon written notice to Contractor, to: (i) rescind the purchase order in its entirety; (ii) accept the defective and/or non-conforming goods or services (as applicable) at a reasonably reduced price; or (iii) reject the non-conforming goods or services (as applicable) and require the replacement or re-performance (as applicable).
- 4.9 If TWU requires replacement or re-performance of non-conforming goods or services (as applicable), Contractor will, at its expense, promptly replace or re-perform the non-conforming goods or services (as applicable) and pay for all related expenses, including, but not limited to, transportation charges for the return of the non-conforming goods and the delivery of replacement goods. If Contractor fails to timely deliver replacement goods or re-perform services (as applicable), TWU may replace the non-conforming goods or services (as applicable) with goods or services (as applicable) from a third party and charge Contractor the cost and terminate the purchase order for cause.
- 4.10 Any inspection or other action by TWU under this section will not reduce or otherwise affect Contractor's obligations under this purchase order, and TWU will have the right to conduct further inspections after Contractor has carried out its remedial actions. Acceptance by TWU will not occur unless and until (i) with respect to goods installed by Contractor, any acceptance tests or programs describe in the purchase order or attachments thereto are completed to TWU's satisfaction, as evidenced by a written acceptance signed by TWU, (ii) with respect to any services performed by Contractor, such services are completed to TWU's satisfaction, as evidenced by a written acceptance signed by TWU, or (iii) with respect to goods not installed by Contractor, TWU has not notified Contractor, within thirty (30) days following receipt of the goods by TWU, that goods are defective or otherwise do not conform to specifications.
- 4.11 No inspection, tests, approval (including design approval), or acceptance of goods or services (as applicable) shall relieve Contractor from responsibility for latent defects, material misstatements or omissions, or Contractor's warranty obligations.
- 4.12 Manufacture or production of goods subject to TWU approval of a prototype, sample, or design shall not proceed until such written approval by TWU is given.
- 4.13 No substitutions for goods are permitted without written approval of TWU Procurement and Contract Services.
- 4.14 Purchase orders not fulfilled within six months from the purchase order receipt date are null and void unless otherwise agreed upon in writing by the parties.

## **5. HAZARDOUS SUBSTANCE**

- 5.1 Contractor shall comply with all federal and state environmental laws.
- 5.2 Contractor shall notify TWU in writing of all chemicals, equipment, and supplies proposed or used by Contractor in performance of this purchase order on TWU property that contains hazardous substances or substances for which the law requires a Material Safety Data Sheet (MSDS). Such notification shall be given upon receipt of this purchase order by the Contractor or in all cases prior to arrival of such substances on TWU property and shall include, at a minimum, information regarding the hazardous substance including but not limited to MSDS and product labeling as required by Texas Health and Safety Code, Chapter 502.
- 5.3 The Contractor shall comply with 6 CFR Part 27, Chemical Facility Anti-terrorism Standards, Notifications shall be presented to TWU when required.

## **6. WARRANTIES**

- 6.1 With respect to all goods (if any) to be delivered under this purchase order, Contractor warrants to TWU that such goods will (i) be merchantable, (ii) free from any defects in workmanship, materials and design, (iii) be manufactured, packaged, labeled, handled, shipped and stored by Contractor or its agent in a good and workman-like manner at quality levels consistent with industry standards and in accordance with all applicable specifications, drawings, designs, samples and other requirements specified by TWU, (iv) be fit, safe and effective for their intended uses and purposes, and operate as intended, (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any patent, trademark, or copyright issued or granted by the United States or any other intellectual property rights of any third party.
- 6.2 With respect to all services (if any) to be performed under this purchase order, Contractor warrants to TWU that (i) Contractor will perform the services using personnel of requisite skill, experience, and qualifications and in a professional and workman-like manner in accordance with generally recognized industry standards

for similar services and in accordance with any and all specifications, (ii) Contractor will devote adequate resources to meet its obligations under this purchase order, and (iii) Contractor's performance of the services will not infringe or misappropriate any patent, trademark, or copyright issued or granted by the United States or any other intellectual property rights of any third party.

- 6.3 Contractor further warrants to TWU that (i) Contractor's acceptance of, or performance under, this purchase order does not result in a conflict of interest between Contractor or any third party, (ii) Contractor has the full legal right to provide all goods or services (as applicable), and that there is no claim, litigation or proceeding pending or to its knowledge threatened against Contractor with respect to such goods or services (as applicable), or any component thereof, alleging infringement of any patent or copyright or violation of any trade secret or any other proprietary right of any person, and (iii) Contractor will obtain and maintain all permits, licenses, and consents required in connection with its performance under this purchase order.
- 6.4 All warranties set forth in these terms and conditions will remain in effect for a period of one (1) year from the date of acceptance of the goods or services (as applicable) by TWU, and will not be deemed waived by reason of TWU's receipt, inspection, or acceptance of, or by payment for, the goods or services (as applicable).
- 6.5 The warranties expressed in these terms will be in addition to and cumulative with all express warranties provided by Contractor or implied warranties by law or equity (collectively, the "Warranties"). It is the intent of TWU and Contractor that if any warranties are held to be inconsistent, TWU may, at any time, including in the course of a suit for breach, select which warranty will be excluded from this purchase order.
- 6.6 All warranties will pass to TWU, its customers and subsequent owners of the goods or services (as applicable) to which they relate. There are no exclusions, limitations, or disclaimers of warranty other than those that may be expressly recited in these terms. All warranties will be construed liberally in favor of TWU.
- 6.7 Notice of breach of warranty may be given orally or in writing; said notice need not include a clear statement of all objections that will be relied upon by TWU as the basis for breach. All warranties will be construed as conditions as well as promises.

## **7. PAYMENT CLAUSES**

- 7.1 In accordance with Texas Government Code Chapter 2251, TWU's payment terms are thirty (30) days for undisputed invoices unless agreed upon in writing by the TWU Chief Procurement Officer prior to issuance of the purchase order. TWU may provide more favorable payment terms for electronic payment options as agreed upon in writing by the parties.
- 7.2 The late payment rate established annually by the State of Texas shall be applicable after thirty (30) days.
- 7.3 Invoices must reference the purchase order number or they will be returned to the Contractor unpaid.
- 7.4 Final invoices must be submitted within sixty (60) days after completion of the services or delivery of the goods.
- 7.5 As an agency of the State of Texas, TWU qualifies for exemption from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. Contractor may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.
- 7.6 Invoices must be addressed and mailed to Texas Woman's University Procurement and Contract Services, PO Box 425439, Denton, Texas 76204-5439 or emailed to: [TWUPayables@twu.edu](mailto:TWUPayables@twu.edu). Failure to do so will delay payment.
- 7.7 If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code, Contractor certifies that it is not currently delinquent in the payment of any taxes due, 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.

## **8. PATENTS OR COPYRIGHTS**

- 8.1 The Contractor agrees to defend, indemnify, and hold harmless TWU and the State of Texas from claims involving infringement of any third party intellectual property or proprietary rights with respect to services performed by Contractor, or goods supplied by Contractor (including, without limitation, with respect to Contractor's manufacture and/or TWU's use or possession thereof).

## **9. PUBLIC INFORMATION**

- 9.1 All information, documentation and other material submitted by vendor ("Vendor" under this section) under this proposal is subject to public disclosure under the Texas Public Information Act (the "Act") (Texas Government Code, Chapter 552). Vendor is hereby notified that TWU strictly adheres to this statute and the interpretations thereof rendered by the Courts and Texas Attorney General. TWU will use reasonable efforts to maintain the confidentiality of vendors' submitted information except where TWU is required to disclose it under the Act. The Texas Attorney General will ultimately decide whether a vendor's proprietary information (such as financial information, client lists, etc.) is released to the public, however TWU will use reasonable efforts to give a vendor notice of requests for its proprietary information in accordance with the Act. TWU cannot represent vendor interests to the Texas Attorney General and vendors seeking to protect their proprietary information will be required to submit a letter, brief, or memorandum to the

Attorney General with reasons in support of withholding their information. Please note that in general, contracting information as defined by the Act, including vendor pricing information, will be disclosed under the Texas Public Information Act. If vendors have further questions regarding the Texas Public Information Act, they should seek appropriate legal counsel.

In submitting this bid for Contract with TWU, the Vendor understands that any contract awarded must comply with applicable sections of Subchapter J, Chapter 552 of the Texas Government Code (the "Texas Public Information Act" or "TPIA"), including Section 552.371. Such Contract will contain the following required verbiage outlining Vendor responsibilities:

Vendor must:

- (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TWU for the duration of the Contract;
- (2) promptly provide to TWU any contracting information related to the Contract that is in the custody or possession of the Vendor on request of TWU; and
- (3) on completion of the Contract, either:
  - (A) provide at no cost to TWU all contracting information related to the Contract that is in the custody or possession of the Vendor; or
  - (B) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to TWU.

As required by the TPIA, Vendor hereby acknowledges the following applies to the Contract between TWU and Vendor on this bid:

"The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter."

Further, in addition to the possible termination of the Contract, Vendor acknowledges that failure to comply with the requirements of the TPIA may negatively affect Vendor's eligibility to bid on future contracts with TWU.

The definition of "contracting information" above is provided in Section 552.003(7) of the Government Code.

## **10. ACCESS TO DOCUMENTS / RECORDKEEPING**

- 10.1 Contractor will maintain records generated pursuant to goods provided or services rendered under this purchase order for a period of at least four years after submission of the last accounting report date on which goods or services (as applicable) were rendered, or until final resolution of any proceedings arising out of this purchase order, whichever date is later in time. Contractor will allow TWU access to such documents for audit purposes.
- 10.2 To the extent that Contractor generates or maintains educational records related to the TWU's students, Contractor agrees to comply with the Family Educational Rights and Privacy Act (FERPA), to the same extent as such laws and regulations apply to TWU, and shall limit access to only those employees or agents with a need to know.
- 10.3 Within thirty (30) days of the termination of this purchase order, Contractor agrees to return or destroy all data and records belonging to TWU (the "University Records"), at TWU's option. If TWU opts for Contractor to destroy the University Records, Contractor will provide proof of such destruction within ten (10) days of such destruction. Contractor may retain only such information as is required by applicable record retention obligations.

## **11. AUDIT**

- 11.1 Contractor understands that acceptance of funds under this purchase order acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with TWU, the State Auditor's Office, or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontractor agreements.
- 11.2 TWU has the right, at TWU's sole cost, to audit Contractor's financial records pertaining to the purchase order for the preceding 12-month period either using TWU's personnel or an independent third party. TWU will complete such audit at Contractor's office, on reasonable advance notice, and on dates and times mutually agreed to by the parties. If the audit reveals Contractor owes TWU money, Contractor will pay the amount due within 30 days of the date TWU notifies Contractor of the audit results. If the audit reveals TWU owes Contractor money, TWU will pay Contractor within 30 days of the date the audit is complete.

## **12. INDEMNITY AND LIMIT ON LIABILITY**

- 12.1 Contractor agrees to indemnify, defend, and hold harmless TWU, its Board of Regents, and its officers, agents, employees, and personnel from and against any and all claims, demands, causes of action, losses, damages, direct and indirect costs and expenses or other liability (including costs of product recall), including reasonable

attorney's fees, arising out of or resulting in any way from (i) Contractor's manufacture and/or supply of goods to TWU, (ii) Contractor's performance of services, (iii) any defect in the goods, (iv) the negligence or willful misconduct of Contractor, its agents or employees, (v) any claim for bodily injury or death, damage to property or any claim by an employee or subcontractor of Contractor for wages and benefits, (vi) Contractor's breach of any representation, warranty, covenant or other obligation hereunder, and/or (vii) the infringement of any third party proprietary rights with respect to services performed by Contractor, or goods supplied by Contractor (including, without limitation, with respect to Contractor's manufacture and/or TWU's use or possession thereof).

- 12.2 Contractor's obligation to indemnify will survive the expiration or termination of the purchase order by either party for any reason. Contractor may, at its option, conduct the defense of any third party action and TWU will cooperate with contract's defense as reasonably requested and allowable under Texas law. If the use or sale of any goods is enjoined as a result of any action or proceeding, in addition to such other rights or remedies that TWU may have hereunder or by law, Contractor, at no expense to TWU, will obtain for TWU and its customers the right to use and sell said item, or will substitute an equivalent item, acceptable to TWU, and extend this indemnity with respect to such item. In the event that Contractor is unable to secure such rights of use or to secure an equivalent items as a substitute for TWU or its customers, Contractor will indemnify TWU and its customers for any and all losses or damages sustained by reason of such injunction.
- 12.3 TWU SHALL NOT BE LIABLE TO CONTRACOR OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) RESULTING FROM TWUS' PERFORMANCE OR ANY FAILURE TO PERFORM HEREUNDER INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR BENEFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **13. TECHNOLOGY ACCESS**

- 13.1 Contractor expressly acknowledges that funds may not be expended in connection with the procurement of electronic and information resources (EIR) unless that EIR meets certain statutory requirements relating to accessibility as required by Texas Administrative Code (TAC) 206 and 213. Accordingly Contractor will address all applicable technical standards (1 TAC 206, and 1 TAC 213) by completing a Voluntary Product Accessibility Template (VPAT) attesting to any electronic and information resources (EIR) accessible features and capabilities or provide a similarly formatted document as the VPAT attesting to the EIR's accessible features and capabilities. TWU reserves the right to perform testing on the Contractor's deliverables to ensure the accuracy of their VPAT response regarding conformance with the 1TAC 206 and 1TAC 213 technical standards.
- 13.2 The parties hereby agree that if under this purchase agreement Contractor provides a cloud-based software offering which meets the criteria specified under the TX-RAMP Program (the "Subject Cloud Software"), the Subject Cloud Software is required to be TX-RAMP certified (which can be satisfied by specific product TX-RAMP certification, STATE-RAMP, FED-RAMP certification or another certification process approved by the State of Texas). Contractor must therefore comply with TX-RAMP, which is a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that processes the data of a Texas state agency. Texas Government Code § 2054.0593 mandates that TWU must only enter or renew contracts to receive cloud computing services that comply with TX-RAMP requirements beginning January 1, 2022. Contractor hereby warrants that the Subject Cloud Software has received, and Contractor will maintain, the approvals required by TX-RAMP. TWU may immediately terminate this purchase order without penalty if Contractor's certification herein is inaccurate or becomes inaccurate. The parties agree that additional cloud-based services or products may not be added under this purchase order, unless such additional cloud-based services or products are also approved as required by TX-RAMP. For avoidance of doubt, if no Subject Cloud Software is being provided under this purchase order, this paragraph is not applicable.

### **14. EXPORT CONTROLS**

- 14.1 Contractor will comply with applicable export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, the Export Administration Regulations (EAR) 15 CFR Parts 730 through 774, and other restrictions imposed by the Treasury Department's Office of Foreign Asset Controls (OFAC) in the performance of this purchase order. In the absence of available license exemptions/exceptions, Contractor will be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Contractor will be responsible for all regulatory record keeping requirements associated with the use of license and license exemptions/exceptions. Prior to disclosing or transferring to TWU any hardware, technical data, software or item utilizing any data subject to export controls under federal law, Contractor will notify TWU in writing of the nature and extent of the export control. TWU will have the right to decline any such technical data or item utilizing such data. In the event the Contractor sends such technical data or product that is subject to export control, without notice of the applicability of such export control, TWU has the right to immediately terminate this purchase order.

### **15. CERTIFICATIONS**

- 15.1 Under §§ 2155.004 and 2155.006 of the Texas Government Code and § 231.006 of the Texas Family Code, Contractor certifies that the individual or business entity named in this purchase order is not ineligible to sign a contract with TWU and acknowledges that this purchase order may be terminated and payment withheld if this certification is inaccurate.
- 15.2 Texas Family Code Child Support Certification. To the extent applicable, Contractor certifies as follows: “Under § 231.006, Texas Family Code, the Contractor certifies that the individual or business entity named in this Purchase Order is not knowingly ineligible to receive the specified payment and acknowledges that if this certification is inaccurate, it will be considered a breach of the terms of this purchase order.
- 15.3 Sales Tax Certification. To the extent applicable, “Under § 2155.004, Texas Government Code, Contractor certifies that the individual or business entity named in this purchase order is not knowingly ineligible to receive the specified contract and acknowledges that if this certification is inaccurate, it shall be considered a breach of this purchase order.
- 15.4 Franchise Tax Certification. Pursuant to Article 2.45, Texas Business Corporation Act a corporate or limited liability company Contractor certifies that it is not knowingly currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Contractor acknowledges and agrees that if this certification is knowingly false or inaccurate, it shall be considered a breach of the terms of this purchase order.
- 15.5 Payment of debts to the State of Texas. Pursuant to § 403.055(h), Texas Government Code, Contractor agrees that any payments owing to Contractor under this purchase order may be applied towards any debt or delinquent taxes that Contractor owes the State of Texas or any agency of the State of Texas, if any, until such debt or delinquent taxes are paid in full.
- 15.6 To the extent this purchase order relates to a project as defined in Texas Government Code § 2252.201(5) (a project to construct, remodel, or alter a building, structure, or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project), and no exemption in Texas Government Code §2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of this purchase order must be produced in the United States (as defined in Texas Government Code §2252.201(4)).
- 15.7 Pursuant to Texas Government Code Section 2270-001, Contractor affirmatively states that it does not boycott Israel. Additionally, Contractor shall not engage in a boycott of Israel during the term of this purchase order.
- 15.8 As required by Texas Government Code Chapter 2274, if Contractor has 10 or more full-time employees and Contractor is to receive \$100,000 or more in value for goods and services provided to TWU under this purchase order, Contractor certifies that it does not boycott energy companies and will not boycott energy companies during the term of this purchase order. Contractor acknowledges the purchase order may be terminated and payment withheld if this certification is or becomes inaccurate.
- 15.9 As required by Section 2155.4441 Texas Government Code, Contractor agrees that it will buy Texas products and materials for use in providing the services contemplated herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.
- 15.10 As required by Texas Government Code Section 2252.152, Contractor represents and warrants that it is not a company prohibited under Section 2252.152 or identified by (1) the Texas Comptroller as a company with business operations in Sudan; (2) the Texas State Pension Review Board as a company with business operations in Iran; or (3) the Texas Comptroller as a company known to have contracts with, or known to provide supplies or services to, a foreign terrorist organization. Excepted from this prohibition are companies the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran or foreign terrorist organizations.
- 15.11 Contractor understands that funds may not be distributed under this purchase order in violation of article IX, Section 6.24 of the General Appropriations Act.
- 15.12 As required by Subtitle F (State and Local Contracts and Fund Management), Title 10, Texas Government Code, if the total amount paid to Contractor under this purchase order by TWU equals one hundred thousand dollars (\$100,000.00) or more, Contractor represents and warrants that it (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the purchase order against a firearm entity or firearm trade association.
- 15.13 Contractor will comply with Subchapter A, Chapter 161, Health and Safety Code 161.0085(c) which prohibits requiring a customer to provide any documentation certifying the customer’s COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business.
- 15.14 Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, neither are in the process of being declared ineligible or being debarred, nor is either Contractor or any of its principals voluntarily excluded from covered transactions by any federal department or

agency. TWU may immediately terminate this purchase order without penalty if Contractor's certification herein is inaccurate or becomes inaccurate.

- 15.15 Applicable Code. Contractor agrees that pursuant to Texas Education Code §51.9335(h), in any contract for the acquisition of goods or services to which TWU is a party, any provision required by applicable law to be included in the agreement is considered to be part of the agreement whether or not the provision appears on the face of the agreement, even if the agreement contains any provision to the contrary.

#### **16. FEDERAL FUNDS**

- 16.1 The University is a recipient of federal funds from various federal agencies. The University shall require vendors/contractors to comply with all federal regulations relating to the use of federal funds. In addition, vendors/contractors agree to flow down all applicable clauses from federal OMB regulations to lower-tier subcontractors. The contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4 (a) and 60-300.5 (a) and 60-741.5 (a), if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. This contractor and subcontractor shall abide by the requirements of 29 CFR Part 471, Appendix A to Subpart A, if applicable.

#### **17. AFFIRMATIVE ACTION**

- 17.1 The Contractor shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Contractor agrees to adhere to the principles set forth in Executive Orders 13672 and 11375, Section 503 of the Rehabilitation Act of 1973, and USC 2012 (Disabled Veterans and Veterans of the Vietnam Era), and to undertake specifically: to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy in both English and Spanish to all persons concerned within his company, and to discuss with TWU the policies and practices relating to the Contractor's Affirmative Action program.

#### **18. FEDERAL EQUAL OPPORTUNITY**

- 18.1 The Contractor and any Subcontractors shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative actions by covered prime Contractors and Subcontractors to employ and advance in employment qualified individuals with disabilities.

#### **19. TERMINATION**

- 19.1 TWU may at any time by written notice suspend or cancel this purchase order without cause.
- 19.2 This purchase order and any TWU contract are subject to termination, without penalty, in whole or in part, if funds are not appropriated by the legislature of the State of Texas.
- 19.3 Either Contractor or TWU may terminate this purchase order upon 30 days 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 30-day period.
- 19.4 TWU may terminate this purchase order immediately without further notice if Contractor: (i) petitions for reorganization under the Bankruptcy Code or is adjudged bankrupt; (ii) becomes insolvent or a receiver is appointed due to the insolvency; or (iii) makes a general assignment or sale of Contractor's assets or business for the benefit of creditors.
- 19.5 In no event will such termination by TWU as provided for under this section give rise to any liability on TWU's part including, but not limited to, Contractor's claims for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. TWU's sole obligation hereunder is to pay Contractor for goods or services received prior to the date of termination.

#### **20. GOVERNING LAW**

- 20.1 This purchase order and all of the rights and obligations of the parties and all of the terms and conditions under this purchase order will be construed, interpreted and applied in accordance with, governed by and enforced under the laws of the State of Texas. Denton County, Texas will be the proper place of venue for any proceeding.

#### **21. DISPUTE RESOLUTION**

- 21.1 The dispute resolution process provided in Government Code Chapter 2260, Subchapter C, will be Contractor's sole and exclusive process for seeking a remedy for any alleged breach of contract by TWU if the parties are unable to resolve their disputes in the ordinary course of business or under Chapter 2260, Subchapter B, unless, after considering the recommendation of the Administrative Law Judge, the Legislature grants the Contractor consent to sue under Chapter 107 of the Civil Practices and Remedies Code.
- 21.2 Neither the execution of this purchase order by TWU nor any other conduct of any of TWU's representatives relating to the purchase order will be considered a waiver to TWU's sovereign immunity to suit.