

## 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 purchase order 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 purchase orders, co-operative purchase orders, 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 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 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 purchase order of the parties with respect to the purchase and sale of the goods or services (as applicable), and supersedes all prior or contemporaneous understandings, purchase orders, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of this purchase order.
- 2.4 TWU's payment of any Contractor invoice, or Contractor's commencement of performance, shall not constitute acceptance of any terms or conditions included in Contractor's documents, including, without limitation, invoices, quotes, order forms, or online terms and conditions, whether such terms purport that payment or use of services constitutes acceptance. Any such terms are hereby rejected and shall be of no force or effect. The parties agree that only this purchase order, and the terms and conditions expressly stated and agreed to in writing and signed by both parties shall govern this transaction. No additional or conflicting terms shall be binding upon TWU unless agreed to in a written amendment executed by both parties. In the event of any conflict between the terms of this purchase order and any Contractor document, the terms of this purchase order shall govern and control.
- 2.5 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>.

- 2.6 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.
- 2.7 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. 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/otpc/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 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 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 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 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.

## 8. INDEPENDENT CONTRACTOR.

- 8.1 Contractor hereby acknowledges that it is an independent contractor, and all persons employed to furnish services hereunder are employees of Contractor and not of TWU. All individuals performing services hereunder will be employees of Contractor and Contractor will pay for all wages, expenses, federal and state payroll taxes and any similar tax relating to such employees.

## 9. INSURANCE.

- 9.1 Contractor agrees to maintain, at Contractor’s sole expense, and to cause its agents, suppliers and permitted subcontractors to maintain, at their sole expense, minimum General Liability insurance, Workers’ Compensation, and Employers’ Liability insurance satisfying the requirements and limits outlined in TWU Third Party Insurance Standards (“Standards”). Contractor shall also maintain any other insurance policies required by the Standards if applicable. By requiring the above minimum insurance, TWU shall not be deemed or construed to have assessed the risk that may be applicable to Contractor, and TWU reserves the right to require additional coverages or amend the limits outlined in the Standards. Contractor’s failure to comply with this section shall be considered a breach of this purchase order. Certificates of insurance shall be provided to TWU at [risk@twu.edu](mailto:risk@twu.edu) at least ten (10) days prior to commencement of any services under this purchase order.



## 10. PUBLIC INFORMATION

- 10.1 All information, documentation and other material submitted by Contractor (“Contractor ” under this section) under this proposal is subject to public disclosure under the Texas Public Information Act (the “Act”) (Texas Government Code, Chapter 552). Contractor 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 Contractor s’ submitted information except where TWU is required to disclose it under the Act. The Texas Attorney General will ultimately decide whether a Contractor ’s proprietary information (such as financial information, client lists, etc.) is released to the public, however TWU will use reasonable efforts to give a Contractor notice of requests for its proprietary information in accordance with the Act. TWU cannot represent Contractor interests to the Texas Attorney General and Contractors 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 Contractor pricing information, will be disclosed under the Texas Public Information Act. If Contractors have further questions regarding the Texas Public Information Act, they should seek appropriate legal counsel.

In submitting this bid for Contract with TWU, Contractor 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 Contractor responsibilities:

Contractor 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 Contractor 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 Contractor ; 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, Contractor hereby acknowledges the following applies to the Contract between TWU and Contractor on this bid:

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

Further, in addition to the possible termination of the Contract, Contractor acknowledges that failure to comply with the requirements of the TPIA may negatively affect Contractor ’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.

## 11. ACCESS TO DOCUMENTS / RECORDKEEPING

- 11.1 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.
- 11.2 Contractor shall maintain adequate records to support its charges, procedures, and performance to TWU for all work related to this Contract to ensure proper accounting for all costs and performances related to this Contract.
- 11.3 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. If TWU reasonably determines in good faith that Contractor has materially breached any of its confidentiality obligations under this purchase order or has violated FERPA, TWU, in its sole discretion, has the right to terminate the purchase order immediately, with a prior written notice to Contractor describing the violation and the action it intends to take.
- 11.4 Within thirty (30) days of the termination of this purchase order, Contractor agrees to return or destroy all data, records and record systems 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.

## 12. AUDIT

- 12.1 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 (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
- 12.2 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.

## 13. INDEMNITY AND LIMIT ON LIABILITY

- 13.1 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) (each of which is an "Indemnifying Act"). Contractor shall reimburse TWU for any and all costs, damages and expenses including reasonable attorney's fees to which TWU may be subject as a result of the occurrence of any Indemnifying Act.

- 13.2 Contractor's obligation to indemnify will survive the expiration or termination of the purchase order by either party for any reason and will not be subject to any liability caps stated anywhere in the Contract. 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 item 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.
- 13.3 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.

ANY INDEMNITY PROVISION IN THE PURCHASE ORDER MAY BE INVALID OR UNENFORCEABLE AGAINST TWU BECAUSE OF APPLICABLE STATE OR FEDERAL LAW. TWU MAY NOT INDEMNIFY CONTRACTOR BEYOND ITS AUTHORITY UNDER STATE LAW AND NO INDEMNITY MAY BE PROVIDED FOR CONTRACTOR'S NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS.

#### 14. TECHNOLOGY ACCESS

- 14.1 Under this purchase order, if Contractor creates, receives from or on behalf of TWU, or has access to TWU's data, records or record systems may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable laws among other sensitive or confidential information (collectively, the "Sensitive University Data"), Contractor represents, warrants, and agrees that it will: (1) hold Sensitive University Data in strict confidence and will not use or disclose Sensitive University Data except as permitted or required by this purchase order, required by applicable laws, or otherwise authorized by TWU in writing; (2) safeguard Sensitive University Data according to reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that the confidentiality of Sensitive University Data is maintained in accordance with all applicable laws and the terms of this purchase order; and (4) comply with TWU rules regarding access to and use of TWU's computer systems. At the request of TWU, Contractor agrees to provide TWU with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of Sensitive University Data. Contractor will also abide by additional mandatory confidentiality and security compliance requirements with respect to Sensitive University Data subject to applicable laws, including but not limited to the Gramm-Leach-Bliley Act, the Family Educational Rights and Privacy Act (FERPA), and the Health

Insurance Portability and Accountability Act (HIPAA).

- 14.2 As required by 1 TAC Chapter 213 and 1 TAC Section 206.70 (as authorized by Subchapter M, Chapter 2054, Texas Government Code, the “EIR Code”), Contractor represents and warrants (the “EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to TWU under this purchase order (collectively, the “EIRs”) comply with the applicable requirements set forth in the EIR Code. To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, Contractor represents that it will, at no cost to TWU, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, TWU may terminate this purchase order and Contractor will refund to TWU all amounts TWU has paid under this Contract within thirty (30) days after the termination date.
- 14.3 The parties hereby agree that if under this purchase order 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 Contract 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 Contract, this paragraph is not applicable.
- 14.4 Under Texas Government Code Section 2054.138, Contractor must meet reasonably appropriate security controls related to TWU’s data (the “Security Controls”). Contractor must provide evidence that Contractor meets the Security Controls upon TWU’s request and must promptly notify TWU in the event of unauthorized access to Sensitive University Data or TWU’s confidential information or sensitive personally identifiable information of TWU’s employees, students, customers or applicants.
- 14.5 As required by Texas Government Code Section 2054.5192, if Contractor, including Contractor’s subcontractors, officers, and employees, has access to a TWU computer system or database, then Contractor must complete a cybersecurity training program certified under Texas Government Code Section 2054.519 and selected by TWU. Contractor must verify completion of the cybersecurity training program to TWU. The cybersecurity training program must be completed during the term of this purchase order and any renewal period of the purchase order.

## 15. EXPORT CONTROLS

- 15.1 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 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.

## 16. SUBCONTRACTING.

- 16.1 In the event Contractor subcontracts for any of the performances herein, Contractor will require such subcontractors to comply with the provisions of this purchase order. The parties agree that TWU shall not be liable to Contractor for any payments to such subcontractor or its employees or agents and that TWU shall not be directly liable in any manner to Contractor's subcontractors. In no event shall this section or any other provision of this purchase order be construed as relieving Contractor of the responsibility for ensuring that all performances rendered under this purchase order, and any subcontracts thereto, are rendered in compliance with all terms of this purchase order.

## 17. CERTIFICATIONS

- 17.1 Under Section 2155.004 of the Texas Government Code, Contractor certifies that it is not ineligible to receive this purchase order and acknowledges that this purchase order may be terminated and payment withheld if this certification is or becomes inaccurate.
- 17.2 Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive payments under the purchase order and acknowledges that the purchase order may be terminated, and payment may be withheld if this certification is or becomes inaccurate.
- 17.3 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. Contractor acknowledges that this purchase order may be terminated, and payment may be withheld if this certification is or becomes inaccurate.
- 17.4 Pursuant to Sections 2107.008 and 2252.903 of Texas Government Code, Contractor agrees that any payments owing to Contractor under the purchase order may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any State of Texas agency regardless of when it arises, until such debt or delinquency is paid in full.
- 17.5 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)).
- 17.6 Pursuant to Texas Government Code Chapter 2271, 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 either (1) it meets an exemption criterion under Section 2271.002; or (2) it does not boycott Israel and will not boycott Israel during the term of the purchase order. Contractor acknowledges this purchase order may be

terminated and payment withheld if either certification is or becomes inaccurate. If Contractor meets an exemption, it shall provide TWU written notice of what that exemption is at the time the purchase order is made.

- 17.7 Pursuant to Texas Government Code Chapter 2276, 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 this purchase order may be terminated and payment withheld if either certification is or becomes inaccurate. If Contractor meets an exemption, it shall provide TWU written notice of what that exemption is at the time the purchase order is made.
- 17.8 Pursuant to 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 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 contract against a firearm entity or firearm trade association.
- 17.9 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.
- 17.10 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. Contractor acknowledges this purchase order may be terminated and payment withheld if this certification is or becomes inaccurate.
- 17.11 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.
- 17.12 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.
- 17.13 Contractor warrants, represents, and covenants that, in performing this purchase order, it will use reasonable care to ensure that (a) no member of the Board or Regents of TWU, and (b) none of TWU's executive officers, has a financial interest, directly or indirectly, in the transaction that is subject of this purchase order.
- 17.14 TWU must comply with the "Disclosure of Interested Parties" requirements mandated by HB 1295, as implemented by the Texas Ethics Commission. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity "submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency."

The law applies to a contract of a governmental entity or state agency that has a value of at least \$1 million. Contractor therefore certifies that if required by Tex. Gov't Code § 2252.908(d) it will submit the required disclosure of interested parties to TWU. Failure to do so will be grounds for termination of this purchase order without penalty to TWU.

- 17.15 Pursuant to Texas Governor Executive Order 48, Contractor certifies that Contractor or any of its holding companies or subsidiaries if applicable, is not: (1) listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or (2) listed in Section 1260H of the 2021 NDAA; or (3) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or (4) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4. Contractor acknowledges this purchase order may be terminated and payment withheld if this certification is or becomes inaccurate.
- 17.16 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.
- 17.17 If Contractor is a corporation, partnership, or limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this purchase order, and the individual executing this purchase order on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 17.18 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 purchase order is considered to be part of the purchase order whether or not the provision appears on the face of the purchase order, even if the purchase order contains any provision to the contrary.

## 18. FUNDS

- 18.1 Performance by TWU under the purchase order may be dependent upon the appropriation and allotment of funds from federally funded programs and/or by the Texas State Legislature. In the event a curtailment of federally funded programs occurs, or in the event state appropriations are unavailable, TWU will issue written notice to Contractor and TWU may terminate the purchase order without further duty or obligation hereunder. Contractor acknowledges that appropriation of funds is beyond the control of TWU.
- 18.2 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.
- 18.3 The University is a recipient of federal funds from various federal agencies. The University shall require Contractors to comply with all federal regulations relating to the use of federal funds. In addition, Contractor agree to flow down all applicable clauses from federal OMB regulations to lower-tier subcontractors. 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.

## 19. NON-DISCRIMINATION

- 19.1 The Parties agree to comply with applicable state and federal rules governing non-discrimination, equal opportunity and affirmative action.

## 20. TERMINATION

- 20.1 TWU may at any time by written notice suspend or cancel this purchase order without cause.
- 20.2 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.
- 20.3 Either Contractor or TWU may terminate this purchase order upon thirty (30) days written notice to the other, if the other party fails to perform or comply with any of the material terms, covenants, purchase orders, or conditions hereof, and such failure is not cured during such 30-day period.
- 20.4 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.
- 20.5 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.

## 21. FORCE MAJEURE.

- 21.1 Any delay or failure in the performance by either Party under the purchase order shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of the purchase order, Force Majeure means a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including without limitation acts of God, fires, floods, explosions, riots, wars, hurricane, terrorism, governmental acts, injunctions, labor strikes, pandemics that prevent the Party from furnishing the materials or equipment, and other like events that are beyond the reasonable anticipation and control of the Party affected, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this purchase order. Notwithstanding, in the event of Force Majeure which prevents TWU's access to the goods and services provided by Contractor as described herein for more than thirty (30) days, TWU will have the option to terminate the purchase order, request a pro-rated refund of the fees paid, or extend the term of this purchase order by the period of time the goods and services are unavailable to TWU due to the Force Majeure.

## 22. PUBLICITY.

- 22.1 Contractor agrees not to refer to this purchase order or use the logo of TWU in any advertising material of any kind without the expressed written permission of TWU. Additionally, Contractor shall not use TWU's name, logo or likeness in any press release, marketing materials or other public announcement without receiving TWU's prior written approval.



## 23. GOVERNING LAW

- 23.1 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.

## 24. DISPUTE RESOLUTION

- 24.1 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 Contractor consent to sue under Chapter 107 of the Civil Practices and Remedies Code.
- 24.2 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.

## 25. MISCELLANEOUS

- 25.1 Nothing in this purchase order, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this purchase order.
- 25.2 No covenant or condition of the purchase order may be waived except by written consent of the waiving Party. Forbearance or indulgence by one Party in any regard shall not constitute a waiver of any other covenant or condition to be performed by the other Party under this purchase order.
- 25.3 The fact that a particular provision in this purchase order is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions, and this purchase order will continue to be binding on the parties. Any provision that is held to be void or unenforceable will be interpreted by the parties or the courts to be replaced with language that is as close as possible to the intent of the original provision so as to effectuate the purpose of this purchase order. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of this purchase order.
- 25.4 The parties agree that the purchase order and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except (1) as expressly allowed by the purchase order, or (2) in the event that proposed or existing legislation or TWU board action including creating a TWU university system with multiple campuses, a reorganization, a name change, merger, or creating a successor in interest (a "Legislative Action"). A Legislative Action will not constitute an assignment of any rights or obligations of TWU under the purchase order and will not activate any assignment clauses in the purchase order detrimental to TWU.
- 25.5 The terms and conditions contained in this purchase order which, by their sense and context, are intended to survive the expiration or termination of the purchase order shall survive.