

TEXAS TECH UNIVERSITY SYSTEM ("TTUS")/TEXAS TECH UNIVERSITY ("TTU") PURCHASE ORDER TERMS

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 Bid: An Offer to Contract submitted in response to an Invitation for Bid.
- 1.3 Change Order: A written alteration that is issued to modify or amend a Purchase Order.
- 1.4 Construction Project: Major Construction Project (total project budget \$4,000,000 or more) and minor Construction Project (total project budget less than \$4,000,000).
- 1.5 Contract: A legally binding written agreement executed between TTUS 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, memoranda of understanding (MOU), Interagency Contracts, Interlocal Contracts, easements, licenses, leases, and Purchase Orders. TTUS *Regents' Rules* Chapter 07.
- 1.6 Contractor: An entity or individual that has a Contract to provide Goods or Services to TTUS. May also be referred to as the Supplier or Vendor.
- 1.7 Employees: means officers, faculty, and staff of TTUS.
- 1.8 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.
- 1.9 Goods: Supplies, materials, technology, or equipment as defined in Texas Government Code § 2155.001. Goods do not include Services or real property.
- 1.10 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.
- 1.11 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.
- 1.12 Procurement (Procure): Purchasing, renting, leasing, or otherwise acquiring any Goods and/or Services, including all functions that pertain to the acquisition through Contract close-out.
- 1.13 Proposal: A response to a Request for Proposal ("RFP") and intended to be used as a basis to negotiate a Contract award.
- 1.14 Purchase Order ("PO"): A legal document issued to a Contractor which formalizes the terms and conditions of any purchase of Goods and/or Services.
- 1.15 Quote: A document setting forth an offer to sell Goods and/or Services at a certain price under specified conditions.
- 1.16 Scope of Work (or "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. Method typically include a Bid or RFP.
- 1.19 Specification(s): Description of the requirements for Goods and/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 "TTUS" shall mean Texas Tech University System a system of higher education in the State of Texas, which includes Texas Tech University, an institution of higher education in the State of Texas ("TTU") and a component institution of TTUS. TTUS used within these terms and conditions may mean TTU.

2. ACCEPTANCE

- 2.1 This PO is an offer by TTUS to purchase Goods and/or Services (as applicable) from the Contractor in accordance with and subject to the terms herein. This PO is binding when it is accepted by Contractor. Contractor will be deemed to have accepted this PO when it (i) sends TTUS notice of acceptance in writing, (ii) starts to perform the Services in accordance with the terms of this PO, (iii) delivers any or all of the Goods covered by this PO, or (iv) accepts payment, whichever occurs first. TTUS may withdraw this PO at any time before it is accepted by Contractor. No Contract will exist except as herein provided or in any other document mutually agreed in writing by the Parties and authorized by a TTUS employee with delegated authority to sign Contracts. Notwithstanding any express provision stating that the terms of the Contractor terms or other contemporaneous or subsequent Contract document will control in the event of conflict with this PO, Contractor's acceptance of this PO acknowledges that the this PO is controlling in the event of a conflict of terms in the Contract.
- 2.2 Contractor's acceptance is expressly limited to the terms herein. Any Proposal, Scope of Work, Quote, Bid, invoice, acknowledgement, or other communication issued by Contractor in connection with, or otherwise incorporated by reference into this PO will be for the purposes of describing in greater detail the Goods and/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 PO 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 PO) are objected to and rejected and will be deemed a material alteration hereof, unless expressly assented to in writing by TTUS. Furthermore, TTUS will not be bound by, any "disclaimers" or "click to approve" terms or conditions now or hereafter contained in any website used by TTUS in connection with the Goods and/or Services (as applicable) or this PO.
- 2.3 This PO, together with any documents agreed to by the parties in writing, incorporated by reference and executed by Contractor and TTUS, constitute the sole and entire agreement of the parties with respect to the purchase and sale of the Goods and/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 PO.
- 2.4 Contractor agrees that it will comply with all federal, state, or local laws or regulations applicable to Contractor's performance under the PO. Contractor further agrees that it will comply with applicable [TTUS Operating Policies and Procedures](#), [TTU System Regulations](#), and [TTUS Board of Regents Rules](#).
- 2.5 Neither the PO nor any of the rights and obligations of TTUS hereunder may be assigned or transferred by Contractor without the prior written consent of TTUS. The PO 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 communications related to this PO must be in writing and delivered to the following address: Texas Tech University, Procurement Services, Box 41094, Lubbock, TX 79409-1094, emailed to strategic.acquisitions@ttu.edu. The Contractor must provide this PO number for reference purposes.

3. SPECIFICATIONS

- 3.1 Unless otherwise provided in the Quote, Scope of Work, or Specifications or agreed upon in writing by the parties, all Goods must be new, unused and, of current production.
- 3.2 Any electrical items must meet all applicable Occupational Safety and Health Administration ("OSHA") standards and regulations, and bear the appropriate listing from Underwriters Laboratories ("UL"), Factory Mutual Research Corporations ("FMRC"), or National Electrical Manufacturers Association ("NEMA").
- 3.3 Samples, when requested, will be furnished without expense to TTUS. 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 shipping information.

4. DELIVERY, INSPECTIONS, AND TESTS

- 4.1 Delivery of any Goods covered by this PO will be made F.O.B. destination, freight prepaid, if from U.S. locations and EXW, if from international locations, (in accordance with Incoterms 2010) unless otherwise agreed in writing by the TTU 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 PO. Contractor will deliver the Goods and/or perform the Services (as applicable) on the date(s) specified in the PO (the "Delivery Date") unless it is not specified on the PO and then the date included on the Quote. If no Delivery Date is specified, Contractor will confirm the delivery date of the Goods and/or Services within thirty (30) days of Contractor's receipt of the PO. Timely delivery of the Goods or Services (as applicable) is of the essence. If Contractor fails to deliver the Goods and/or Services (as applicable) in full on the Delivery Date, TTUS may terminate the PO immediately by providing written notice to Contractor and Contractor will indemnify TTUS against any losses, claims, damages, and reasonable costs and expenses directly attributable to Contractor's failure to deliver the Goods and/or Services (as applicable) on the Delivery Date.
- 4.3 Delivery must be made to the "Ship To" address located on the PO. Failure to deliver to the appropriate address will not be grounds for reimbursement for shipping costs and will result in delay of payment until shipment is made by the Contractor to the correct location.
- 4.4 Delivery must be made during normal working hours only, unless prior written approval has been obtained from TTUS. No collect shipments will be accepted.
- 4.5 If delay is foreseen, Contractor shall give written notice to TTU Procurement Services. Contractor must keep TTUS advised at all times of status of order. Default in promised Delivery Date (without accepted reasons) or failure to meet Specifications authorizes TTUS to Procure Goods and/or Services elsewhere and charge any increase in cost and handling to defaulting Contractor.
- 4.6 Title to the Goods covered by the PO (if any) passes to TTUS upon delivery of the Goods to the delivery location (the ship-to address provided on this PO). Delivery of the Goods is not complete until such Goods have actually been received and accepted by TTUS. Contractor bears all risk of loss or damage to the Goods until delivery and acceptance 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.

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- 4.8 TTUS shall have thirty (30) days after receipt of any Goods or completion of Services to inspect the Goods or Services rendered by Contractor. All Goods and/or Services (as applicable) are subject to TTUS' right of inspection and rejection on or after the Delivery Date. TTUS, 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 PO or otherwise communicated to Contractor in writing. If TTUS rejects any portion of the Goods and/or Services, TTUS has the right, effective upon written notice to Contractor, to: (i) rescind the PO in its entirety; (ii) accept the defective and/or non-conforming Goods and/or Services at a reasonably reduced Price; or (iii) reject the non-conforming Goods and/or Services and require the replacement or re-performance (as applicable).
- 4.9 If TTUS requires replacement or re-performance of non-conforming Goods and/or Services, Contractor will, at its expense, promptly replace or re-perform the non-conforming Goods and/or Services 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), TTUS may replace the non-conforming Goods and/or Services with Goods or Services from a third party and charge Contractor any and all costs and terminate the PO for cause.
- 4.10 Any inspection or other action by TTUS under this section will not reduce or otherwise affect Contractor's obligations under this PO, and TTUS will have the right to conduct further inspections after Contractor has carried out its remedial actions. Acceptance by TTUS will not occur unless and until (i) with respect to Goods installed by Contractor, any acceptance tests or programs described in the PO or attachments thereto are completed to TTUS' satisfaction, as evidenced by a written acceptance signed by TTUS, (ii) with respect to any Services performed by Contractor, such Services are completed to TTUS' satisfaction, as evidenced by a written acceptance signed by TTUS, or (iii) with respect to Goods not installed by Contractor, TTUS has not notified Contractor, within thirty (30) days following receipt of the Goods by TTUS, that Goods are defective or otherwise do not conform to Specifications.
- 4.11 No inspection, tests, approval (including design approval), or acceptance of Goods and/or Services 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 TTUS approval of a prototype, sample, or design shall not proceed until such written approval by TTUS is given.
- 4.13 No substitutions for Goods are permitted without written approval of TTU Procurement Services. If an additional cost is required as a result of the substitution, the Contractor shall not proceed until a change order is received from TTUS.
- 4.14 POs not fulfilled within six (6) months from the PO was transmitted to the Contractor 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 for the jurisdiction where Services take place.
- 5.2 Contractor shall notify TTUS in writing of all chemicals, equipment, and supplies proposed or used by Contractor in performance of this PO on TTUS 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 PO by the Contractor or in all cases prior to arrival of such substances on TTUS 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 TTUS when required.
6. **WARRANTIES**
- 6.1 With respect to all Goods (if any) to be delivered under this PO, Contractor warrants to TTUS 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 workmanlike manner at quality levels consistent with industry standards and in accordance with all applicable Specifications, drawings, designs, samples, and other requirements specified by TTUS, (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 PO, Contractor warrants to TTUS that (i) Contractor will perform the Services using personnel of requisite skill, experience, and qualifications and in a professional and workmanlike 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 PO, 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 TTUS that (i) this PO is not prohibited under [Texas Government Code §2261.252\(b\)](#), (ii) Contractor's acceptance of, or performance under, this PO does not result in a conflict of interest between Contractor or any third party, (iii) Contractor has the full legal right to provide all Goods and/or Services, and that there is no claim, litigation or proceeding pending or to its knowledge threatened against Contractor with respect to such Goods and/or Services, 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 (iv) Contractor will obtain and maintain all permits, licenses, and consents required in connection with its performance under this PO. If Contractor's certification is or becomes untrue, this PO immediately rendered void, and the Contractor may not seek and waives its right to seek any legal or equitable remedy for past or future performance under this PO, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.
- 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 and/or Services by TTUS, and will not be deemed waived by reason of TTUS' receipt, inspection, or acceptance of, or by payment for, the Goods and/or Services.
- 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 TTUS and Contractor that if any Warranties are held to be inconsistent, TTUS may, at any time, including in the course of a suit for breach, select which Warranty will be excluded from this PO.
- 6.6 All Warranties will run to TTUS, its customers and subsequent owners of the Goods and/or Services 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 TTUS.
- 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 TTUS as the basis for breach. All Warranties will be construed as conditions as well as promises.
7. **PAYMENT TO CONTRACTORS**
- 7.1 In accordance with [Texas Government Code Chapter 2251](#), TTUS' payment terms are thirty (30) days for undisputed invoices unless agreed upon in writing by the Chief Procurement Officer prior to issuance of the PO. TTUS 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 to invoices paid after thirty (30) days.
- 7.3 Invoices must reference the PO number or they will be returned to the Contractor unpaid.
- 7.4 Final invoices must be submitted within ninety (90) days after completion of the Services or delivery of the Goods. Failure to submit by ninety (90) days will result in forfeiture of any further amounts due.
- 7.5 As an agency of the State of Texas, TTUS 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 emailed to payment.strategies@ttu.edu unless specifically instructed otherwise in writing. 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 TTUS 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 TTUS' use or possession thereof).
9. **PUBLIC INFORMATION**
- 9.1 All information, documentation and other material submitted by Contractor under any Solicitation and for this PO are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552). Contractor is hereby notified that TTUS strictly adheres to this statute and the interpretations thereof rendered by the courts and the Texas Attorney General. TTUS will use its best efforts to maintain the confidentiality of all Contractor submitted information except where TTUS 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 TTUS will give Contractor notice of all requests for its proprietary information in accordance with the Act. TTUS cannot represent Contractor's interests to the Texas Attorney General and Contractor 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, pricing information will be disclosed under the Public Information Act. If Contractor has further questions regarding the Public Information Act, it should seek appropriate legal counsel.
10. **ACCESS TO DOCUMENTS**
- 10.1 Contractor will maintain records generated pursuant to Goods provided or Services rendered under to this PO for a period of at least two (2) years after submission of the last accounting report date on which Goods and/or Services were rendered, or until final resolution of any proceedings arising out of this PO, whichever date is later in time. Contractor will allow TTUS access to such documents for audit and purposes.

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11. AUDIT

- 11.1 Contractor understands that acceptance of funds under this PO 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 TTUS, 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 TTUS has the right, at TTUS' sole cost, to audit Contractor's financial records pertaining to the PO for the preceding twelve (12) month period either using TTUS' personnel or an independent third party. TTUS 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 TTUS money, Contractor will pay the amount due within thirty (30) days of the date TTUS notifies Contractor of the audit results. If the audit reveals TTUS owes Contractor money, TTUS will pay Contractor within thirty (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 TTUS, TTU, its Board of Regents, and its officers, 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 attorneys' fees, arising out of or resulting in any way from (i) Contractor's manufacture and/or supply of Goods to TTUS, (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 TTUS use or possession thereof).
- 12.2 Contractor's obligation to indemnify will survive the expiration or termination of the PO by either party for any reason. Contractor may, at its option, conduct the defense of any third party action and TTUS will cooperate with Contractor'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 TTUS may have hereunder or by law, Contractor, at no expense to TTUS, will obtain for TTUS and its customers the right to use and sell said item, or will substitute an equivalent item, acceptable to TTUS, 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 TTUS or its customers, Contractor will indemnify TTUS and its customers for any and all losses or damages sustained by reason of such injunction.
- 12.3 TTUS/TTUS SHALL NOT BE LIABLE TO CONTRACTOR 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 TTUS' 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 EIR accessible features and capabilities or provide a similarly formatted document as the VPAT attesting to the EIR's accessible features and capabilities. TTUS 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.

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 PO. 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 licenses and license exemptions/exceptions. Prior to disclosing or transferring to TTUS any hardware, technical data, software, or item utilizing any data subject to export controls under federal law, Contractor will notify TTUS in writing of the nature and extent of the export control. TTUS 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, TTUS has the right to immediately terminate this PO.

15. CERTIFICATIONS

- 15.1 [Under §§ 2155.004 and 2155.006](#) of the Texas Government Code, Contractor certifies that the individual or business entity named in this PO is not ineligible to sign a Contract with TTUS and acknowledges that this PO 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 PO is not ineligible to sign a Contract with TTUS and 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 PO and TTUS will have right to cancel the Goods or Services.
- 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 PO 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 PO.
- 15.4 Franchise Tax Certification. 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 PO.
- 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 PO 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 PO 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 PO must be produced in the United States (as defined in Texas Government Code §2252.201(4)).
- 15.7 If this PO or the Contract has a value of \$100,000 or more that is to be paid wholly or partly from public funds of TTUS, and if Contractor is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to [Texas Government Code Chapter 2271](#), Contractor affirmatively states that it does not boycott Israel and will not boycott Israel during the term of this PO or Contract. In this paragraph, the terms "company" and "boycott Israel" shall have the meanings described in [Texas Government Code §808.001](#).
- 15.8 If this PO or the Contract has a value of \$100,000 or more that is to be paid wholly or partly from public funds of TTUS, and if Contractor is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to Texas Government Code §2274.002, Contractor affirmatively states it does not boycott energy companies and will not boycott energy companies during the term of this PO or Contract. In this paragraph, the terms "company" and "boycott energy companies" shall have the meanings described in Texas Government Code §809.001.
- 15.9 Pursuant to Texas Government Code 2274.002, Contractor agrees that it will play the United States national anthem at the beginning of each team sporting event held at the Contractor's home venue or other facility controlled by Contractor for the team for the event and acknowledges that failure to comply with the written verification may subject the Contract to the penalties outlined Texas Government 2274.002(2).
- 15.10 Contractor verifies it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the Contract against a firearm entity or trade association.
- 15.11 Under [§2155.0061, Texas Government Code](#), the Contractor certifies that the individual or business entity named in the Contract, and/or PO is not ineligible to receive the specified Contract and/or PO and acknowledges that the Contract and/or PO may be terminated and payment withheld if this certification is inaccurate.
- 15.12 If given access to the personally identifiable information about any student during performance of any Services, Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from student records as set forth in The Family Educational Rights and Privacy Act ("FERPA") 34 CFR, §99.3.
- 15.13 The Contractor affirmatively states that it will comply with the requirements of [Texas Health and Safety Code, § 161.0085\(c\)](#).
- 15.14 Pursuant to Texas Government Code §2054.0593, relating to the Texas Department of Information Resource's State Risk and Authorization Management Program ("Program"), Contractor represents and warrants that it complies with the requirements of the Program and Contractor agrees that throughout the term of the Contract and/or PO it shall maintain the required certifications and comply with the Program requirements in the performance of the Contract and/or PO. If the Contractor fails to maintain the requirements of the Program, TTU has the right to terminate the Contract and PO immediately without any further cause.

16. FEDERAL FUNDS

- 16.1 If the Agreement involves the use of United States federal funds, including from a government grant or funds from a subcontract at any tier relating to a federal government grant, the following terms apply to the Agreement. In addition, Contractor agrees to flow-down all applicable clauses to lower-tier subcontractors. For all purchases of Goods and/or Services in excess of \$10,000, Contractor agrees that the United States Government/Comptroller General of the United States or their representatives will, until the expiration of three (3) years after final payment under this purchase, have access to and the right to examine any directly pertinent books, documents, papers, and records of such Contractor,

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Subcontractor, or Service provider involving transactions related to the PO or any related Contract.

- 16.2 Contractor further agrees to include in all contracts, subcontracts, and agreements with service providers performing services in connection with this PO or any related Contract in excess of \$10,000, a provision to the effect that the subcontractor or service provider agrees that the United States Government/Comptroller General of the United States or his representatives will, until the expiration of three (3) years after final payment under this Lease, have access to and the right to examine any directly pertinent books, documents, papers, and records of such contractor, subcontractor or service provider involving transactions related to the contract or subcontract.

17. FEDERAL REQUIREMENTS ON ALL PURCHASES

- 17.1 Security Requirements (applicable if access to classified material is involved) FAR 52.204-2
- 17.2 Equal Employment Opportunity - Executive Order 11246 as amended by Executive Order 11375 and supplemented by 41 CFR part 60
- 17.3 Copeland Anti-kickback Act (for construction and repair) 18 USC 874 as supplemented by Department of Labor regulations 29 CFR part 3
- 17.4 Davis-Bacon Act, as amended 40 USC 276a to a-7 and supplemented by Department of Labor regulations 29 CFR part 5
- 17.5 Contract Work Hours and Safety Standards Act 40 USC 327-333 and supplemented by Department of Labor regulations 29 CFR part 5.
- 17.6 Rights to Inventions Made under a Contract or Agreement - 37 CFR part 401
- 17.7 Preference for Privately Owned U.S.-Flag Commercial Vessels - FAR 52.247-64
- 17.8 Hazardous Material Identification and Material Safety Data policy (when applicable) FAR 52.223-3
- 17.9 Filing of Patent Applications - Classified Subject Matter FAR 52.227-10
- 17.10 Patents Rights - Ownership by Contractor and Government FAR 52.227-11 and 52.227.13
- 17.11 Rights in Data - General FAR 52.227-14
- 17.12 Authorization and Consent Patents and Copyrights 52.227-1
- 17.13 Notice and Assistance Regarding Patent and Copyright Infringements FAR 52.227.2
- 17.14 Buy American Act - Supplies FAR 52.225-3
- 17.15 Government Property FAR 52.245-5
- 17.16 Notice of Radioactive Materials FAR 52.223-7
- 17.17 Privacy Act FAR 52.224-2
- 17.18 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment FAR 52.204-25

18. FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$2,500

- 18.1 Restrictions on Certain Foreign Purchases FAR 52.225-13
- 18.2 McNamara-O'Hara Service Contracts Act 41 U.S.C. 351 *et seq.*

19. FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$10,000

- 19.1 Prohibition of Segregated Facilities FAR 52.222-21
- 19.2 Equal Opportunity FAR 52.222-26
- 19.3 Affirmative Action for Workers with Disabilities FAR 52.222-36
- 19.4 Walsh-Healy Public Contracts Act FAR 52.222.20

20. FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$25,000

- 20.1 Affirmative Action for Disabled Veterans and Vietnam of the Vietnam Era FAR 52.222-35
- 20.2 Employment Reports on Special Disabled Veterans and Vietnam of the Vietnam Era FAR 52.222-37
- 20.3 Debarment and Suspension FAR 52.209-6

21. FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$100,000

- 21.1 Anti-kickback procedures FAR 52.203-7
- 21.2 Restrictions on Subcontractor Sales to the Government FAR 52-203.6
- 21.3 Audit and Records Negotiation (if document was entered by negotiation) FAR 52.215.2
- 21.4 Integrity of Unit Prices FAR 52.215-14
- 21.5 Contract Work Hours and Safety Standards Act FAR 522.222-4
- 21.6 Clean Air and Water FAR 52.223-2
- 21.7 Clean Air Act (42 U.S.C. 7401 *et seq.*)
- 21.8 Federal Water Pollution Control Act 33 U.S.C. 1251, *et seq.*
- 21.9 Drug-Free Workplace FAR 52.223-6
- 21.10 Byrd Anti-Lobbying Amendment 31 U.S.C. 1352
- 21.11 Utilization of Small Business Concerns FAR 52.219-8
- 21.12 Preference for US Flag Carriers FAR 52.247-63
- 21.13 Toxic Chemical Release Reporting 52.223-14

22. FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$500,000

- 22.1 Cost Accounting Standards - Educational Institutions FAR 52.230-5
- 22.2 Administration of Cost Accounting Standards FAR 52.230-6

23. FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$550,000

- 23.1 Price Reduction for Defective Cost or Pricing Data FAR 52.215-10
- 23.2 Subcontractor Cost or Pricing Data FAR 52.215-12
- 23.3 Subcontractor Cost or Pricing Data - Modifications FAR 52.215-13

24. FEDERAL REQUIREMENTS ON PURCHASES GREATER THAN \$650,000

- 24.1 Small Business and Small Disadvantaged Business Subcontracting Plans FAR 52.219-9
- 24.2 Liquidated Damages - Subcontracting Plan FAR 52.219-16

25. AFFIRMATIVE ACTION

- 25.1 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, §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 TTUS the policies and practices relating to the Contractor's Affirmative Action program.

26. FEDERAL EQUAL OPPORTUNITY

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 action by covered prime Contractors and Subcontractors to employ and advance in employment qualified individuals with disabilities.

27. INSURANCE REQUIREMENTS

Without limiting any liability of or any other obligation of Contractor, unless more specific insurance provisions are attached to the PO or any supplemental contract or a waiver from such requirements is agreed to in writing by TTUS Procurement Services, Contractor will purchase and maintain (and cause its subcontractors to purchase and maintain), until all of their obligations have been discharged or satisfied, including any warranty periods under the Contract, insurance as described below:

Consistent with its status as an independent contractor, Contractor will carry and cause its Subcontractors to carry at least the following insurance, with companies authorized to do business in Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code. TTUS in no way warrants that these limits are sufficient to protect Contractor from liabilities that might arise out of the performance of the scope of work. Contractor will assess its own risks and, if it deems appropriate or prudent, maintain higher limits or broader coverages. Contractor is not relieved of any liability or other obligations assumed by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. All policies will be written on a primary basis, non-contributory with any other insurance coverage or self-funded plans which TTUS maintains.

- A. Minimum Limits of Insurance:** Contractor agrees to furnish insurance certificates reflecting the following minimum coverage:

Coverage:

Commercial General Liability - ISO form CG 00 01 or its equivalent. Coverage to include:

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- Premises and Operations
- Personal Injury/Advertising Injury
- Products/Completed Operations
- Liability assumed under an Insured Agreement (including tort liability of another assumed in a business contract)
- Independent Contractors

Workers' Compensation and Employers' Liability – Workers' Compensation (Coverage A) and Employers' Liability (Coverage B)

Limits Required:

Workers Compensation (Coverage A)	Statutory
Employer's Liability (Coverage B)	\$1,000,000

Contractors with no employees may waive the Workers' Compensation requirements.

Commercial General Liability, including products and completed operations

a. General Aggregate	\$2,000,000
b. Products/Completed Operations Aggregate	\$2,000,000
c. Each Occurrence Limit	\$1,000,000
d. Personal Advertising Injury	\$1,000,000
e. Damage to Rented Premises	\$50,000
f. Medical Payments (any one person)	\$5,000

- B. Automobile Liability:** If Contractor will be driving a company vehicle on a TTUS owned/leased property, the following section shall be applicable:

Coverage:

Automobile Liability: (owned vehicles, leased vehicles, hired vehicles, non-owned, and employee non-owned vehicles)
Personal Injury Protection (where applicable)

Limits Required:

Automobile Liability (covering leased, hired, non-owned, and employee non-owned vehicles)	
Bodily Injury/Property Damage (each accident)	\$1,000,000
Personal Injury Protection	Statutory

If the company owns no company vehicles, then personal auto insurance will be maintained at the limits specified by the State of Texas.

- C. Technology:** The following section shall apply but is not strictly limited to the purchasing or leasing of software by TTUS; the receipt, storage, and maintenance, by the Contractor, of TTUS data; the storage or collection of online payment information by the Contractor, or if TTUS is purchasing Goods and/or Services that involves the cloud or connects to the TTU network.

Coverage:

Cyber Liability First and Third Party

Limits:

Cyber Liability First and Third Party \$10,000,000

- D. Professional Liability:** The following section shall apply if the Contractor will provide Professional or Consulting Services as defined by [Texas Government Code 2254](#) to TTUS, including but not limited to: accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, or provided in connection with the professional employment or practice of a person who is licensed or registered as: a certified public accountant, an architect, a landscape architect, a land surveyor, a physician (including a surgeon), an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse:

Coverage:

Professional Liability

Limits:

Professional Liability \$1,000,000

NOTE: An umbrella policy may be used to reach required limits.

Commercial General Liability ("CGL") must include coverage for liability arising from Goods or Services completed operations and liability assumed under an insured Contract.

If the CGL insurance has a general aggregate limit then ISO endorsement CG 25 04 (03/97 Edition) or its equivalent must be added. The Designated Location(s) General Aggregate Limit must be maintained for the duration of the Agreement, and the limit must be twice the minimum required occurrence limit.

Contractor will name TTUS, and its Board of Regents, officers, employees, agents, and volunteers as Additional Insureds on ISO endorsement CG 20 26 or its equivalent. The policy shall include ISO endorsement CG 20 01 04 13.

The CGL policy shall contain no endorsements or modification limiting the scope of coverage for liability assumed under a Contract, or liability arising from pollution.

Additional Insured, Subrogation. All policies must include a waiver of subrogation favoring TTUS. With the exception of the Workers' Compensation and Professional Liability policies, TTUS must be an additional insured on all policies.

Certificates of Coverage. Within thirty (30) after the Effective Date of the Contract or PO and at least thirty (30) days prior to the commencement of any renewal term of the Contract or PO, or upon renewal of the policies, Contractor shall furnish TTU Procurement Services with certificates of insurance in a form acceptable to TTUS, certifying that the Contractor carries the required insurance policies and coverage. The certificates shall be sent to TTU Procurement Services at procurement.insurance@ttu.edu. It is the responsibility of the Contractor to provide evidence of insurance for the duration of any contract or the performance period of any Services provided. TTUS may request evidence at any time during the term of the Contract or PO. Failure of TTUS to request such certificates does not eliminate the requirement for the Contractor to maintain the required coverage.

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Notification of Cancellation. Contractor shall notify TTU Procurement Services at procurement.insurance@ttu.edu in writing thirty (30) days before any material change or cancellation of any insurance policy. In the event Contractor receives notice of modification or cancellation of any of the policies required under any Contract, then prior to the effective date of modification or cancellation of the policy, the Contractor will obtain a policy of insurance affording the required coverage from an insurance carrier acceptable to TTUS. If Contractor fails to obtain such an insurance policy, TTUS may immediately terminate the Contract or PO after providing Contractor with written notice of such termination.

28. TERMINATION

- 28.1 TTUS may at any time by written notice suspend or cancel this PO without cause.
- 28.2 This PO and any TTUS 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.
- 28.3 Either Contractor or TTUS may terminate this PO 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, agreements, or conditions hereof, and such failure is not cured during such thirty (30) day period.
- 28.4 TTUS may terminate this PO 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.
- 28.5 In no event will such termination by TTUS as provided for under this section give rise to any liability on TTUS' part including, but not limited to, Contractor's claims for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. TTUS' sole obligation hereunder is to pay Contractor for Goods and/or Services received prior to the date of termination.

29. FORCE MAJEURE

- 29.1 "Event of Force Majeure" means an event beyond the control of Contractor or TTUS which prevents or makes a party's compliance with any of its obligations under the PO illegal or impracticable, including but not limited to: act of God (including, without limitation, fire, explosion, earthquake, tornado, drought, and flood); war, act or threats of terrorism, hostilities (whether or not war be declared), invasion, act of enemies, mobilization, requisition, or embargo; rebellion, insurrection, military or usurped power, or civil war; contamination or destruction from any nuclear, chemical, or biological event; riot, commotion, strikes, go slows, lock outs, or disorder; epidemic, pandemic, viral outbreak, or health crisis; or directive of governmental authority. No party will be considered in breach of the PO to the extent that performance of their respective obligations is prevented or made illegal or impracticable by an Event of Force Majeure that arises during the term (or after execution of the PO but prior to the beginning of the term). A party asserting an Event of Force Majeure hereunder ("Affected Party") will give reasonable notice to the other party of an Event of Force Majeure upon it being foreseen by, or becoming known to, Affected Party. In the event of an Event of Force Majeure, Affected Party will endeavor to continue to perform its obligations under the PO only so far as reasonably practicable.

30. GOVERNING LAW

- 30.1 This PO and all of the rights and obligations of the parties and all of the terms and conditions under this PO will be construed, interpreted and applied in accordance with, governed by and enforced under the laws of the State of Texas. Lubbock County, Texas will be the proper place of venue for any for any legal action or proceeding arising out of this PO or enforcement of any provision in this PO.

31. DISPUTE RESOLUTION

- 31.1 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 TTUS 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](#).
- 31.2 Neither the execution of this PO by TTUS nor any other conduct of any of TTUS' representatives relating to the PO will be considered a waiver of TTUS' sovereign immunity to suit.

32. EMERGENCY HEALTH AND SAFETY PROCEDURES

In the event of pandemic, epidemic, viral outbreak, health crisis, or other emergency ("Emergency"), TTUS may, at its sole discretion, implement new or modified health and safety procedures in order to protect the health and safety of the TTUS community. In the event of Emergency, Contractor agrees to adhere to all such procedures and related directives from TTUS when entering onto and performing services on TTUS' campus.