

**Port of Houston Authority of Harris County, Texas  
Purchase Order Terms and Conditions**

**THE BELOW TERMS AND CONDITIONS ONLY APPLY TO TRANSACTIONS THAT DO NOT HAVE A WRITTEN AGREEMENT EXECUTED BY PORT HOUSTON AND VENDOR.** IF THERE IS SUCH A SEPARATE AGREEMENT, THEN THE TERMS OF THAT SEPARATE AGREEMENT SHALL BE THE TERMS THAT GOVERN THE TRANSACTION AND RELATIONSHIP OF THE PARTIES. FOR TRANSACTIONS THAT DO NOT HAVE SUCH A SEPARATE AGREEMENT, THE BELOW TERMS ARE INCORPORATED INTO ALL PURCHASE ORDERS – ACCEPTANCE OF THE PURCHASE ORDER INDICATES VENDOR AGREES TO THE BELOW TERMS AND CONDITIONS.

1. **DEFINITIONS.** “Items” means the services, goods, or other tangible or intangible personal property covered by this Purchase Order. “Port Houston” means the Port of Houston Authority of Harris County, Texas. “Proposal” means the Vendor’s quote, response to Solicitation, bid, or proposal for the Items in this Purchase Order. “Separate Agreement” means a written agreement executed by Port Houston and Vendor covering the transaction(s) for the Items. “Solicitation” means Port Houston’s formal or informal request, invitation, or solicitation for the Items in this Purchase Order or to which the Vendor has provided a Proposal. “Vendor” means the individual or entity contracting with the Port Houston to furnish the Items covered by this Purchase Order.
2. **CONTROLLING DOCUMENTS.** If there is no Separate Agreement between Port Houston and Vendor, then the description, quantity, price, or delivery schedule of the Items included in Vendor’s Proposal control over any conflicting provisions included in any other documents. Any other terms of this Purchase Order or Port Houston’s Solicitation documents control over the terms of any documents submitted by Vendor, including Vendor’s Proposal. Any contract terms in Port Houston’s Solicitation documents control over the terms of this Purchase Order.
3. **PORT HOUSTON’S OFFER/ACCEPTANCE.** If there is no Separate Agreement between Port Houston and Vendor, then a) Port Houston accepts only the description, quantity, price, and/or delivery schedule of the Items included in Vendor’s Proposal and b) Port Houston’s acceptance is limited to the express terms contained in this Purchase Order and the Solicitation, except to the extent that those terms conflict with the description, quantity, price, or delivery schedule of the Items included in Vendor’s Proposal. Any additional or different terms contained in Vendor’s Proposal shall be deemed material and are hereby objected to and rejected by Port Houston. If Vendor has not submitted a written Proposal, this Purchase Order is an offer to buy the Items listed in the Solicitation, subject to Vendor’s acceptance by commencement of performance or written acknowledgment. Vendor’s acceptance of this Purchase Order is expressly limited to terms of this Purchase Order and the Solicitation, and Port Houston hereby objects to any additional or different terms in Vendor’s acceptance. A change by Vendor to the Purchase Order is a counter-offer to sell, and cancels this Purchase Order, unless Port Houston accepts the counter-offer by new or amended Purchase Order that expressly incorporates such counter-offer. Once accepted, this Purchase Order is a binding contract.
4. **PORT HOUSTON OBLIGATION.** Port Houston has no obligation under this Purchase Order until it is executed by (i) Port Houston’s Strategic Sourcing Director or its designee, and (ii) Port Houston Financial Services or its designee.
5. **DELIVERY; SUBSTITUTIONS.** Delivery shall be to Port Houston facilities during normal business days and hours. Alternative delivery options must be approved in writing in advance by Port Houston. Deliveries prior to the delivery date(s) scheduled in this Purchase Order may be accepted; however, payment terms shall be unchanged. Port Houston may return quantities delivered in excess of those specified on the Purchase Order at its discretion, and the risk and expense thereof shall be borne by Vendor. Vendor shall perform services in accordance with specifications in this Purchase Order and the related Solicitation and Proposal documents. Vendor shall package Items in accordance with good commercial practice. Vendor shall supply a delivery ticket upon delivery. Vendor will keep the Port Houston advised at all times of the status of delivery or performance under this Purchase Order. If delay is foreseen, Vendor will give prompt written notice to Port Houston. Upon notice, Port Houston may extend the delivery date in its sole discretion. Vendor will only tender for acceptance those Items that conform to the requirements of this Purchase Order. Substitutions, cancellations and price changes will require prior written consent of Port Houston. Default in promised delivery or failure to conform to the requirements of this Purchase Order authorizes Port Houston to purchase Items elsewhere and charge to Vendor any excess cost of such repurchase. Vendor will show this Purchase Order number on all packages, shipments, and invoices.
6. **TITLE AND RISK OF LOSS.** Title to and risk of loss to any Items to be delivered under this Purchase Order will not pass to Port Houston until Port Houston actually receives, accepts, and takes possession of such Items at the point of delivery.
7. **INSPECTION.** Port Houston reserves the right to inspect Items prior to acceptance and/or payment. Items which, in the opinion of Port Houston, do not conform to Port Houston’s specifications or are determined to be defective may be rejected, and shall be promptly replaced by Vendor at its risk and expense, or refurbished or completed by Port Houston, the cost which may be recovered from Vendor or deducted from payments made or owing to Vendor.
8. **INVOICES; AMOUNT DUE.** Vendor shall submit an original invoice bearing this Purchase Order number, for Items received and accepted by Port Houston, **to the Port Houston address on this Purchase Order, Attn: Accounts Payable**, signed by an authorized representative of Vendor. Excess items provided by Vendor are at its expense. The amount due Vendor hereunder is limited to the Purchase Order amount, the sum certified as available by Port Houston Financial Services, when Port Houston has expended such sum, Port Houston shall have no further obligation or duty hereunder.
9. **PAYMENTS; DISCOUNTS.** Under Texas Govt. Code 2251.021, payments by Port Houston are not overdue until 46 days after the later of the date Port Houston receives the Items under the contract; the date the performance of the service under the contract is completed; or the date Port

Houston receives an invoice for the Items. Cash discounts shall be shown on face of invoice. For the purpose of discounts, payment is deemed made on the date of check mailing. If invoices are not mailed on the date Items are furnished, discounts are calculated from the date the invoice is received.

- 10. TAX-EXEMPT STATUS.** Port Houston is exempt from Federal Excise and Transportation Tax, State Sales and Use Tax, and State Fuel Tax. Unless the Solicitation or Proposal documents so indicate, prices are exclusive of such taxes. Vendors may submit requests for refunds of or exemptions from taxes paid on Items, and the Port Houston Strategic Sourcing Director may approve or issue the necessary certificates.
- 11. WARRANTIES.** In addition to all warranties established by law, Vendor hereby represents, covenants, certifies, warrants and agrees that:
- (a) Vendor shall comply with all requirements of this Purchase Order.
  - (b) Vendor shall comply with all applicable federal, state, local, or other laws, regulations, and policies, including those regarding discrimination, unfair labor practices, and collusion.
  - (c) If Vendor is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized and in good standing to conduct business in the State of Texas.
  - (d) If Vendor is a taxable entity as defined by Chapter 171, *Texas Tax Code (Chapter 171)*, Vendor is not currently delinquent in the payment of any taxes due under Chapter 171, or Vendor is exempt from the payment of those taxes, or Vendor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
  - (e) All Items are new (unless otherwise specified on the face hereof or in the Solicitation or Proposal documents), free from defects (including defects in title, and in Vendor's right to sell a patented or copyrighted product or to use a patented process), conform to industry standards and good practice and all specifications including those in the Solicitation and Proposal documents, and suitable for their intended purpose. Neither acceptance of, nor payment for, an Item shall constitute a waiver or modification of any warranties by Vendor or any rights of Port Houston. Vendor shall transfer to Port Houston any manufacturers' warranties for Items. If an Item does not conform to these warranties during one year from the date of acceptance of the Item by Port Houston, and the Strategic Sourcing Director so notifies Vendor, Vendor shall correct such Item to the Port Houston's satisfaction, or Port Houston may revoke acceptance by purchasing a substitute item or correcting the nonconformity. Costs of such correction shall be borne by Vendor.
  - (f) No disclosure, description, or other communication of any sort will be made by Vendor to any third person of the fact of Port Houston's purchase of Items under this Purchase Order, or of the details and characteristics of the Items, without Port Houston's prior written consent. Anything furnished to Vendor by Port Houston pursuant to this Purchase Order including samples, drawings, patterns, and materials will remain the property of Port Houston, will be held at Vendor's risk, and will be returned to Port Houston upon Port Houston's request, and no disclosure or reproduction thereof in any form will be made without Port Houston's prior written consent.
  - (g) Vendor is familiar with and is in full compliance with its obligations, if any, under all applicable federal, state and local, laws, regulations, and ordinances (collectively, **Applicable Laws**).
  - (h) All Items delivered or provided pursuant to this Purchase Order will conform to standards established for such Items by all Applicable Laws, including those standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, Chapter 502, *Texas Health and Safety Code (Texas hazard Communication Act)*.
  - (i) Vendor is familiar with and in full compliance with the Texas Hazard Communication Act and will provide either (1) a Material Safety Data Sheet (**MSDS**) for each product Vendor, its employees, agents or subcontractors brings on Port Houston's premises, or (2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.
  - (j) Use or sale of any Items delivered under this Purchase Order, except (with respect to patents) Items produced to Port Houston's detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right.
  - (k) The price to be paid by Port Houston will be that contained in Vendor's bid or proposal, which Vendor warrants to be no higher than Vendor's current prices on orders by others for Items of the kind covered by this Purchase Order for similar quantities to similar customers under similar conditions. In the event Vendor breaches its warranty, the prices will be reduced to Vendor's current prices on orders by others or, in the alternative, Port Houston may cancel this Purchase Order without liability to Vendor.
  - (l) Vendor will make records of Vendor's costs, reimbursable expenses and payments pertaining to this Purchase Order available to Port Houston or its authorized representative during business hours and retain those records for four (4) years after final payment or abandonment of the project, unless Port Houston otherwise instructs Vendor in writing.
  - (m) Vendor has not given or offered to give, nor does Vendor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Purchase Order.
  - (n) The foregoing representations, covenants, certifications, warranties and agreements will survive acceptance of Items as well as performance of services under this Purchase Order.

12. **TIME OF THE ESSENCE, ETC.** Time is of the essence. Port Houston reserves the right to terminate the entire or a portion of the Purchase Order or its purchase of Items improperly delivered if delivery or performance is not at the time(s) or in the quantity or quality specified.
13. **INTELLECTUAL PROPERTY.** All ideas, design, drawings, and specifications created in connection with the Items or this Purchase Order (“Work Product”) are Port Houston’s property upon creation, provided that Work Product shall not include pre-existing proprietary information of the Vendor. Vendor agrees that it has been hired to create all Work Product and assigns to Port Houston all Vendor’s right, title, and ownership in Work Product
14. **ANTITRUST LAWS; CLAIMS FOR OVERCHARGES.** Vendor warrants and represents that neither Vendor nor any party acting on behalf of Vendor has violated the antitrust laws of the United States or of the State of Texas. Vendor hereby assigns to Port Houston any and all claims for overcharges associated with this Purchase Order which arise under the antitrust laws of the United States, 15 U.S.C.A. §1, et seq., or of the State of Texas, Tex. Bus. & Comm. Code Sec. 15.01, et seq.
15. **INDEPENDENT CONTRACTOR.** In performing any services under this Purchase Order, Vendor is, and undertakes performance thereof as, an independent contractor, with sole responsibility for all persons employed in connection therewith, including exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees and all social security and other taxes and contributions payable in respect of such persons, from and against which liability Vendor agrees to indemnify, exonerate and hold harmless Port Houston.
16. **INDEMNITY.** CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS PORT HOUSTON, THE PORT COMMISSION OF THE PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS (**COMMISSION**) AND THEIR OFFICERS, COMMISSIONERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE **INDEMNIFIED PARTIES**) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY, **CLAIMS**) BY ANY PERSON OR ENTITY, ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE ITEMS PROVIDED UNDER THIS PURCHASE ORDER, TO THE EXTENT CAUSED BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE ITEMS PROVIDED UNDER THIS PURCHASE ORDER.
17. **INSURANCE.** Unless otherwise agreed to in writing by Port Houston, Vendor shall obtain and maintain at all times during the term of this Purchase Order, or as otherwise required in the Solicitation, insurance specified in the Solicitation, and provide Port Houston proof of coverage. If no insurance is specified in the Solicitation and Vendor’s employees, agents, suppliers or subcontractors will be present on Port Houston’s property, then Vendor will maintain and cause its agents, suppliers and subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

Coverages	Limits
Workers’ Compensation	Statutory Limits
Employer’s Liability	\$1,000,000 – each accident
Employer’s Liability	\$1,000,000 – disease – each employee
Employer’s Liability	\$1,000,000 – disease – policy limit
Commercial General Liability (including contractual liability)	\$1,000,000 per occurrence
Personal & Advertising Injury	\$1,000,000 per occurrence
Product/Completed Ops	\$2,000,000 aggregate
General Aggregate	\$2,000,000 aggregate
Business Auto Liability covering owned, non-owned, or hired autos	\$1,000,000 combined single limit per accident. If a Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

All policies (except Workers’ Compensation/Employer’s Liability) will name Port Houston, the Commission, and their officers, commissioners, and employees as Additional Insureds. A Waiver of Subrogation in favor of Port Houston and the Commission and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to Port Houston prior to commencement of any services under this Purchase Order or any Vendor occupying Port Houston property. No policy will be canceled until after thirty (30) days’ unconditional written notice to Port Houston. Vendor will send notice to Port Houston thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required by these Terms and Conditions.

18. **VENUE; GOVERNING LAW.** Harris County, Texas, will be the exclusive proper place of venue for suit on or in respect of this Purchase Order. This Purchase Order, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Purchase Order, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

19. **ASSIGNMENT AND DELEGATION.** Vendor may not assign any of its rights or delegate any of its obligations under this Purchase Order without Port Houston's prior written consent. Any assignment or delegation attempted by Vendor in violation of this clause will be void and ineffective for all purposes.
20. **ENTIRE AGREEMENT; MODIFICATIONS.** If there is no Separate Agreement between Port Houston and Vendor, then this Purchase Order (and the Proposal and/or Solicitation terms expressly incorporated herein) supersedes all prior agreements, written or oral, between Vendor and Port Houston and will constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing.
21. **NO WAIVER OF SOVEREIGN IMMUNITY OR RIGHT TO REDRESS.** The parties specifically agree that (i) neither the execution of this Purchase Order by Port Houston nor any other conduct, action or inaction of any representative of Port Houston relating to this Purchase Order constitutes or is intended to constitute a waiver of Port Houston's sovereign immunity to suit; and (ii) Port Houston has not waived its right to seek redress in the courts.
22. **SUBCONTRACTING. INCLUSIVE SOURCING PROGRAM PROVISIONS.**
- (a) **Inclusive Sourcing Program.** Port Houston promotes business opportunities for all sectors of the community and recognizes the importance of vendor and supplier diversity in its contracts. In support of that effort and to encourage participation of diverse businesses, Port Houston has established an organizational goal of 35% small business participation in its Small Business Development Program (SBDP) and an aspirational goal of 30% minority- and woman-owned business enterprise (MWBE) participation in its MWBE Program in Port Houston prime contracts and subcontracts. The SBDP and the MWBE Program are collectively referred to herein as "Program."
- (b) **Non-Discrimination Mandate and Verification.** It is the long-standing policy of Port Houston to prohibit discrimination based on race, color, sex, religion, national or ethnic origin, age, or disability, and including any other status protected by applicable law, in all operations at Port Houston, including the award of, or participation in, Port of Houston Authority contracts. Port Houston will not participate in any program, award contracts to, nor conduct business with, any individual or entity that is found to knowingly discriminate against persons on the basis of race, color, sex, religion, national or ethnic origin, age, or disability, and including any other status protected by applicable law. By entering into this Agreement, Vendor agrees that it: (i) is aware of this Non-Discrimination Mandate; (ii) verifies that it does not have any practice, policy, guidance, or directive that discriminates based on race, color, sex, religion, national or ethnic origin, age, disability, or any other status protected by applicable law; and (iii) it will not during the term of this Contract knowingly discriminate based on race, color, sex, religion, national or ethnic origin, age, disability, or any other status protected by applicable law.
- (c) **Reporting Requirements for All Contracts.** Port Houston's Strategic Sourcing Department collects informational data and monitors Vendor's payments regarding all subcontractors and suppliers, including but not limited to Port Houston-Enrolled small businesses and MWBEs (such small, minority- and woman-owned businesses, collectively, "S/MWBEs") performing any part of work or services under this Contract. Vendor reporting requirements apply to all contracts, not just to those with S/MWBE contract participation goals. B2Gnow is the online system used by Port Houston for collecting information about and monitoring payments to all subcontractors and suppliers.
- Vendor is responsible for providing contact information for itself and all of its subcontractors and suppliers to the Strategic Sourcing Department, and for keeping this information updated during the term of the Contract, until the subject Project is complete and closed. Vendor shall comply with all applicable Port Authority subcontractor and supplier payment reporting requirements, including providing information and reporting payments in the form and at the time specified in this Contract, and as otherwise directed by Port Houston.
  - A monthly audit is triggered after the first payment is made to Vendor and the monthly payment file is loaded to B2Gnow. Every month Vendor shall report on ALL subcontractor and supplier payments, even if the payment amount for the month is \$0.00.
  - The reporting requirements extend to Contract amendments and all Contract Work covered by change orders during the entire performance of the Contract.
  - To support compliance with and enforcement of the Program, Vendor shall permit Port of Houston Authority contract compliance analysts and auditors or their designees reasonable access to Vendor's books and records and shall require its subcontractors and suppliers to provide reasonable access to their respective books and records. This access shall be for the purpose of determining compliance with Program requirements.
  - The failure by Vendor to provide the informational data and payment reporting requested by Port Houston may: (i) be a breach of the Contract; (ii) result in termination of the Contract; (iii) result in debarment or suspension from future Port Authority contract opportunities; and/or (iv) result in other remedies.
- (d) In addition to the requirements above, Vendor is encouraged to and agrees it will endeavor to:
- place qualified small businesses and MWBEs on subcontractor and supplier solicitation lists;
  - attempt to solicit small businesses and MWBEs whenever they are potential participants in the Services;
  - divide total Services requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by

small businesses and MWBEs;

- establish delivery schedules, where requirements permit, which encourage participation by small businesses and MWBEs; and
- Use the services and assistance, as appropriate, of Port Houston's Strategic Sourcing Department in such aspirational efforts.

(e) Information about the Inclusive Sourcing policies and programs may be found on the Port Houston website (including at <https://porthouston.com/business/inclusive-sourcing/inclusive-sourcing/> and <https://porthouston.smwbe.com/>).

- 23. Audit Rights.** Vendor understands that acceptance of funds under this Purchase Order constitutes acceptance of the authority of Port Houston's internal auditor or a third party auditor representing Port Houston (collectively, **Auditor**) to conduct an audit or investigation in connection with those funds. Vendor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Vendor will include this provision in all contracts with subcontractors.
- 24. LIMITATIONS.** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF PORT HOUSTON (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THIS PURCHASE ORDER, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON PORT HOUSTON'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE **LIMITATIONS**), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON PORT HOUSTON EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 25. ETHICS MATTERS; NO FINANCIAL INTEREST.** Vendor and its employees, agents, representatives and subcontractors have read and understand Port Houston's Code of Ethics available at <https://porthouston.com/wp-content/uploads/2023/01/Third-Amended-and-Restated-Code-of-Ethics-2022-final.pdf>, Port Houston's Standards for Employee Interaction with Interested Parties available at [https://porthouston.com/wp-content/uploads/2022/11/Standards\\_for\\_Employee\\_Interaction\\_with\\_Interested\\_Parties\\_August\\_2015.pdf](https://porthouston.com/wp-content/uploads/2022/11/Standards_for_Employee_Interaction_with_Interested_Parties_August_2015.pdf). Neither Vendor nor its employees, agents, representatives or subcontractors will assist or cause Port Houston employees or Commissioners to violate the Code of Ethics, Standards for Employee Interaction with Interested Parties, or any applicable ethics laws or rules. Vendor shall not offer, confer, or agree to confer any prohibited benefit as consideration for a commissioner's or employee's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, or in exchange for the commissioner's or employee's exercise of official powers or performance of official duties, or participating in the violation of any provision of the Code or Guidelines. Port Houston reserves the right to cancel Vendor's contracts and exclude it from future business in the event of its breach of this provision.

Further, if applicable, Vendor agrees to comply with §2252.908, *Texas Government Code (Disclosure of Interested Parties Statute)*, and 1 TAC §§46.1 through 46.5 (**Disclosure of Interested Parties Regulations**), as implemented by the Texas Ethics Commission (**TEC**), including, among other things, providing the TEC and Port Houston with information required on the form promulgated by TEC. Vendor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at [https://www.ethics.state.tx.us/resources/FAQs/FAQ\\_Form1295.php](https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php).

- 26. NOTICES.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Purchase Order will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to Port Houston: Port of Houston Authority  
111 East Loop North  
Houston, Texas 77029  
Email: [strategicsourcing@porthouston.com](mailto:strategicsourcing@porthouston.com)  
Attention: Strategic Sourcing Director

with copy to: Port of Houston Authority  
111 East Loop North  
Houston, Texas 77029  
Email: [legaldept@porthouston.com](mailto:legaldept@porthouston.com)  
Attention: Chief Legal Officer

or other person or address as may be given in writing by either party to the other in accordance with this Section.

- 27. UNDOCUMENTED WORKERS.** The *Immigration and Nationality Act (8 United States Code 1324a) (Immigration Act)* makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service

has established the Form I-9 Employment Eligibility Verification Form (**I-9 Form**) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Vendor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Vendor employs unauthorized workers during performance of this Purchase Order in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, Port Houston may terminate this Purchase Order. Vendor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

- 28. FORCE MAJEURE.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (**force majeure occurrence**). Provided, however, in the event of a force majeure occurrence, Vendor agrees to use its best efforts to avoid or mitigate the impact of the occurrence so that Port Houston may continue to provide services during the occurrence.
- 29. TERMINATION.**
- (a) Upon written notice to Vendor, Port Houston may terminate this Purchase Order, in whole or in part, without cause. If Port Houston terminates without cause, Port Houston will pay Vendor all reasonable costs incurred up to the date of termination. Under no circumstance will Port Houston pay Vendor for anticipatory or lost profits.
  - (b) Port Houston may terminate all or any part of this Purchase Order if Vendor materially fails to perform in accordance with the Terms of this Purchase Order (**default**), and fails to cure following ten (10) calendar days written notice and demand to cure by Port Houston. In such event, Port Houston may obtain similar Items elsewhere and Vendor shall be liable to Port Houston for any damages, including additional costs.
- 30. WAIVER.** Failure to insist upon strict compliance with any provision shall not be a waiver of any provision of this Purchase Order, which shall only occur by written instrument signed by the party waiving such provision. Failure to object to any breach of this Purchase Order shall not waive rights to object to that breach or any subsequent breach of the same or any other provision.
- 31. SAVINGS CLAUSE.** The invalidity, illegality, or unenforceability of any provision of this Purchase Order or its related documents, or the occurrence of any event rendering any provision of this Purchase Order or its related documents void, shall not affect the validity or enforceability of any other provision. Any such provision shall be severed from this Purchase Order and the remainder shall be construed and enforced as if it did not contain it.
- 32. PUBLIC INFORMATION.** Port Houston strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act (TPIA)*, Chapter 552, *Texas Government Code*. In accordance with §552.002 of TPIA and §2252.907, *Texas Government Code*, and at no additional charge to Port Houston, Vendor will make any information created or exchanged with Port Houston pursuant to this Purchase Order (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by Port Houston that is accessible by the public.
- 33. TEXAS PUBLIC INFORMATION ACT - SUBCHAPTER J REQUIREMENTS.** If applicable, pursuant to Section 552.372 of the *Texas Government Code*, Vendor must:
- (1) preserve all contracting information (ref. Section 552.003(7), *Texas Government Code*) related to this Agreement as provided by the records retention requirements applicable to Port Houston for the duration of this Agreement;
  - (2) promptly provide to Port Houston any contracting information related to this Agreement that is in the custody or possession of Vendor on request of Port Houston; and
  - (3) on completion of this Agreement, either:
    - (A) provide at no cost to Port Houston all contracting information related to this Agreement that is in the custody or possession of Vendor, or
    - (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to Port Houston.

If applicable, the requirements of Subchapter J, Chapter 552, *Government Code (Subchapter J)* may apply to this Agreement and Vendor agrees that the Agreement can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of Subchapter J.

Port Houston may reject a bid for a contract described by Section 552.371, *Texas Government Code* or refuse to award the contract to an entity that Port Houston has determined has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract described by Section 552.371 unless Port Houston determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J.

If Vendor fails to comply with the requirements of Subchapter J applicable to Vendor, then Port Houston shall provide written notice to Vendor stating the requirement(s) of Subchapter J that Vendor has violated. If applicable, such notice will also advise Vendor that Port Houston may terminate this Agreement without further obligation to Vendor if (a) Vendor does not cure the violation on or before the 10th business day after the date Port Houston provides the notice, (b) Port Houston determines that Vendor has intentionally or knowingly failed to comply with a requirement of that Subchapter J, and (c) Port Houston determines that Vendor has not taken adequate steps to ensure future compliance with the requirements of Subchapter J. For purposes of the above, Vendor has taken adequate steps to ensure future compliance with Subchapter J if: (1) Vendor produces contracting information requested by Port Houston that is in the custody or possession of Vendor not later than the 10th business day after the date Port Houston makes the request and (2) Vendor establishes a records management program to enable Vendor to comply with Subchapter J.

34. **CYBERSECURITY TRAINING PROGRAM.** If Vendor and/or its subcontractors, officers, or employees will have an account on or access to a Port Houston computer system (for example, an account to an application, database, or network), then Vendor and its subcontractors, officers, and employees must complete a cybersecurity training program selected by Port Houston. The cybersecurity training program must be completed by Vendor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Vendor shall verify completion of the program to Port Houston.
35. **DATA SECURITY CONTROLS.** If Vendor will access, transmit, use, or store data for Port Houston, Vendor must comply with applicable security standards and if required, periodically provide to Port Houston evidence that Vendor meets the security controls required under this Agreement.
36. **SAFEGUARDING OF CONFIDENTIAL DATA.** If the item(s) or service(s) specified in this Purchase Order require Vendor access to Confidential Data as defined by state and federal law, Vendor represents, warrants, and certifies that it will: (1) hold the information in the strictest confidence and will not use or disclose information except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by Port Houston in writing; (2) safeguard information according to commercially reasonable administrative, physical and technical standards (e.g., National Institute of Standards and Technology, Center for Internet Security, GrammLeach Bliley Act, Payment Card Industry Data Security Standards (PCI-DSS)); and (3) continually monitor its operations and take any action necessary to assure the information is safeguarded in accordance with the terms of this Agreement. At the request of Port Houston, Vendor agrees to provide Port Houston a written summary of the procedures the Vendor uses to safeguard this information. If an impermissible use or disclosure of any of the Confidential Data occurs, Vendor will provide written notice to Port Houston within five (5) business days after Vendor's discovery of use or disclosure. Vendor will promptly provide Port Houston all information requested by Port Houston regarding the impermissible use or disclosure. In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if Port Houston reasonably determines that the Vendor has breached any restrictions or obligations set forth in this section, Port Houston may immediately terminate this Agreement without notice or opportunity to cure.
37. **FEDERAL REQUIREMENTS FOR TELECOMMUNICATIONS EQUIPMENT OR SERVICES.**
  - (a) Vendor represents that it will not provide covered telecommunications equipment or services, as defined in 2 CFR § 200.216, to Port Houston in the performance of this Agreement or any contract, subcontract, or other contractual instrument resulting from this Agreement.
  - (b) In the event Vendor identifies covered telecommunications equipment or services, as defined in 2 CFR § 200.216, used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of this Agreement, or Vendor is notified of such by a subcontractor at any tier or by any other source, Vendor shall report information about the contract, equipment item, and mitigation measures to Port Houston within one business day, and provide Port Houston with an update within ten business days that includes measures to prevent recurrence.
38. **CONTRACTOR CERTIFICATION REGARDING BOYCOTTING ISRAEL.** Pursuant to Chapter 2271, *Texas Government Code*, Vendor certifies Vendor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
39. **CONTRACTOR VERIFICATIONS REGARDING DISCRIMINATION AGAINST FIREARM ENTITIES OR TRADE ASSOCIATIONS.** Pursuant to Chapter 2274, *Texas Government Code*, Vendor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Vendor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
40. **CONTRACTOR VERIFICATION REGARDING BOYCOTTING ENERGY COMPANIES.** Pursuant to Chapter 2276, *Texas Government Code*, Vendor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Vendor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
41. **CONTRACTOR CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Vendor certifies Vendor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
42. **CONTRACTOR CERTIFICATION REGARDING COVID-19 VACCINATION.** Pursuant to Section 161.0085, *Texas Health and Safety Code*, Vendor certifies that it does not require 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 Vendor's business. Vendor acknowledges this Agreement may be

terminated and payment withheld if this certification is inaccurate.

- 43. CONTRACTOR CERTIFICATION RELATING TO CRITICAL INFRASTRUCTURE.** If Vendor will be granted direct or remote access to or control of critical infrastructure in the State of Texas pursuant to Chapter 2275, *Texas Government Code*, Vendor certifies (A) it is neither owned by nor is the majority of stock or other ownership interest of the Vendor held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the *Texas Government Code* (a **designated country**) or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; and (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country. Vendor understands that the prohibitions set forth in the preceding sentence apply regardless of whether (1) Vendor's or its parent company's securities are publicly traded or (2) Vendor or its parent company is listed on a public stock exchange as either (a) a Chinese, Iranian, North Korean, or Russian company or (b) a company of a designated country. Vendor acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 44. Contractor Certification Regarding Foreign Adversaries.** Vendor certifies that it and, if applicable, any of its holding companies or subsidiaries, is not:
- (a) Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
  - (b) Listed in Section 1260H of the 2021 NDAA; or
  - (c) 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
  - (d) 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.