

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

THE BELOW TERMS AND CONDITIONS ONLY APPLY TO TRANSACTIONS FOR WHICH THERE IS NO SEPARATE 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.** “**Agreement**” means the Purchase Order and all documents specifically referenced or incorporated herein by Port Houston, together with any modifications or amendments agreed to in writing by both Port Houston and Vendor. “**Confidential Information**” means any nonpublic, proprietary, oral or written information or technology used in Port Houston’s operations or business, and any materials evidencing the same, and which is: (i) information designated by Port Houston as “confidential” or “proprietary,” or (ii) information that a reasonable person would understand to be confidential or proprietary given the nature of the information and the circumstances of the disclosure. PHA’s Confidential Information includes (i) Port Houston information collected by Vendor in connection with providing the applicable Items and related services to Port Houston pursuant to this Purchase Order, and (ii) the data generated through Port Houston's use of the Items provided pursuant to this Purchase Order. “**Items**” means the services, goods, or other tangible or intangible personal property covered by this Purchase Order. “**Party**” or “**Parties**” are sometimes used herein to refer to Port Houston and/or Vendor. “**Port Houston**” means the Port of Houston Authority of Harris County, Texas. “**Pre-Existing IP**” means any intellectual property, proprietary information, software, tools, data, or materials owned or controlled by Vendor or a third party developed independently of this Purchase Order without use of Port Houston’s Confidential Information. “**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 Port Houston to furnish the Items covered by this Purchase Order. “**Work Product**” means all ideas, inventions, discoveries, improvements, works of authorship, software, source code, object code, specifications, drawings, designs, data, documentation, processes, methods, reports, and other deliverables conceived, created, developed, reduced to practice, authored, or otherwise generated by or for Vendor or Port Houston, alone or with others, in connection with the Items or this Purchase Order, whether tangible or intangible and whether or not patentable or copyrightable, excluding Pre-Existing IP.
2. **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, provided that such acceptance is subject to the Controlling Documents provision in Section 3, and (b) Port Houston’s acceptance is limited to the express terms contained in this Purchase Order and the Solicitation, subject to the Controlling Documents provision in Section 3. 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, then (a) this Purchase Order is an offer to buy the Items listed in the Solicitation, subject to the Controlling Documents provision in Section 3 and subject to Vendor’s acceptance by commencement of performance or written acknowledgment, and (b) Vendor’s acceptance of this Purchase Order is expressly limited to terms of this Purchase Order and the Solicitation. Port Houston hereby objects to and rejects any additional or different terms in Vendor’s acceptance and objects to and rejects any change by Vendor to the Purchase Order, unless Port Houston expressly accepts such additional or different terms or change in a written amendment to this Purchase Order signed by an authorized representative of Port Houston. Once accepted, this Purchase Order is a binding contract.
3. **CONTROLLING DOCUMENTS.** If there is no Separate Agreement between Port Houston and Vendor, then:
 - (a) the Item **description, quantity, pricing, or delivery schedule** terms of this Purchase Order control over conflicting terms in any other documents and the Item **description, quantity, pricing, or delivery schedule** terms in Vendor’s Proposal control over conflicting terms in Port Houston’s Solicitation;
 - (b) **all other terms** (besides description, quantity, pricing, or delivery schedule) in this Purchase Order or Port Houston’s Solicitation documents control over conflicting terms of any documents submitted by Vendor, including Vendor’s Proposal; and
 - (c) unless otherwise stated in this Purchase Order, any **terms other than those relating to Item description, quantity, pricing, or delivery schedule** in Port Houston’s Solicitation documents control over conflicting terms of this Purchase Order.
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. **TIME OF THE ESSENCE; TIME ZONE; RIGHT TO TERMINATE.** Time is of the essence. Unless otherwise specified in the controlling Purchase Order, Solicitation, or Proposal documents, all dates, times, and deadlines are in Central Time (CT), prevailing in Houston, Texas. 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.

6. **DELIVERY; NOTICE OF DELAY; 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 Port Houston advised at all times of the status of delivery or performance under this Purchase Order. Vendor must provide written notice of any actual or anticipated delay immediately, and in any event no later than one business day after Vendor knows or should know of the delay. Failure to timely notify constitutes a material breach and may result in Port Houston's exercise of remedies, including cover and recovery of excess costs. 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 shall not be allowed unless expressly authorized in a written instrument signed by an authorized representative 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.
7. **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.
8. **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. Payment or use does not constitute acceptance of defects.
9. **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, and when Port Houston has expended such sum, Port Houston shall have no further obligation or duty hereunder.
10. **PAYMENTS; DISCOUNTS.** Under Texas Govt. Code 2251.021, payments by Port Houston are not overdue until 46 days after the later of: (a) the date Port Houston receives the Items under the contract; (b) the date the performance of the service under the contract is completed; or (c) the date Port Houston receives an invoice for the Items. Cash discounts must be stated on the face of the invoice. For discount eligibility, payment is deemed made on the date Port Houston tenders payment (check mailing or electronic funds release). If the invoice date precedes delivery or completion, any discount period will run from Port Houston's actual receipt of a proper invoice after delivery/completion. Nothing herein obligates Port Houston beyond amounts certified as available by Financial Services; when such sums are expended, Port Houston has no further obligation.
11. **RIGHT TO WITHHOLD PAYMENT.** Port Houston shall have the right, but not the obligation, to withhold all or any part of payment requested by Vendor, or nullify the whole or part of a previously paid invoice, to protect the Port of Houston Authority from loss because of any failure of Vendor to comply with the provisions of this Purchase Order.
12. **TAX-EXEMPT STATUS; ALL INCLUSIVE PRICING.** Port Houston is exempt from Federal excise and transportation taxes, State sales taxes, State use taxes, and State fuel taxes. Such taxes must not be included in the invoiced amount. Port Houston will provide a tax exemption certificate upon request. Notwithstanding the foregoing, unless the controlling Purchase Order, Solicitation, or Proposal documents state otherwise, the price stated in this Purchase Order is inclusive of all other taxes, duties, tariffs, and freight and shipping costs.
13. **WARRANTIES.** In addition to all warranties established by law and otherwise required by this Purchase Order, 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 ordinances, including those regarding discrimination, unfair labor practices, and collusion (collectively, **Applicable Laws**).
 - (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) In addition to all warranties by law, Vendor warrants all Items are new (unless otherwise specified on the face hereof or in the controlling Solicitation or Proposal documents), conform to specifications and industry standards, are free from defects in materials, workmanship, design, and title, and are fit for their intended purpose. The warranty period shall be the longer of: (i) one year from Port Houston's acceptance; (ii) any longer period stated in the Solicitation or Proposal; or (iii) any manufacturer's warranty period. Upon notice during the warranty period, Vendor shall, at Port Houston's option, promptly repair, replace, or reperform at no cost, including all transportation, labor, parts, removal, reinstallation, and retesting. If Vendor fails to promptly correct, Port Houston may correct or procure substitutes and recover its costs from Vendor via direct payment recovery or setoff. Acceptance or payment does not waive warranty rights. All manufacturers' warranties for Items shall be assigned or transferred to Port Houston.
 - (f) Vendor shall not make any disclosure, description, or other communication of any sort to any third person regarding Port Houston's purchase of Items under this Purchase Order, or regarding 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) 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)*.
 - (h) Vendor is and shall remain in 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.
 - (i) 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.
 - (j) The price to be paid by Port Houston will be that contained in Vendor's 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.
 - (k) 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.
 - (l) 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 Port Houston employee, Port Houston Commissioner, or other public servant in connection with this Purchase Order.
 - (m) The foregoing representations, covenants, certifications, warranties and agreements will survive acceptance of Items as well as performance of services under this Purchase Order.
- 14. INTELLECTUAL PROPERTY.** All Work Product is Port Houston's property upon creation; Vendor assigns to Port Houston all right, title, and interest in and to the Work Product. For clarity, Work Product does not include Vendor's Pre-Existing IP. Vendor grants Port Houston a perpetual, irrevocable, royalty-free, worldwide license (with rights to sublicense to Port Houston's contractors for Port Houston's benefit) to use, execute, reproduce, display, perform, modify, and create derivative works of any Pre-Existing IP solely as embedded in or necessary to use the Work Product and Items.
- 15. 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.
- 16. 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 defend, indemnify,

and hold harmless Port Houston.

- 17. 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. Nothing in this Section or Section 18 expands Vendor’s obligations beyond the extent permitted by Applicable Laws or waives Port Houston’s constitutional, statutory, or other legal protections or requirements, including those described in Section 22 and Section 25.
- 18. 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 (a) no insurance is specified in the Solicitation and (b) 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. Vendor shall furnish certificates of insurance verifying the foregoing requirements (and, if requested, complete copies of policies and endorsements) to Port Houston prior to the earlier of commencement of any services under this Purchase Order or any Vendor occupying Port Houston property and upon each renewal. 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. Vendor shall provide renewal certificates no later than fourteen (14) days prior to policy expiration, evidencing continuous, uninterrupted coverage, including Additional Insured status, Waiver of Subrogation, and 30-day cancellation notice, as required herein. Failure to provide timely renewal proof is a material breach

- 19. 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.
- 20. ASSIGNMENT AND DELEGATION.** Vendor may not assign any rights (including by change of control, merger, consolidation, asset transfer, or by operation of law) or delegate any obligations under this Purchase Order without Port Houston’s prior written consent. Any attempted assignment or delegation in violation of this Section is void.
- 21. 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) constitutes the entire agreement between the parties with

respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, regarding the purchase of the Items. This Purchase Order and each of its provisions will be binding upon the parties. No waiver, modification, amendment, or other change to this Purchase Order will be effective unless it is in a written instrument that expressly states it modifies this Purchase Order and is signed by an authorized representative of Port Houston.

22. 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.

23. SUBCONTRACTING. CONTRACTING PARTICIPATION PROVISIONS.

(a) **Contracting Participation Programs.** Port Houston promotes business opportunities for all sectors of the community. Port Houston has established programs and organizational goals relating to vendor participation in Port Houston prime contracts and subcontracts. These programs and goals are referred to herein as the "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 Laws, in all operations at Port Houston, including the award of, or participation in, Port Houston 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 Laws. 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 Laws; and (iii) it will not during the term of this Agreement knowingly discriminate based on race, color, sex, religion, national or ethnic origin, age, disability, or any other status protected by Applicable Laws.

(c) **Prompt Payment to Subcontractors and Suppliers.** Vendor shall pay promptly all subcontractors and suppliers used in the work provided under this Agreement in accordance with applicable Texas and federal prompt payment provisions. Port Houston reserves all rights to investigate complaints or charges of excessive delay in payments, and to enforce statutory and contractual prompt payment provisions. These requirements apply to all tiers of subcontractors and suppliers. Vendor shall incorporate the provisions of this subsection into all appropriate subcontract and supplier agreements.

(d) **Reporting Requirements for All Contracts.** Port Houston's Strategic Sourcing Department collects informational data and monitors Vendor's payments regarding all subcontractors and suppliers performing any part of work or services under this Agreement. Vendor reporting requirements apply to all contracts, not just to those with contract participation goals. Port Houston has an online system 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 Agreement, until the subject project is complete and closed. Vendor shall comply with all applicable Port Houston subcontractor and supplier payment reporting requirements, including providing information and reporting payments in the form and at the time specified in this Agreement, 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 Port Houston's online system. 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 all work covered by change orders, amendments, extensions, renewals, or other Agreement modifications during the entire performance of the Agreement.
- 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.

(e) **Reporting and Compliance Requirements for Contracts with Participation Goals.** In addition to the Reporting Requirements set out above, if Port Houston's Solicitation resulting in this Agreement contained one or more small business or other contract participation goal(s) ("Contract Participation Goal"), then the following provisions also apply:

- Vendor shall submit reports of its progress towards meeting the small business or other contract participation goal(s) and compliance with other Program requirements, in the form and at the time specified in the Solicitation or as otherwise directed

by Port Houston until the Agreement is complete and closed;

- Vendor is responsible for ensuring that, monthly, all subcontractors and suppliers have confirmed the payment amounts reported by Vendor, and that the subcontractors and suppliers have noted whether the amount is correct or if there is a discrepancy. If a payment discrepancy is reported, Vendor shall respond to the discrepancy;
- Subject to amendments as approved by Port Houston, the Contract Participation Goal obligation extends to all contract work covered by change orders regardless of the contracting tier, and the obligation to make good faith efforts to meet the Contract Participation Goal extends to the entire performance of the Agreement;
- Vendor shall make good faith efforts to meet, and maintain throughout the term of the Agreement, all planned Contract Participation Goals; and
- Vendor shall adhere to the dispute resolution mechanisms of the applicable small business or other contracting participation program.

(f) In addition to the requirements above, Vendor is encouraged to and agrees it will endeavor to:

- place qualified small businesses on subcontractor and supplier solicitation lists;
- attempt to solicit small businesses whenever they are potential participants in providing the Items;
- divide total Items or work requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small businesses;
- establish delivery schedules, where requirements permit, which encourage participation by small businesses; and
- Use the services and assistance, as appropriate, of Port Houston's Strategic Sourcing Department in such aspirational efforts.

(g) The failure by Vendor to fulfill the requirements of this Section 23 may: (i) be a breach of the Agreement; (ii) result in termination of the Agreement; (iii) result in denying or limiting credit towards the Contract Participation Goal; (iv) result in withholding progress payments; (v) trigger required payment of liquidated damages; (vi) result in debarment or suspension from future contract opportunities; and/or (vii) result in other remedies.

(h) Information about the Strategic Sourcing policies and programs may be found on the Port Houston website (including at <https://porthouston.com/business/strategic-sourcing/strategic-sourcing-overview/>).

- 24. 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.
- 25. LIMITATIONS.** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF PORT HOUSTON (A POLITICAL SUBDIVISION) 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.
- 26. ETHICS MATTERS; NO FINANCIAL INTEREST.** Vendor and its employees, agents, representatives and subcontractors shall comply with 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>, and 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. Neither Vendor nor its employees, agents, representatives, or subcontractors will violate, or 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 policies, 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.

27. **NOTICES.** Except as otherwise agreed in writing by an authorized representative of Port Houston, all notices 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, or email as provided below, and notice will be deemed given (i) for certified mail—on deposit, postage prepaid; (ii) for hand delivery or overnight courier—when received; and (iii) for email—when the email enters the recipient's system without bounce-back, if sent on a business day before 5:00 p.m. CT, otherwise the next business day.

If to Port Houston: Port of Houston Authority
2960 Riverby Road
Houston, Texas 77020
Email: strategicsourcing@porthouston.com
Attention: Strategic Sourcing Director

with copy to: Port of Houston Authority
2960 Riverby Road
Houston, Texas 77020
Email: LegalDept@PortHouston.com
Attention: Chief Legal Officer

28. **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.
29. **FORCE MAJEURE.** Timely performance by the Vendor is essential to this Purchase Order. However, neither Party will be liable for delays in performing its obligations if and to the extent such delays are caused by unforeseeable conditions that are beyond such Party's reasonable control, and that are without such Party's fault or negligence (**Force Majeure Occurrence**), subject to the following provisions: Acts of God such as storms or floods, as well as judicial restraints, acts of law-enforcement or military authorities, fires, epidemics, war or riot are examples of events that might be excusable as being Force Majeure Occurrences. However, no time extension because of an excusable delay shall ever be allowed in favor of Vendor unless: (a) within seven (7) calendar days of the commencement of any excusable delay, Vendor shall provide Port Houston with written notice of the cause and extent thereof as well as a request for a time extension equal to the estimated duration thereof; and (b) within seven (7) calendar days of the cessation of the event causing delay, Vendor shall provide Port Houston with written notice of the actual delay incurred, upon receipt of which, the time for Vendor's performance shall be extended for the time actually lost by reason of an excusable delay. Vendor agrees to use its best efforts to mitigate the impact of the Force Majeure Occurrence.
30. **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 reasonable, properly documented, and auditable costs actually incurred up to the effective date of termination for conforming Items received and accepted, reasonable demobilization, and non-cancellable, pre-approved pass-through costs, (less salvage, refunds, and mitigation, and subject to the appropriation limits described in Section 9). Any claim for such costs must be submitted by Vendor within thirty (30) days after termination effective date. Under no circumstance will Port Houston pay Vendor for anticipatory or lost profits, consequential damages, or unabsorbed overhead.
- (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.

31. **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 an authorized representative of 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.
32. **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.
33. **SURVIVAL.** The following provisions survive expiration or termination: Section 1 (Definitions), Section 8 (Inspection) with respect to latent defects, Section 9 (Invoices; Amount Due) as to limitations, Section 10 (Payments; Discounts), Section 13 (Warranties), Section 14 (Intellectual Property), Section 16 (Independent Contractor) as to indemnity obligations therein, Section 17 (Indemnity), Section 18 (Insurance) as to ongoing claims, Section 19 (Venue; Governing Law), Section 22 (No Waiver of Sovereign Immunity), Section 23 (Inclusive Sourcing) recordkeeping, Section 24 (Audit Rights), Section 25 (Limitations), Section 27 (Notices), Sections 35-47, and any other provisions which by their nature should survive
34. **FURTHER ASSURANCES.** Vendor shall execute and deliver such further instruments, assignments, and documents, and take such additional actions, as Port Houston may reasonably request to effectuate and carry out the intent of this Purchase Order, including perfecting Port Houston's rights in Work Product and implementing data security and insurance obligations.
35. **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.
36. **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.

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 an applicable 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.

- 37. 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.
- 38. DATA SECURITY CONTROLS.** If Vendor will access, transmit, use, or store data for Port Houston, Vendor must comply with industry standard security standards and if required, periodically provide to Port Houston evidence that Vendor meets the security controls required under this Agreement.
- 39. SAFEGUARDING OF CONFIDENTIAL INFORMATION.** If the item(s) or service(s) specified in this Purchase Order require Vendor access to Confidential Information as defined herein or 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. : In addition to the notice required herein, Vendor shall immediately (and in any event within 24 hours) notify Port Houston upon discovery of any suspected or actual security incident involving Confidential Information or Port Houston systems, and within five business days provide the written notice and information described herein. Vendor shall provide Port Houston and its designees with reasonable access to relevant facilities, systems, logs, and personnel to investigate, contain, and remediate. Vendor shall, at its expense, provide required notifications, credit monitoring, call-center support, and remediation as required by Applicable Laws and reasonably requested by Port Houston. 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 suspend access or terminate this Agreement without notice or opportunity to cure. This Section complements Sections 37 and 38 and does not limit Port Houston's other remedies.
- 40. PROHIBITED 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.
- 41. 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.
- 42. 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.
- 43. 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.
- 44. 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.
- 45. 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.

- 46. 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.
- 47. 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.