

## TEMPLE UNIVERSITY PURCHASE ORDER TERMS AND CONDITIONS

### 1. DEFINITIONS.

- a. **“Contract Documents”** means the PO Form, including any attachments or exhibits incorporated therein by reference, together with these PO Terms, the Specifications (if applicable), the Pricing Agreement (if applicable) and/or any Written Agreement (if applicable).
- b. **“Goods”** means and include all things defined as “Goods” in 13 Pa. C.S.A. §2105, fixtures that cannot be readily severed from realty after installation, software, appliances, plant and any other items to be supplied pursuant to this Purchase Order.
- c. **“PO Form”** means the purchase order form issued by Purchaser to Supplier in connection with the Goods and/or Services. The PO Form includes any and all attachments or exhibits incorporated in the PO Form by reference.
- d. **“PO Terms”** means these Temple University Purchase Order Terms and Conditions
- e. **“Pricing Agreement”** means Purchaser’s form of contract for Supplier to provide Goods or Services to Purchaser at the rates and prices set forth therein, duly executed by Supplier. Purchaser may place an order pursuant a Pricing Agreement by issuing a Purchase Order or by Written Agreement. These PO Terms apply to all orders placed under a Pricing Agreement unless a Written Agreement states otherwise.
- f. **“Purchaser”** means Temple University - Of The Commonwealth System of Higher Education.
- g. **“Purchase Order”** means the PO Form together with the PO Terms.
- h. **“Services”** means all activities to be performed by Supplier in connection with the PO Form.
- i. **“Specifications”** means and includes all of the following that relate to the Goods or Services and that are (i) provided by the Purchaser or (ii) consistent with Purchaser’s requirements and accepted in writing by the Purchaser: samples, prototypes, sketches, drawings, renderings, plans, formulas, compositions, requirements (including performance specifications and acceptance test criteria), technical product descriptions (including detailed listing of components, functionality, features, physical characteristics and performance, security and standard compliance information) or other descriptions.
- j. **“Subcontractor”** means Supplier’s subcontractors, subconsultants, suppliers, and/or materialmen of any tier.
- k. **“Supplier”** means the supplier identified on the PO Form, and supplier’s Subcontractors.
- l. **“Written Agreement”** means a written agreement concerning the Goods and/or Services, duly executed by an authorized representative of Supplier and Purchaser.

### 2. CONTRACT.

- a. Commencing performance of or accepting the Purchase Order shall indicate Supplier’s intent to be bound by the terms and conditions of the Contract Documents, shall constitute an unqualified acceptance by Supplier of each of the PO Terms, and shall form a contract under the laws of the Commonwealth of Pennsylvania. This Purchase Order shall be deemed to have been accepted by the Supplier upon receipt by the Purchaser of any writing, including a writing transmitted by fax or other means of electronic transmission, indicating acceptance, or by any of the following: (i) shipment of the Goods or any portion thereof, (ii) commencement of any work on site or (iii) performance of any Services hereunder.
- b. If the Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this offer. Notice of objection is hereby given that any different or conflicting or additional terms in Supplier’s quotations, acknowledgments, invoices, or in any other communication from Supplier are hereby expressly rejected unless Purchaser expressly agrees to such terms in writing. Payment, acceptance of Goods, or inaction by Purchaser shall not constitute Purchaser’s consent to or acceptance of any such Supplier terms.
- c. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offeror’s assent to any different or additional terms contained or referenced in these PO Terms. If this Purchase Order is construed as a confirmation of an existing contract, other than a Written Agreement, the parties agree that this confirmation states the exclusive terms of any contract between the parties. If this Purchase Order is construed as a confirmation of the Written Agreement, then the parties agree the Written Agreement states the exclusive terms of any contract between the parties and these PO Terms will apply only if the Written Agreement expressly states these PO terms apply.

3. **DELIVERY/PERFORMANCE.** Supplier shall comply with any delivery, performance, or shipping instructions appearing on the PO Form. All Goods shall be packed for shipment according to Purchaser’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Supplier must provide Purchaser prior written notice if it requires Purchaser to return any packaging material. Any return of such packaging material shall be made at Supplier’s expense. The Goods shall be tendered by delivery to Purchaser on the date and at the place and, if applicable, the time specified in the “Delivery Information” Section on the PO Form, or, if no time and place is specified in the Product Description Section, at such time and place specified in the “Delivery Information” Section of the PO Form. The times set forth for delivery are of the essence. Services shall be rendered at any Purchaser location specified by the Purchaser in writing including, without limitation, in the Contract Documents. If Supplier fails to deliver the Goods in full on the specified delivery date, Purchaser may terminate the Purchase Order immediately by providing written notice to Supplier and Supplier shall indemnify Purchaser against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier’s failure to deliver the Goods on the specified delivery date. Purchaser has the right to return any Goods delivered prior to the delivery date at Supplier’s expense and Supplier shall redeliver such Goods on the delivery date. Supplier is responsible for maintaining and providing proof of delivery. Packing lists must accompany each case or parcel, showing the Purchase Order number indicated on the PO Form and a complete description of contents. Supplier shall prepay all transportation charges. If transportation of the Goods is undertaken by an entity other than Supplier, Supplier shall be responsible for and handle all claims against such entity for shortages, damages, theft and other such occurrences.

4. **IDENTIFICATION/RISK OF LOSS/TITLE.** Identification of the Goods shall occur as soon as the Purchase Order is received by Supplier. Risk of loss of and clear title to the Goods shall pass to Purchaser at the time that conforming Goods are received and accepted by Purchaser.

5. **PURCHASE PRICE/FEES.** All prices for Goods and fees for Services shall be as specified on the PO Form and/or Written Agreement, or, if this is a blanket Purchase Order, then as specified in writing by Purchaser from time to time, in each case subject to Section 9 hereof. Purchaser shall not be charged sales and use taxes for which an exemption is applicable. Purchaser shall have no obligation to pay shipping, handling or transportation costs for Goods unless specified in the Written Agreement or the Purchase Order. Purchaser shall have no responsibility for payment for over-shipments, Goods not delivered due to shortages, theft, etc., or otherwise non-conforming shipments. Purchaser shall have no responsibility for payment for non-conforming Services or activities not within the scope of the Services specified on the PO Form or Written Agreement. Under no circumstances shall Purchaser be responsible for payment for Goods or Services in excess of the extended price set forth on the PO Form, unless Purchaser gives prior written approval. Purchaser’s count shall be accepted as final and conclusive for all shipments. If the price for Goods or fee for Services is omitted from the PO Form and is not covered by a blanket order or agreement, this order is to be filled at the lower of (i) the price last quoted or charged or (ii) the lowest prevailing market price. All prices for Goods are FOB Purchaser’s on-site receiving area unless otherwise specified in the Contract Documents. If shipment is indicated as FOB Supplier’s location, Supplier will arrange for shipping, prepay the freight charges and add them to the invoice. Collect shipments will be returned at Supplier’s expense. Unless otherwise indicated in the Written Agreement or the Purchase Order, Supplier shall be responsible for payment of all expenses incident to the performance of the Services hereunder. Supplier shall not invoice Purchaser for the travel time expended by its personnel in traveling to, or from, Purchaser’s location(s). Supplier shall bear sole responsibility for payment of compensation to its personnel. Supplier shall pay and report, for all of Supplier’s personnel assigned to perform Services for Purchaser, federal and state income tax withholding, workers’ compensation payments, social security taxes, value added taxes, ad valorem taxes and unemployment insurance applicable to such representatives as employees of Supplier. Supplier shall bear sole responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which its personnel may be entitled.

### 6. PAYMENT.

- a. For Goods not requiring on-site work, such as installation to permit the Goods to be put into operation, one invoice shall be submitted for the Purchase Order. No invoices will be processed for payment until Purchaser has received the Goods, has inspected them and has determined that they are conforming. Invoices shall be considered as dated the later of the day the invoice is received or the day the Goods are received and accepted by Purchaser. Payment for conforming Goods shall be paid within thirty (30) days of the date treated as the date of the invoice under the preceding sentence. With respect to invoices covering mechanical equipment and similar Goods which cannot immediately be put into operation, Purchaser reserves the right to withhold from payment of such invoice retainage of 10% of the

amount thereof pending approval of the operation of such equipment and/or Goods. In such a case a second invoice may be issued for the retainage. In the event of a disputed invoice, Purchaser shall deliver a written statement to Supplier no later than the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed shall be paid, notwithstanding disputes on other items, within the period set forth in this Section. The parties shall seek to resolve all such disputes expeditiously and in good faith. Supplier shall continue performing its obligations under the Purchase Order notwithstanding any such dispute. Purchaser shall pay for the Goods by check or electronic funds transfer. Purchaser shall be entitled to take all agreed-upon discounts for prompt payment.

- b. For Services, one invoice shall be submitted upon completion of Supplier's performance. No invoices will be processed for payment until Purchaser has accepted the Services as conforming with the terms of this Contract Documents. Invoices shall be considered as dated the later of the day the invoice is received or the day the Services are accepted by Purchaser. Payment for conforming Services shall be made by check or electronic funds transfer within thirty (30) days of the date treated as the date of the invoice under the preceding sentence. Purchaser shall be entitled to take all agreed-upon discounts for prompt payment.
- c. Without prejudice to any other right or remedy it may have, Purchaser reserves the right to set off at any time any amount owing to it by Supplier against any amount payable by Purchaser to Supplier.

## 7. OWNERSHIP OF DELIVERABLES.

- a. Supplier warrants, represents and agrees that upon receipt of all undisputed payments due from Purchaser therefor, any reports, drawings, research, specifications, technical data, or any other materials prepared for Purchaser in connection with this Purchase Order, and any intellectual property rights therein, (hereinafter being collectively referred to as the "Deliverables") shall be the sole and exclusive property of Purchaser, whether developed, created, conceived, or made solely by Supplier or in collaboration with any other person or entity. Deliverables shall be considered a "work made for hire" as defined by the copyright laws of the United States. If for any reason any portion of the Deliverables, or Supplier's Services in connection therewith, is determined at any time not to be a "work made for hire," Supplier hereby irrevocably transfers and assigns to Purchaser all right, title and interest in and to said Deliverables and in and to any and all copyrights on said Deliverables that currently exist and that may arise and/or may be granted in the United States and any foreign country, and including each and every derivative work arising from said Deliverables. The parties agree that Purchaser shall own all intellectual property rights in and to the Deliverables including, without limitation, use and derivative use thereof, patent and copyright right, and any and all trade secrets, whether or not embodied in any material or documentation. All Deliverables shall be promptly disclosed and delivered to Purchaser and shall be maintained by Supplier in strict confidence. The Deliverables must be new and original. Supplier must not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the Deliverables without Purchaser's prior written permission. Upon the expiration or termination of this Purchase Order for any reason, Supplier shall promptly turn over and return to Purchaser all Deliverables (and all copies thereof, in whatever form) or, upon written direction of Purchaser, destroy all of the foregoing.
- b. In the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, or in the event that the Goods or Services provided under this Purchase Order do not involve work made for higher, Purchaser is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute any Pre-Existing Materials in connection with the Deliverables, Goods and/or Services.

## 8. WARRANTIES.

- a. Supplier warrants to Purchaser that all Goods and Services covered by this Purchase Order shall conform to the Contract Documents, including without limitation the Specifications. Suppliers are not authorized to substitute. All Goods shall be merchantable; fit for Purchaser's intended purpose; of good material, workmanship and design, and free from defect. Supplier also guarantees that the Goods are of sufficient size or capacity to perform as specified. All Goods delivered shall be free and clear of all liens, encumbrances, and rights of others.
- b. Supplier warrants to Purchaser that all Services performed under this Purchase Order will be of high quality, will conform to the Contract Documents, including without limitation the Specifications, and will, in no event, be of a quality less than the quality of services performed by a skilled worker with expertise in the area for which Supplier is providing Services hereunder.
- c. Supplier warrants: that the Goods and Services rendered shall comply with federal disability laws and regulations; that Supplier will promptly respond to remediate to any identified technology accessibility defects in the Goods and Services to conform with Web Content Accessibility Guidelines (WCAG) 2.0 AA if applicable; and that Supplier shall promptly respond to and use reasonable efforts to resolve and remediate any complaint regarding accessibility of its Goods and/or Services.
- d. Supplier hereby assigns to Purchaser, and Purchaser shall have, the benefit of all manufacturers' warranties, express or implied, issued on or applicable to the Goods and/or Services, and Supplier authorizes Purchaser to obtain the warranty service, make warranty claims, and receive all other customary warrant benefits furnished in connection with such warranties and guaranties. Further, Purchaser shall have the right to designate a representative or assignee ("Purchaser's Designee") who shall have the right on behalf of Purchaser and for itself to obtain warranty service, make warranty claims and receive all other warrant benefits to which Purchaser is entitled. Purchaser agrees to acknowledge Purchaser's Designee upon Purchaser's request.
- e. This Purchase Order incorporates by reference any and all warranties (express, implied, oral or written) made by Supplier prior to or at the time this Purchase Order is accepted, including those contained in brochures, catalogues, advertisements, owner's manuals, etc., provided that in the event the warranty provisions are inconsistent, Purchaser shall have the sole discretion to determine which warranty provisions to enforce.
- f. All warranties shall survive inspection, acceptance and payment.
- g. Supplier agrees to repair or replace free of charge any Goods or parts of Goods which prove defective or which operate unsatisfactorily for a period of one (1) year after acceptance thereof by Purchaser. This warranty does not apply to normal effects of corrosion or wear and tear. Such remedies shall be available to Purchaser in addition to all others afforded to it by this Contract or at law or equity. Where required by OSHA's Hazard Communication Standard, Supplier will provide MSDS documentation in the OSHA recommended 16-section format established by the American National Standards Institute (ANSI) standard (Z400.1).
- h. Supplier warrants to Purchaser that the use by Purchaser of the Goods, or part thereof, or Services (including, without limitation, support and maintenance) furnished by Supplier under this Purchase Order does not (and will not) violate or in any way infringe upon the rights of third parties including any property, contractual, employment, trade secrets, proprietary information and non-disclosure rights, or any trademark, copyright, patent or other intellectual property rights. If Purchaser's use of any Goods provided under this Purchase Order is (or is alleged to be) infringing, then Supplier shall at Purchaser's direction, within 10-days of the date of Purchaser's notification of such infringement, either: (a) secure for Purchaser, without any additional costs or expense to Purchaser, the right to continue using such Good or affected part thereof as provided under this Purchase Order pending a final determination of the claim; or (b) replace or modify such Good without any additional costs or expense to Purchaser, with substitute Goods yielding substantially equivalent results. If neither of such options are or would be available on a basis that Purchaser finds commercially reasonable, then Purchaser may terminate this Purchase Order and return such deliverable to Supplier and receive all monies paid by Purchaser to Supplier under this Purchase Order for the Goods (including, without limitation, installation, training, and support fees).

## 9. RIGHT OF INSPECTION.

- a. Within a reasonable time after delivery of the Goods in accordance with Section 4, Purchaser shall have the right to inspect the Goods to determine their conformity with the Contract Documents. Thirty (30) days from the date of delivery or installation is deemed to be the reasonable time for Purchaser to inspect the Goods. If all or any part of the Goods are found to be non-conforming, Purchaser may reject such non-conforming Goods, whereupon such rejected Goods promptly shall be removed by Supplier at Supplier's cost, and the purchase price with respect to such rejected Goods either shall be refunded by Supplier if already paid, or shall be reduced if still owing. In either case, if Purchaser so directs in writing, Supplier shall promptly replace such non-conforming Goods with Goods conforming to the Specifications. All direct and incidental costs of rejecting and removing such non-conforming Goods shall be borne by Supplier. Notwithstanding final acceptance of Goods and payment, Supplier will be liable for latent defects, fraud or such gross mistakes as amount to fraud.
- b. Purchaser shall have the right to review and inspect all of the Services provided hereunder after notice of completion by Supplier. In the event Purchaser, in its reasonable discretion and judgment, concludes that the Services do not conform to the requirements of this Purchase Order (including without limitation any attachments or exhibit incorporated in this Purchase Order by reference and the Specifications) for any reason, Purchaser shall notify Supplier, specifying in reasonable detail the reasons for such determination. Following notification from Purchaser of any such determination, Supplier shall, unless otherwise set forth

in the applicable Statement of Work, have five (5) days to correct the Services. Purchaser shall thereafter again review and inspect the Services and notify Supplier of its determination as to compliance. If, after such additional evaluation by Purchaser, Purchaser again determines the Services do not conform to the requirements of this Purchase Order, then Purchaser may, at its option, provide additional time to Supplier to correct the Services or Purchaser may treat such failure as a material breach of this Purchase Order by Supplier.

- 10. CANCELLATION.** If the subject matter of this Purchase Order (or any design, prototype, drawing, or other sample) is subject to prior review and approval by Purchaser, Purchaser may cancel this Purchase Order upon its determination that such design, prototype, drawing or sample does not conform to any applicable requirements; and Purchaser shall have no further obligations or liability hereunder.
- 11. TERMINATION FOR CONVENIENCE.** Purchaser, in its sole discretion and without cause, may terminate this Purchase Order, in whole or in part, at any time without incurring liability to Supplier for lost profits, or any other costs or damages. To the extent, however, that partial performance of the Services or partial delivery of the Goods are beneficial to the Purchaser in its reasonable discretion, Purchaser will pay the percentage of the purchase price equal to the percentage of the Services completed and/or percentage of the Goods delivered. Supplier's warranties, and Supplier's liability for defective or non-conforming Goods and Services, hereof, shall survive termination and remain in full force and effect.
- 12. REMEDIES.** In addition to remedies provided in the Contract Documents, Purchaser shall have all other rights and remedies available under applicable law. In addition to other remedies provided by law, Purchaser reserves the right to reject any Goods or Services or to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Supplier fails to deliver all or any part of the Goods or to perform any of the Services in accordance with the terms and conditions of this Purchase Order. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE CONTRACT DOCUMENTS, IN NO EVENT SHALL SUPPLIER BE ENTITLED TO ANY PAYMENT ON ACCOUNT OF LOST PROFITS OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY TERMINATION OF THE PURCHASE ORDER, OR OTHERWISE IN CONNECTION WITH THE CONTRACT DOCUMENTS.**
- 13. INDEMNIFICATION.** To the extent permitted by law, Supplier shall indemnify and hold harmless Purchaser, its affiliates, the Commonwealth of Pennsylvania and any Purchaser's Designee, and all of their respective trustees, directors, officers, employees and agents (collectively, "Indemnitees") from and against all claims, demands, causes of action and suits ("Claims") and all losses, damages and expenses, including reasonable attorneys' fees and costs of investigation and dispute resolution ("Losses"), that are in any way related to, connected with, or that arise, or that are alleged to arise, in whole or in part, from the undertaking by Supplier of any Services or any defect(s) in the Goods supplied under the Purchase Order, or any negligent act, omission, recklessness or willful misconduct of Supplier or anyone for whose acts Supplier may be liable, or provided Supplier may be held responsible for same under products liability law or under other applicable legal or equitable principles. Supplier further agrees to assume the defense of any Claims brought against the Indemnitees and to protect the Indemnitees from all Losses arising out of Claims for infringement of any patent, invention, design, trademark or copyright in connection with the Goods or Services.
- 14. INSURANCE.**
- a. Supplier shall at all times maintain, at its own cost and expense, liability insurance in sufficient amounts to cover Supplier's indemnification obligations stated herein. Supplier shall maintain such insurance at the following minimum limits, which limits may be met through any combination of primary and excess/umbrella insurance:
    - (i) commercial general liability insurance (in minimum amounts of \$1,000,000 per occurrence and \$2,000,000 aggregate coverage with appropriate tail coverage if such insurance is "claims made");
    - (ii) if Supplier's performance of the Purchase Order involves operation of a vehicle, auto liability policy including owned and non-owned (in minimum amounts of \$1,000,000 combined single limit and \$100,000 per incident for uninsured and under-insured motorist);
    - (iii) workers' compensation coverage with statutory limits and employer liability coverage (in minimum amounts of \$1,000,000 per incident and \$1,000,000 aggregate coverage);
    - (iv) if applicable, technology errors and omissions or professional liability insurance in minimum amounts of \$1,000,000 per occurrence or claim and \$3,000,000 aggregate, with appropriate tail coverage if such insurance is "claims made"; and
    - (v) if applicable, privacy and network security liability ("cyber liability") insurance in minimum amount of \$2,000,000 per incident to specifically cover security, privacy, viruses, malicious code, and denial of access liability. The cyber liability insurance shall provide, at a minimum, coverage for: (1) Security and Privacy Liability, including defense and indemnity for liability and damages (including investigations, data recovery, hardware and software repairs, fines, penalties, legal fees, settlements, and lost revenue) resulting from any failure to protect, misuse, misappropriation, unauthorized disclosure, or other breach of confidential or private information and personally identifiable information and Purchaser's data; and (2) Event Management, including but not limited to data breach notification, public relations, forensics, credit monitoring, and related costs.
  - b. Purchaser reserves the right to require additional insurance or other insurance levels depending on the Services or Goods. Supplier shall maintain all insurance coverages hereunder with a company or companies rated A or higher by A.M. Best that have a size requirement of "V(5)." Supplier's insurance coverage hereunder (except for workers' compensation and professional liability) shall name "Temple University-Of The Commonwealth System of Higher Education, its affiliates, and their respective trustees, officers, employees, and agents" as "additional insureds." Supplier shall provide Purchaser with a certificate of insurance evidencing the required coverage, prior to or upon issuance of the Purchase Order and from time to time as requested by Purchaser. The certificates of insurance shall contain a provision that coverage will not be canceled, non-renewed, or materially changed without thirty (30) days' prior written notice to Purchaser. Supplier's insurance policy shall be primary and non-contributory and shall apply to loss prior to any coverage carried by Purchaser or any other party and shall contain a waiver of all rights of subrogation against the Indemnitees. Supplier's policies shall include severability of interest or cross liability clause wording and shall not contain cross liability exclusion. If any of Supplier's liability insurance is on a "claims-made" basis, Supplier shall maintain such coverage for a minimum of three (3) years following completion of the performance or attempted performance of the provisions of this Purchase Order. Any limitation of liability set forth in the Contract Documents shall not preclude Purchaser from claiming under any insurance placed or provided pursuant to this Purchase Order up to the full amount payable under such insurance.
- 15. REGULATORY COMPLIANCE, NONDISCRIMINATION, AND EXPORT CONTROLS.**
- a. The Supplier shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction ("Laws") including, without limitation the applicable provisions of the following, all as amended and in effect as of the date of this order: the Anti-Kickback Act (41 U.S.C. Sections 51 *et seq.*), the Civil Rights Act of 1964 (42 U.S.C. Section 2000a *et seq.*), Executive Orders 11246 and 11375, the Age Discrimination in Employment Act of 1967 (29 U.S.C. Section 621 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. Sections 701 *et seq.*), the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*), and of all other applicable Laws dealing with labor and wages, workmen's compensation, employer liability, unemployment compensation, old age benefits, safety, antitrust and anti-collusion, fair trade, the environment, equal employment opportunity and discrimination on the basis of race, color, religion, sex, gender, national origin, veteran's status or disability. Where applicable, Supplier will comply with 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: "This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status."
  - b. If the Purchase Order involves the procurement of any Goods that are export-controlled under the International Traffic in Arms Regulations (22 CFR §§ 120-130), the United States Munitions List (22 CFR § 121.1), or Export Administration Regulations (15 CFR §§ 730-774) 500 or 600 series, or controlled on a military

strategic goods list, Supplier shall notify Purchaser in accordance with Section 20, identifying the export-controlled Goods and such Goods' export classification.

- 16. SUBCONTRACTORS, SUPPLIERS, AND MATERIALMEN.** Supplier shall promptly pay all of its Subcontractors performing Services or delivering materials or Goods under this Purchase Order. Supplier shall defend, indemnify and hold harmless Purchaser from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees and disbursements, arising out of or resulting from any mechanic's or similar lien filed against Purchaser or its property by any of Supplier's Subcontractors, suppliers, and materialmen. Supplier shall cause it Subcontractors, to execute, acknowledge, and deliver to Purchaser upon request a final lien release and waiver simultaneously with payment for Services performed or materials or Goods delivered.
- 17. CONFIDENTIAL INFORMATION.**
- a. All non-public, confidential or proprietary information of the Purchaser disclosed to Supplier, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," is confidential, and is solely for Supplier's use in performing its obligations hereunder and may not be disclosed or copied unless authorized by Purchaser in writing. Upon Purchaser's request, Supplier shall promptly return all documents and other materials received from Purchaser. Purchaser shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (i) in the public domain; (ii) rightfully known to the Supplier at the time of disclosure; or (iii) rightfully obtained by the Supplier on a non-confidential basis from a third party.
- b. Any Specifications or other information described in section 18(a) above provided by Purchaser to Supplier in connection with this Purchase Order are provided solely for the purpose of facilitating Supplier's performance of its obligations hereunder. Purchaser reserves all rights in any such Specifications or other information, and Supplier shall acquire no rights therein.
- 18. NON-WAIVER.** No waiver of any term, provision, or condition of these PO Terms, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further and continuing waiver of any such term, provision or condition of these PO Terms. No waiver shall be valid unless in writing and signed by the parties.
- 19. ASSIGNMENT/DELEGATION.** Supplier shall not assign any right or interest in this Purchase Order, nor delegate any obligation owed by it hereunder without the prior written consent of Purchaser. Any attempted assignment or delegation absent Purchaser's consent shall be wholly void and totally ineffective for all purposes. Purchaser may assign this Purchase Order to any parent, subsidiary or affiliate of Purchaser or any third party provided that Purchaser remains liable hereunder.
- 20. COMMUNICATIONS; NOTICES.** With the exception of invoices and monthly statements of account, which are to be directed to Temple University Accounts Payable, all communications and acknowledgments from Supplier concerning this Purchase Order must be directed to the Temple University Purchasing Department. All notices required hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the PO Form or to such other address that may be designated by the receiving party in writing; provided, however, that if any notice is sent to the Purchaser, a copy of such Notices must also be sent to the Temple University Office of University Counsel, 1509 Cecil B. Moore Avenue, Entertainment & Community Education Center Fourth Floor, Philadelphia, PA 19121, Attention: University Counsel, with email copy to: ucounsel@temple.edu. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Purchase Order, a notice is effective only if the party giving the Notice has complied with the requirements of this subsection.
- 21. TAXES, DOCUMENTATION.** Purchaser's tax exemption certificate will be supplied upon request. Supplier shall provide Purchaser with an executed IRS form W-9, and any other documentation reasonably requested by the Purchaser, prior to submission of the initial invoice.
- 22. NON-COLLUSIVE BIDDING.** Supplier certifies that the prices charged to Purchaser pursuant to this Purchase Order have been determined independently without collusion with Purchaser's employees or any other supplier.
- 23. ORDER OF PRECEDENCE.** The Contract Documents are meant to be read as a whole and any apparent conflict or inconsistencies must be considered and reasonably addressed by reference to the Contract Documents as a whole. If any such conflicts or inconsistencies cannot be resolved by reading the Contract Documents as a whole, the provisions of the Contract Documents will be controlling in accordance with the following order of precedence: (i) the Written Agreement (if any); (ii) these PO Terms; (iii) the PO Form; and (iv) the Specifications (if any). Contract Documents of a later date shall take precedence over Contract Documents of the same category bearing an earlier date. Notwithstanding anything to the contrary contained in this Section, if there is a conflict or inconsistency in the Contract Documents, Supplier is obligated to provide that item that is of the highest quality or greatest amount, or to adhere to the most stringent provision, as applicable, unless Purchaser directs otherwise in writing.
- 24. DEBARMENT.**
- a. **Federal Debarment.**
- (i) Supplier shall comply and shall cause all Subcontractors to comply with Subpart C of the OMB Guidelines at 2 CFR Chapter 1 Part 180, as supplemented by applicable Federal regulations.
- (ii) Supplier represents and warrants that neither Supplier nor Supplier's principals are "disqualified," "excluded" or otherwise "ineligible" from being a "participant" in "covered transactions" with any Federal department or agency pursuant to Executive Order 12549 (2/18/86), 2 CFR Chapter 1 Part 180 ("OMB Guidelines") or any regulations issued pursuant thereto. If Supplier or any of Supplier's principals becomes so disqualified, excluded or otherwise ineligible, Supplier shall notify Purchaser within three (3) business days of the earlier of learning of such action or receiving notice of such action. Further, if Supplier learns of any hearing or other governmental proceeding that could render Supplier or any of Supplier's principals to become so disqualified, excluded or otherwise ineligible, Supplier shall notify Purchaser within three (3) business days of the earlier of learning of such hearing or other governmental proceeding or receiving notice of such hearing or other governmental proceeding. It shall be a default under the Purchase Order without the requirement of notice or opportunity to cure if, during the term of the Purchase Order, Supplier or any of Supplier's principals becomes disqualified, excluded or otherwise ineligible from being a participant in a covered transaction with any Federal department or agency.
- (iii) Supplier shall include the terms of this Section 24 in all agreements with Subcontractors and Supplier shall immediately remove from the Services performed for Purchaser pursuant to the Purchase Order (and/or from work or services being provided to Purchaser by Supplier under any other agreement) any Subcontractor which is disqualified, excluded or otherwise ineligible from being a participant in a covered transaction with any Federal department or agency. Purchaser shall be the intended third-party beneficiary of such provisions and failure of Supplier to immediately remove such Subcontractor from the Services shall be a default under the Purchase Order. Furthermore, any costs incurred by Supplier in connection with the removal of a Subcontractor from the performance of the Services including, but not limited to, increased cost of replacement performance, shall be at Supplier's sole cost and expense and shall not be reimbursed to Supplier by Purchaser and Supplier shall not be entitled to any extension of time due to delays caused by removal of such Subcontractor.
- (iv) Terms used in this Section 24(a) and not otherwise defined shall have the meanings set forth in the OMB Guidelines, as supplemented by applicable Federal regulations issued pursuant thereto.
- b. **Debarment - City of Philadelphia.**
- (i) Supplier represents and warrants that Supplier has not been Suspended, Debarred or declared Ineligible to enter into the Purchase Order or perform the Services, nor has Supplier been the subject of an action by the City of Philadelphia to Suspend or Debar Supplier, pursuant to the City of Philadelphia Policy and Procedure for the City of Philadelphia Debarment and Suspension of Suppliers dated January 18, 2007 (the "City Debarment Policy"). If during the term of the Purchase Order, Supplier is Suspended, Debarred or declared Ineligible to perform the Services, or is the subject of an action by the City of Philadelphia

to Suspend or Debar Supplier, pursuant to the City Debarment Policy, Supplier shall notify Purchaser within three (3) business days of the earlier of learning of such action or receiving notice of such action. It shall be a default under the Purchase Order without the requirement of notice or opportunity to cure if, during the term of the Purchase Order, Supplier is Suspended, Debarred or declared Ineligible to perform the Services, or is the subject of an action by the City of Philadelphia to Suspend or Debar Supplier, pursuant to the City of Philadelphia Policy.

- (ii) Supplier shall include the terms of this Section 24(b) in all agreements with Subcontractors and Supplier shall immediately remove from the performance of the Services under the Purchase Order (and/or from work or services being provided to Purchaser by Supplier under any other agreement) any Subcontractor which is Suspended, Debarred or declared Ineligible to enter into or perform the Purchase Order, or is the subject of an action by the City of Philadelphia to Suspend or Debar Supplier, pursuant to the City Debarment Policy. Purchaser shall be the intended third-party beneficiary of such provisions and failure of Supplier to immediately remove such Subcontractor from the performance of the Services shall be a default under the Contract Documents without the requirement of notice or opportunity to cure. Furthermore, any costs incurred by Supplier in connection with the removal of a Subcontractor from the performance of the Services, including, but not limited to, increased cost of replacement performance, shall be at Supplier's sole cost and expense and shall not be reimbursed to Supplier by Purchaser and Supplier shall not be entitled to any extension of time due to delays caused by removal of such Subcontractor.
- (iii) Terms used in this Section 24(b) and not otherwise defined in these PO Terms shall have the meanings set forth in the City Debarment Policy.
- c. **Debarment – Commonwealth of Pennsylvania.**
- (i) Supplier represents and warrants that Supplier has not been suspended and/or debarred, nor has been the subject of an action by a purchasing agency (as defined in the Title 62 of the Pennsylvania Consolidated Statutes (the “Commonwealth Procurement Code”) to suspend or debar Supplier, pursuant to Section 531 of the Commonwealth Procurement Code (the “Commonwealth Debarment Code”). If during the term of the Purchase Order, Supplier is suspended and/or debarred, or is the subject of an action by a purchasing agency to suspend or debar Supplier, pursuant to the Commonwealth Debarment Code, Supplier shall notify Purchaser within three (3) business days of the earlier of learning of such action or receiving notice of such action. It shall be a default under the Contract Documents without the requirement of notice or opportunity to cure if, during the term of the Purchase Order, Supplier is suspended and/or debarred, or is the subject of an action by a purchasing agency to suspend or debar Supplier, pursuant to the Commonwealth Debarment Code.
- (ii) Supplier shall include the terms of this Section 24(c) in all agreements with Subcontractors and Supplier shall immediately remove from the performance of the Services under the Purchase Order (and/or from work or services being provided to Purchaser by Supplier under any other agreement) any Subcontractor which is suspended and/or debarred, or is the subject of an action by a purchasing agency to suspend or debar Supplier, pursuant to the Commonwealth Debarment Code. Purchaser shall be the intended third-party beneficiary of such provisions and failure of Supplier to immediately remove such Subcontractor from the performance of the Services shall be a default under the Purchase Order without the requirement of notice or opportunity to cure. Furthermore, any costs incurred by Supplier in connection with the removal of a Subcontractor from the performance of the Services, including, but not limited to, increased cost of replacement performance, shall be at Supplier's sole cost and expense and shall not be reimbursed to Supplier by Purchaser and Supplier shall not be entitled to any extension of time due to delays caused by removal of such Subcontractor.
25. **DAMAGE TO PURCHASER’S PROPERTY.** The Supplier shall be totally responsible for any damages done to Purchaser’s property (sometimes referred to as the “Site”) during delivery, assembly, installation/placement of the Goods and/or the furnishing of the Services described herein and shall repair or cause to be repaired at its expense any such damages in a manner satisfactory to Purchaser.
26. **REMOVAL OF DEBRIS.** The Supplier shall be totally responsible for the daily removal of debris (empty cartons, crates, packing material, etc.) resulting from delivery, assembly and/or installation/placement of Goods or the furnishing of Services described herein, from Purchaser’s property, as required by applicable laws regulations. Rubbish must not remain overnight. FAILURE TO COMPLY WITH THIS PROVISION WILL RESULT IN SUPPLIER PAYING PURCHASER, AS LIQUIDATED DAMAGES AND NOT AS A PENALTY FOR SUCH FAILURE, THE SUM OF \$100.00 (ONE HUNDRED DOLLARS) PER DAY, FOR EACH DAY THAT DEBRIS REMAINS ON PURCHASER’S PROPERTY. THE CORRESPONDING AMOUNT SHALL AUTOMATICALLY BE DEDUCTED FROM SUPPLIER’S INVOICE.
27. **BACKGROUND CHECKS.** Supplier shall ensure that reference and background checks have been conducted as to all employees of Supplier and its Subcontractors (i) performing Services on Purchaser’s campus or (ii) who have access to the Purchaser’s Confidential Information. Background checks shall include federal, state and county of residence criminal background checks, including previous residential addresses. Background checks shall include social security number trace and verification. Suppliers shall exclude from participation in the performance of the Services any person who could reasonably be believed to present a risk of dishonest, dangerous or violent behavior, or who is otherwise unqualified to participate.
28. **COVID19 HEALTH AND SAFETY.** During the performance of all Services under the Purchase Order, Supplier shall strictly comply with, and shall be responsible for ensuring all Subcontractors strictly comply with, all applicable statutes, laws, codes, regulations, rules, ordinances, orders, executive orders, directives, standards, practices, requirements, guidelines, recommendations, directions and any and all guidance issued by any federal, state, and/or local governmental entity, or any other authority having jurisdiction, with respect to CoViD19 and the coronavirus that causes CoViD19 and the health and safety of employees, workers, others at or near the sites where Services and/or work is/are being performed, and the general public.
29. **EMPLOYMENT VERIFICATION.** If the Pennsylvania Public Works Employment Verification Act (Act 127 of 2012) (the “Act”) applies to the Services, then Supplier shall comply with the terms of the Act and the Statement of Policy set forth in 4 PA. Code Ch. 66 (2012) and shall contemporaneously with the issuance of this Purchase Order, execute and deliver to Purchaser a verification form in the form described in Section 3(C) of the Act.
30. **MISCELLANEOUS.**
- a. No agreement or other understanding in any way modifying the Contract Documents shall be binding upon Purchaser unless made or accepted by Purchaser in writing. This Purchase Order shall be subject to modification, amendment and/or cancellation by Purchaser without any liability to the Supplier in event of fire, accident, strike, government acts or other conditions beyond Purchaser’s control. Purchaser shall promptly provide to Supplier written notice of the occurrence of such events requiring such modification, amendment and/or cancellation.
- b. This Purchase Order and the other Contract Documents are intended by the parties as a final expression of their agreement with respect to the subject matter and may not be modified, added to or rescinded except by a subsequent written agreement signed by Purchaser.
- c. All the provisions of these PO Terms are intended to be distinct and severable. If any provision of these PO Terms shall be held or made invalid or unenforceable by a court decision, statute, rule, or otherwise, then the remaining provisions of these PO Terms shall not be affected thereby and shall continue in full force and effect.
- d. The contract resulting from this Purchase Order shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws or choice of law provisions. All lawsuits arising out of or relating to this Purchase Order shall be venued in the state and federal courts located in Philadelphia County, Pennsylvania. PURCHASER AND SUPPLIER HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL WITH REGARD TO ANY DISPUTE ARISING IN CONNECTION WITH THIS PURCHASE ORDER.
- e. Any captions or headings contained in these PO Terms are inserted only as a matter of convenience and in no way define, limit, or extend the scope or intent of these PO Terms or any provision hereof.
- f. All provisions in these PO Terms that are intended to survive termination or expiration of the Purchase Order, including without limitation those terms concerning indemnification, insurance, payment, warranty, subcontractors, title, remedies, ownership of deliverables, and confidential information, shall so survive termination or expiration of the Purchase Order.