

TIPS VENDOR AGREEMENT

Between TITAN School Solutions, Inc. and
(Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS),
a Department of Texas Education Service Center Region 8
for
RFP 181105 Cafeteria Point-of-Sale

General Information

The Vendor Agreement (“Agreement”) made and entered into by and between The Interlocal Purchasing System (hereinafter referred to as “TIPS” respectfully) a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control unless otherwise agreed by the parties in writing and by signature and date on the attachment.

The vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation as posted, including any addenda and the awarded vendor’s proposal. Once signed, if an awarded vendor’s proposal varies or is unclear in any way from the TIPS Agreement, TIPS, at its sole discretion, will decide which provision will prevail unless otherwise specifically agreed in writing by the parties.

A Purchase Order, Agreement or Contract is the TIPS Member’s approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed to between the vendor and TIPS Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addendums possible.

Terms and Conditions

Freight

All quotes to members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating “No Charge” or “\$0”, “included in price” or other similar indication. Otherwise, all shipping, freight or delivery changes shall be passed through to the TIPS Member at cost with no markup and said charges shall be agreed by the TIPS Member.

Warranty Conditions

All new supplies equipment and services shall include **manufacturer's minimum standard warranty** unless otherwise agreed to in writing. Vendor shall be legally permitted to sell all products offered for sale to TIPS Members. All goods proposed and sold shall be new unless clearly stated in writing.

Customer Support

The Vendor shall provide timely and accurate customer support for orders to TIPS Members as agreed by the Parties. Vendors shall respond to such requests within a commercially reasonable time after receipt of the request. If support and/or training is a line item sold or packaged with a sale, support shall be as agreed with the TIPS Member.

Agreements

Agreements for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the TIPS Member participating government entities, but other means of placing an order may be used at the Member's discretion.

Tax exempt status

Most TIPS Members are tax exempt and the related laws and/or regulations of the controlling jurisdiction(s) of the TIPS Member shall apply.

Assignments of Agreements

No assignment of Agreement may be made without the prior notification of TIPS. Written approval of TIPS shall not be unreasonably withheld. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

Disclosures

1. Vendor and TIPS affirms that he/she or any authorized employees or agents has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.

2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
3. The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

Renewal of Agreements

The Agreement with TIPS is for three (3) years with an option for renewal for an additional one (1) consecutive year. The scheduled Agreement termination date shall be the last date of the month of the last month of the agreement's legal effect. **Example:** *If the agreement is scheduled to end on May 23, the anniversary date of the award, it would actually be extended to May 31 in the last month of the last year the contract is active.*

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with TIPS Members Resulting from the Solicitation and with the Vendor Named in this Agreement.

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order or executed Agreement issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

Shipments

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed.

Invoices

The awarded vendor shall submit invoices or payment requests to the TIPS Member participating entity clearly stating "Per TIPS Agreement # xxxxxxxx or similarly identifying the Agreement. Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

Payments

The TIPS Member will make payments directly to the Vendor or vendor assigned dealer after receiving invoice or in compliance with applicable statute, whichever is the greater time or as otherwise provided by an agreement of the parties.

Pricing

Price increases will be honored according to the terms of the solicitation. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to TIPS Member customer. Failure to render the participation fee to TIPS shall constitute a breach of this agreement and shall be grounds for termination of this agreement and any other agreement held with TIPS.

Participation Fees

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any Fee conditions stated in the RFP. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Vendor or vendor assigned dealer Agreements to pay the participation fee for all Agreement sales to TIPS on a monthly scheduled report or as otherwise agreed by the parties. Vendor must login to the TIPS database and use the "Submission Report" section to report sales. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS.

Failure to pay the participation fee will result in termination of Agreement and possible legal action. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's work under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC Region 8.** Per Texas Education Code §44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

State of Texas Franchise Tax

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

Miscellaneous

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order or contract modification occurs, TIPS is to be notified within 48 hours of receipt of order.

Termination for Convenience

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty-day written notice. Termination for convenience is required under Federal Regulations 2 CFR part 200. All purchase orders presented to the Vendor by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded vendor may terminate the agreement with ninety (90) days written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement.

TIPS Member Purchasing Procedures

Purchase orders or their equal are issued by participating TIPS Member to the awarded vendor and should indicate on the order that the purchase is per the applicable TIPS Agreement number. Orders are typically emailed to TIPS at tipspo@tips-usa.com.

- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating TIPS Member directly.
- Awarded vendor receives payment directly from the participating member.
- Awarded vendor reports sales monthly to TIPS (unless prior arrangements have been made with TIPS for an alternative submission schedule).

Licenses

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. TIPS and TIS Members reserves the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) expire, lapse, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

Site Requirements (only when applicable to service or job)

Cleanup: Awarded vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Awarded vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order.

Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered sex offender restrictions: For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion.

Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

Safety measures: Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking

Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes or policies.

Marketing

Awarded vendor agrees to allow TIPS to use their name and logo within TIPS website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. The Vendor may submit an acceptable use directive for Vendor's names and logos with which TIPS agrees to comply. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to TIPS@TIPS-USA.COM.

Supplemental agreements

The TIPS Member entity participating in the TIPS Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. TIPS, its agents, TIPS Members and employees shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a vendor submitting a Proposal requires TIPS and/or TIPS Member to sign an additional agreement, those agreements shall comply with the award made by TIPS to the Vendor. Supplemental Vendor's Agreement documents may not become part of TIPS's Agreement with vendor unless and until an authorized representative of TIPS reviews and approves it. TIPS permits TIPS Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's TIPS Agreement.

Survival Clause

All applicable agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

Legal obligations

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this Solicitation and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Awarded Vendor's pricing that is offered to TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing

being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm to investigate any possible non-complying conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format and at the location acceptable to Region 8 ESC or TIPS.

Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and fully particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Project Delivery Order Procedures

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded vendor under this Agreement when the TIPS Member desires goods or services awarded to the Vendor. Notification may occur via phone, the web, courier, email, fax, or in person. Upon notification of a pending request, the awarded vendor shall acknowledge the TIPS Member's request as soon as possible, but must make contact with the TIPS Member within two working days.

Status of TIPS Members as Related to This Agreement

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

Vendor's Resellers as Related to This Agreement

Vendor's Named Resellers under this Agreement shall comply with all terms and conditions of this agreement and all addenda or incorporated documents. All actions related to sales by Authorized Vendor's Resellers under this Agreement are the responsibility of the Awarded Vendor.

Support Requirements

If there is a dispute between the awarded vendor and TIPS Member, TIPS or its representatives will assist in conflict resolution or third party if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded vendors TIPS project files, documentation and correspondence related to the requesting Member's order. If there are confidentiality requirements by either party, TIPS shall comply to the extent permitted by law.

Incorporation of Solicitation

The TIPS Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

SECTION HEADERS OR TITLES

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

NEW STATUTORY REQUIREMENT EFFECTIVE SEPTEMBER 1, 2017.

Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270.

By executing this agreement, you certify that you are authorized to bind the undersigned Vendor and that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

You certify that your company is not listed on and we do not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify TIPS within 1 business day of the change by a letter on your letterhead from an authorized representative of the Vendor stating the non-compliance decision and the TIPS Agreement number and description at:

Attention: General Counsel
ESC Region 8/The Interlocal Purchasing System (TIPS)
4845 Highway 271 North
Pittsburg, TX, 75686
And by an email sent to bids@tips-usa.com

Insurance Requirements

The undersigned Vendor agrees to maintain the below minimum insurance requirements for TIPS Contract Holders.

General Liability	\$1,000,000 each Occurrence/ Aggregate
Automobile Liability	\$300,000 Includes owned, hired & non-owned
Workers' Compensation	Statutory limits
Umbrella Liability	\$1,000,000

When the contractor or its subcontractors are liable for any damages or claims, the contractors'

policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the District. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Contractor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member.

Special Terms and Conditions

- **Agreements:** All vendor orders received from TIPS Members must be emailed to TIPS at tipspo@tips-usa.com. Should a TIPS Member send an order direct to vendor, it is the vendor's responsibility to forward a copy of the order to TIPS at the email above within 3 business days and confirm its receipt with TIPS.
 - **Vendor Encouraging Members to bypass TIPS agreement:** Encouraging entities to purchase directly from the Vendor or through another agreement, when the Member has requested using the TIPS cooperative Agreement or price, and thereby bypassing the TIPS Agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.
 - **Order Confirmation:** All TIPS Member Agreement purchase orders are approved daily by TIPS and sent to vendor. The vendor should confirm receipt of orders to the TIPS Member (customer) within 3 business days.
 - **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, updated pricing when effective. TIPS shall be notified when prices change in accordance with the award.
 - **Back Ordered Products:** If product is not expected to ship within the time provided to the TIPS member by the Vendor, customer is to be notified within 3 business days and appropriate action taken based on customer request.
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Page 11 of 11 will be the TIPS Vendor Agreement Signature Page

TIPS Vendor Agreement Signature Form

RFP 181105 Cafeteria Point-of-Sale

Company Name TITAN School Solutions, Inc.

Address 19900 MacArthur Blvd., Suite 1000

City Irvine State CA Zip 92612

Phone 9164674700 Fax 9164674700

Email of Authorized Representative bblankenship@titank12.com

Name of Authorized Representative Bradley Blankenship

Title President

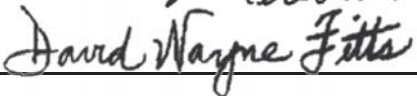
Signature of Authorized Representative 

Date 11/14/2018

TIPS Authorized Representative Name Meredith Barton

Title Vice-President of Operations

TIPS Authorized Representative Signature 

Approved by ESC Region 8 

Date 11/29/18

The Interlocal Purchasing System (TIPS Cooperative) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Rick Powell General Counsel/Procurement Compliance Officer	Address	Region VIII Education Service Center 4845 US Highway 271 North Pittsburg, TX 75686	Address
Email	rick.powell@tips-usa.com	Contact	Kristie Collins, Contracts Compliance Specialist	Contact
Phone	(903) 575-2689 x			Department Building
Fax				
Bid Number	181105			Floor/Room
Title	Cafeteria Point-of-Sale	Department Building		Telephone
Bid Type	RFP			Fax
Issue Date	11/1/2018 08:00 PM (CT)			Email
Close Date	11/27/2018 03:00:00 PM (CT)	Floor/Room		
		Telephone	+1 (866) 839-8477 x	
		Fax	+1 (866) 839-8472 x	
		Email	bids@tips-usa.com	

Supplier Information

Company Titan School Solutions, Inc.
 Address 3017 Douglas Blvd
 STE 300
 Roseville, CA 95661
 Contact
 Department
 Building
 Floor/Room
 Telephone (916) 467-4700 x700
 Fax
 Email
 Submitted 11/26/2018 12:03:41 PM (CT)
 Total \$0.00

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature Stephanie Freeman

Email sfreeman@titank12.com

Supplier Notes

Bid Notes

Bid Activities

Bid Messages

Date	Subject	Message
11/08/18	Typographical date error on RFP Specifications PDF	in the section of the specifications, TIPS listed dates under section entitled "ANTICIPATED SCHEDULE OF AWARD OR RELATED EVENT:" as 2019. This is an error and should be 2018 on the dates on this page and section.

Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	Yes - No	Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.	NO
2	Yes - No	Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at https://comptroller.texas.gov/purchasing/vendor/hub/ or in a HUBZone as defined by the US Small Business Administration at https://www.sba.gov/offices/headquarters/ohp Proof of one or both may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.	No
3	Yes - No	The Vendor can provide services and/or products to all 50 US States?	Yes
4	States Served:	If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)	
5	Company and/or Product Description:	This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)	TITAN School Solutions is Making Schools Stronger by bringing state-of-the art efficiencies and real time transparency to school foodservice. TITAN founders are school information technology veterans. We have created scalable and affordable, web-based management solutions to help districts and schools like yours succeed and remain focused more on education and less on administration. TITAN offers an entirely Software as a Service (SaaS) cloud-based platform. TITAN performs all maintenance, upgrades, and backups to be expected with an enterprise platform. We support Google Chrome, Microsoft Edge, and Apple's Safari on all supported operating systems such as Windows, OS X, and Android. There is no software to install, maintain, or upgrade; ever.
6	Primary Contact Name	Primary Contact Name	Bradley Blankenship
7	Primary Contact Title	Primary Contact Title	President
8	Primary Contact Email	Primary Contact Email	bblankenship@titank12.com

9	Primary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	9164674700
10	Primary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	9164674700
11	Primary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	9165992003
12	Secondary Contact Name	Secondary Contact Name	Stephanie Freeman
13	Secondary Contact Title	Secondary Contact Title	Sales Support Manager
14	Secondary Contact Email	Secondary Contact Email	sfreeman@titank12.com
15	Secondary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	9164674700
16	Secondary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	9164674700
17	Secondary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	5592596579
18	Admin Fee Contact Name	Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS.	Bradley Blankenship
19	Admin Fee Contact Email	Admin Fee Contact Email	bblankenship@titank12.com
20	Admin Fee Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	9154674700
21	Purchase Order Contact Name	Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS.	Stephanie Freeman
22	Purchase Order Contact Email	Purchase Order Contact Email	sfreeman@titank12.com
23	Purchase Order Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	9164674700
24	Company Website	Company Website (Format - www.company.com)	http://titank12.com
25	Federal ID Number:	Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789)	46-5546777
26	Primary Address	Primary Address	19900 MacArthur Blvd. #1000
27	Primary Address City	Primary Address City	IRVINE
28	Primary Address State	Primary Address State (2 Digit Abbreviation)	CA
29	Primary Address Zip	Primary Address Zip	92612
30	Search Words:	Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)	point of service, point-of-sale, POS, Free and Reduced, Application Processing, menu planning, inventory, online payments, general ledger, accounts payable, accounts receivable, purchasing, school nutrition, cafeteria software, cloud based, software as a service, online applications, child nutrition, USDA, vending.

31	Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?	<p>Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that are provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR)compliant.</p> <p>Do you want TIPS Members to be able to spend Federal grant funds with you if awarded and is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?</p>	Yes
32	Yes - No	<p>Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner:</p> <p>(A) has its principal place of business in Texas;</p> <p>OR</p> <p>(B) employs at least 500 persons in Texas?</p>	No
33	Company Residence (City)	Vendor's principal place of business is in the city of?	IRVINE
34	Company Residence (State)	Vendor's principal place of business is in the state of?	CA
35	Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION	<p>Remember this is a MINIMUM discount percentage so, be sure the discount percentage inserted here can be applied to ANY OFFERING OF GOODS OR SERVICES THROUGH OUT THE LIFE OF THE CONTRACT</p> <p>CAUTION: BE CERTAIN YOU CAN HONOR THIS MINIMUM DISCOUNT PERCENTAGE ON ANY OFFERED SERVICE OR GOOD.</p> <p>What is the MINIMUM percentage discount off of any item or service you offer to TIPS Members that is in your regular catalog (as defined in the RFP document), website, store or shelf pricing? The resulting price of any goods or services Catalog list prices after this discount is applied is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale. Must answer with a number between 0% and 100%.</p>	0%
36	TIPS administration fee	By submitting a proposal, I agree that all pricing submitted to TIPS shall include the participation fee, as designated in the solicitation or as otherwise agreed in writing and shall be remitted to TIPS by the Vendor as agreed in the Vendor agreement. I agree that the fee shall not and will not be added by the vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.	(No Response Required)
37	Yes - No	Vendor agrees to remit to TIPS the required administration fee? Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.	Yes
38	Yes - No	Do you offer additional discounts to TIPS members for large order quantities or large scope of work?	Yes
39	Years Experience	Company years experience in this category? This is an evaluation criterion worth a maximum of 10 points. See RFP for more information.	4

40	Resellers:	Does the vendor have resellers that it will name under this contract? Resellers are defined as other companies that sell your products under an agreement with you, the awarded vendor of TIPS. BIGmart is a reseller of ACME brand televisions. If ACME were a TIPS awarded vendor, then ACME would list BIGmart as a reseller. applicable, vendor should download the Reseller/Dealers spreadsheet from the Attachments section, fill out the form and submit the document in the "Response Attachments" RESELLERS section.	No
41	Pricing discount percentage are guaranteed for?	Does the vendor agrees to honor the proposed pricing discount percentage off regular catalog (as defined in the RFP document), website, store or shelf pricing for the term of the award?	YES
42	Right of Refusal	Does the proposing vendor wish to reserve the right not to perform under the awarded agreement with a TIPS member at vendor's discretion?	No
43	NON-COLLUSIVE BIDDING CERTIFICATE	<p>By submission of this bid or proposal, the Bidder certifies that:</p> <p>1)This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor;</p> <p>2)This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor:</p> <p>3)No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;</p> <p>4)The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf.</p> <p>Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.</p>	(No Response Required)
44	CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ - Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?	<p>Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS. may find the Blank CIQ form on our website at:</p> <p>Copy and Paste the following link into a new browser or tab:</p> <p>https://www.tips-usa.com/assets/documents/docs/CIQ.pdf</p> <p>There is an optional upload for this form provided if you have a conflict and must file the form.</p>	No
45	Filing of Form CIQ	If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above?	
46	Regulatory Standing	I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not, please explain in the next attribute question.	Yes

- 47 Regulatory Standing Regulatory Standing explanation of no answer on previous question.
- 48 Antitrust Certification Statements (Tex. Government Code § 2155.005) By submission of this bid or proposal, the Bidder certifies that: (No Response Required)
I affirm under penalty of perjury of the laws of the State of Texas that:
- (1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;
- (2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- (3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law;
- (4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Instructions for Certification: By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions. (No Response Required)

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

50 Suspension or Debarment Certification

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above. Yes
and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive
Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

51 Non-Discrimination Statement and Certification

In accordance with Federal civil rights law, all U.S. Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Yes

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities) U.S. Departments, including the USDA are equal opportunity provider, employer, and lender. Not a negotiable term. Failure to agree by answering YES will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.

52 2 CFR PART 200 Contract Provisions Explanation

Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members: following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

(No Response Required)

The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the

non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

53 2 CFR PART 200 Contracts

Contracts for more than the simplified acquisition threshold Yes
currently set at \$150,000, which is the inflation adjusted
amount determined by the Civilian Agency Acquisition
Council and the Defense Acquisition Regulations Council
(Councils) as authorized by 41 U.S.C. 1908, must address
administrative, contractual, or legal remedies in instances
where contractors violate or breach contract terms, and
provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are
expended by ESC Region 8 and TIPS Members, ESC
Region 8 and TIPS Members reserves all rights and
privileges under the applicable laws and regulations with
respect to this procurement in the event of breach of
contract by either party.

Does vendor agree?

54 2 CFR PART 200 Termination

Termination for cause and for convenience by the grantee Yes
or subgrantee including the manner by which it will be
effected and the basis for settlement. (All contracts in
excess of \$10,000)

Pursuant to the above, when federal funds are expended
by ESC Region 8 and TIPS Members, ESC Region 8 and
TIPS Members reserves the right to terminate any
agreement in excess
of \$10,000 resulting from this procurement process for
cause after giving the vendor an appropriate opportunity
and up to 30 days, to cure the causal breach of terms and
conditions. ESC Region 8 and
TIPS Members reserves the right to terminate any
agreement in excess of \$10,000 resulting from this
procurement process for convenience with 30 days notice
in writing to the awarded vendor. The vendor
would be compensated for work performed and goods
procured as of the termination date if for convenience of
the ESC Region 8 and TIPS Members. Any award under
this procurement process is not exclusive and the ESC
Region 8 and TIPS reserves the right to purchase goods
and services from other vendors when it is in the best
interest of the ESC Region 8 and TIPS.

Does vendor agree?

55 2 CFR PART 200 Clean Air Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Yes
Water Pollution Control Act (33 U.S.C. 1251-1387), as
amended—Contracts and subgrants of amounts in excess
of \$150,000 must contain a provision that requires the
non-Federal award to agree to comply with all applicable
standards, orders or regulations issued pursuant to the
Clean Air Act (42 U.S.C. 7401-7671q) and the Federal
Water Pollution Control Act as amended (33 U.S.C.
1251-1387). Violations must be reported to the Federal
awarding agency and the Regional Office of the
Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal
funds are expended by ESC Region 8 and TIPS Members,
ESC Region 8 and TIPS Members requires that the
proposer certify that during the term of
an award by the ESC Region 8 and TIPS Members
resulting from this procurement process the vendor agrees
to comply with all of the above regulations, including all of
the terms listed and referenced therein.

Does vendor agree?

56 2 CFR PART 200 Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Yes

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.

Does vendor agree?

57 2 CFR PART 200 Federal Rule

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

Yes

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$100,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify that it is in compliance with the Clean Air Act?

58 2 CFR PART 200 Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Yes

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

59 Certification Regarding Lobbying

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds I HAVE NOT Lobbied per above

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. undersigned certifies, to the best of his or her knowledge and belief, that:

(1)No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2)If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.

(3)The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

60 If you answered "I HAVE lobbied per above to the previous question.

IF you answered "I HAVE lobbied" per above Attribute question, you must download the Lobbying Report "Standard From LLL, disclosure Form to Report Lobbying" which includes instruction on completing the form, complete and submit it in the Response Attachments section as a report of the lobbying activities you performed or paid others to perform.

(No Response Required)

61 Subcontracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful? NO

IF NO, DO NOT ANSWER THE NEXT ATTRIBUTE QUESTION. . IF YES, and ONLY IF YES, you must answer the next question YES if you want a TIPS Member to be authorized to spend Federal Grant Funds for Procurement.

62 ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?	<p>ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?</p> <p>Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.</p> <p>(b)Affirmative steps must include:(1)Placing qualified small and minority businesses and women's business enterprises on solicitation lists;</p> <p>(2)Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;</p> <p>(3)Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;</p> <p>(4)Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;</p> <p>(5)Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and</p> <p>(6)Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.</p>	
63 Indemnification	<p>The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws</p>	Yes

of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

64 Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder MAY be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Yes, I Agree

Do you agree to these terms?

65 Remedies Explanation of No Answer

66 Choice of Law

The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles. THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.

Yes

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

67 Jurisdiction and Service of Process	<p>Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Venue clauses in contracts with TIPS members may be determined by the parties.</p> <p>Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?</p>	Yes
68 Infringement(s)	<p>The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.</p> <p>Do you agree to these terms?</p>	Yes, I Agree
69 Infringement(s) Explanation of No Answer		
70 Contract Governance	<p>Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.</p>	Yes

71 Payment Terms and Funding Out Clause

Payment Terms:

Yes

TIPS or TIPS members shall not be liable for interest or late payment fees on past due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding Out Clause:

Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

See statute(s) for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

Do you agree to these terms?

72 Insurance and Fingerprint Requirements Information

Insurance

(No Response Required)

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion: will have continuing duties related to the contracted services; and

(2) has or will have direct contact with students you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at

NCJU@txdps.state.tx.us and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474. form in the next attribute to complete entitled:

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

73 Texas Education Code Chapter 22 Contractor
Certification for Contractor Employees

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. certify that: (Section A) of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided. (Section B) or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

- 74 Texas Business and Commerce Code § 272 Requirements as of 9-1-2017 SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES. (No Response Required)
- 75 Texas Government Code 2270 Verification Form Texas Government Code 2270 Verification Form YES
 Texas 2017 House Bill 89 has been signed into law by the governor and as of September 1, 2017 will be codified as Texas Government Code § 2270 and 808 et seq.
 The relevant section addressed by this form reads as follows:
 Texas Government Code Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.engaged by
 ESC Region 8/The Interlocal Purchasing System (TIPS)
 4845 Highway 271 North
 Pittsburg,TX,75686
 verify by this writing that the above-named company affirms that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract, or any contract with the above-named Texas governmental entity in the future. I further affirm that if our company's position on this issue is reversed and this affirmation is no longer valid, that the above-named Texas governmental entity will be notified in writing within one (1) business day and we understand that our company's failure to affirm and comply with the requirements of Texas Government Code 2270 et seq. shall be grounds for immediate contract termination without penalty to the above-named Texas governmental entity.
 AND
 our company is not listed on and we do not do business with companies that are on the the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>
 I swear and affirm that the above is true and correct.

76	Logos and other company marks	<p>Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred</p> <p>Potential uses of company logo: Your Vendor Profile Page of TIPS website Potentially on TIPS website scroll bar for Top Performing Vendors TIPS Quarterly eNewsletter sent to TIPS Members Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)</p>	(No Response Required)
77	Solicitation Deviation/Compliance	Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?	Yes
78	Solicitation Exceptions/Deviations Explanation	<p>If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.</p> <p>TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.</p> <p>In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.</p>	
79	Agreement Deviation/Compliance	Does the vendor agree with the language in the Vendor Agreement?	Yes
80	Agreement Exceptions/Deviations Explanation	<p>If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.</p>	

81 Felony Conviction Notice

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." (c) This section does not apply to a publicly held corporation. The person completing this proposal certifies that they are authorized to provide the answer to this question.

B. Firm not owned nor operated by felon; per above

Select A., B. or C.

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

OR B. My firm is not owned nor operated by anyone who has been convicted of a felony, OR

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony. (if you answer C below, you are required to provide information in the next attribute.

82 If you answered C. My Firm is owned or operated by a felon to the previous question, you are REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.

If you answered C. My Firm is owned or operated by a felon to the previous question, you must provide the following information.

1. Name of Felon(s)
2. The named person's role in the firm, and
3. Details of Conviction(s).

83 Long Term Cost Evaluation Criterion # 4.

READ CAREFULLY and see in the RFP document under "Proposal Scoring and Evaluation". Points will be assigned to this criterion based on your answer to this Attribute. Points are awarded if you agree not increase your catalog prices (as defined herein) more than X% annually over the previous year for years two and three and potentially year four, unless an exigent circumstance exists in the marketplace and the excess price increase which exceeds X% annually is supported by documentation provided by you and your suppliers and shared with TIPS, if requested. If you agree NOT to increase prices more than 5%, except when justified by supporting documentation, you are awarded 10 points; if 6% to 14%, except when justified by supporting documentation, you receive 1 to 9 points incrementally. Price increases 14% or greater, except when justified by supporting documentation, receive 0 points.

increases will be 5% or less annually per question

Line Items		
Response Total:		\$0.00

REFERENCES

Please provide three (3) references, preferably from school districts or other governmental entities who have used your services within the last three years. Additional references may be required. DO NOT INCLUDE TIPS EMPLOYEES AS A REFERENCE.

You may provide more than three (3) references.

Entity Name	Contact Person	VALID EMAIL IS REQUIRED	Phone
Mount Diablo Unified School District (TIPS Member)	Dominic Machi	machid@mdusd.org	925-682-8000 x 4124
Phoenix Union High School District	Nancy Cohen	ncohen@phoenixunion.org	602-764-7901
Torrance Unified School District	LaShonta Netherly	netherly.lashonta@tusd.org	310-972-6350
Washington Elementary School District	Connie Parmenter	connie.parmenter@wesdschools.org	602-896-5230
Selma Unified School District	Alex Carillo	acarillo@selmausd.org	559-898-6513 x 46513
Palos Verdes Peninsula Unified School District	Christina Lin	linc@pvpusd.net	310-732-0900 x 781
Apple Valley School District	Rose Stark	rose_stark@avusd.org	760-247-8001 x 353
Burbank Unified School District	Kathy Sessinghaus	kathysessinghaus@burbankusd.org	818-729-4540
Brea Olinda Unified School District	Stefanie Zoellner	szoellner@bousd.us	714-990-7805

CERTIFICATION BY CORPORATE OFFERER

COMPLETE ONLY IF OFFERER IS A CORPORATION,

THE FOLLOWING CERTIFICATE SHOULD BE EXECUTED AND INCLUDED AS PART OF PROPOSAL FORM/PROPOSAL FORM.

OFFERER: TITAN School Solutions, Inc.
(Name of Corporation)

Bradley Blankenship _____ certify that I am the Secretary of the Corporation
I, (Name of Corporate Secretary)

named as OFFERER herein above; that

Paul Conklin _____
(Name of person who completed proposal document)

who signed the foregoing proposal on behalf of the corporation offerer is the authorized person that is acting as

Vice President of Sales _____
(Title/Position of person signing proposal/offer document within the corporation)

of the said Corporation; that said proposal/offer was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

CORPORATE SEAL if available



SIGNATURE

11/15/2018 _____
DATE

Insert TIPS RFP # 181105 Cafeteria Point of Sale

**FAILURE TO PROPERLY COMPLETE THIS FORM AND SUBMIT WITH YOUR RESPONSE MAY RESULT IN A
WAIVER OF YOUR RIGHTS UNDER THE LAW TO MAINTAIN CONFIDENTIALITY TREATMENT OF
SUBMITTED MATERIALS.**

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential information and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), **you must make a copy of all claimed confidential materials within your proposal and put this COMPLETED form as a cover sheet to said materials then scan, name "CONFIDENTIAL" and upload with your proposal submission.** (You must include the confidential information in the submitted proposal as well, the copy uploaded is to indicate which material in your proposal, if any, you deem confidential in the event the receives a Public Information Request.) ESC8 and TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law. Pricing of solicited product or service may be deemed as public information under Chapter 552 Texas Gov't Code. The Office of Texas Attorney General shall make the final determination whether the information held by ESC8 and TIPS is confidential and exempt from public disclosure.

If you claim that parts of your proposal are confidential, complete the top section below.

I claim part of my proposal to be confidential and DO NOT desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.

Name of company claiming confidential status of material

Printed Name and Title of authorized company officer claiming confidential status of material

Address	City	State	ZIP	Phone
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ATTACHED ARE COPIES OF _____ PAGES OF CONFIDENTIAL MATERIAL FROM OUR PROPOSAL

Signature _____ Date _____

OR _____

If you do not claim any of your proposal to be confidential, complete the section below only.

Express Waiver: I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.

Paul Conklin

Vice President of Sales

Printed Name authorized company officer

Title of authorized company officer

19900 MacArthur Blvd, Suite 1000 Irvine

CA 92612

9164674700

Address

City

State

ZIP

Phone

Signature 

Date 11/15/2018

Warranty

Hardware Warranty

Input Devices: 1 Year Warranty.

TITAN warrants input devices to be in good working order and free from defects in materials and workmanship under normal use for a period of One-Year from the date of purchase. Any abuse, including opening the case, will void the warranty. Your sole remedy and TITAN's entire liability for this product will be repair or replacement as provided for above, or at TITAN's option, the refund of your purchase price. A Return Material Authorization (RMA) Number must be obtained before returning a product. This warranty covers parts, labor, and return shipping only. The customer shall be responsible for the shipping cost of sending the product to the manufacturer. TITAN will send the repaired, or replaced, product via UPS ground at our cost. Any shipping method requested which differs from this shall not be covered by this warranty.

Aures Yuno All-in-One Touchscreen Computers: 4 Year Warranty

Any goods supplied by AURES that are found to be faulty 'out of the box' within 5 working days of delivery will be picked up and returned to AURES at our cost. All other goods must be returned to AURES at your cost. Products returned for failures covered by the warranty will be repaired and returned at no cost to you. Products returned outside of warranty, or with faults not covered by the warranty, will be repaired only after agreement has been given to proceed. Return carriage to your site will be invoiced along with the repair charge. All non-warranty products returned to AURES Technologies, Inc. for repair will incur a non-negotiable inspection, cleaning and handling fee of \$45.00 for system/displays & \$20.00 for printer/scanner. Goods damaged or lost in transit between your site and AURES will be your responsibility. You will be responsible to make claims directly with your chosen courier. A repair report will be issued after inspection describing the fault and outlining the costs of repair (including costs for replacement parts and components.) It is your responsibility to advise us if you want the repair to proceed within 28 working days of receipt of this report. Failure to do so will result in the product being returned and an invoice raised for the inspection fee and return carriage.

Returns

Purchaser may return hardware within thirty (30) days of receipt of hardware only if hardware is in original packaging and in original condition. A 15% restocking fee will be charged on return items. Purchaser will be responsible for shipping fees on the return of the hardware. Purchaser will need to contact TITAN for a Return Material Authorization (RMA) Number.

Software Warranty & Disclaimer

Following is the TITAN Master Subscription Agreement which contains the Software Warranty & Disclaimer in Section 7





Master Subscription Agreement

PLEASE READ THIS MASTER SUBSCRIPTION AGREEMENT CAREFULLY BEFORE ACCEPTING THE TERMS AND CONDITIONS OF THIS MASTER SUBSCRIPTION AGREEMENT, ANY ADDITIONAL TERMS AND ANY ORDER FORMS ENTERED INTO BY YOU AND TITAN SCHOOL SOLUTIONS INC. ("TITAN") ARE COLLECTIVELY REFERRED TO AS THE "AGREEMENT." UNLESS OTHERWISE DEFINED HEREIN, CAPITALIZED TERMS SHALL HAVE THE MEANINGS SET FORTH IN SECTION 11 BELOW.

BY ACCEPTING, YOU ARE AGREEING ON BEHALF OF THE ENTITY ORDERING THE TITAN PRODUCT ("YOU") THAT YOU WILL BE BOUND BY AND BECOME A PARTY TO THE AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT OR DO NOT HAVE THE AUTHORITY TO BIND THIS AGREEMENT, DO NOT SIGN (EITHER MANUALLY OR ELECTRONICALLY) THE ORDER FORM ISSUED TO YOU BY TITAN.

1. Subscription.

1. Use of the TITAN Product.

1. Terms of Use. The parties acknowledge and agree that the terms and conditions contained in this Agreement and the terms of use, which are attached in Exhibit A, will govern Your use of the TITAN Product for the Subscription Term, unless explicitly stated otherwise in a written agreement between the parties.
2. TITAN Product Features and Components. TITAN reserves the right to make modifications to the TITAN Product or particular features or components of the TITAN Product, from time to time, at its sole discretion. TITAN will exercise reasonable commercial efforts to notify You of any such material modifications to the TITAN Product, provided however, that TITAN will not have any liability for failure to provide such notice.
2. Support. During the Subscription Term, and at no additional charge to you, TITAN shall provide you technical assistance by telephone on use of the Software, the identification of Software problems, and the reporting of Errors. TITAN will respond to phone calls from Support Contacts, identified by You, pursuant to the terms, which are attached in Exhibit B (the "Support Services"). You shall designate in writing to TITAN no more than three (3) technical contacts to request and receive telephone support services from TITAN.
3. Professional Services. If purchased by you and set forth on an Invoice, TITAN will provide services which will enable attendees to use the Software which are periodically held at TITAN's facilities or at other locations as TITAN and you may agree ("Professional Services"). In consideration of payment of the fees associated with the Professional Services set forth on an Invoice, you are entitled to receive the number of hours of Professional Services as indicated on the Invoice. You shall be solely responsible for all transportation, lodging, meals or any other expenses incurred by TITAN or your Users attending such Services. If you purchased hardware from TITAN, Professional Services may include installation of hardware as well. In the event You cancel or postpone scheduled Professional Services within 14 days of the agreed upon date, You are responsible for all expenses incurred by TITAN and fifty-percent (50%) of the scheduled Professional Services fee. All quoted installation dates, including dates related to terms such as "installation," "completion of training" and "live," if any, are estimates only.
4. Your Responsibilities. You shall: (a) be responsible for all Your Users' compliance with the terms and conditions of this Agreement, (b) be solely responsible for the accuracy, integrity, and legality of Your Data and the means by which it acquires and uses such Your Data, (c) use the TITAN Product only in accordance

Titan School Solutions, Inc. - Confidential

with the applicable online user guide and applicable laws, rules, regulations (including, without limitation, export, data protection and privacy laws, rules and regulations) and any TITAN Product documentation, (d) use commercially reasonable efforts to prevent unauthorized access to or use of the TITAN Product, and (e) notify TITAN in writing immediately of (i) any unauthorized use of, or access to, the TITAN Product or any User account or password thereof or (ii) any notice or charge of noncompliance with any applicable law, rule or regulation asserted or filed against You in connection with Your Data. For the avoidance of doubt, User accounts and passwords are specific to individual Users, and under no circumstances may User accounts or passwords be shared among or by different Users; provided, however, that Your administrator(s) may reassign a User account during the Subscription Term, if a former User no longer requires a User account.

5. Restrictions. You shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to the TITAN Product or any modified version or derivative work of the TITAN Product created by or for You, (b) provide the TITAN Product, or any modified version or derivative work of the TITAN Product created by or for You, on a timesharing, service bureau or other similar basis, (c) remove or alter any copyright, trademark or proprietary notice in the TITAN Product, (d) copy any features, functions or graphics of the TITAN Product for any purpose other than what is expressly authorized in this Agreement, (e) modify, remove or disable any portion of the Titan Product, (f) send, store, or authorize a third party to send or store spam, unlawful, infringing, obscene or libelous material, or Malicious Code, (g) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the TITAN Product or Your Data contained therein, (h) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, the TITAN Product, (i) use any Intellectual Property Rights protected by applicable laws and contained in or accessible through the TITAN Product for the purpose of building a competitive product or service or copying its features or user interface, or (j) use the TITAN Product, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without TITAN's prior written consent.
6. Third Parties. You may use third party contractors to assist with the installation, use and modification of the TITAN Product for Your own internal business use, including creation of Modifications on Your behalf. You agree not to disclose any Confidential Information of TITAN to any contractor or allow any subcontractor to create Modifications unless and until the contractor has agreed in writing to (a) protect the confidentiality of such Confidential Information in the manner required by Section 6 and then only to the extent necessary for the contractor to perform those services subcontracted to it, and (b) assign all such contractor's rights, title and interests (including all Intellectual Property Rights) in such Modifications to You to ensure You can comply with Section 3.1.1. You will be solely responsible for all payments to its contractors and will remain responsible for compliance by its contractors with the terms and conditions of this Agreement.

2. **Third-Party Software; Third-Party Modules.**

1. Third-Party Software. The TITAN Product utilizes or includes certain Third Party Software. Your use of the TITAN Product, including all Third Party Software accessible via APIs, is governed by the applicable Third-Party Software terms and conditions. If a Third Party Software provider requires TITAN to remove such software from the TITAN Product due to violation of applicable law or third-party rights, You agree to cooperate with TITAN to ensure its removal from the TITAN Product and Your systems.

2. Third-Party Modules. You may use Third-Party Modules to add functionality to the TITAN Product, provided that such use is limited to internal use by You in a manner that does not violate any provisions of Section 1.6. Any use by You of Third-Party Modules and any exchange of Your Data between You and the Third-Party Module provider are solely between You and the Third-Party Module provider. TITAN does not warrant or support Third-Party Modules.
3. Third-Party Privacy Policies. You understands and agrees that any of Your Data exchanged with Third-Party Software or Third-Party Module is governed by that provider's respective privacy policy.
4. Third Party APIs. Features that interoperate with third party services (such as Google) depend on the continuing availability of the API and program for use with the TITAN Product. If a third party ceases to make the API or program available on reasonable terms to TITAN, TITAN may cease providing such third party features without entitling You to any refund, credit, or other compensation.

3. **Proprietary Rights and Data Protection.**

1. Ownership.
 1. Ownership of TITAN Product and Modifications. TITAN owns all right, title and interest, including all Intellectual Property Rights, in and to the TITAN Product, any and all Modifications (collectively, the "TITAN Property"). You hereby assign and agree to assign to TITAN all right, title and interest worldwide in the Intellectual Property Rights embodied in any and all Modifications. To the extent any of the rights, title and interest are not assignable by You to TITAN, You grant and agree to grant to TITAN an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) under Your Intellectual Property Rights to use, disclose, reproduce, license, sell, offer for sale, distribute, import and otherwise exploit the Modifications in its discretion, without restriction or obligation of any kind or nature. Except as expressly stated otherwise in this Agreement, TITAN retains all of its right, title and ownership interest in and to the TITAN Property, and no other Intellectual Property Rights or license rights are granted by TITAN to You under this Agreement, either expressly or by implication, estoppel or otherwise, including, but not limited to, any rights under any of TITAN'S or its Affiliates patents.
 2. Trademarks. TITAN's name, logo, trade names and trademarks are owned by TITAN, and no right is granted to You to use any of the foregoing except as expressly permitted herein or by written consent of TITAN.
 3. Freedom to Operate and Innovate. Nothing in this Section 3 shall inhibit, hamper, encumber or otherwise impede TITAN'S freedom to create Modifications or improve, extend and/or modify any and all TITAN Products.
 4. Suggestions. You or your Users may, from time to time, provide suggestions, enhancement or feature requests or other feedback to TITAN with respect to the TITAN Property or other TITAN products, services or related documentation (whether or not such is disclosed or delivered by TITAN to You under this Agreement) (collectively, "Feedback"). You agrees that all Feedback is and shall be given by You is entirely voluntarily. TITAN shall be free to use, disclose, reproduce, license or otherwise distribute and exploit the Feedback in its discretion, without restriction or obligation of any kind or nature. Feedback, even if designated as confidential by You, shall not create any obligation of confidentiality for TITAN, unless TITAN expressly agrees so in writing.

2. Your Data/Your Information.

1. Ownership of Your Data. You own and retain all Intellectual Property Rights in and to Your Data.
2. Data Processing. You grant TITAN the right to use, access and process Your Data solely to the extent necessary for TITAN to provide the TITAN Product and services to You, including, without limitation to address service or technical problems, or at Your request, in connection with providing Support Services to You. TITAN agrees not to use, access, disclose or process any of Your Data, except (a) to perform the obligations under this Agreement, (b) comply with applicable laws, and (c) in accordance with the Terms of Use in Exhibit A, attached hereto.
3. Non-Modification and Non-Disclosure. TITAN shall not (a) modify Your Data, or (b) disclose Your Data except as compelled by law in accordance with Section 6.1, as expressly set forth in this Agreement or as otherwise permitted in writing by You.
4. Business Information. You agree to allow TITAN and its Affiliates to store and use Your business contact information, including names, business phone numbers, and business e-mail addresses, anywhere it does business. Such information will be processed and used in connection with TITAN'S business relationship, and may be provided to contractors acting on TITAN'S behalf, TITAN'S business partners who promote, market and support certain TITAN products and services, and assignees of TITAN and its subsidiaries for uses consistent with TITAN'S business relationship.

3. Data Protection.

1. Relationship of the Parties. To the extent that Your Data contains personal data about any living individual ("Data"), TITAN will process that Data only as a Data Processor acting on behalf of You (as the Data Controller) and in accordance with the requirements of this Agreement.
2. Your Compliance with Privacy Laws. You will at all times comply in full with the requirements of any applicable privacy and data protection laws.
3. Purpose Limitation. TITAN will process the Data in accordance with Your instructions under Applicable Privacy Law(s) and will not: (a) assume any responsibility for determining the purposes for which and the manner in which the Data is processed, or (b) process the Data for its own purposes.
4. Usage Data.
 - (a). In the course of providing You with the services described in the Agreement, TITAN may also collect, use, process and store diagnostic and usage related content from the computer, mobile phone or other devices Your Users use to access the TITAN Product or Service. This may include, but is not limited to, IP addresses and other information like internet service, location, the type of browser and modules that are used and/or accessed (the "Usage Data"). Usage Data does not, however, include Your Data.
5. Aggregated Data Use. Notwithstanding Sections 3.3.3 or 3.3.4, You agree that TITAN may process the Data and Usage Data to create and compile anonymized, aggregated datasets and/or statistics about the TITAN products or services in order to: (a) maintain and improve the performance and integrity of TITAN products or services, (b) understand which TITAN products or services are most commonly deployed and preferred by customers and how customers interact with TITAN products

or services, (c) identify the types of TITAN services that may require additional maintenance or support, and (d) comply with all regulatory, legislative and/or contractual requirements, provided in each case that such aggregated datasets and statistics will not enable You or any living individual to be identified.

6. Security. TITAN will have in place and will maintain throughout the Term, appropriate technical and organizational measures against accidental or unauthorized destruction, loss, alteration or disclosure of the Data, and adequate security programs and procedures to ensure that unauthorized persons will not have access to any equipment used to process the Data.
7. Subprocessing. You authorize TITAN to subcontract processing of Data under this Agreement to a third party provided that: (a) TITAN flows down its obligations under this Section 3.3, to protect the Data in full, to any subcontractor it appoints, such that the data processing terms of the subcontract are no less onerous than the data processing terms set out in this Section 3.3, and (b) TITAN will remain fully liable to You for the acts, errors and omissions of any subcontractor it appoints to process the Data.
8. Adequacy. TITAN will at all times provide an adequate level of protection for Data that it processes on behalf of You.
9. HIPAA and PHI in Relation to TITAN Products. You understand and acknowledges that neither the Service nor the TITAN Products or systems are configured to receive and store personal health information ("PHI"), as that term is defined under the Health Insurance Portability and Accountability Act ("HIPAA") and that TITAN is neither a "Covered Entity" nor a "Business Associate," as those terms are defined in HIPAA. As such, You agree, on behalf of itself and its Users, not to use the TITAN Products or provide access to or submit any PHI to TITAN when requesting technical and or Support Services, in either case, to, directly or indirectly, submit, store or include any PHI as part of the Your Data. You agree that TITAN may terminate this Agreement immediately, if You are found to be in violation of this Section.
10. Family Educational Rights and Privacy Act (FERPA). TITAN shall comply in all respects with the Family Educational Rights and Privacy Act (FERPA) and all other state and federal laws applicable to the security and confidentiality of pupil records. TITAN will designate and train responsible individuals on ensuring the security and confidentiality of pupil records and TITAN will establish and validate that security protocols that are in use at their facilities or leased facilities meet or exceed the stated and expected security surrounding FERPA which include firewalls, intrusion detection, web based security and authentication protocols. In addition, TITAN will provide such information reasonably requested by You in order for You to verify TITAN's compliance with FERPA and such other state and federal laws applicable to the security and confidentiality of pupil records.
11. Security Breach. In the event of a security breach, TITAN will notify You and those affected by such breach regarding the extent of the breach, time of the breach, and steps taken to ensure their security and privacy. TITAN will use commercially reasonable efforts to notify those affected within 48 hours. TITAN will notify the Child Nutrition Director via telephone & email; parents will be notified via email.
12. Privacy Policy. You acknowledge that TITAN's privacy policy (which may be viewed at [____]) shall apply to any Personal Data received or collected by TITAN from the Users.

4. Payment.

1. Fees and Payment. You agree to pay all fees specified in the relevant Order Form. Except as otherwise provided, fees set forth in each Order Form hereunder will be: (a) fixed during the Subscription Term set forth in such Order Form, (b) quoted and payable in United States dollars, and (c) non-cancelable and non-refundable. Fees are due thirty (30) days from the invoice date, unless otherwise noted in an Order Form. You agree to provide TITAN with complete and accurate billing and contact information and to notify TITAN of any changes to such information.
2. Additional Licenses. Additional User licenses may be added during any given month at the then-current Subscription fee. You understand and agree that You will be charged a pro-rata fee for the initial month in which licenses are added and for each of the monthly periods remaining in the then-current Subscription Term. The Subscription Term for the additional licenses will terminate on the same date as the pre-existing Subscriptions. You will be responsible for submitting a new Order Form to TITAN to request the additional licenses during the Subscription Term. You also understand and agree that the number of Subscription licenses purchased under a specific Order Form cannot be decreased during the relevant Subscription Term set forth on such Order Form.
3. Renewal. All fees required for renewal of a Subscription Term will be reflected in a quotation issued by TITAN in advance of the expiration of the current Subscription Term (each a “Renewal Quote”), and any pricing or changes in the number of Licenses for such renewal Subscription Term will be reflected in the Renewal Quote. Fees for any subsequent renewals shall be set at the then-current TITAN pricing, unless otherwise stated on the Order Form, Renewal Quote or otherwise agreed to in writing by the parties.
4. Overdue Charges. Overdue amounts are subject to interest at a rate of one percent (1.0%) per month, or the maximum rate permitted by law, whichever is lower. If any charge owing by You to TITAN is thirty (30) days or more overdue, TITAN may, without limiting its other right and remedies, suspend services until such amounts are paid in full.
5. Taxes. Unless otherwise provided, fees specified in quotes or Order Forms, do not include any Taxes, and You are responsible for payment and reimbursement of all Taxes associated with its purchases hereunder.

5. Term and Termination.

1. Term. This Agreement commences on the Effective Date and continues for a period set forth in the Order Form (the “Term”).
2. Termination by You or TITAN. Either party may terminate this Agreement and any then-current Order Forms prior to the end of a Subscription Term if the other party: (i) materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for thirty (30) days following written notice of the breach or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
3. Effect of Termination. No refund of payments will be made, unless termination of this Agreement and any then-current Order Forms is a result of a breach by TITAN under Section 5.2, in which case You will be entitled to a refund of the pro rata portion of fees associated with the remainder of the Subscription Term. You understand and agree that upon expiration of the Subscription Term or termination of this Agreement, whichever occurs first, the rights granted under this Agreement and, in connection with any then-current Order Forms, will be immediately revoked and TITAN may immediately deactivate Your account. At TITAN’s

request, you agree to return any hardware provided to You as part of the TITAN Product. You acknowledge and agree that TITAN may keep copies of Your Data solely to the extent necessary for the performance of its obligations under this Agreement. In no event shall any termination relieve You of the obligation to pay any fees payable to TITAN for the period prior to the effective date of termination, unless otherwise stated in this Agreement.

4. Surviving Provisions. Sections 1.5, 3.1, 3.3.4(a), 3.3.4(b), 3.3.5, 4, 5.4, 6, 7.3, 8, 9, 10, 11 and 12 shall survive termination or expiration of this Agreement.

6. Confidentiality.

1. Confidentiality. The parties acknowledge that in the course of performing their obligations under this Agreement, each may receive Confidential Information. Each party covenants and agrees that neither it nor its agents, employees, officers, directors or representatives will disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (a) to those employees, representatives, or contractors of the Receiving Party who require access to the Confidential Information to exercise its rights under this Agreement and who are bound by written agreement, with terms at least as restrictive as these, not to disclose third-party confidential or proprietary information disclosed to such party, or (b) as such disclosure may be required by law or governmental regulation, subject to the Receiving Party providing to the Disclosing Party written notice to allow the Disclosing Party to seek a protective order or otherwise prevent the disclosure. Nothing in this Agreement will prohibit or limit the Receiving Party's use of information: (i) previously known to it without obligation of confidence, (ii) independently developed by or for it without use of or access to the Disclosing Party's Confidential Information, (iii) acquired by it from a third party that is not under an obligation of confidence with respect to such information, or (iv) that is or becomes publicly available through no breach of this Agreement. The Receiving Party acknowledges the irreparable harm that improper disclosure of Confidential Information may cause; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section. The terms of this Agreement, Original Code and the structure, sequence and organization of the TITAN Product are Confidential Information of TITAN or its licensors.
2. Destruction. Within five (5) days after a Disclosing Party's request, the Receiving Party shall return or destroy the Disclosing Party's Confidential Information; provided, however, that the Receiving Party shall be entitled to retain archival copies of the Confidential Information of the Disclosing Party solely for legal, regulatory or compliance purposes unless otherwise prohibited by law.

7. Warranties, Exclusive Remedies and Disclaimers.

1. TITAN Warranties. TITAN warrants that (a) it has the legal power to, and hereby does, enter into this Agreement, (b) the TITAN Product shall perform materially in accordance with the online user guide for the applicable TITAN Product or the user manual accompanying the TITAN Product, and (c) TITAN will use commercially reasonable measures to detect whether the TITAN Product contains any Malicious Code. If the TITAN Product does not conform to the warranty specified in Section 7.1(b) above, You must notify TITAN within thirty (30) days of the breach of warranty, and TITAN agrees to use commercially reasonable efforts to cure the non-conforming portions of the TITAN Product before You pursue any other remedies. TITAN is not responsible for any non-compliance with this warranty resulting from or caused by any (i) Malicious Code present in the Your Data made available to TITAN by You, or (ii) Modifications made by anyone other than TITAN, including by way of example, Modifications made by You or any Authorized

Partners. Your sole and exclusive remedy for a breach of any of warranties contained in this Section 7.1 shall be to terminate the Agreement pursuant to Section 5.2 and, notwithstanding anything to the contrary in Section 4.1, have TITAN refund to You the pro rata unused portion of any pre-paid Subscription fees.

2. Your Warranties. You warrant that (a) You have the legal power to, and hereby do, enter into this Agreement, (b) You have all rights in and to Your Data necessary to permit TITAN to exercise its rights to access and use Your Data as permitted by this Agreement, and (c) Your Data or the media on which the Your Data resides does not contain any Malicious Code.
3. Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED IN SECTION 7.1 AND AS PERMITTED BY APPLICABLE LAW, THE TITAN PRODUCT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. TITAN'S PRODUCT OR SERVICE MAY BE SUBJECT TO LIMITATIONS OR ISSUES INHERENT IN THE USE OF THE INTERNET AND TITAN IS NOT RESPONSIBLE FOR ANY PROBLEMS OR OTHER DAMAGE RESULTING FROM SUCH LIMITATIONS OR ISSUES.

8. **Limitation of Liability.**

1. Limitation on All Damages. EXCEPT FOR A BREACH OF SECTIONS 1.2, 1.3, 1.4, 1.5 or 1.6, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORTS, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE, THE LESSOR OF THE TOTAL AMOUNT PAYABLE TO TITAN UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR GIVING RISE TO THE LIABILITY OR TWENTY FIVE THOUSAND DOLLARS (\$25,000). THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 4.
2. Disclaimer of Consequential Damages. EXCEPT FOR A BREACH OF SECTIONS 1.2, 1.3, 1.4, 1.5 or 1.6, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR REVENUE OR FOR ANY INDIRECT, SPECIAL, COVER, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING UNDER THIS AGREEMENT AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
3. Scope of Limitations on Liability. THE LIMITATIONS SET FORTH IN THIS SECTION 8 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH CLAIMS ARE BROUGHT (CONTRACT, TORT, INCLUDING NEGLIGENCE OR OTHERWISE).

9. **General.**

1. Publicity. TITAN may include Your name, logos and trademarks in TITAN's customer presentations, website, brochures and other marketing materials and display areas at TITAN's events to represent that You are a TITAN customer.
2. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without the consent of the other party, to its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this

Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any attempted assignment in breach of this Section 11.3 shall be void.

3. Relationship of the Parties. TITAN and You are independent contractors, and nothing in this Agreement or any attachment hereto will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties.
4. No Third-Party Beneficiaries. There are no third party beneficiaries to this Agreement.
5. Choice of Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal U.S. laws applicable therein, excluding its conflicts of law provisions.
6. Attorney's Fees. In any action related to this Agreement, if any party is successful in obtaining some or all of the relief it is seeking or in defending against the action, the other party shall pay, on demand, the prevailing party's reasonable attorneys' fees and reasonable costs.
7. Manner of Giving Notice. Notices regarding this Agreement shall be in writing and addressed to You at the address You provide, or, in the case of TITAN, when addressed to TITAN School Solutions Inc., Attn. General Counsel, 3017 Douglas Blvd, STE 300, Roseville, CA 95661 USA. Notices regarding the TITAN Product in general may be given by electronic mail to Your e-mail address on record with TITAN.
8. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's reasonable control, and denial of service attacks.
9. Entire Agreement. This Agreement and any Order Forms or exhibits attached hereto or referenced herein represent the entire agreement of the parties and supersede all prior discussions, emails, and/or agreements including requests for proposals ("RFP"), between the parties and is intended to be the final expression of their Agreement. To the extent there is a conflict between this Agreement and any additional or inconsistent terms, including any pre-printed terms on Your purchase order, the terms of this Agreement shall prevail, unless expressly stated otherwise. Notwithstanding any language to the contrary therein, and except as set forth in Section 4.1, no terms stated in a purchase order or in any other order document (other than an Order Form expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. The Agreement and all exhibits hereto, including any related Order Forms may not be modified or altered except by written instrument, and no amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed (either manually or electronically) by an authorized representative of You and TITAN. All rights not expressly granted to You are reserved by TITAN and its licensors.
10. Equitable Relief. Except as otherwise provided, remedies specified herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
11. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

10. Definitions.

1. **"API"** means application programming interfaces provided by TITAN as part of the TITAN Product, which set forth rules and specifications that Third Party Modules may utilize to access Your Data in accordance with this Agreement.
2. **"Authorized Partner"** means a TITAN Product partner that is in good standing with TITAN under a fully-executed TITAN agreement and is associated with an Order Form under this Agreement.
3. **"Your Data"** means any data, information or material submitted by You, or stored by You in the TITAN Product.
4. **"Your Software"** means online, Web-based applications and offline software products that are developed by or for You, the use of which software is governed by the applicable terms and conditions specified by such software.
5. **"Confidential Information"** means information that one party (the "Disclosing Party") provides to the other party ("Receiving Party") during the term of this Agreement that is identified in writing at the time of disclosure as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.
6. **"Intellectual Property Rights"** means any patents and applications thereto, copyrights, trademarks, service marks, trade names, domain name rights, trade secret rights, and all other intellectual property and proprietary rights.
7. **"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.
8. **"Modifications"** means any work based on or incorporating all or any portion of the TITAN Product, including, without limitation, modifications, enhancements and customizations to the TITAN Product developed by TITAN, You, a third party on either such party's behalf or any combination of such parties.
9. **"Order Form"** means a document for purchases of Subscriptions hereunder, including purchase orders, order notifications and order confirmation documents (either in writing or via the Web), that are agreed to by TITAN, or entered into between TITAN and You from time to time. Order Forms are deemed incorporated herein by reference.
10. **"Original Code"** means TITAN Product source code.
11. **"Personal Data"** means any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.
12. **"Software Releases"** has the meaning ascribed to it in Exhibit A of this Agreement.
13. **"Subscription"** means Your right to use the TITAN Product for the Subscription Term, per the terms of the Agreement and the related Order Form(s).
14. **"Subscription Term"** means the period of time which You may access the applicable TITAN Product as set forth in an Order Form.

15. **"TITAN Product"** means any software or hardware that TITAN supplies, licenses or sells to You from time to time during the Term, as set forth in the Order Form, including any software that is downloadable from a third party app store and Modifications.
16. **"Support Services"** shall have the meaning defined in Section 1.3.
17. **"Taxes"** means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature.
18. **"Third-Party Modules"** means software developed by a third party that You may use to add functionality to the TITAN Product, the use of which software is governed by the applicable terms and conditions specified by such third party.
19. **"Third-Party Software"** means online, Web-based applications and offline software products that are developed by third parties, and may interoperate with the TITAN Product, the use of which software is governed by the applicable terms and conditions specified by such third party.
20. **"User"** means an individual user that You authorize to use the TITAN Product and on whose behalf You pay the licensee fees; provided, that the number of Users shall not exceed the number of licenses that You purchase.
21. **"You or you"** means the hospital, college, university, school district, corporation, or other entity or individual who has been invoiced.

Exhibit A

Terms of Use

1. Service. Subject to the Terms of Use and the terms of the Agreement, You shall have the right to access, use and modify the TITAN Product during the Subscription Term solely for Your own internal business purposes. The TITAN Product may be accessed through a web browser and/or mobile web client.
2. Software Releases. During the Subscription Term, if You have paid the applicable fees and are in compliance with the terms and conditions of the Agreement, TITAN may provide automatic updates to the TITAN Product with Software Releases. “**Software Releases**” may be comprised of Maintenance Releases and/or Feature Releases (as defined below).
 1. “**Maintenance Releases**” means an update to the TITAN Product which includes fixes to known defects and does not intentionally introduce any new or modified application behavior.
 2. “**Feature Releases**” means a software update which includes both fixes to known defects and introduces new or modified application behavior or changes the available features or functionality of the TITAN Product.
3. Third Party Analytics Tools. You acknowledge that TITAN may use third party web analytics tools (such as Google Analytics) that serve cookies or similar tracking technologies through the TITAN products and services, on end user devices, to collect Usage Data for the purposes described in Section 3.3.5. You will take such measures as are necessary to inform Your end users about TITAN’s use of such web analytics tools in connection with the TITAN Products and related services. You hereby provide Your consent to TITAN to use cookies or tracking technologies served by those web analytics tools, in a manner that is consistent with industry practice.
4. Development. You agree that You will not, directly or indirectly, conduct any activity that will degrade performance beyond an acceptable level, including but not limited to: (a) conducting automated functionality tests or load tests on the TITAN Product, (b) creating Internet links to the TITAN Product, and/or (c) deploying custom modifications that adversely impact the TITAN infrastructure due to incompatible code, inefficient code or architecture practices. If You do any of the foregoing, TITAN shall have the right to terminate or suspend Your account and access to the Service without any refund or credit until You correct such violation to TITAN’s reasonable satisfaction.
5. Handling of Your Data Post Termination. Upon written request by You made within ninety (90) days of the effective date of expiration or termination of the Agreement (the “**Post-Term Period**”), TITAN agrees to make available to You, a copy of Your production environment. Further, during the Post-Term Period and upon Your request, TITAN shall grant the You limited access to the Service for the sole purpose of permitting You to retrieve Your Data, provided that You have paid in full all good faith undisputed amounts owed to TITAN. Upon expiration of the Post-Term Period, TITAN will have no further obligation to maintain for or provide to You any of Your Data and may thereafter, unless legally prohibited, delete all of Your Data in its systems or otherwise in its possession or under its control.

Exhibit B

Service Level Specifications

TITAN's required response times and resolution will vary based on the severity of the problem faced by You and the time of day in which Your problem occurs. TITAN's hours of operation are Monday through Friday 7:00AM to 6:00PM Pacific Standard Time.

Priority Code	Your Impact	Initial Contact with Support Contact	Resolution Time for Errors
Level 1	Business Halted/ Critical	These are worked immediately as they come in with a maximum of two hour initial response time	Provide a temporary work around by the start of the client's next business day or 72 hours after initial report time, whichever is sooner. Diligently pursue Error Correction and provide within no later than 90 days after initial report time.
Level 2	Business Impacted/High	Within 4 hours initial response time	Provide a temporary work around within 10 business days after the initial report time. Make commercially reasonable efforts to pursue Error Correction and provide no later than next release or 120 days after reporting of the Error, whichever is longer.
Level 3	Non-Critical Request/Low	Within 1 business day initial response time	Provide Error Correction on a mutually agreed upon date. Provided that the date will be no earlier than the next release or 180 days after reporting of the Error, whichever is longer.

Explanation of Priority Codes:

Level 1: Business Halted: a problem with the Software that prevents your ability to complete critical business functions. In these cases, troubleshooting is done over the phone with a Support Contact. If an on-site visit is deemed necessary, the client will be responsible for all travel, lodging and related expenses.

Examples:

Software system is down, Hardware is not responding, or Error message(s) which reflect an error that will halt the client's or its customer's business

Level 2: Business Impacted: non-critical issues or questions that affect a person or group at your Site. A work-around has been identified so the person or group can use the system to perform their job. Troubleshooting is done over the phone.

Examples:

Reports get error message

Level 3: Non-Critical/Request: issues or questions that need a response, but are not time critical. Support Contacts requesting information/action that is not urgent.