

TIPS VENDOR AGREEMENT

TIPS RFP 240101 Technology Solutions, Products, and Services

The following Vendor Agreement (“Agreement”) creates a legal agreement between The Interlocal Purchasing System (“TIPS”), a government purchasing cooperative and Department of Texas Region 8 Education Service Center and (INSERT ENTITY NAME):

VMRay Inc.

(ENTER ENTITY NAME]

its owners, agents, subsidiaries, and affiliates (together, “Vendor”) (individually, “Party”, and collectively the “Parties”) and this agreement shall exclusively govern the contractual relationship (“Agreement”) between the Parties.

TIPS, a governmental entity and a national purchasing cooperative seeks to provide a valuable and necessary solution to public entities and qualifying non-profits by performing the public procurement solicitation process and awarding compliant contracts to qualified vendors. Then, where the law of a customer’s jurisdiction allows, instead of public entities and qualifying non-profits expending time, money, and resources on the extensive public procurement process, the use of TIPS allows public entities to quickly select and purchase their preferred products or services from qualified, competitively evaluated vendors through cooperative purchasing.

1. **Purpose.** The purpose of this Agreement is to identify the terms and conditions of the relationship between TIPS and Vendor. Public entities and qualifying non-profits that properly join or utilize TIPS (“TIPS Members”) may elect to “piggyback” off of TIPS’ procurements and agreements where the laws of their jurisdiction allow. TIPS Members are not contractual parties to this Agreement although terms and conditions of this Agreement may ensure benefits to TIPS Members.
2. **Authority.** The Parties agree that the signatories below are individual authorized to enter into this Agreement on behalf of their entity and that they are acting under due and proper authority under applicable law.
3. **Definitions.**
 - a. **TIPS Pricing:** The specific pricing, discounts, and other pricing terms and incentives which Vendor submitted and TIPS approved for each respective TIPS Contract awarded to Vendor and all permissible, subsequent pricing updates submitted by Vendor and accepted by TIPS, if any.
 - b. **Authorized Reseller:** A reseller or dealer authorized and added by a Vendor through their online TIPS Vendor Portal to make TIPS sales according to the terms and conditions herein.
4. **Entire Agreement.** This Agreement resulted from TIPS posting a “TIPS Solicitation” (RFP, RCSP, RFQ, or other) and Vendor submitting a proposal in response to that posted TIPS Solicitation for evaluation and award. The Parties agree that this Agreement consists of the provisions set forth herein and: (1) The TIPS solicitation document resulting in this Agreement; (2) Any addenda or clarifications issued in relation to the TIPS solicitation; (3) All solicitation information provided to Vendor by TIPS through the TIPS eBid System; (3) Vendor’s entire proposal response to the TIPS solicitation including all accepted required attachments, acknowledged notices and certifications, accepted negotiated terms, pricing, accepted responses to questions, and accepted written clarifications of Vendor’s proposal, and; any properly included attachments to this Agreement. All documentation and information listed is hereby incorporated by reference as if set forth herein verbatim. In the event of conflict between the terms herein and one of the incorporated documents the terms and conditions herein shall control.
5. **Vendor’s Specific Warranties, Terms, and License Agreements.** Because TIPS serves public entities and non-profits throughout the nation all of which are subject to specific laws and policies of their jurisdiction, as a matter of standard practice, TIPS does not typically accept a Vendor’s specific “Sale Terms” (warranties, license agreements, master agreements, terms and conditions, etc.) on behalf of all TIPS Members. TIPS may permit Vendor to attach those to this Agreement to display to interested customers what terms may apply to their Supplemental Agreement with Vendor (if submitted by Vendor for that purpose). However, unless this term of the Agreement is negotiated and modified to state otherwise, those specific Sale Terms are not accepted by TIPS on behalf of all TIPS Members and each Member may choose whether to accept, negotiate, or reject those specific Sale Terms, which must be reflected in a separate agreement between Vendor and the Member in order to be effective.

- 6. Vendor Identity and Contact Information.** It is Vendor's sole responsibility to ensure that all identifying vendor information (name, EIN, d/b/a's, etc.) and contact information is updated and current at all times within the TIPS eBid System and the TIPS Vendor Portal. It is Vendor's sole responsibility to confirm that all e-correspondence issued from tips-usa.com, ionwave.net, and tipsconstruction.com to Vendor's contacts are received and are not blocked by firewall or other technology security. Failure to permit receipt of correspondence from these domains and failure to keep vendor identity and contact information current at all times during the life of the contract may cause loss of TIPS Sales, accumulating TIPS fees, missed rebid opportunities, lapse of TIPS Contract(s), and unnecessary collection or legal actions against Vendor. It is no defense to any of the foregoing or any breach of this Agreement that Vendor was not receiving TIPS' electronic communications issued by TIPS to Vendor's listed contacts.
- 7. Initiation of TIPS Sales.** When a public entity initiates a purchase with Vendor, if the Member inquires verbally or in writing whether Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether the Member is seeking a TIPS purchase. Once verified, Vendor must include the TIPS Contract Number on all purchase communications and sales documents exchanged with the TIPS Member.
- 8. TIPS Sales and Supplemental Agreements.** The terms of the specific TIPS order, including but not limited to: shipping, freight, insurance, delivery, fees, bonding, cost, delivery expectations and location, returns, refunds, terms, conditions, cancellations, order assistance, etc., shall be controlled by the purchase agreement (Purchase Order, Contract, Invoice, etc.) (hereinafter "Supplemental Agreement") entered into between the TIPS Member Customer and Vendor only. TIPS is not a party to any Supplemental Agreement. All Supplemental Agreements shall include Vendor's Name, as known to TIPS, and TIPS Contract Name and Number. Vendor accepts and understands that TIPS is not a legal party to TIPS Sales and Vendor is solely responsible for identifying fraud, mistakes, unacceptable terms, or misrepresentations for the specific order prior to accepting. Vendor agrees that any order issued from a customer to Vendor, even when processed through TIPS, constitutes a legal contract between the customer and Vendor only. When Vendor accepts or fulfills an order, even when processed through TIPS, Vendor is representing that Vendor has carefully reviewed the order for legality, authenticity, and accuracy and TIPS shall not be liable or responsible for the same. In the event of a conflict between the terms of this TIPS Vendor Agreement and those contained in any Supplemental Agreement, the provisions set forth herein shall control unless otherwise agreed to and authorized by the Parties in writing within the Supplemental Agreement.
- 9. Right of Refusal.** Vendor has the right not to sell to a TIPS Member under the awarded agreement at Vendor's discretion unless otherwise required by law.
- 10. Reporting TIPS Sales.** Vendor must report all TIPS Sales to TIPS. If a TIPS sale is initiated by Vendor receiving a TIPS Member's purchase order from TIPS directly, Vendor may consider that specific TIPS Sale reported. Otherwise, with the exception of TIPS Automated Vendors, who have signed an exclusive agreement with TIPS regarding reporting, all TIPS Sales must be reported to TIPS by either: (1) Emailing the purchase order or similar purchase document (with Vendor's Name, as known to TIPS, and the TIPS Contract Name and Number included) to TIPS at tipspo@tips-usa.com with "Confirmation Only" in the subject line of the email within three business days of Vendor's acceptance of the order, or; (2) Within 3 business days of the order being accepted by Vendor, Vendor must login to the TIPS Vendor Portal and successfully self-report all necessary sale information within the Vendor Portal and confirm that it shows up accurately on your current Vendor Portal statement. No other method of reporting is acceptable unless agreed to by the Parties in writing. Failure to report all sales pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com.
- 11. TIPS Administration Fees.** The collection of administrative fees by TIPS, a government entity, for performance of these procurement services is required pursuant to Texas Government Code Section 791.011 et. seq. The administration fee ("TIPS Administration Fee") is the amount legally owed by Vendor to TIPS for TIPS Sales made by Vendor. The TIPS Administration Fee amount is typically a set percentage of the amount paid by the TIPS Member for each TIPS Sale, less shipping cost, bond cost, and taxes if applicable and identifiable, which is legally due to TIPS, but the exact TIPS Administration Fee for this Contract is published in the corresponding solicitation and is incorporated herein by reference. TIPS Administration Fees are due to TIPS immediately upon Vendor's receipt of payment, including partial payment, for a TIPS Sale. The TIPS Administration Fee is assessed on the amount paid by the TIPS Member, not on the Vendor's cost or on the amount for which the Vendor sold the item to a dealer or Authorized Reseller. Upon receipt of payment for a TIPS Sale, including partial payment (which renders TIPS Administration Fees immediately due), Vendor shall issue to TIPS the corresponding TIPS Administration Fee payment as soon as possible but not later than thirty-one calendar days following Vendor's receipt of payment. Vendor shall pay TIPS via check unless otherwise agreed to by the Parties in writing. Vendor shall include clear documentation with the issued payment dictating to which sale(s) the amount should be applied. Vendor may create a payment report within their TIPS Vendor Portal which is the preferred documentation dictating to which TIPS Sale(s) the amount should be applied. Failure to pay all TIPS Administration Fees pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion as well as the initiation of collection and legal actions by TIPS against Vendor to the extent permitted by law. Any overpayment of participation fees to TIPS by Vendor will be refunded to the Vendor

within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date that TIPS received the payment will render the overpayment non-refundable. Region 8 ESC and TIPS reserve the right to extend the six (6) month deadline if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect TIPS Administration Fees due to TIPS pursuant to this Agreement.

- 12. Term of the Agreement.** This Agreement with TIPS is for approximately five years with a one-year, consecutive option for renewal as described herein. Renewal options are not automatic and shall only be effective if offered by TIPS at its sole discretion. If TIPS offers a renewal option, the Vendor will be notified via email issued to Vendor's then-listed Primary Contact. The renewal option shall be deemed accepted by Vendor unless Vendor notifies TIPS of its objection to the renewal option in writing and confirms receipt by TIPS.

Actual Effective Date: Agreement is effective upon signature by authorized representatives of both Parties. The Effective Date does not affect the "Term Calculation Start Date."

Term Calculation Start Date: To keep the contract term consistent for all vendors awarded under a single TIPS contract, Vendor shall calculate the foregoing term as starting on the last day of the month that "Award Notifications" are anticipated as published in the Solicitation, regardless of the actual Effective Date.

Example of Term Calculation Start Date: If the anticipated "Award Date" published in the Solicitation is May 22, 2023, but extended negotiations delay award until June 27, 2023 (Actual Effective Date), the Term Calculation Start Date shall be May 31, 2023, in this example.

Contract Expiration Date: To keep the contract term consistent for all vendors awarded under a single TIPS contract, the term expiration date shall be five years from the Term Calculation Start Date.

Example of Contract Expiration Date: If the anticipated "Award Date" published in the Solicitation is May 22, 2023, but extended negotiations delay award until June 27, 2023 (Actual Effective Date), the Term Calculation Start Date shall be May 31, 2023, and the Contract Expiration Date of the resulting initial "five-year" term, (which is subject to an extension(s)) will be May 31, 2028 in this example.

Option(s) for Renewal: Any option(s) for renewal shall begin on the Contract Expiration Date, or the date of the expiration of the prior renewal term where applicable, and continue for the duration specified for the renewal option herein.

Example of Option(s) for Renewal: In this example, if TIPS offers a one-year renewal and the Contract Expiration Date is May 31, 2028, then the one-year renewal is effective from May 31, 2028 to May 31, 2029.

TIPS may offer to extend Vendor Agreements to the fullest extent the TIPS Solicitation resulting in this Agreement permits.

- 13. TIPS Pricing.** Vendor agrees and understands that for each TIPS Contract that it holds, Vendor submitted, agreed to, and received TIPS' approval for specific pricing, discounts, and other pricing terms and incentives which make up Vendor's TIPS Pricing for that TIPS Contract ("TIPS Pricing"). Vendor confirms that Vendor will not add the TIPS Administration Fee as a charge or line-item in a TIPS Sale. Vendor hereby certifies that Vendor shall only offer goods and services through this TIPS Contract if those goods and services are included in or added to Vendor's TIPS Pricing and approved by TIPS. TIPS reserves the right to review Vendor's pricing update requests as specifically as line-item by line-item to determine compliance. However, Vendor contractually agrees that all submitted pricing updates shall be within the original terms of the Vendor's TIPS Pricing (scope, proposed discounts, price increase limitations, and other pricing terms and incentives originally proposed by Vendor) such that TIPS may accept Vendors price increase requests as submitted without additional vetting at TIPS discretion. Any pricing quoted by Vendor to a TIPS Member or on a TIPS Quote shall never exceed Vendor's TIPS Pricing for any good or service offered through TIPS. TIPS Pricing price increases and modifications, if permitted, will be honored according to the terms of the solicitation and Vendor's proposal, incorporated herein by reference.

- 14. Indemnification of TIPS.** VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND TIPS, TIPS MEMBERS, TIPS OFFICERS, TIPS EMPLOYEES, TIPS DIRECTORS, AND TIPS TRUSTEES (THE "TIPS INDEMNITEES") FROM AND AGAINST ALL CLAIMS AND SUITS BY THIRD-PARTIES FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGES, LOSSES, EXPENSES, FEES, INCLUDING COURT COSTS, ATTORNEY'S FEES, AND EXPERT FEES, ARISING OUT OF OR RELATING TO VENDOR'S PERFORMANCE UNDER THIS AGREEMENT (INCLUDING THE PERFORMANCE OF VENDOR'S OFFICERS, EMPLOYEES, AGENTS, AUTHORIZED RESELLERS, SUBCONTRACTORS, LICENSEES, OR INVITEES), REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW OR BASED IN

WHOLE OR IN PART UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS ON THE PART OF VENDOR, ITS OFFICERS, EMPLOYEES, AGENTS, AUTHORIZED RESELLERS, SUBCONTRACTORS, LICENSEES, OR INVITEES. NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED TO BY TIPS. APART FROM THIS INDEMNIFICATION PROVISION REQUIRING INDEMNIFICATION OF THE TIPS INDEMNITEES' ATTORNEY'S FEES AS SET FORTH ABOVE, RECOVERY OF ATTORNEYS' FEES BY THE PREVAILING PARTY IS AUTHORIZED ONLY IF AUTHORIZED BY TEX. EDUC. CODE § 44.032(F).

15. **Indemnification and Assumption of Risk – Vendor Data.** VENDOR AGREES THAT IT IS VOLUNTARILY PROVIDING DATA (INCLUDING BUT NOT LIMITED TO: VENDOR INFORMATION, VENDOR DOCUMENTATION, VENDOR'S PROPOSALS, VENDOR PRICING SUBMITTED OR PROVIDED TO TIPS, TIPS CONTRACT DOCUMENTS, TIPS CORRESPONDENCE, VENDOR LOGOS AND IMAGES, VENDOR'S CONTACT INFORMATION, VENDOR'S BROCHURES AND COMMERCIAL INFORMATION, VENDOR'S FINANCIAL INFORMATION, VENDOR'S CERTIFICATIONS, AND ANY OTHER VENDOR INFORMATION OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION SOFTWARE AND SOURCE CODE UTILIZED BY VENDOR, SUBMITTED TO TIPS BY VENDOR AND ITS AGENTS) ("VENDOR DATA") TO TIPS. FOR THE SAKE OF CLARITY, AND WITHOUT LIMITING THE BREADTH OF THE INDEMNITY OBLIGATIONS IN SECTION 14 ABOVE, VENDOR AGREES TO PROTECT, INDEMNIFY, AND HOLD THE TIPS INDEMNITEES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, ACTIONS, DEMANDS, ALLEGATIONS, SUITS, JUDGMENTS, COSTS, EXPENSES, FEES, INCLUDING COURT COSTS, ATTORNEY'S FEES, AND EXPERT FEES AND ALL OTHER LIABILITY OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATING TO: (I) ANY UNAUTHORIZED, NEGLIGENT OR WRONGFUL USE OF, OR CYBER DATA BREACH INCIDENT AND VIRUSES OR OTHER CORRUPTING AGENTS INVOLVING, VENDOR'S DATA, PRICING, AND INFORMATION, COMPUTERS, OR OTHER HARDWARE OR SOFTWARE SYSTEMS, AND; (II) ALLEGATIONS OR CLAIMS THAT ANY VENDOR DATA INFRINGES ON THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD-PARTY OR VENDOR.
16. **Procedures Related to Indemnification.** In the event that an indemnity obligation arises, Vendor shall pay all amounts set forth in Section 14 and 15 above (including any settlements) and – if it has accepted its indemnity obligation without qualification – control the legal defense to such claim or cause of action, including without limitation attorney selection, strategy, discovery, trial, appeal, and settlement, and TIPS shall, at Vendor's cost and expense (with respect to reasonable out of pocket costs and expenses incurred by TIPS which shall be reimbursed to TIPS by Vendor), provide all commercially reasonable assistance requested by Vendor. In controlling any defense, Vendor shall ensure that all assertions of governmental immunity and all applicable pleas and defenses shall be promptly asserted.
17. **Indemnity for Underlying Sales and Supplemental Agreements.** Vendor shall be solely responsible for any customer claims or any disputes arising out of TIPS Sales or any Supplemental Agreement as if sold in the open-market. The Parties agree that TIPS shall not be liable for any claims arising out of Vendor's TIPS Sales or Supplemental Agreements, including but not limited to: allegations of product defect or insufficiency, allegations of service defect or insufficiency, allegations regarding delivery defect or insufficiency, allegations of fraud or misrepresentation, allegations regarding pricing or amounts owed for TIPS sales, and/or allegations regarding payment, over-payment, under-payment, or non-payment for TIPS Sales. Payment/Drafting, overpayment/over-drafting, under-payment/under-drafting, or non-payment for TIPS Sales between customer and Vendor and inspections, rejections, or acceptance of such purchases shall be the exclusive respective obligations of Vendor/Customer, and disputes shall be handled in accordance with the terms of the underlying Supplemental Agreement(s) entered into between Vendor and Customer. Vendor acknowledges that TIPS is not a dealer, subcontractor, agent, or reseller of Vendor's goods and services and shall not be responsible for any claims arising out of alleged insufficiencies or defects in Vendor's goods and services, should any arise.
18. **Confidentiality of Vendor Data.** Vendor understands and agrees that by signing this Agreement, all Vendor Data is hereby released to TIPS, TIPS Members, and TIPS third-party administrators to effectuate Vendor's TIPS Contract except as provided for herein. The Parties agree that Vendor Data is accessible by all TIPS Members as if submitted directly to that TIPS Member Customer for purchase consideration. If Vendor otherwise considers any portion of Vendor's Data to be confidential and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code (the "Public Information Act") or other law(s) and orders, Vendor must have identified the claimed confidential materials through proper execution of the Confidentiality Claim Form which is required to be submitted as part of Vendor's proposal resulting in this Agreement and incorporated by reference. The Confidentiality Claim Form included in Vendor's proposal and incorporated herein by reference is the sole indicator of whether Vendor considers any Vendor Data confidential in the event TIPS receives a Public Information Request. If TIPS receives a request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For Vendor Data deemed confidential by you in this manner, 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, including Attorney General determination and opinion. In the event that TIPS receives a written request for information pursuant to the Public Information Act that affects Vendor's interest in any information or data furnished to TIPS by Vendor, and TIPS requests an opinion from the Attorney General, Vendor may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Public Information Act. Vendor is solely responsible for submitting the memorandum brief and information to the Attorney General

within the time period prescribed by the Public Information Act. Notwithstanding any other information provided in this solicitation or Vendor designation of certain Vendor Data as confidential or proprietary, Vendor's acceptance of this TIPS Vendor Agreement constitutes Vendor's consent to the disclosure of Vendor's Data, including any information deemed confidential or proprietary, to TIPS Members or as ordered by a Court or government agency, including without limitation the Texas Attorney General. Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation by TIPS Members or as required by law.

- 19. Vendor's Authorized Resellers.** TIPS recognizes that many vendors operate in the open market through the use of resellers or dealers. For that reason, TIPS permits Vendor to authorize Authorized Resellers within its Vendor Portal and make TIPS Sales through the Authorized Reseller(s). Once authorized by Vendor in the Vendor Portal, the Authorized Reseller(s) may make TIPS sales to TIPS Members. However, all purchase documents must include: (1) Authorized Reseller's Name; (2) Vendor's Name, as known to TIPS, and; (3) Vendor's TIPS Contract Name and Number under which it is making the TIPS Sale. Either Vendor or Reseller may report the sale pursuant to the terms herein. However, Vendor agrees that it is legally responsible for all reporting and fee payment as described herein for TIPS Sales made by Authorized Resellers. The TIPS Administration Fee is assessed on the amount paid by the TIPS Member, not on the Vendor's cost or on the amount for which the Vendor sold the item to a dealer or Authorized Reseller. The Parties intend that Vendor shall be responsible and liable for TIPS Sales made by Vendor's Authorized Resellers. Vendor agrees that it is voluntarily authorizing this Authorized Reseller and in doing so, Vendor agrees that it is doing so at its own risk and agrees to protect, indemnify, and hold TIPS harmless in accordance with Sections 14-17 above related to Authorized Reseller TIPS Sales made pursuant to this Agreement or purporting to be made pursuant to this Agreement that may be asserted against Vendor whether rightfully brought or otherwise. The Parties further agree that it is no defense to Vendor's breach of this Agreement that an Authorized Reseller caused Vendor of breach this Agreement.
- 20. Circumvention of TIPS Sales.** When a public entity initiates a purchase with Vendor, if the Member inquires verbally or in writing whether Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether the Member is seeking a TIPS purchase. Any request for quote, customer communication, or customer purchase initiated through or referencing a TIPS Contract shall be completed through TIPS pursuant to this Agreement. Any encouragement or participation by Vendor in circumventing a TIPS sale being completed may result in immediate termination of Vendor's TIPS Contract(s) for cause as well as preclusion from future TIPS opportunities at TIPS sole discretion.
- 21. State of Texas Franchise Tax.** By signature hereon, Vendor hereby certifies that Vendor is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Chapter 171 of the Texas Tax Code.
- 22. Termination.**
- A) Termination for Convenience. TIPS may, by written notice to Vendor, terminate this Agreement for convenience, in whole or in part, at any time by giving thirty (30) days' written notice to Vendor of such termination, and specifying the effective date thereof.
 - B) Termination for Cause. If Vendor fails to materially perform pursuant to the terms of this Agreement, TIPS shall provide written notice to Vendor specifying the default. If Vendor does not cure such default within thirty (30) days, TIPS may terminate this Agreement, in whole or in part, for cause. If TIPS terminates this Agreement for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience.
 - C) Vendor's Termination. If TIPS fails to materially perform pursuant to the terms of this Agreement, Vendor shall provide written notice to TIPS specifying the default ("Notice of Default"). If TIPS does not cure such default within thirty (30) days, Vendor may terminate this Agreement, in whole or in part, for cause. If Vendor terminates this Agreement for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience.
 - D) Upon termination, all TIPS Sale orders previously accepted by Vendor shall be fulfilled and Vendor shall be paid for all TIPS Sales executed pursuant to the applicable terms. All TIPS Sale orders presented to Vendor but not fulfilled by Vendor, prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. TIPS shall submit to Vendor an invoice for any outstanding TIPS Administration Fees and approved expenses and Vendor shall pay such fees and expenses within 30 calendar days of receipt of such valid TIPS invoice. Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS' sole discretion and that any Vendor may be removed from the TIPS program at any time with or without cause. This

termination clause does not affect TIPS Sales Supplemental Agreements pursuant to this term regarding termination and the Survival Clause term.

- E) Vendor hereby waives any and all claims for damages, including, but not limited, to consequential damages or lost profits, that might arise from TIPS' act of terminating this Agreement.

- 23. Survival Clause.** It is the intent of the Parties that this Agreement and procurement method applies to any TIPS Sale made during the life of this Agreement even if made on or near the Contract Expiration Date as defined herein. Thus, all TIPS Sales, including but not limited to: leases, service agreements, license agreements, open purchase orders, warranties, and contracts, even if they extend months or years past the TIPS Contract Expiration Date, shall survive the expiration or termination of this Agreement subject to the terms and conditions of the Supplemental Agreement between Customer and Vendor or unless otherwise specified herein.
- 24. Audit Rights.** Due to transparency statutes and public accountability requirements of TIPS and TIPS Members, Vendor shall at their sole expense, maintain documentation of all TIPS Sales for a period of three years from the time of the TIPS Sale. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Vendor's TIPS Pricing or TIPS Sales with thirty-days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without said 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 Vendor's TIPS Pricing, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm to investigate any possible non-compliant 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 TIPS. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the TIPS Member. These audit rights shall survive termination of this Agreement for a period of one (1) year from the effective date of termination.
- 25. Conflicts of Interest.** The Parties confirm that they have not offered, given, or accepted, nor intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, service to the other in connection with this Agreement. Vendor affirms that, to the best of Vendor's knowledge, this Agreement has been arrived at independently, and is awarded 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. Vendor agrees that it has disclosed any necessary affiliations with Region 8 Education Service Center and the TIPS Department, if any, through the Conflict of Interest attachment provided in the solicitation resulting in this Agreement.
- 26. Volume of TIPS Sales.** Nothing in this Agreement or any TIPS communication may be construed as a guarantee that TIPS or TIPS Members will submit any TIPS orders to Vendor at any time.
- 27. Compliance with the Law.** The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations applicable to their entity in connection with the programs contemplated under this Agreement.
- 28. Severability.** If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, then such term(s) or provision(s) shall be deemed restated to reflect the original intention of the Parties as nearly as possible in accordance with applicable law and the remainder of this Agreement, and the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such holding causes the obligations of the Parties hereto to be impossible to perform or shall render the terms of this Agreement to be inconsistent with the intent of the Parties hereto.
- 29. 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 through no fault of its own then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon. Upon delivering such notice, the obligation of the affected party, so far as it is affected by such Force Majeure as described, shall be suspended during the continuance of the inability then claimed but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. In the event that Vendor's obligations are suspended by reason of Force Majeure, all TIPS Sales accepted prior to the Force Majeure event shall be the legal responsibility of Vendor and the terms of the TIPS Sale Supplemental Agreement shall control Vendor's failure to fulfill for a Force Majeure event.
- 30. Immunity.** Vendor agrees that nothing in this Agreement shall be construed as a waiver of sovereign or government immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses,

remedies, or immunities available to Region 8 Education Service Center or its TIPS Department under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

- 31. Insurance Requirements.** Vendor agrees to maintain the following minimum insurance requirements for the duration of this Agreement. All policies held by Vendor to adhere to this term shall be written by a carrier with a financial size category of VII and at least a rating of "A-" by A.M. Best Key Rating Guide. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Vendor(s). Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "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. Vendor agrees that when Vendor or its subcontractors are liable for any damages or claims, Vendor's policy, shall be primary over any other valid and collectible insurance carried by the Member or TIPS.

General Liability: \$1,000,000 each Occurrence/Aggregate

Automobile Liability: \$300,000 Includes owned, hired & non-owned

Workers' Compensation: Statutory limits for the jurisdiction in which the Vendor performs under this Agreement. If Vendor performs in multiple jurisdictions, Vendor shall maintain the statutory limits for the jurisdiction with the greatest dollar policy limit requirement.

Umbrella Liability: \$1,000,000 each Occurrence/Aggregate

- 32. Waiver.** No waiver of any single breach or multiple breaches of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting regarding any breach of any provision shall be construed to be a waiver of such breach.
- 33. Binding Agreement.** This Agreement shall be binding and inure to the benefit of the Parties hereto and their respective heirs, legal successors, and assigns.
- 34. Headings.** The paragraph headings contained in this Agreement are included solely for convenience of reference and shall not in any way affect the meaning or interpretation of any of the provisions of this Agreement.
- 35. Choice of Law and Venue.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas. Any proceeding, claim, action, or alternative dispute resolution arising out of or relating to this Agreement or involving TIPS shall be brought in a State Court of competent jurisdiction in Camp County, Texas, or if Federal Court is legally required, a Federal Court of competent jurisdiction in the Eastern District of 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 and 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.
- 36. Relationship of the Parties.** Nothing contained in this Agreement shall be construed to make one Party an agent of the other Party nor shall either party have any authority to bind the other in any respect, unless expressly authorized by the other party in writing. The Parties are independent contractors and nothing in this Agreement creates a relationship of employment, trust, agency or partnership between them.
- 37. Assignment.** No assignment of this Agreement or of any duty or obligation of performance hereunder, shall be made in whole or in part by a Party hereto without the prior written consent of the other Party. Written consent of TIPS shall not be unreasonably withheld.
- 38. Minimum Condition and Warranty Requirements for TIPS Sales.** All goods quoted or sold through a TIPS Sale shall be new unless clearly stated otherwise in writing. All new goods and services shall include the applicable manufacturers minimum standard warranty unless otherwise agreed to in the Supplemental Agreement.

- 39. Minimum Customer Support Requirements for TIPS Sales.** Vendor shall provide timely and commercially reasonable support for TIPS Sales or as agreed to in the applicable Supplemental Agreement.
- 40. Minimum Shipping Requirements for TIPS Sales.** Vendor shall ship, deliver, or provide ordered goods and services within a commercially reasonable time after acceptance of the order. If a delay in delivery is anticipated, Vendor shall notify the TIPS Member as to why delivery is delayed and provide an updated estimated time for completion. The TIPS Member may cancel the order if the delay is not commercially acceptable or not consistent with the Supplemental Agreement applicable to the order.
- 41. Minimum Vendor License Requirements.** Vendor shall maintain, in current status, all federal, state, and local licenses, bonds and permits required for the operation of the business conducted by Vendor. 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 TIPS Agreement. TIPS and TIPS Members reserve the right to stop work and/or cancel a TIPS Sale or terminate this or any TIPS Sale Supplemental Agreement involving Vendor if Vendor's license(s) required to perform under this Agreement or under the specific TIPS Sale have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.
- 42. Minimum Vendor Legal Requirements.** Vendor shall remain aware of and comply with this Agreement and all local, state, and federal laws governing the sale of products/services offered by Vendor under this contract. Such applicable laws, ordinances, and policies must be complied with even if not specified herein.
- 43. Minimum Site Requirements for TIPS Sales (when applicable to TIPS Sale).**

Cleanup: When performing work on site at a TIPS Member's property, Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by the TIPS Member or as agreed by the parties. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Vendor shall not begin a project for which a TIPS Member has not prepared the site, unless Vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in the TIPS Sale 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, Vendor agrees that no employee of Vendor or a subcontractor 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 unless otherwise agreed by the TIPS Member. Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the TIPS Sale at the TIPS Member's discretion. 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: 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. 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, ordinances, and policies.

- 44. Payment for TIPS Sales.** TIPS Members may make payments for TIPS Sales directly to Vendor, Vendor's Authorized Reseller, or as otherwise agreed to in the applicable Supplemental Agreement after receipt of the invoice and in compliance with applicable payment statutes. Regardless of how payment is issued or received for a TIPS Sale, Vendor is responsible for all reporting and TIPS Administration Fee payment requirements as stated herein.
- 45. Marketing.** Vendor agrees to allow TIPS to use their name and logo within the TIPS website, database, marketing materials, and advertisements unless Vendor negotiates this term to include a specific acceptable-use directive. Any use of TIPS' name and logo or any form of publicity, inclusive of press release, regarding this Agreement by Vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to tips@tips-usa.com. For marketing efforts directed to TIPS Members, Vendor must request and execute a separate Joint Marketing Disclaimer, at marketing@tips-usa.com, before TIPS can release contact information for TIPS Member entities for the purpose of marketing your TIPS contract(s). Vendor must adhere to strict Marketing Requirements once a disclaimer is executed. The Joint Marketing Disclaimer is a supplemental agreement specific to joint marketing efforts and has no effect on the terms of the TIPS Vendor Agreement. Vendor agrees that any images, photos, writing, audio, clip art,

music, or any other intellectual property ("Property") or Vendor Data utilized, provided, or approved by Vendor during the course of the joint marketing efforts are either the exclusive property of Vendor, or Vendor has all necessary rights, license, and permissions to utilize said Property in the joint marketing efforts. Vendor agrees that they shall indemnify and hold harmless TIPS and its employees, officers, agents, representatives, contractors, assignees, designees, and TIPS Members from any and all claims, damages, and judgments involving infringement of patent, copyright, trade secrets, trade or services marks, and any other intellectual or intangible property rights and/or claims arising from the Vendor's (including Vendor's officers', employees', agents', Authorized Resellers', subcontractors', licensees', or invitees') unauthorized use or distribution of Vendor Data and Property.

46. **Tax Exempt Status of TIPS Members.** Most TIPS Members are tax exempt entities and the laws and regulations applicable to the specific TIPS Member customer shall control.
47. **Automatic Renewal Limitation for TIPS Sales.** No TIPS Sale may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated into a TIPS Sale Supplemental Agreement shall only be valid and enforceable when Vendor received written confirmation of acceptance of the renewal term from the TIPS Member for the specific renewal term. 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. Any TIPS Sale Supplemental Agreement containing an "Automatic Renewal" clause that conflicts with these terms is rendered void and unenforceable.
48. **Choice of Law Limitation for TIPS Sales.** Vendor agrees that if any "Choice of Law" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Choice of Law" applicable to the TIPS Sale agreement/contract between Vendor and TIPS Member shall be the state where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Choice of Law" clause that conflicts with these terms is rendered void and unenforceable.
49. **Venue Limitation for TIPS Sales.** Vendor agrees that if any "Venue" provision is included in any TIPS Sale Agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Venue" for any litigation or alternative dispute resolution shall be in the state and county where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Venue" clause that conflicts with these terms is rendered void and unenforceable.
50. **Indemnity Limitation for TIPS Sales.** Texas and other jurisdictions restrict the ability of governmental entities to indemnify others. Vendor agrees that if any "Indemnity" provision which requires the TIPS Member to indemnify Vendor is included in any TIPS sales agreement/contract between Vendor and a TIPS Member, that clause must either be stricken or qualified by including that such indemnity is only permitted, "to the extent permitted by the laws and constitution of [TIPS Member's State]" unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing an "Indemnity" clause that conflicts with these terms is rendered void and unenforceable.
51. **Arbitration Limitation for TIPS Sales.** Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause may not require that the arbitration is mandatory or binding. Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause provides for only voluntary and non-binding arbitration unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Arbitration" clause that conflicts with these terms is rendered void and unenforceable.

In Witness Whereof, the parties hereto, each acting under due and proper authority, have signed this Agreement.

TIPS VENDOR AGREEMENT SIGNATURE

FORM TIPS RFP 240101 Technology Solutions, Products, and Services

Vendor Name: VMRay Inc.

Vendor Address: 75 State Street, Ste 100


City: Boston State: MA Zip Code: 02109

Vendor Authorized Signatory Name: Philipp Wackerbeck

Vendor Authorized Signatory Title: Secretary

Vendor Authorized Signatory Phone: _____

Vendor Authorized Signatory Email: pwackerbeck@vmray.com

Vendor Authorized Signature:  Date: Feb 16, 2024
Philipp Wackerbeck (Feb 16, 2024 09:09 GMT+1)

(The following is for TIPS completion only)

TIPS Authorized Signatory Name: Dr. David Fitts

TIPS Authorized Signatory Title: Executive Director

TIPS Authorized Signature:  Date: 5/14/2024



240101
VMRay Inc.
Supplier Response

Event Information

Number: 240101
Title: Technology Solutions, Products, and Services
Type: Request for Proposal
Issue Date: 1/4/2024
Deadline: 2/16/2024 03:00 PM (CT)

Notes: This is a solicitation issued by The Interlocal Purchasing System (TIPS), a department of Texas Region 8 Education Service Center. It is an Indefinite Delivery, Indefinite Quantity ("IDIQ") solicitation. It will result in contracts that provide, through adoption/"piggyback" an indefinite quantity of supplies/services, during a fixed period of time, to TIPS public entity and qualifying non-profit "TIPS Members" throughout the nation. Thus, there is no specific project or scope of work to review. Rather this solicitation is issued as a prospective award for utilization when any TIPS Member needs the goods or services offered during the life of the agreement.

IF YOU CURRENTLY HOLD ANY TIPS CONTRACT IN THE "TECHNOLOGY SOLUTIONS, PRODUCTS, AND SERVICES" CATEGORY, AND YOU ARE SATISFIED WITH IT, THERE IS NO NEED TO RESPOND TO THIS SOLICITATION.

IF YOU HOLD AN EXISTING TIPS "TECHNOLOGY SOLUTIONS, PRODUCTS, AND SERVICES" CONTRACT AND YOU CHOOSE TO RESPOND HEREIN, YOUR EXISTING TIPS "TECHNOLOGY SOLUTIONS, PRODUCTS, AND SERVICES" CONTRACT WILL BE TERMINATED AND REPLACED BY THIS CONTRACT.

ALSO IF YOU HOLD ANY OTHER TIPS CONTRACT OUTSIDE OF THE "TECHNOLOGY SOLUTIONS, PRODUCTS, AND SERVICES" CATEGORY WHICH COVERS ALL OF YOUR TECHNOLOGY OFFERINGS AND YOU ARE SATISFIED WITH IT, THERE IS NO NEED TO RESPOND TO THIS SOLICITATION UNLESS YOU PREFER TO HOLD BOTH CONTRACTS.

Contact Information

Address: Region 8 Education Service Center
4845 US Highway 271 North
Pittsburg, TX 75686
Phone: +1 (866) 839-8477
Email: bids@tips-usa.com

VMRay Inc. Information

Address: 75 State Street, Ste 100,
Boston, MA 02109
Phone: (857) 437-3987
Web Address: <https://www.vmray.com/contact/>

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

Gregory smith

Signature

Submitted at 2/16/2024 02:26:27 PM (CT)

gsmith@vmray.com

Email

Requested Attachments

Alternate or Supplemental Pricing Documents

2024-02-01 VMRay Internal Use
PriceList Detailed.xlsx

Optional. If when completing Pricing Form 1 & Pricing Form 2 you direct TIPS to view additional, alternate, or supplemental pricing documentation, you may upload that documentation.

Vendor Logo (Supplemental Vendor Information Only)

VMRay Logo.jpg

Optional. If Vendor desires that their logo be displayed on their public TIPS profile for TIPS and TIPS Member viewing, Vendor may upload that logo at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Disclosure of Lobbying Activities - Standard Form - LLL

No response

Do not upload this form unless Vendor has reportable lobbying activities. There are Attributes entitled, "2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment – Continued." Properly respond to those Attributes and only upload this form if applicable/instructed. If upload is required based on your response to those Attributes, the Disclosure of Lobbying Activities – Standard Form - LLL must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location.

Required Confidentiality Claim Form

6. 240101 Required
Confidentiality Claim
Form_VC20240213.pdf

The Required Confidentiality Claim Form must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. This is the only way for Vendor to assert confidentiality of any information submitted.

Vendor Agreement

3. 240101 Vendor
Agreement_VC20240115.pdf

The Vendor Agreement must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, Vendor Name placed in the line provided at the top, and uploaded to this location. If Vendor has proposed deviations to the Vendor Agreement, Vendor may assert so in the Attribute Questions and those shall be addressed during evaluation.

Conflict of Interest Questionnaire - Form CIQ

No response

Do not upload this form unless you have a reportable conflict with TIPS. There is an Attribute entitled "Conflict of Interest Questionnaire Requirement" immediately followed by an Attribute entitled "Conflict of Interest Questionnaire Requirement – Form CIQ – Continued." Properly respond to those Attributes and only upload this form if applicable/instructed. If upload is required based on your response to those Attributes, the Conflict of Interest Questionnaire – Form CIQ must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded at this location.

Current Form W-9

W9 for VMRay Inc 2023 -
signed.pdf

Vendor must upload their current IRS Tax Form W-9. The legal name, EIN, and d/b/a's listed should match the information provided herein exactly. This form will be utilized by TIPS to properly identify your entity.

Vendor Agreement Signature Form

4. 240101 Vendor Agreement
Signature Form_VC20240124.pdf

The Vendor Agreement Signature Form must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. If Vendor has proposed deviations to the Vendor Agreement, Vendor may leave the signature line of this page blank and assert so in the Attribute Questions and those shall be addressed during evaluation.

Certificates & Licenses (Supplemental Vendor Information Only)

No response

Optional. If Vendor would like to display any applicable certificates or licenses (including HUB certificates) for TIPS and TIPS Member Customer consideration, Vendor may upload those at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Pricing Form 1

240101 Pricing Form 1 (1).xlsx

Pricing Form 1 must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed as instructed, and uploaded to this location.

Reference Form

240101 Reference Form.xls

The Reference Form must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. The Reference Form must be uploaded in Excel format.

Pricing Form 2

2024-02-01 VMRay Internal Use
PriceList Detailed.xlsx

Pricing Form 2 must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed as instructed, and uploaded to this location.

Vendor's Warranties, Terms, and Conditions (Supplemental Vendor Information Only)

vmray_saasa_vTIPS_LegalVMRay.pdf

Optional. If Vendor would like to display any standard warranties, terms, or conditions which are often applicable to their offerings for TIPS and TIPS Member Customer consideration, Vendor may upload those at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Supplemental Vendor Information (Supplemental Vendor Information Only)

No response

Optional. If Vendor would like to display or include any brochures, promotional documents, marketing materials, or other Vendor Information for TIPS and TIPS Member Customer consideration, Vendor may upload those at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Bid Attributes

1 Disadvantaged/Minority/Women Business & Federal HUBZone

Some participating public entities are required to seek Disadvantaged/Minority/Women Business & Federal HUBZone ("D/M/WBE/Federal HUBZone") vendors. Does Vendor certify that their entity is a D/M/WBE/Federal HUBZone vendor?

If you respond "Yes," you must upload current certification proof in the appropriate "Response Attachments" location.

NO

2 Historically Underutilized Business (HUB)

Some participating public entities are required to seek Historically Underutilized Business (HUB) vendors as defined by the Texas Comptroller of Public Accounts Statewide HUB Program. Does Vendor certify that their entity is a HUB vendor?

If you respond "Yes," you must upload current certification proof in the appropriate "Response Attachments" location.

No

3 National Coverage

Can the Vendor provide its proposed goods and services to all 50 US States?

Yes - All 50 States

4 States Served

If Vendor answered "No" to the question entitled "National Coverage," please list all states where vendor can provide the goods and services proposed directly below. Your response may dictate which potential TIPS Member customers consider purchasing your offerings.

Tx

5 Description of Vendor Entity and Vendor's Goods & Services

If awarded, this description of Vendor and Vendor's goods and services will appear on the TIPS website for customer/public viewing.

Malware Analysis Tool (sandbox Tool)

6 Primary Contact Name

Please identify the individual who will be primarily responsible for all TIPS matters and inquiries for the duration of the contract.

Gregory smith

7 Primary Contact Title

Primary Contact Title

RSM

8 Primary Contact Email

Please enter a valid email address that will definitely reach the Primary Contact.

gsmith@vmray.com

9 Primary Contact Phone

Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).

Please provide the accurate and current phone number where the individual who will be primarily responsible for all TIPS matters and inquiries for the duration of the contract can be reached directly.

5016071039

1 0	Primary Contact Fax Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="No response"/>
--------	---

1 1	Primary Contact Mobile Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="No response"/>
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1 2	Secondary Contact Name Please identify the individual who will be secondarily responsible for all TIPS matters and inquiries for the duration of the contract. <input type="text" value="Stephen Kuitu"/>
--------	--

1 3	Secondary Contact Title Secondary Contact Title <input type="text" value="Director"/>
--------	--

1 4	Secondary Contact Email Please enter a valid email address that will definitely reach the Secondary Contact. <input type="text" value="<skuitu@vmray.com>"/>
--------	---

1 5	Secondary Contact Phone Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). Please provide the accurate and current phone number where the individual who will be secondarily responsible for all TIPS matters and inquiries for the duration of the contract can be reached directly. <input type="text" value="9729716631"/>
--------	--

1 6	Secondary Contact Fax Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="No response"/>
--------	---

1 7	Secondary Contact Mobile Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="No response"/>
--------	--

1 8	Administration Fee Contact Name Please identify the individual who will be responsible for all payment, accounting, and other matters related to Vendor's TIPS Administration Fee due to TIPS for the duration of the contract. <input type="text" value="Stephen Kuitu"/>
--------	---

1 9	Administration Fee Contact Email Please enter a valid email address that will definitely reach the Administration Fee Contact. <input type="text" value="<skuitu@vmray.com>"/>
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20	Administration Fee Contact Phone Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="9729716631"/>
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21	Purchase Order and Sales Contact Name Please identify the individual who will be responsible for receiving and processing purchase orders and sales under the TIPS Contract. <input type="text" value="Stephen Kuitu"/>
-----------	--

22	Purchase Order and Sales Contact Email Please enter a valid email address that will definitely reach the Purchase Order and Sales Contact. <input type="text" value="<skuitu@vmray.com>"/>
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23	Purchase Order and Sales Contact Phone Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="9729716631"/>
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24	Company Website Company Website (Format - www.company.com) <input type="text" value="No response"/>
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25	Entity D/B/A's and Assumed Names You must confirm that you are responding to this solicitation under your legal entity name. Go now to your Supplier Profile in this eBid System and confirm that your profile reflects your "Legal Name" as it is listed on your W9. In this question, please identify all of your entity's assumed names and D/B/A's. Please note that you will be identified publicly by the Legal Name under which you respond to this solicitation unless you organize otherwise with TIPS after award. <input type="text" value="No response"/>
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26	Primary Address Primary Address <input type="text" value="22 Boston Wharf Rd. 7th Floor"/>
-----------	---

27	Primary Address City Primary Address City <input type="text" value="Boston"/>
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28	Primary Address State Primary Address State (2 Digit Abbreviation) <input type="text" value="MA"/>
-----------	---

29	Primary Address Zip Primary Address Zip <input type="text" value="02210"/>
-----------	---

30 Search Words Identifying Vendor

Please list all search words and phrases to be included in the TIPS database related to your entity. **Do not** list words which are not associated with the bid category/scope (See bid title for general scope). This will help users find you through the TIPS website search function. You may include product names, manufacturers, specialized services, and other words associated with the scope of this solicitation.

Malware Analysis Tool, Sandbox Tool

31 Certification of Vendor Residency (Required by the State of Texas)

Does Vendor's parent company or majority owner:

(A) have its principal place of business in Texas; **or** (B) employ at least 500 persons in Texas?

Texas Education Code Section 44.031 requires that this information be considered in evaluation for certain contracts. However, Vendor response does not affect points, scoring, or potential award.

No

32 Vendor's Principal Place of Business (City)

In what city is Vendor's principal place of business located?

US

33 Vendor's Principal Place of Business (State)

In what state is Vendor's principal place of business located?

all of them

34 Vendor's Years in Business

How many years has the business submitting this proposal been operating in its current capacity and field of work?

-1

35 Certification Regarding Entire TIPS Agreement

Vendor agrees that, if awarded, Vendor's final TIPS Contract will consist of the provisions set forth in the finalized TIPS Vendor Agreement, Vendor's responses to these attribute questions, and: (1) The TIPS solicitation document resulting in this Agreement; (2) Any addenda or clarifications issued in relation to the TIPS solicitation; (3) All solicitation information provided to Vendor by TIPS through the TIPS eBid System; (3) Vendor's entire proposal response to the TIPS solicitation including all accepted required attachments, acknowledged notices and certifications, accepted negotiated terms, accepted pricing, accepted responses to questions, and accepted written clarifications of Vendor's proposal, and; any properly included attachments to the TIPS Contract.

Does Vendor agree?

Yes, Vendor agrees

**3
6** Minimum Percentage Discount Offered to TIPS Members on all Goods and Services (READ CAREFULLY)

Please read thoroughly and carefully as an error on your response can render your contract award unusable.

TIPS Members often turn to TIPS Contracts for ease of use and to receive discounted pricing.

What is the minimum percentage discount that you can offer TIPS Members off of all goods and service pricing (whether offered through Pricing Form 1, Pricing Form 2, or in another accepted format) that you offer? Only limited goods/services specifically identified and excluded from this discount in Vendor's original proposal may be excluded from this discount.

Vendor must respond with a percentage from 0%-100%. The percentage discount that you input below will be applied to your "Catalog Pricing", as defined in the solicitation, for all TIPS Sales made during the life of the contract. You cannot alter this percentage discount once the solicitation legally closes. You will always be required to discount every TIPS Sale by the percentage included below with the exception of limited goods/services specifically identified and excluded from this discount in Vendor's original proposal. If you add goods or services to your "Catalog Pricing" during the life of the contract, you will be required to sell those new items with this discount applied.

Example: In this example, you enter a 10% minimum percentage discount below. In year-one of your TIPS Contract, your published "Catalog Pricing" (website/store/published pricing) for "Tablet A" is \$100 and for "Tablet Set-Up Service" is \$100. In this example, you must sell those items under the TIPS Contract at the proposed 10% discounted price of: "Tablet A" - \$90, "Tablet Set-Up Service" - \$90. In year two of your TIPS Contract, you update your "Catalog Pricing" with the market. You add "Tablet B" to your "Catalog Pricing" for \$200 and have increased the price of "Tablet A" to \$110 and the price of "Tablet Set-Up Service" to \$110. In this example, after the "Catalog Pricing" update, you must still sell those items under the TIPS Contract at the proposed 10% discounted price of: "Tablet A" - \$99, "Tablet Set-Up Service" - \$99, and "Tablet B" - \$180.00.

With the exception of limited goods/services specifically identified and excluded from this discount in Vendor's original proposal, if you cannot honor the discount on all goods and items now included or which may be added in the future with certainty, then you should offer a lesser discount percentage below.

What is the minimum percentage discount that you can offer TIPS Members off of all goods and service pricing (whether offered through Pricing Form 1, Pricing Form 2, or in another accepted format) that you offer?

**3
7** Honoring Vendor's Minimum Percentage Discount

Vendor is asked in these Attribute Questions to provide a Minimum Percentage Discount offered to TIPS Members on all goods and services sold under the TIPS Contract. Points will be assigned for your response and scoring of your proposal will be affected. A "YES" answer will be awarded the maximum 10 points and a "NO" answer will be awarded 0 points.

Does Vendor agree to honor the Minimum Percentage Discount off of their TIPS "Catalog Pricing" that Vendor proposed for all TIPS Sales made for the duration of the TIPS Contract?

**3
8** Volume and Additional Discounts

In addition to the Minimum Percentage Discount proposed herein, does Vendor ever expect and intend to offer additional, greater, or volume discounts to TIPS Members?

Point(s) may be assigned for your response in the category of "Pricing" during scoring and evaluation.

3
9

"Catalog Pricing" and Pricing Requirements

This is a requirement of the TIPS Contract and is non-negotiable.

In this solicitation and resulting contract, "Catalog Pricing" shall be defined as:

"The then available list of goods or services, in the most current listing regardless of date, that takes the form of a catalog, price list, price schedule, shelf-price or other viewable format that:

- A. is regularly maintained by the manufacturer or Vendor of an item; and
- B. is either published or otherwise available for review by TIPS or a customer during the purchase process;
- C. to which the Minimum Percentage Discount proposed by the proposing Vendor may be applied.

If awarded on this TIPS Contract, for the duration of the contract, Vendor agrees to provide, upon request, their then current "Catalog Pricing." Or, in limited circumstances where Vendor has proposed the Percentage Mark-Up method of pricing in this proposal, proof of Vendor's "cost" may be accepted by TIPS in place of catalog pricing.

4
0

EXCEPTIONS & DEVIATIONS TO TIPS STANDARD TERMS AND CONDITIONS

Vendor agrees that, if awarded, Vendor's final TIPS Contract will consist of the provisions set forth in the finalized TIPS Vendor Agreement, Vendor's responses to these attribute questions, and: (1) The TIPS solicitation document resulting in this Agreement; (2) Any addenda or clarifications issued in relation to the TIPS solicitation; (3) All solicitation information provided to Vendor by TIPS through the TIPS eBid System; (3) Vendor's entire proposal response to the TIPS solicitation including all accepted required attachments, acknowledged notices and certifications, accepted negotiated terms, accepted pricing, accepted responses to questions, and accepted written clarifications of Vendor's proposal, and; any properly included attachments to the TIPS Contract. In the event of conflict between the terms of the finalized Vendor Agreement and one of the incorporated documents the terms and conditions which are in the best interest of governmental/qualifying non-profit TIPS Members shall control at TIPS sole discretion.

If Vendor responds, "No, Vendor does not agree" to this Attribute, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration. This is the only proper way to submit proposed deviations for TIPS consideration. TIPS reserves the right to accept, decline, or modify Vendor's requested negotiated terms. For this reason, answering "No, Vendor does not agree" may ultimately delay or prevent award.

Does Vendor agree with TIPS standard terms and conditions as presented in the TIPS solicitation document (RFP, RCSP, RFQ, or other) and the TIPS Vendor Agreement document?

4
1 **TIPS Sales Reporting Requirements**

This is a requirement of the TIPS Contract and is non-negotiable.

By submitting this proposal, Vendor certifies that Vendor will properly report all TIPS sales. With the exception of TIPS Automated Vendors, who have signed an exclusive agreement with TIPS regarding reporting, all TIPS Sales must be reported to TIPS by either:

(1) Emailing the purchase order or similar purchase document (with Vendor's Name, as known to TIPS, and the TIPS Contract Name and Number included) to TIPS at tipspo@tips-usa.com with "Confirmation Only" in the subject line of the email within three business days of Vendor's acceptance of the order, or;

(2) Within 3 business days of the order being accepted by Vendor, Vendor must login to the TIPS Vendor Portal and successfully self-report all necessary sale information within the Vendor Portal and confirm that it shows up accurately on your current Vendor Portal statement.

No other method of reporting is acceptable unless agreed to by the Parties in writing. Failure to report all sales pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion.

4
2 **TIPS Administration Fee Requirement and Acknowledgment**

This is a requirement of the TIPS Contract and is non-negotiable.

The collection of fees by TIPS, a government entity, for performance of these procurement services is required pursuant to Texas Government Code Section 791.011 et. seq. The TIPS Administration Fee is the amount legally owed by Vendor to TIPS for TIPS Sales made by Vendor. The TIPS Administration Fee amount is typically a set percentage of each TIPS Sale legally due to TIPS, but the exact TIPS Administration Fee for this Contract is published in the corresponding RFP or RCSP document. TIPS Administration Fees are due to TIPS immediately upon Vendor's receipt of payment, including partial payment, for a TIPS Sale.

By submitting a proposal, Vendor agrees that it has read, understands, and agrees to the published TIPS Administration Fee amount, calculation, and payment requirements. By submitting a proposal Vendor further confirms that all TIPS Pricing includes the TIPS Administration Fee and Vendor will not show adding the TIPS Administration Fee as a charge or line-item in any TIPS Sale.

4
3 **TIPS Member Access to Vendor Proposal & Documentation**

This is a requirement of the TIPS Contract and is non-negotiable.

Notwithstanding any other information provided in this solicitation or Vendor designation of certain documentation as confidential or proprietary, Vendor's submission of this proposal constitutes Vendor's express consent to the disclosure of Vendor's comprehensive proposal, including any information deemed confidential or proprietary, **to TIPS Members**. The proposing Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation to TIPS Members or by TIPS Members. By submitting this proposal, Vendor certifies the foregoing.

4 Non-Collusive Bidding Certificate

4 This is a requirement of the TIPS Contract and is non-negotiable.

By submission of this proposal, the Vendor certifies that:

- 1) This proposal has been independently arrived at without collusion with any other entity, bidder, or with any competitor;
- 2) This 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;
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to modify, submit, or not to submit a bid or proposal; and
- 4) The person signing this bid or proposal certifies that they are duly authorized to execute this proposal/contract on behalf of Vendor and they have fully informed themselves 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;

4 Antitrust Certification Statements (Tex. Government Code § 2155.005)

5 This is a requirement of the TIPS Contract and is non-negotiable.

By submission of this bid or proposal, Vendor certifies under penalty of perjury of the laws of the State of Texas that:

- (1) I am duly authorized to execute this proposal/contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Vendor) identified herein;
- (2) In connection with this proposal, neither I nor any representative of Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- (3) In connection with this proposal, neither I nor any representative of the Vendor has violated any federal antitrust law;
- (4) Neither I nor any representative of Vendor 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.

4 Limitation on Out-of-State Litigation - Texas Business and Commerce Code § 272

6 This is a requirement of the TIPS Contract and is non-negotiable.

Texas Business and Commerce Code § 272 prohibits a construction contract, or an agreement collateral to or affecting the construction contract, from containing a provision making the contract or agreement, or any conflict arising under the contract or agreement, subject to another state's law, litigation in the courts of another state, or arbitration in another state. If included in Texas construction contracts, such provisions are voidable by a party obligated by the contract or agreement to perform the work.

By submission of this proposal, Vendor acknowledges this law and ***if Vendor enters into a construction contract with a Texas TIPS Member*** under this procurement, Vendor certifies compliance.

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7

Required Confidentiality Claim Form

This is a requirement of the TIPS Contract and is non-negotiable.

TIPS provides the required TIPS Confidentiality Claim Form in the "Attachments" section of this solicitation. Vendor must execute this form by either signing and waiving any confidentiality claim, or designating portions of Vendor's proposal confidential. If Vendor considers any portion of Vendor's proposal to be confidential and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s) and orders, Vendor must have identified the claimed confidential materials through proper execution of the Confidentiality Claim Form.

If TIPS receives a public information act or similar request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For Vendor documents deemed confidential by you in this manner, 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, including Attorney General determination and opinion.

Notwithstanding any other Vendor designation of Vendor's proposal as confidential or proprietary, Vendor's submission of this proposal constitutes Vendor's agreement that proper execution of the required TIPS Confidentiality Claim Form is the only way to assert any portion of Vendor's proposal as confidential.

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Non-Discrimination Statement and Certification

This is a requirement of the TIPS Contract and is non-negotiable.

In accordance with Federal civil rights law, all U.S. Departments, including but not limited to the USDA, USDE, FEMA, 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 federal funds (not all bases apply to all programs).

Vendor certifies that Vendor will comply with applicable Non-Discrimination and Equal Opportunity provisions set forth in TIPS Member Customers' policies and other regulations at the local, state, and federal levels of governments.

Yes, I certify

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9

Limitation of Vendor Indemnification and Similar Clauses

This is a requirement of the TIPS Contract and is non-negotiable.

TIPS, a department of Region 8 Education Service Center, a political subdivision, and local government entity of the State of Texas, is prohibited from indemnifying third-parties (pursuant to the Article 3, Section 52 of the Texas Constitution) except as otherwise specifically provided for by law or as ordered by a court of competent jurisdiction. Article 3, Section 52 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " and the Texas Attorney General has opined that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Thus, contract clauses which require TIPS to indemnify Vendor, pay liquidated damages, pay attorney's fees, waive Vendor's liability, or waive any applicable statute of limitations must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas."

Does Vendor agree?

Yes, I Agree

50

Alternative Dispute Resolution Limitations

This is a requirement of the TIPS Contract and is non-negotiable.

TIPS, a department of Region 8 Education Service Center, a political subdivision, and local government entity of the State of Texas, does not agree to binding arbitration as a remedy to dispute and no such provision shall be permitted in this Agreement with TIPS. Vendor agrees that any claim arising out of or related to this Agreement, except those specifically and expressly waived or negotiated within this Agreement, may be subject to non-binding mediation at the request of either party to be conducted by a mutually agreed upon mediator as prerequisite to the filing of any lawsuit arising out of or related to this Agreement. Mediation shall be held in either Camp or Titus County, Texas. Agreements reached in mediation will be subject to the approval by the Region 8 ESC's Board of Directors, authorized signature of the Parties if approved by the Board of Directors, and, once approved by the Board of Directors and properly signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Does Vendor agree?

51

No Waiver of TIPS Immunity

This is a requirement of the TIPS Contract and is non-negotiable.

Vendor agrees that nothing in this Agreement shall be construed as a waiver of sovereign or government immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

Does Vendor agree?

Yes, Vendor agrees

52

Payment Terms and Funding Out Clause

This is a requirement of the TIPS Contract and is non-negotiable.

Vendor agrees that TIPS and 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 applicable laws and regulations, including but not limited to Texas Local Government Code § 271.903, or any other statutory or regulatory limitation of the jurisdiction of any TIPS Member, which requires that 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.

Does Vendor agree?

Yes, Vendor agrees

53

Certification Regarding Prohibition of Certain Terrorist Organizations (Tex. Gov. Code 2270)

Vendor certifies that Vendor is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

Does Vendor certify?

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Certification Regarding Prohibition of Boycotting Israel (Tex. Gov. Code 2271)

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement or any agreement with a TIPS Member under this procurement has value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Vendor certifies, where applicable, that neither the Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any, boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory but does not include an action made for ordinary business purposes.

When applicable, does Vendor certify?

Yes, Vendor certifies

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Certification Regarding Prohibition of Contracts with Certain Foreign-Owned Companies (Tex. Gov. Code 2274)

Certain public entities are prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant Vendor direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by a customer for product warranty and support purposes.

Vendor certifies that neither it nor its parent company nor any affiliate of Vendor or its parent company, is (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; (2) a company or other entity, including governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (3) headquartered in China, Iran, North Korea, Russia, or a designated country.

For purposes of this certification, "critical infrastructure" means "a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility." Vendor certifies that Vendor will not grant direct or remote access to or control of critical infrastructure, except for product warranty and support purposes, to prohibited individuals, companies, or entities, including governmental entities, owned, controlled, or headquartered in China, Iran, North Korea, Russia, or a designated country, as determined by the Governor.

When applicable, does Vendor certify?

Yes, Vendor certifies

5 Certification Regarding Prohibition of Discrimination Against Firearm and Ammunition Industries (Tex. Gov. Code 2274)

If (a) Vendor is not a sole proprietorship; (b) Vendor has at least ten (10) full-time employees; and (c) this Agreement or any Supplemental Agreement with certain public entities have a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the Agreement is not excepted under Tex. Gov. Code 2274 and (e) the purchasing public entity has determined that Vendor is not a sole-source provider or the purchasing public entity has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required.

Vendor certifies that Vendor, or association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary parent company, or affiliate of these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association.

For purposes of this Agreement, “discriminate against a firearm entity or firearm trade association” shall mean, with respect to the entity or association, to: “(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.”

“Discrimination against a firearm entity or firearm trade association” does not include: “(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association.”

When applicable, does Vendor certify?

Yes, Vendor certifies

5 Certification Regarding Termination of Contract for Non-Compliance (Tex. Gov. Code 552.374)

If Vendor is not a governmental body and (a) this Agreement or any Supplemental Agreement with a public entity has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by certain public entities; or (b) this Agreement or any Supplemental Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by certain public entities in their fiscal year, the following certification shall apply; otherwise, this certification is not required.

As required by Tex. Gov. Code 552.374, the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): “The requirements of Subchapter J, Chapter 552, Government Code, may apply to this solicitation and Agreement and the Vendor agrees that this Agreement and any applicable Supplemental Agreement can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.”

Pursuant to Chapter 552 of the Texas Government Code, Vendor certifies that Vendor shall: (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to TIPS or the purchasing TIPS Member for the duration of the Agreement; (2) promptly provide to TIPS or the purchasing TIPS Member any contracting information related to the Agreement that is in the custody or possession of Vendor on request of TIPS or the purchasing TIPS Member; and (3) on completion of the Agreement, either (a) provide at no cost to TIPS or the purchasing TIPS Member all contracting information related to the Agreement that is in the custody or possession of Vendor, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to TIPS or the purchasing TIPS Member.

When applicable, does Vendor certify?

Yes, Vendor certifies

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Certification Regarding Prohibition of Boycotting Certain Energy Companies (Tex. Gov. Code 2274)

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement or any Supplemental Agreement with certain public entities has a value of \$100,000 or more that is to be paid wholly or partly from public funds, the following certification shall apply; otherwise, this certification is not required.

Vendor certifies that Vendor, or any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of these entities or business associations, if any, do not boycott energy companies and will not boycott energy companies during the term of the Agreement or any applicable Supplemental Agreement.

For purposes of this certification the term "company" shall mean an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, that exists to make a profit.

The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by paragraph (a)." (See Tex. Gov. Code 809.001).

When applicable, does Vendor certify?

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Felony Conviction Notice - Texas Education Code 44.034

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."

Subsection (c) states, "This section does not apply to a publicly held corporation."

Vendor certifies one of the following:

- 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 Vendor responds with Option (C), Vendor is required to provide information in the next attribute.

60 Felony Conviction Notice - Texas Education Code 44.034 - Continued

If Vendor selected Option (C) in the previous attribute, Vendor must provide the following information herein:

1. Name of Felon(s)
2. The Felon(s) title/role in Vendor's entity, and
3. Details of Felon(s) Conviction(s).

No response

61 Conflict of Interest Questionnaire Requirement

Vendor agrees that it has looked up, read, and understood the current version of Texas Local Government Code Chapter 176 which generally requires disclosures of conflicts of interests by Vendor hereunder if Vendor:

- (1) has an employment or other business relationship with a local government officer of our local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of our local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of our local governmental entity.
- (4) Any other financial, commercial, or familial relationship with our local government that may warrant reporting under this statute.

Does Vendor certify that it has NO reportable conflict of interest?

Yes, Vendor certifies - VENDOR HAS NO CONFLICT

62 Conflict of Interest Questionnaire Requirement - Form CIQ - Continued

If you responded "No, Vendor does not certify - VENDOR HAS CONFLICT" to the Conflict of Interest Questionnaire question above, you are required by law to fully execute and upload the form attachment entitled "Conflict of Interest Questionnaire - Form CIQ." If you accurately claimed no conflict above, you may disregard the form attachment entitled "Conflict of Interest Questionnaire - Form CIQ."

Have you uploaded this form if applicable?

Not Applicable

63 Upload of Current W-9 Required

Vendors are required by TIPS to upload a current, accurate W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity.

You must confirm that you are responding to this solicitation under your legal entity name. Go now to your Supplier Profile in this eBid System and confirm that your profile reflects your "Legal Name" as it is listed on your W9.

64 Regulatory Good Standing Certification

Does Vendor certify that its entity is in good standing will all government entities and agencies, whether local, state, or federal, that regulate any aspect of Vendor's field of work or business operations?

If Vendor selects "No", Vendor must provide explanation on the following attribute question.

Yes, Vendor certifies

6
5 **Regulatory Good Standing Certification - Explanation - Continued**

If Vendor responded to the prior attribute that "No", Vendor is not in good standing, Vendor must provide an explanation of that lack of good standing here for TIPS consideration.

No response

6
6 **Instructions Only - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**
Instructions for Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

1. 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.

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.

6 **Suspension or Debarment Certification**

7

Read the instructions in the attribute above and then answer the following accurately.

Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Does Vendor certify?

Yes, Vendor certifies

6 **Vendor Certification of Criminal History - Texas Education Code Chapter 22**

8

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 pursuant to this law.

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.

Vendor certifies:

NONE (Section A): None of the employees of Vendor 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 Vendor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided under this procurement.

OR

SOME (Section B): Some or all of the employees of Vendor and any subcontractor are covered employees. If this box is checked, I further certify that: (1) Vendor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history; (2) If Vendor receives information that a covered employee subsequently has a reported criminal history, Vendor will immediately remove the covered employee from contract duties and notify the purchasing entity in writing within 3 business days; (3) Upon request, Vendor will provide the purchasing entity with the name and any other requested information of covered employees so that the purchasing entity may obtain criminal history record information on the covered employees; (4) If the purchasing entity objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Vendor agrees to discontinue using that covered employee to provide services at the purchasing entity.

Which option does Vendor certify?

Yes, I certify - NONE (Section A)

6
9 **Certification Regarding "Choice of Law" Terms with TIPS Members**

Vendor agrees that if any "Choice of Law" provision is included in any sales agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Choice of Law" applicable to the sales agreement/contract between Vendor and TIPS Member shall be the state where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Choice of Law" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

7
0 **Certification Regarding "Venue" Terms with TIPS Members**

Vendor agrees that if any "Venue" provision is included in any sales agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Venue" for any litigation or alternative dispute resolution is shall be in the state and county where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Venue" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

7
1 **Certification Regarding "Automatic Renewal" Terms with TIPS Members**

Vendor agrees that no TIPS Sale may incorporate an "Automatic Renewal" clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated into a TIPS Sale Supplemental Agreement shall only be valid and enforceable when Vendor received written confirmation of acceptance of the renewal term from the TIPS Member for the specific renewal term. The purpose of this clause is to avoid a TIPS Member inadvertently renewing a Supplemental 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. Any TIPS Sale Supplemental Agreement containing an "Automatic Renewal" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

**7
2 Certification Regarding "Indemnity" Terms with TIPS Members**

Texas and other jurisdictions restrict the ability of governmental entities to indemnify others. Vendor agrees that if any "Indemnity" provision which requires the TIPS Member to indemnify Vendor is included in any sales agreement/contract between Vendor and a TIPS Member, that clause must either be stricken or qualified by including that such indemnity is only permitted, "to the extent permitted by the laws and constitution of [TIPS Member's State]" unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing an "Indemnity" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

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3 Certification Regarding "Arbitration" Terms with TIPS Members**

Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause may **not** require that the arbitration is mandatory or binding. Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause provides for only voluntary and non-binding arbitration unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Arbitration" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

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4 2 CFR PART 200 AND FEDERAL CONTRACT PROVISIONS EXPLANATION**

TIPS and TIPS Members will sometimes seek to make purchases with federal funds. In accordance with 2 C.F.R. Part 200 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (sometimes referred to as "EDGAR"), Vendor's response to the following questions labeled "2 CFR Part 200 or Federal Provision" will indicate Vendor's willingness and ability to comply with certain requirements which may be applicable to TIPS purchases paid for with federal funds, if accepted by Vendor.

Your responses to the following questions labeled "2 CFR Part 200 or Federal Provision" will dictate whether TIPS can list this awarded contract as viable to be considered for a federal fund purchase. **Failure to certify all requirements labeled "2 CFR Part 200 or Federal Provision" will mean that your contract is listed as not viable for the receipt of federal funds. However, it will not prevent award.**

If you do enter into a TIPS Sale when you are accepting federal funds, the contract between you and the TIPS Member will likely require these same certifications.

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2 CFR Part 200 or Federal Provision - Vendor Willingness to Accept Federal Funds

This certification is not required by federal law. However, TIPS Members are public entities and qualifying non-profits which often receive federal funding and grants (ESSER, CARES Act, EDGAR, etc.) **Accepting such funds often requires additional required certifications and responsibilities for Vendor.** The following attribute questions include these required certifications. Your response to this questions, the following certifications, and other factors will determine whether your contract award will be deemed as eligible for federal fund expenditures by TIPS Members.

If awarded, is Vendor willing to accept payment for goods and services offered under this contract paid for by a TIPS Member with federal funds?

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2 CFR Part 200 or Federal Provision - Contracts

Contracts for more than the simplified acquisition threshold currently set at \$250,000 (2 CFR § 200.320), 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 reserve 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?

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2 CFR Part 200 or Federal Provision - Termination

Termination for cause and for convenience by the grantee 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 reserve 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 reserve 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?

7 8 2 CFR Part 200 or Federal Provision - Clean Air Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal 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 require 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?

Yes, Vendor agrees

7 9 2 CFR Part 200 or Federal Provision - 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.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members require 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 that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

Does Vendor agree?

Yes, Vendor agrees

8 0 2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment - Continued

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). 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.

The 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.

Does Vendor certify that it has NOT lobbied as described herein?

Yes, Vendor certifies - NO Reportable Lobbying

8 1 2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment - Continued

If you answered "No, Vendor does not certify - Lobbying to Report" to the above attribute question, you must download, read, execute, and upload the attachment entitled "Disclosure of Lobbying Activities - Standard Form - LLL", as instructed, to report the lobbying activities you performed or paid others to perform.

8 2 2 CFR Part 200 or Federal Provision - 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)

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 \$250,000, 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 compliance?

Yes, Vendor certifies

8 **2 CFR Part 200 or Federal Provision - Procurement of Recovered Materials**

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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: (1) 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; (2) 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.

Does vendor certify that it is in compliance with these provisions?

Yes, Vendor certifies

8 **2 CFR Part 200 or Federal Provision - Rights to Inventions**

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If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to the above, when the foregoing applies to ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in the Federal rule above.

Does vendor certify?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Domestic Preferences for Procurements and Compliance with Buy America Provisions

As appropriate and to the extent consistent with law, TIPS Member Customers, to the greatest extent practicable under a Federal award, may provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Vendor agrees that the requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. For purposes of 2 CFR Part 200.322, "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber.

Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition. For purposes of 2 CFR Part 200.322,

"Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

"Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that to the greatest extent practicable Vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Does Vendor Certify?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Ban on Foreign Telecommunications

ESC 8 and TIPS Members are prohibited from obligating or expending Federal financial assistance, to include loan or grant funds, to: (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that use "covered telecommunications" equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. "Covered telecommunications" equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and physical security surveillance of critical infrastructure and other national security purposes, and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes detailed in 2 CFR § 200.216.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that Vendor will not purchase equipment, services, or systems that use "covered telecommunications", as defined by 2 CFR §200.216 equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Does vendor certify?

Yes, Vendor certifies

8 **2 CFR Part 200 or Federal Provision - Contract Cost & Price**

For contracts more than the simplified acquisition threshold currently set at \$250,000, a TIPS Member may, in very rare circumstances, be required to negotiate profit as a separate element of the price pursuant to 2 C.F.R. 200.324(b). Under those circumstances, Vendor agrees to provide information and negotiate with the TIPS Member regarding profit as a separate element of the price. However, Vendor certifies that the total price charged by the Vendor shall not exceed the Vendor's TIPS pricing and pricing terms proposed.

Does Vendor certify?

Yes, Vendor certifies

8 **2 CFR Part 200 or Federal Provision - Equal Employment Opportunity**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members on any federally assisted construction contract, the equal

opportunity clause is incorporated by reference here.

Does Vendor Certify?

Yes, Vendor certifies

8 **2 CFR Part 200 or Federal Provision - Davis Bacon Act Compliance**

Texas Statute requires compliance with Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to state and federal requirements, Vendor certifies that it will be in compliance with all applicable Davis-Bacon Act provisions if/when applicable.

Does Vendor certify?

Yes, Vendor certifies

9 2 CFR Part 200 or Federal Provision - Contract Work Hours and Safety Standards

Where applicable, all contracts awarded by ESC 8 and TIPS Members in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award for all contracts resulting from this procurement process, Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does Vendor certify?

9 2 CFR Part 200 or Federal Provision - FEMA Fund Certification & Certification of Access to Records

If and when Vendor accepts a TIPS purchase paid for in full or part with FEMA funds, Vendor certifies that:

(1) Vendor agrees to provide the TIPS Member, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to and rights to reproduce any books, documents, papers, and records of the Contractor which are directly pertinent to this contract, or any contract resulting from this procurement, for the purposes of making audits, examinations, excerpts, and transcriptions. This right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents. Vendor agrees to provide the FEMA Administrator or an authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. Vendor acknowledges and agrees that no language in this contract or the contract with the TIPS Member is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) The Vendor shall not use the Department of Homeland Security's seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(3) The Vendor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(4) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

(5) The Vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Vendor's actions pertaining to this contract.

Does Vendor certify?

9 2 CFR Part 200 or Federal Provision - Certification of Compliance with the Energy Policy and Conservation Act

When appropriate and to the extent consistent with the law, Vendor certifies that it will comply with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq; 49 C.F.R. Part 18) and any state mandatory standards and policies relating to energy efficiency which are contained in applicable state energy conservation plans issued in compliance with the Act.

Does Vendor certify?

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2 CFR Part 200 or Federal Provision - Certification of Compliance with Never Contract with the Enemy

Where applicable, all contracts awarded by ESC 8 and TIPS Members in excess of \$50,000.00, within the period of performance, and which are performed outside of the United States, including U.S. territories, are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. Per 2 CFR part 183, in the situation specified, ESC 8 and TIPS Members shall terminate any contract or agreement resulting from this procurement which violates the Never Contract with the Enemy regulation in 2 CFR part 183, including if Vendor is actively opposing the United States or coalition forces involved in a contingency operation in which members of the the Armed Forces are actively engaged in hostilities. Vendor certifies that it is neither an excluded entity under the System for Award Management (SAM) nor Federal Awardee Performance and Integrity Information System (FAPIS) for any contract terminated due to Never Contract with the Enemy as a Termination for Material Failure to Comply.

Does Vendor certify?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Certification of Compliance with EPA Regulations

For contracts resulting from this procurement, in excess of \$100,000.00 and paid for with federal funds, Vendor certifies that Vendor will comply with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does Vendor certify?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Record Retention Requirements

For contracts resulting from this procurement, paid for by ESC 8 or TIPS Members with federal funds, Vendor certifies that Vendor will comply with the record retention requirements detailed in 2 CFR § 200.334. Vendor certifies that Vendor will retain all records as required by 2 CFR § 200.334 for a period of three years after final expenditure or financial reports, as applicable, and all other pending matters are closed.

Does Vendor certify?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Subcontracting and Affirmative Steps for 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?

If you respond "Yes", you must respond to the following attribute question accurately. If you respond "No", you may skip the following attribute question.

YES

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2 CFR Part 200 or Federal Provision - If "Yes" Response to Above Attribute - Continued - Subcontracting and Affirmative Steps for Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Only respond to this question if you responded "Yes" to the attribute question directly above. Skip this question if you responded "No" to the attribute question directly above.

Does Vendor certify that it will follow the following affirmative steps? 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.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (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;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (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
- (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.

Does Vendor certify?

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ACKNOWLEDGMENT & BINDING CORPORATE AUTHORITY

By submitting this proposal, the individual(s) submitting on behalf of the Vendor certify that they are authorized by Vendor to complete and submit this proposal on behalf of Vendor and that this proposal was duly submitted on behalf of Vendor by authority of its governing body, if any, and within the scope of its corporate powers.

Vendor further certifies that it has read, examined, and understands all portions of this solicitation including but not limited to all attribute questions, attachments, solicitation documents, bid notes, and the Vendor Agreement(s). Vendor certifies that, if necessary, Vendor has consulted with counsel in understanding all portions of this solicitation.

TIPS CONTRACT 240101

REQUIRED CONFIDENTIALITY CLAIM FORM

(VENDOR MUST COMPLETE THE FOLLOWING VENDOR INFORMATION)

Vendor Entity Name: VMRay Inc.
Vendor Authorized Signatory Name: Philipp Wackerbeck
Vendor Authorized Signatory Title: Secretary
Vendor Authorized Signatory Email: legal@vmray.com
Vendor Address: 75 State Street, Ste 100
City: Boston State: MA Zip Code: 02109

Vendor agrees that it is voluntarily providing its data (including but not limited to: Vendor information, Vendor documentation, Vendor's proposal, Vendor pricing submitted or provided to TIPS, TIPS contract documents, TIPS correspondence, Vendor logos and images, Vendor's contact information, Vendor's brochures and commercial information, Vendor's financial information, Vendor's certifications, and any other Vendor information or documentation submitted to TIPS by Vendor and its agents) (Hereinafter, "Vendor Data") to TIPS. Vendor understands and agrees that TIPS is a government entity subject to public information laws including but not limited to Texas Government Code (TGC) Chapter 552. Vendor agrees that regardless of confidentiality designations herein, Vendor's submission of a proposal constitutes Vendor's consent to the disclosure and release of Vendor's Data and comprehensive proposal, including any information deemed confidential or proprietary herein, to and by TIPS Members.

Notwithstanding the foregoing permissible release to TIPS Members, if Vendor considers any portion of Vendor's proposal to be otherwise confidential and not subject to public disclosure pursuant to public information laws, including but not limited to TGC Chapter 552, Vendor must properly execute *Option 1 only* below, attach to this PDF all documents and information that Vendor deems confidential, and upload the consolidated documentation. Regardless of the Option selected below, this form must be completed and uploaded to the "Response Attachments" section of the eBid System entitled "Required Confidentiality Claim Form." Execution and submission of this form is the sole indicator of whether Vendor considers any Vendor Data confidential in the event TIPS receives a request, a Public Information Request, or subpoena. If TIPS receives a request, any responsive documentation not deemed confidential by you through proper execution of Option 1 of this form will be automatically released. For information deemed confidential by you through proper execution of Option 1 of this form, TIPS will follow procedures of controlling statute(s) regarding withholding that documentation and shall not be liable for any release of information required by law, including Attorney General opinion or court order.

(VENDOR MUST COMPLETE ONE OF THE TWO OPTIONS AND UPLOAD IN THE EBID SYSTEM)

OPTION 1 – DESIGNATING CONFIDENTIAL MATERIALS – YES, VENDOR HAS ATTACHED CONFIDENTIAL MATERIALS

(Confirm each bullet point and sign below)

- Vendor claims some Vendor Data confidential to the extent permitted by TGC Chapter 552 and other applicable law.
- Vendor attached to this PDF all potentially confidential Vendor Data and listed the number of attached pages below.
- Vendor's authorized signatory has signed below and shall upload this document in the proper location in the eBid System.
- Vendor agrees that TIPS shall not be liable for any release of confidential information required by law.

Number of pages attached deemed confidential: 33

Authorized Signature: Philipp Wackerbeck
Philipp Wackerbeck (Mar 20, 2024 16:15 GMT+1)

OPTION 2 – WAIVER OF CONFIDENTIALITY – NO, VENDOR HAS NOT ATTACHED CONFIDENTIAL MATERIALS

(Confirm each bullet point and sign below)

By signing for Option 2 below, Vendor expressly waives any confidentiality claim for all Vendor Data submitted in relation to this proposal and resulting contract. Vendor confirms that TIPS may freely release Vendor Data submitted in relation to this proposal or resulting contract to any requestor. Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of Vendor Data by TIPS or TIPS Members.

- Vendor's authorized signatory has signed below and shall upload this document in the proper location in the eBid System.
- Vendor agrees that TIPS shall not be liable for any release of confidential information required by law.

Authorized Signature: _____

VENDOR SUPPLEMENTAL INFORMATION

TIPS permits Vendors to submit supplemental documentation and information (“Vendor Supplemental Information”) with their proposals to display to TIPS Member Customers their qualifications, offerings, and special terms. The following documents are for marketing and informational purposes only. They are not terms of Vendor’s TIPS Contract. If the Vendor Supplemental Information herein contains any warranties, terms, or conditions, the TIPS Member Customer may review and determine whether or not those are applicable and acceptable for any TIPS purchase before proceeding. If the Vendor Supplemental Information contains any licenses or certificates, TIPS encourages the TIPS Member Customer to ensure current accuracy at the time of a TIPS purchase.

SOFTWARE AS A SERVICE AGREEMENT FOR VMRAY SOFTWARE

THIS SOFTWARE AS A SERVICE AGREEMENT (“**SAASA**”) IS A LEGALLY BINDING CONTRACT BETWEEN CUSTOMER AND PROVIDER (COLLECTIVELY “**PARTIES**” OR INDIVIDUALLY A “**PARTY**”). IT COVERS THE TERMS AND CONDITIONS FOR CUSTOMER’S USE OF VMRAY SOFTWARE AS A SERVICE ON SERVERS CONTROLLED BY PROVIDER. PROVIDER OBJECTS TO ANY ALTERNATIVE OR ADDITIONAL TERMS OR CONDITIONS PROPOSED BY CUSTOMER IN ANY CUSTOMER-ISSUED DOCUMENT (SUCH AS A PURCHASE ORDER), INCLUDING ANY TERMS THAT ARE IN CONFLICT WITH THIS SAASA, EXCEPT WHERE AN INDIVIDUAL, SIGNATURE-BEARING CONTRACT HAS BEEN CONCLUDED WITH PROVIDER AS THE GOVERNING AGREEMENT. ANY PRODUCT PLAN, ORDER OR INVOICE RELATING TO THIS SAASA IS DEEMED TO BE PART OF THIS SAASA AND IS HEREBY INCORPORATED BY REFERENCE.

IN CASE CUSTOMER RECEIVES THE SERVICE THROUGH A RESELLER, ALL FEES AND OTHER PROCUREMENT AND DELIVERY TERMS WILL BE AGREED BETWEEN CUSTOMER AND RESELLER; HOWEVER, THE TERMS SET FORTH IN THIS SAASA REGARDING CUSTOMER’S USE OF THE SERVICE REMAIN APPLICABLE. CUSTOMER’S AGREEMENT WITH THE RESELLER IS BETWEEN CUSTOMER AND THE RESELLER ONLY AND SUCH AGREEMENT IS NOT BINDING ON PROVIDER OR USE OF THE SERVICE.

THE SERVICE IS NOT AVAILABLE FOR PERSONAL, HOME, AND/OR CONSUMER USE. IF YOU DO NOT AGREE TO BE BOUND BY THIS SAASA DO NOT USE THE SERVICE. ONCE THE SERVICE HAS BEEN USED, ALL PROVISIONS OF THIS SAASA APPLY. ANY USE OF THE SERVICE BY CUSTOMER SHALL CONSTITUTE AN UNQUALIFIED ACCEPTANCE OF THIS SAASA.

Definitions:

Access Credentials: Any API-key, access email, username, identification number, password, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Service.

Account: The VMRay Platform account set up by the Customer for the use of the Service.

Affiliate: Any person or entity which directly or indirectly owns, controls, is controlled by, or is under common control with a Party, where control is defined as owning or directing more than fifty percent (50%) of the voting equity securities or a similar ownership interest in the controlled entity.

Affiliate Use: (a) Customer (i) sharing Results with Affiliates or (ii) permitting Affiliates to trigger Analyses and receive Results through a VMRay offered feature like e.g. IR Mailbox (both “**Indirect Affiliate Use**”) and/or (b) Customer permitting Affiliates a direct access and use the Service via the API or web interface (“**Direct Affiliate Use**”),

Analysis: The process of generating Results regarding potential malware based on the submission of a Sample to the VMRay Platform.

Authorized User: Employee, agent or independent contractor of Customer or its Affiliate (i) who is identified by Customer, and/or (ii) whom the Service can identify.

Confidential Information: Any information, maintained in confidence by the disclosing Party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or any information that by its form, nature, content or mode of transmission would to a reasonable recipient be deemed confidential or proprietary.

Customer: The entity entering this SAASA with Provider.

Customer Content: All data (including Personal Data), or other content, communications, or material, in any format, and any software, application, system, network, or infrastructure provided or made accessible by Customer or Authorized User to Provider in connection with Customer's access and use of the Service. For clarification, the Severity Verdict provided by the Service does not contain Customer Content, and it is technically impossible to reconstruct any Customer Content from such Severity Verdict. **Documentation:** Any technical specifications, online help content, user manuals, or similar materials pertaining to the implementation, operation, access, and use of the Service that are made available by Provider, as may be revised by Provider from time to time.

External Use: Any access to or use of the Service by Authorized Users or a Third Party, which is not Internal Use as defined below.

Force Majeure Event: Fire, flood, earthquake, pandemic, elements of nature or acts of God, fundamental technological changes to the underlying hardware or software, or any other similar cause beyond the reasonable control of Provider.

GDPR: the European Union ("E.U.") General Data Protection Regulation which is only applicable to personal data that is subject to, regulated by, and protected under the GDPR and shall also include additional laws, rules, and regulations now or hereafter promulgated by the EU, any Member State, or other governmental authority under or supplemental to the GDPR, as the same may be amended, supplemented, or replaced from time to time.

Hazardous Environment: An environment requiring fail-safe performance, such as, without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support systems, medical systems, transport management systems, or weapon or combat systems, in which the failure of the Service could lead to personal injury, death, property damage or environmental damage.

Internal Use: Any use of the Service for Customer's internal (i.e., own) information security purposes, i.e. to protect Customer's own computing infrastructure. By way of example and not limitation, Internal Use shall not include any access or use, whether commercial or non-commercial: (i) by or for the benefit of any Third Party, or (ii) in any event, for the development, supplement, improvement or quality assurance of any product or service (e.g. managed security, cybersecurity consultancy, threat intelligence feed etc.) of Customer to be provided to a Third Party.

Order: (a) An executed or otherwise accepted Quote (including acceptance by performance) or (b) a Customer-initiated and Provider-accepted document for the procurement of the Service to be supplied only in accordance with and subject to the provisions of this SAASA, which must contain the terms set forth in the Quote or other information sufficient to complete the transaction.

Personal Data: Any information relating to an identified or identifiable individual or that is otherwise defined as "personal data", "personal information", or "personally identifiable information" under applicable data protection laws.

Product Plan: One of the different VMRay Product subscription models with specific available modules.

Provider: Either VMRay, Inc., a Delaware (United States of America, "U.S.") corporation, located in 75 State Street, Ste 100, Boston, MA 02109 (U.S.) or VMRay GmbH, a German limited liability company, located in Suttner-Nobel-Allee 7, 44803 Bochum (Germany), as specified in the Order. In the absence of such Order, Provider shall be VMRay, Inc., if Customer resides in the Americas (North, Central and South America), or VMRay GmbH, if Customer resides outside of the Americas.

Quota: The quantity of Analyses, mailboxes, other measure, and/or other measuring mechanism for each Service purchased under this SAASA as set forth in an Order.

Quote: One or more documents issued by Provider or a Reseller (as the case may be) to Customer specifying the Service (including the selected Product Plan(s)), the related pricing, payment terms, and offered Quota as well as sufficient other information to complete the transaction.

Report: Presentation of detailed security relevant information from a Result in human and/or machine-readable format.

Reputation Analysis: Looking up Reputation Data in a database of known good and known bad values.

Reputation Data: Network indicators (URLs, domain names, IP addresses) and hash values derived from a Sample that can be used with Reputation Analyses to increase the efficacy and efficiency.

Reseller: A reseller or other partner that is authorized by Provider or its distributor to secure Orders for the sale of VMRay Products and services to customers.

Result: Any outcome of an Analysis, usually provided to Customer within the VMRay Platform as a Report or Verdict.

Sample: Data submitted by Customer for Analysis (e.g. Office file, executable, URL, or email) and optional analysis instructions and configuration settings (e.g. command line parameters or prescripts).

Sanctions and Export Control Laws: Any law, regulation, or similar provision applicable to the Service and/or to either party relating to the adoption, application, implementation and enforcement of economic sanctions, export controls, trade embargoes or any other restrictive measures, including, but not limited to, those administered and enforced by the E.U., the United Kingdom, and the U.S., each of which shall be considered applicable to the Service.

Service: The provision of VMRay Product(s) set forth on all Orders entered into under this SAASA, as well as all accompanied components (executables, Documentation, and all other files provided) as a service on servers controlled by Provider.

Third Party: Any person or entity other than the Customer, Customer's Affiliate, or an Authorized User.

Updates: Upgrades, updates, patches, and/or hotfixes of the Service that replace or supplement the original Service.

Usage Statistics: Statistical information generated by Customer's use of the Service, excluding any Samples or Personal Data.

Verdict: Presentation of core security relevant data from a Result in form a) of high-level classification information about a Sample's detected grade of maliciousness ("**Severity Verdict**"), usually represented as textual descriptions (e.g. "malicious", "suspicious" or "clean" or "n/a") and/or numeric values (e.g. number between 0 and 100) and b) enrichment data for a threat in question.

VMRay Competitor: A person or entity in the business of developing, distributing or commercializing IT security products or services substantially similar to or competitive with Provider's products or services.

VMRay DPA: The Data Processing Addendum ("**DPA**") located at vmray-legal.com.

VMRay Platform: Provider's core software and its additional functionality supplied by Provider.

VMRay Product: A software solution within the VMRay Platform which can be licensed as a Service under this SAASA.

1. Rights and Restrictions.

1.1 Subject to the terms and conditions of this SAASA, Provider grants Customer a non-exclusive, non-sublicensable, non-transferable, and non-assignable right to access and use the Service, during the Term and in accordance with the applicable Documentation, for Internal Use. Customer's Internal Use shall include Affiliate Use, but in case of Direct Affiliate Use Customer shall (i) provide prior written notice to Provider, (ii) ensure that its Affiliates are aware of and comply with the terms and conditions of this SAASA, and (iii) be responsible for, and hold Provider harmless from, the acts and omissions of its Affiliates relating to such Direct Affiliate Use. The Affiliate is not a separate or additional customer, or otherwise having any rights or deemed to be a third-party beneficiary hereunder in any event or circumstance, and since all support is to be provided only to Customer, no Affiliate will be entitled to request or receive support directly from Provider. In case Customer wants to extend its Internal Use to entities which are not Affiliates but belong to a company network, group or similar construct, such extension must be pre-approved by Provider in writing.

1.2 Customer is not permitted under this SAASA to directly or indirectly:

- a) use the Service (i) other than for its intended purpose of improving Customer's own security and protecting Customer's own computing infrastructure, (ii) in any way or in connection with any activity qualifying as External Use, (iii) in any way or in connection with any activity that is unlawful fraudulent or harmful, (iv) in any competitive manner, or (v) in a Hazardous Environment,
- b) modify, enhance, disassemble, reverse compile, or reverse engineer the Service,
- c) sell, lend, assign, lease, or transfer in any other way this SAASA, the related Account or Access Credentials,
- d) publish or otherwise make available to any third party, any benchmark tests or performance analysis relating to the Service without the express written permission of Provider which may be withheld or conditioned at the sole discretion of Provider,
- e) create any derivative works or other works that are based upon or derived from the Service in whole or in part, unless such works are only created for and utilized in Internal Use, or
- f) circumvent the Internal Use restriction; prohibited circumventions of the Internal Use restriction include but are not limited to: (i) providing a mechanism enabling Third Parties to submit Samples, (ii) providing Results created by the Service to Third Parties, or (iii) providing services or products to Third Parties, where malware detection and analysis capabilities are built in whole or in part on Service. Any behavior in violation of this provision 1.2 is not allowed and Provider may terminate the Service, in addition to any other remedies and damages allowed by law and with no refund of any fees paid.

1.3 If Customer plans to use the Service and/or its Results directly or indirectly as part of an External Use case or becomes aware that such External Use is already performed, Customer shall promptly inform Provider and discontinue such External Use until the Parties have closed separate agreement (e.g. a full OEM contract) or addendum to this SAASA (e.g. additional MSSP terms) governing such External Use, which the Parties agree to negotiate in good faith.

1.4 Customer acknowledges that the Service includes significant non-public elements, including its structure, algorithms, logic, flow, know-how, programming techniques, ideas, and design that are protected and maintained as proprietary trade secrets, which may also be protected under copyright and other intellectual property laws and treaties. Customer shall not use or disclose any such trade-secret protected information to Third Parties during and after the term of this SAASA and for so long thereafter as such trade secret-protected information remains protected as trade secrets under applicable law.

1.5 Customer understands and agrees that the success of its security efforts is dependent on a number of factors solely under Customer's control and responsibility.

2. Account and User Management.

2.1 As soon as practicable following the execution of this SAASA, Provider will enable Customer to set up its Account.

2.2 The Service offers a user management, by which Customer can allow the agreed on number of Authorized Users to use the Account.

2.3 It is Customer's sole responsibility to protect the Account and the Access Credentials from: any unauthorized access or use and if – for any reason – Customer becomes aware of such, or any incidents that may lead thereto, it is Customer's duty to promptly inform Provider. For sake of clarity, the sharing of Access Credentials within Customer's organization to exceed user limits shall be regarded as unauthorized access and use.

3. Data Processing; Data protection.

3.1 The Service stores all data (including access logs) that is necessary for the purposes of this SAASA. Except as provided otherwise herein such stored data may be used for the purposes of this SAASA only. Customer acknowledges that Provider does not control Customer Content submitted to the Service. Customer is solely responsible for all Customer Content, including but not limited to its accuracy, quality, and legality. Customer represents and warrants that it has the legal rights to provide Customer Content to Provider.

3.2 Provider will maintain appropriate administrative, physical, and technical measures designed to protect the security, confidentiality, and integrity of Customer Content processed by Provider. The VMRay DPA is incorporated by reference into this SAASA if the provision of the Service constitutes a "processing" by Provider of any Personal Data on behalf of Customer within the Customer Content, but only to the extent such processing falls within the scope of the GDPR. In the event of any conflict between the terms of the VMRay DPA and this SAASA, the terms of the VMRay DPA will take precedence.

3.3 Customer acknowledges and agrees that the use of the Service may involve a data transfer between the Affiliates VMRay GmbH and VMRay, Inc. Any transfer of Personal Data between these Affiliates takes place based on of a DPA in compliance with the provisions of the GDPR. In case there is a transfer of Personal Data from VMRay GmbH to VMRay, Inc. such transfer is additionally protected by an agreement on the Standard Contractual Clauses ("**SCC**").

3.4 Customer acknowledges that Provider may monitor the Service and collect Usage Statistics from this monitoring to: (a) verify usage in compliance with this SAASA and the Quota, (b) provide support, (c) monitor the performance, integrity, and availability of the Service, (d) prevent or remediate technical issues, (e) detect and address illegal acts or violations of Section 1.1, and (f) improve the Service.

3.5 To enhance reaction time and accuracy, the Service is able to utilize Reputation Analyses and integrate their output into Results. Reputation Analysis is activated by default. If not deactivated by Customer, Reputation Data may be transferred to external Reputation Analysis service providers of VMRay GmbH without disclosing the identity of Customer. Reputation Analysis service providers located outside of Germany and/or the U.S. are bound by a DPA and/or SCCs to process any Reputation Data only in accordance with data protection standards not less restrictive than the terms and conditions of this SAASA.

3.6 The Service is able to integrate certain program features performed by additional external service providers of Customer. If activated by Customer in the Service (and only then), the

Service may directly transfer data to such additional external service providers and Customer shall be solely responsible for this data transfer.

3.7 All data transfers under Provider's responsibility will be compliant with applicable law and protected by Provider against unauthorized access and disclosure using the same degree of care Provider uses to protect its own information of like importance, but in no case less than a reasonable degree of care.

3.8 Nothing in this SAASA shall grant Customer the right to inspect Provider's premises, Service, or related data systems; provided, however, that the foregoing shall not preclude any right provided to Customer under applicable law (such as the GDPR).

4. Confidentiality.

4.1 The Parties agree that when receiving Confidential Information from the disclosing Party, the receiving Party shall hold it in confidence and shall not disclose or use such information except as necessary to carry out the purpose of this SAASA. The receiving Party shall treat the disclosing Party's Confidential Information confidentially and in the same manner as it treats its own proprietary and/or Confidential Information, which shall not be less than a reasonable standard of care. Confidential Information may be disclosed to receiving Party's employees, Affiliates, agents, financial advisors, contractors, and attorneys on a need-to know basis, and the receiving Party shall ensure that such persons are: (i) obligated to maintain professional secrecy, or (ii) subject to signed confidentiality agreements that are at least as restrictive as the terms of the SAASA.

4.2 The receiving Party may disclose Confidential Information in connection with a judicial or administrative proceeding to the extent that such disclosure is required under applicable law or court order, provided that the receiving Party shall, where reasonably possible and permitted by law, give the disclosing Party prompt and timely written notice of any such proceeding and shall offer reasonable cooperation in any effort of the disclosing Party to obtain a protective order, and limit disclosure to the extent legally required.

4.3 Confidential Information shall exclude: (i) information which the receiving Party has been authorized in writing by the disclosing Party to disclose without restriction; (ii) information which was rightfully in the receiving Party's possession or rightfully known to it prior to receipt of such information from the disclosing Party; (iii) information which was rightfully disclosed to the receiving Party by a Third Party having proper possession of such information, without restriction; (iv) information which is part of or enters the public domain without any breach of the obligations of confidentiality by the receiving Party; and (v) information which is independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information.

4.4 Nothing in the SAASA will: (i) preclude Provider from using the ideas, concepts and know-how which are developed in the course of providing any services to Customer or (ii) be deemed to limit Provider's rights to provide similar services to other customers, provided that such developments or similar services do not include Customer's Confidential Information. Customer agrees that Provider may use any feedback provided by Customer related to any Provider service for any Provider business purpose, without requiring consent including reproduction and preparation of derivative works based upon such feedback, as well as distribution of such derivative works.

4.5 The receiving Party agrees, upon request of the disclosing Party, to return to the disclosing Party all Confidential Information in its possession or certify the destruction thereof.

4.6 In the event of a breach of the obligations in this Section, the disclosing Party may not have an adequate remedy at law. The Parties therefore agree that the disclosing Party may be entitled to seek the remedies of temporary and permanent injunction, specific performance or

any other form of equitable relief deemed appropriate by a court of competent jurisdiction, without the need to post bond.

4.7 In case the Parties hereto have previously entered into a non-disclosure or confidentiality agreement that is still in effect on the date this SAASA is agreed on, then the Parties hereto agree that such prior agreement is hereby merged into and superseded by this SAASA only with respect to the subject matter hereof and the transactions undertaken pursuant hereto.

5. Confidential Vulnerability Notification.

In the event Customer becomes aware of attack scenarios that could lead to an exploitable vulnerability of the Service, Customer shall promptly notify Provider and shall keep such information strictly confidential unless specific written authorization has been granted by Provider to Customer: (i) allowing Customer to disclose this information to Third Parties, and (ii) enabling Provider to follow a responsible disclosure process towards Provider's customers. Notwithstanding the foregoing, nothing shall prohibit Customer from making disclosures required by law.

6. Limited Warranty and Exclusive Remedy.

6.1 Provider warrants to Customer that (i) the Service itself contains no malware (for the avoidance of doubt: this does not refer to malware contained in a Sample and analyzed by the Service) (ii) the Service will operate without material error or defect in conformance to ANNEX A: Service Specification, ANNEX B: Support Provisions, ANNEX C: Service Level Agreement, and the Documentation under normal use and circumstances until the expiration or termination of Customer's paid right to access and use such Service, (iii) Provider will perform its overall obligations under this SAASA with reasonable care and expertise, (iv) Provider will install Updates as they come available and will inform Customer about any predictable Service downtime caused by such an Update.

6.2 The foregoing limited warranty does not cover events or circumstances caused by accident, abuse or use of the Service in a manner inconsistent with this SAASA, or other guidance provided by Provider, or resulting from a Force Majeure Event (as defined in Section 16.2). If it is established that Provider has breached the above warranty after notice from Customer as required below, Provider may, at its option: (i) use reasonable efforts to cure the breach; or (ii) in the event Provider cannot, after commercially practicable attempts to do so, achieve the remedy in (i) immediately above, either Provider or Customer may terminate this SAASA and Provider will provide a refund (within thirty (30) days) of unused fees pre-paid by Customer, if any, as of the effective date of such termination.

6.3 To benefit from this warranty and the remedies stated herein, Customer must report in writing to Provider, the alleged breach of warranty with reasonable specificity within ten (10) days of its occurrence. The above remedies for breach of the foregoing warranty are Provider's sole and exclusive obligation and liability to Customer, and Customer's sole and exclusive right and remedy for Provider's breach of the foregoing warranty notwithstanding any other provision of this SAASA to the contrary.

7. Disclaimers.

7.1 EXCEPT AS SET FORTH IN SECTION 6, THE SERVICE IS PROVIDED "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" AND WITHOUT ANY OTHER WARRANTY, CONDITION, UNDERTAKING, OR GUARANTEE OF ANY KIND OR NATURE. PROVIDER (ON BEHALF OF ITSELF AND ITS AFFILIATES) EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, GUARANTEES, CONDITIONS, UNDERTAKINGS, OR WARRANTIES OF ANY KIND (WHETHER

EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) ARISING FROM OR RELATED TO A STATUTE, CIVIL/COMMERCIAL CODE, CUSTOM, USAGE OR TRADE PRACTICE, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AND/OR CONDITION OF: MERCHANTABILITY; FITNESS FOR A PARTICULAR (SUCH AS A HAZARDOUS ENVIRONMENT) OR GENERAL PURPOSE; TITLE; SATISFACTORY QUALITY; ACCURACY; NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS; OR ABILITY TO ACHIEVE A PARTICULAR OUTCOME.

7.2 FURTHER, PROVIDER DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT: (A) USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THE SERVICE OR ITS FUNCTIONS AND FEATURES WILL MEET ALL SECURITY OR OTHER NEEDS OR REQUIREMENTS (SUCH AS USE IN A HAZARDOUS ENVIRONMENT) OF CUSTOMER; (C) USE OF THE SERVICE ALONE WILL FULLY PROTECT CUSTOMER'S SYSTEMS, NETWORKS, DEVICES, ASSETS, INFORMATION, AND/OR DATA FROM AND AGAINST ANY OR ALL MALWARE OR OTHER POSSIBLE RISKS; (D) RESULTS WILL BE ERROR-FREE (E.G. BENIGN SAMPLES MAY BE INCORRECTLY MARKED AS MALICIOUS AND/OR MALICIOUS SAMPLES INCORRECTLY MARKED AS NOT MALICIOUS) OR THAT THE SERVICE WILL DETECT, IDENTIFY, WEAKEN OR REMEDIATE ALL MALICIOUS AND POTENTIALLY HARMFUL ACTIVITIES OF AN ANALYZED MALWARE AND ALL VULNERABILITES KNOWN OR UNKNOWN AT THE TIME; OR (E) THE SERVICE WILL OPERATE IN COMBINATION WITH HARDWARE, OTHER SOFTWARE, SYSTEMS, CLOUD SERVICES, OR DATA NOT PROVIDED OR REQUIRED OR OTHERWISE AUTHORIZED FOR USE WITH THE SERVICE BY PROVIDER.

8. Intellectual Property Indemnity.

8.1 Provider will indemnify, defend, and hold Customer harmless from and against any and all damages, costs, penalties, liabilities, or expenses (including attorneys' fees and costs), and/or, at its option, settle any Third Party claims, suits, and demands based on an allegation that Customer's use of the Service infringes any valid patent or copyright within the jurisdictions where Customer is authorized to use the Service at the time of delivery, provided that: (i) Customer gives Provider prompt written notice thereof and reasonable cooperation, information and assistance in connection therewith; (ii) Provider shall have sole control and authority with respect to defense or settlement of any claim, provided that Customer approval shall be required of any settlement that imposes any liability on Customer; and (iii) Customer takes no action that is contrary to Provider's interest. Provider may, at its option and expense, as Provider's sole obligation: (i) procure for Customer the right to continue to use the Service; (ii) repair, modify or replace the Service so that it is no longer infringing with no material loss in functionality or performance; or (iii) terminate the SAASA, in which case Provider shall provide a pro-rated refund of the fees paid for the Service (directly or through any participating Reseller) which gave rise to the indemnified claim, such pro-rated refund to be calculated against the remainder of the then-current Term from the date it is established that Provider is notified of the Third Party claim.

8.2. Provider shall have no liability arising out of this Section 8 or otherwise if: (i) the claim is a result of a modification of the Service not made or authorized in writing by Provider, or (ii) the Service is not being used in accordance with Provider's specifications, related Documentation and guidelines, (iii) the alleged infringement is subject to any limitation of warranty or disclaimer set forth in Section 6 and/or 7, (iv) the alleged infringement is a result of use of the Service in combination with any Third Party product, (v) the applicable fees have not been paid, or (vi) Customer is otherwise in breach of this SAASA. The indemnifications contained herein shall not apply and Provider shall have no liability in relation to any Service produced by Provider at the specific direction of Customer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING PROVISIONS STATE THE ENTIRE

LIABILITY AND OBLIGATION OF PROVIDER REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO CUSTOMER REGARDING ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

9. Liability.

9.1 Exclusions from Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SAASA, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS AFFILIATES OR CONTRACTORS UNDER THIS SAASA OR IN CONNECTION HEREWITH FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING FROM OR RELATED TO: (I) LOSS OF USE OF ANY NETWORKS, SYSTEMS, SOFTWARE, HARDWARE, COMPUTERS, OR DEVICES; (II) LOSS OR CORRUPTION OF DATA; (III) LOST PROFITS OR REVENUE; (IV) PROCUREMENT OF SUBSTITUTE GOODS, SOFTWARE OR SERVICES; (V) LOSS OF BUSINESS, GOODWILL, OPPORTUNITY, REVENUE OR SAVINGS; OR (VI) OTHERWISE FOR ANY INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO THIS SAASA, PROVIDER'S OR ITS AFFILIATES PERFORMANCE HEREUNDER, OR ANY PRODUCT, UPDATES, AND/OR MAINTENANCE, WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS SAASA FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF A PARTY AND/OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES. IF CUSTOMER IS IN THE EUROPEAN ECONOMIC AREA, REFERENCES TO "INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES" SHALL ALSO MEAN ANY LOSSES OR DAMAGES WHICH: (A) WERE NOT REASONABLY FORESEEABLE BY BOTH PARTIES; (B) WERE KNOWN TO CUSTOMER BUT NOT TO PROVIDER; AND/OR (C) WERE REASONABLY FORESEEABLE BY BOTH PARTIES BUT COULD HAVE BEEN PREVENTED BY CUSTOMER SUCH AS, FOR EXAMPLE, LOSSES CAUSED BY VIRUSES, MALWARE, OR OTHER MALICIOUS PROGRAMS, OR LOSS OF OR DAMAGE TO CUSTMER DATA.

9.2 Maximum Liability – Direct Damages. IN NO EVENT WILLEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS SAASA EXCEED THE TOTAL AMOUNT OF SERVICE FEES ACTUALLY RECEIVED BY PROVIDER FOR THE SERVICE OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE.

9.3 Exceptions; Unenforceability; Basis of Bargain. NOTWITHSTANDING ANYTHING CONTAINED IN THIS SECTION 9 TO THE CONTRARY, A PARTY'S LIABILITY SHALL NOT BE LIMITED OR EXCLUDED IN THE EVENT OR CIRCUMSTANCE OF: (A) BREACH OF CONFIDENTIALITY OBLIGATIONS, INCLUDING UNAUTHORIZED DISCLOSURE OR MISUSE OF CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY AND/OR PERSONAL DATA; (B) BREACH OF INDEMNITY OBLIGATIONS UNDER SECTION 8; (C) GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT; OR (D) BREACH OF PAYMENT OBLIGATIONS. THE DISCLAIMERS, LIMITATIONS, AND EXCLUSIONS CONTAINED HEREIN THIS SECTION 9 SHALL APPLY TO THE MAXIMUM EXTENT PERMISSIBLE BY WRITTEN WAIVER, DISCLAIMER, LIMITATION, AND/OR EXCLUSION UNDER THE GOVERNING LAW, REGARDLESS OF WHETHER OR NOT A PARTY, ITS AFFILIATES, LICENSORS, SUPPLIERS, AND/OR RESELLERS SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

EACH PARTY RECOGNIZES AND AGREES THAT THE WAIVERS, WARRANTY LIMITATIONS, AS WELL AS DISCLAIMERS AND EXCLUSIONS FROM AND LIMITATIONS OF LIABILITY AND/OR REMEDIES IN THIS SAASA ARE A MATERIAL AND ESSENTIAL BASIS OF THIS SAASA; REFLECT A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES; ARE FAIR, REASONABLE, AND A FUNDAMENTAL PART OF THIS SAASA; AND EACH HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS SAASA AND IN THE DECISION BY EACH PARTY TO ENTER INTO

THIS SAASA. THE PARTIES ACKNOWLEDGE AND AGREE THAT ABSENT ANY OF SUCH WAIVERS, DISCLAIMERS, EXCLUSIONS, AND/OR LIMITATIONS OF LIABILITY/REMEDIES, THE PROVISIONS OF THIS SAASA, INCLUDING THE ECONOMIC TERMS, WOULD BE SUBSTANTIALLY DIFFERENT, OR IN THE ALTERNATIVE, THIS SAASA WOULD NOT HAVE BEEN CONSUMMATED.

10. U.S. Government End Users.

The Service is a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software", "computer database", and "commercial computer software documentation", as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (or an equivalent provision, e.g. in supplements of various U.S. Government Agencies, as applicable), all U.S. Government End Users, whether this concerns GSA Multiple Award and Federal Supply Schedule acquisitions, FAR acquisitions, DOD acquisitions or other acquisitions whatsoever, acquire the Service only as "commercial items" and only with those rights as are granted to all other end users pursuant to the terms and conditions set forth herein, as provided in FAR 12.212, and DFARS 227.7202-1(a), 227.7202-3(a), 227.7202-4, as applicable.

11. Limitation on Exports.

11.1 In some jurisdictions, using the Service, or materials provided related to or generated with the Service, may be subject to export or import regulation. Each Party agrees that it will comply with all applicable regulations and obtain any applicable governmental approvals, consents, licenses, authorizations, declarations, filings and registrations as may be necessary or advisable for the use of the Service or related materials provided with, related to, or generated with the Service.

11.2 Customer acknowledges that Customer is not: (i) ordinarily resident in, located in, or organized under the laws of any country or region subject to economic or financial sanctions or trade embargoes imposed, administered, or enforced by the E.U. or the U.S.; (ii) an individual or entity on any sanctions or restricted persons lists maintained by the E.U. or the U.S.; or (iii) otherwise the target or subject of any Sanctions and Export Control Laws.

12. Term, Fees and Termination.

12.1 If not otherwise agreed upon and confirmed in the invoice the initial subscription period ("**Initial Term**") of this SAASA shall be twelve (12) months without any automatic renewal. If the SAASA for the Initial Term is Provider's then-current version of the software-as-a-service terms, then each successive term ("**Renewal Term**") and together with the initial Term the "**Term**") will be governed by Provider's then-current version of the software-as-a-service terms (as generally available at <https://vmray-legal.com>). If the SAASA for the Initial Term is executed as a signed contract ("**Signed Contract**"), each Renewal Term will be governed by such Signed Contract, but Provider may request that the agreement and/or a renewal order (as applicable) be amended in writing to reflect any material changes of Provider's software-as-a-service terms or pricing terms (collectively, "**Amendment Terms**"). At least thirty (30) days prior to the end of the Initial Term, Provider shall notify Customer of any applicable Amendment Terms governing a potential Renewal Term,.

12.2 During the Term, Customer shall pay fees as stated in the invoice issued to Customer.

12.3 Unless agreed upon otherwise, the Term will start on the date specified in the invoice for the Initial Term. If Provider voluntarily enables a use of the Service to Customer before that date, the Term shall start on the date the use is enabled.

12.4 Either Party may terminate this SAASA or an applicable Order immediately by giving written notice to the other Party for any material breach of this SAASA that is not cured within thirty (30) days after written notice of such breach.

12.5 Upon termination or uncured material breach, Provider will block Customer's access to the Account. Customer will no longer be able to: (i) use the Service and (ii) download any submitted or generated data. Termination shall not relieve either Party of obligations incurred prior thereto.

12.6 Termination is not an exclusive remedy and the exercise by either Party will be without prejudice to any other remedies it may have under this SAASA, by law, or otherwise.

13. Trial.

Provider offers a one-time testing of the Service ("**Trial**") with the following differences: If not otherwise agreed upon between the Parties (i) the Trial Period shall last fourteen (14) days after the use of the Service is enabled ("**Trial Period**"), and (ii) both Parties may terminate the SAASA immediately for convenience at any given time during the trial by giving written notice. At the expiration of the Trial Period, this SAASA will terminate automatically unless Provider has received an Order.

14. Applicable Law; Place of Jurisdiction; Place of Performance.

14.1 All claims under any theory of liability in any way to this SAASA and all other claims or aspects whatsoever arising out of or in connection with this SAASA shall be governed and construed in accordance with the laws of the state where the Licensee operates unless expressly stated otherwise, exclusive of any provisions of the United Nations Convention on the International Sale of Goods and without regard to its principles of conflicts of law. The venue for such claims shall be any federal or state court located in the state where the Licensee operates unless expressly stated otherwise. The Parties hereby irrevocably submit to the exclusive jurisdiction of such courts (and, in the case of appeals, appropriate appellate courts therefrom) in any such action or proceeding and irrevocably waive the defenses of lack of personal jurisdiction or any inconvenient forum to the maintenance of any such action or proceeding.

14.2 To the maximum extent permitted by applicable law, the place of performance is Provider's registered business address by the time of performance.

15. Modifications.

15.1 This SAASA may only be amended by a written agreement duly executed by the Parties.

15.2 Provider reserves the right (at its discretion and without notice to or consent of any person) to continually improve, update, and offer new versions of the Service (e.g. infrastructure/platform, features or functionality, security, technical configurations, and/or application features) during the Term, to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of use, and cyberthreat environment and capabilities. Unless it leads to material degradation of the Service's overall functionality, any such Service modification shall be governed by this SAASA and shall not be treated as a breach of this SAASA nor give Customer a right to a full or partial refund of any fees paid or payable hereunder, but Customer acknowledges that the use of some of which may be contingent upon Customer's agreement to additional terms.

16. Miscellaneous.

16.1 Customer shall pay all taxes that are imposed due to the execution or performance of this SAASA, or where appropriate, Customer shall reimburse amounts Provider paid on Customer's behalf. This includes all taxes arising from use of the Service.

16.2 The Parties and any of their directors, officers, employees, controlled or controlling entities, or sub-contractors shall not be liable for any default or delay in the performance of its obligations hereunder if and to the extent such default or delay is caused, directly or indirectly, by a Force Majeure Event. Provider shall use its reasonable efforts to minimize the duration and consequences of any delay or failure of performance resulting from a Force Majeure Event.

16.3 Except as expressly stated otherwise herein: (i) there are no other agreements, understandings between the Parties, or obligations of Provider related to the Service, and (ii) this SAASA, including without limitation each ANNEX, provides the entire agreement of the Parties and supersedes any prior or present understanding or communications regarding its subject matter.

16.4 Written notices shall be deemed to have been received when personally delivered, when received by email transmission (with confirmation of receipt or follow up by another method of communication as provided in this Section), or two calendar days after being sent by a generally recognized overnight courier service. If a Party refuses to accept a notice or if a notice cannot be delivered because of a change in address for which no notice was given, then it is considered received when the notice is rejected or unable to be delivered.

16.5 If any provision of this SAASA is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this SAASA, and this SAASA shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

16.6 Failure by either Party to insist on strict compliance with the terms and conditions of this SAASA shall not be considered a waiver of such terms and conditions.

16.7 The titles and headings of the various sections and paragraphs in this SAASA are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this SAASA.

16.8 This SAASA may not be assigned by either Party without the prior written consent of the other Party; provided that either Party may assign this SAASA and/or any of its rights or obligations under this SAASA to an Affiliate of the assigning Party or in connection with a merger, consolidation, or the sale of all or substantially all of its assets or stock, without the prior written consent of the other Party but with prior notice. Notwithstanding anything to the contrary contained in the foregoing or elsewhere in this SAASA, Provider may terminate this SAASA without further obligation to Customer (including any obligation to provide a refund) in the event that (a) Customer assigns this SAASA or its rights under this SAASA to a VMRay Competitor or (b) Customer is acquired by a VMRay Competitor.

ANNEX A: Service Specification

A. VMRay Platform

The VMRay Platform is a security solution for analyzing and detecting potentially malicious data. To that end, Customer can submit Samples through different interfaces, such as web user interface, API, or email. If the submitted Sample type is supported and a suitable configuration is defined, one or more Analyses are performed according to the configuration and one or more Verdicts and/or Reports are made accessible.

B. Different VMRay Products

Provider offers the following VMRay Products through the VMRay Platform:

- VMRay DeepResponse (DR)
- VMRay FinalVerdict (FV)
- VMRay TotalInsight (TI)

Each VMRay Product is comprehensively described in the Documentation.

C. Specification

The Service purchased and subscribed, as set forth in an Order can include one or more VMRay Products and the detailed Service performance specification further depends on Customer's choice of Product Plan.

Each Product Plan includes different features and characteristics in its modules such as, e.g. (non-exhaustive):

- a) number of Authorized Users;
 - b) available Quotas and Quota Limits,
 - c) number of Analyses in parallel;
 - d) available submission interfaces;
 - e) manual or automated submission;
 - f) possible integrations;
 - g) special features;
 - h) details from the Result to be provided;
 - i) additional technical support (if any); and
 - j) fees.
-

ANNEX B: Support Provisions

During the Term, Provider will provide basic support (“**Standard Support**”) to Customer.

In case Customer has a support related agreement with a Reseller the concrete terms and conditions of such support are subject to such agreement, and Provider shall not be obligated to provide support obligations other than those provided herein.

Standard Support by Provider shall be in accordance with the following additional terms and conditions (“**Support Provisions**”), which are hereby incorporated by reference into the SAASA. Defined terms used herein but not otherwise defined herein shall have the meanings given such terms in the SAASA. In the event of a conflict between these Support Provisions and the SAASA, the SAASA shall govern.

NONE OF THE SERVICE AND SUPPORT PROVISIONS SHALL OPERATE OR BE CONSTRUED AS A WAIVER OF ANY LIMITATION OF WARRANTY, LIMITATION ON REMEDIES, LIMITATION OF DAMAGES, LIMITATION OF LIABILITY OR ANY OTHER LIMITATION AS SET FORTH IN THE SAASA IN FAVOR OF PROVIDER.

1. Fees; Scope.

1.1 Standard Support shall be free of charge and include the following:

- Evaluating feature requests (Provider will provide new features at its sole discretion).
- Assisting Customer in connection with the setup of an account and configuration of the Service.
- Verifying reproducible program errors in the Service (“**Error**”).
- Troubleshooting Errors by using reasonable efforts to provide solutions to Errors for which there are not existing known workarounds or patches.

1.2 Standard Support will be provided in English or German language. Other languages may be offered at Provider’s sole discretion (additional fees may apply).

1.3 Unless expressly provided by mutual agreement between Customer and Provider, Standard Support will be provided remotely from Provider’s premises only (i.e., no on-site Standard Support at Customer’s premises).

1.4 Standard Support will be provided during Provider’s normal business hours only (i.e., no weekends and no holidays).

1.5 Customer agrees that Standard Support may also be provided by qualified and duly authorized subcontractors of Provider.

2. Exclusions.

2.1 If the Service fails to analyze and/or detect a specific malicious Sample, this failure will generally not qualify as an Error.

2.2 No Standard Support will be provided if the Error is caused by a misuse of the Service by Customer or an operation of the Service by Customer which is not in accordance with the specifications found in ANNEX A.

2.3 Provider’s Standard Support does not cover Third Party products.

2.4 Except for the Standard Support mentioned above, the terms of this ANNEX B and the SAASA do not require Provider to provide Customer with any configuration, deployment, training, consulting services, or other technical assistance of any kind. Additional

technical support packages may be available for an additional fee, included in a Product Plan or agreed on in a separate Premium Services Addendum

3. Customer's Responsibilities and Obligations.

- 3.1 Customer shall promptly notify Provider if the operation of the Service does not conform to Documentation provided by Provider. Such notification shall contain a comprehensive description of the nature of the suspected Error; and a detailed step-by-step description on how to reproduce the Error (e.g. relevant log file entries).
- 3.2 Customer shall initiate a request for Standard Support via Provider's customer support portal only, which is available at <https://support.vmray.com> or via email sent to support@vmray.com ("**Support Request**").
- 3.3 Customer shall provide commercially reasonable assistance to assist Provider.
- 3.4 Customer shall always and continuously backup all relevant data on systems that may be affected by the use of the Service.

4. Support-Procedure.

- 4.1 Upon receipt of a Support Request, Provider shall use commercially reasonable efforts to analyze the problem and, if possible, confirm the existence of an Error.
- 4.2 Based on the severity level of the reported Error, Provider shall react as follows, but only if Customer has fulfilled its obligations set out in Section 3 above:

Level 1: CRITICAL IMPACT

- Definition: Service usage in its entirety is impossible AND there is a critical impact on Customer's business (e.g. due to complete Service failure or direct security impact on the Service).
- Response time: A ticket shall be opened and a resource shall be assigned within two (2) business hours.

Level 2: MAJOR IMPACT

- Definition: Due to the loss of essential Service functions, Service usage is severely restricted AND there is a major impact on Customer's business (e.g. basic functions are not usable).
- Response time: A ticket shall be opened, and a resource shall be assigned within one (1) business day.

Level 3: MINOR IMPACT

- Definition: Due to the loss of non-essential Service functions, Service usage is limited AND there is a minor impact on Customer's business.
- Response time: A ticket shall be opened, and a resource shall be assigned within three (3) business days.

Level 4: OTHER

- Definition: NON-Service issues (e.g. documentation errors, feature requests)
- Response time: A ticket shall be opened, and a resource assigned within five (5) business days.

ANNEX C: Service Level Agreement

1. Availability. Availability means that Customer can execute and use the essential functions of the Service as defined in the SAASA.

Provider shall provide the Service with an Availability of 99.5 % of each month.

The achievement of Availability will be calculated per month, as follows:

$$\frac{\text{total} - \text{nonexcluded} - \text{excluded}}{\text{total} - \text{excluded}} * 100 \geq \text{Monthly Service Availability}$$

Where:

- total means the total number of minutes in the month;
- nonexcluded means downtime that is not excluded; and
- excluded means any planned downtime (not to exceed 12 hours in any month) of which Provider gives 24 or more hours' notice via email or via a conspicuous on-screen message in the Service and any unavailability caused by circumstances beyond Provider's reasonable control, including, without limitation, Force Majeure Events, or third-party Internet service provider failures or delays (other than those Internet service providers under contract with Provider).

For any partial month during the Term, Availability will be calculated based on the entire month, not just the portion for which Customer subscribed.

2. Remedies. Should Provider fail to make the Service available as set forth in Section 1 above in a month, Customer may receive one full day of use of the Service without payment of subscription fees ("**Service Credit**"), for each 6 hours of Service unavailability below the percentage specified in Section 1 above subject to a maximum of 1 month of Service Credits per year of Service. Should Provider fail to make the Service available as set forth in Section 1 above in two consecutive months, Customer may terminate the SAASA by providing notice of termination in accordance with Section 3 below, in which case Provider will refund to Customer the unused portion of prepaid fees for the remainder of the then-current Term following the date of termination. The remedies described in this paragraph shall be the sole remedies available to Customer for breach of this SLA.

3. Claims and Notices. To claim a remedy under this SLA, Customer shall send Provider a notice, via email addressed to support@vmray.com within 20 business days after the end of each month. Claims may be made on a monthly basis only and must be submitted within 20 business days after the end of the applicable month, except where the then-current Term ends on a date other than the last day of a month, in which case any claim related to that subscription must be submitted within 20 business days after the then-current Term end-date. All claims will be verified against Provider's system records.

----- END OF SAASA FOR VMRAY SERVICE -----