

## **VENDOR AGREEMENT INSTRUCTIONS**

If you have not taken exception or deviation to the agreement language in the solicitation attributes, please insert your company name on the first page below. This PDF document is a fillable form. Download the document to your computer, fill in your company name at the top of page 1, save the file, and upload to the AGREEMENT section of the "Response Attachments" tab. Next, download the AGREEMENT SIGNATURE FORM from the "Attachment" tab. This PDF document is a fillable form. Download the document to your computer, fill in the requested company information, print the file, SIGN the form, SCAN the completed and signed AGREEMENT SIGNATURE FORM, and upload to the AGREEMENT SIGNATURE FORM section of the "Response Attachments" tab.

If you have taken exception to any of the agreement language and noted the exception in the deviations section of the attributes for the agreement, complete the AGREEMENT SIGNATURE FORM, but DO NOT SIGN until those deviations have been negotiated and resolved with TIPS management. Upload the unsigned form to the AGREEMENT SIGNATURE FORM section of the "Response Attachments" tab, because this is a required document.

# **VENDOR AGREEMENT**

**Between Nearpod Inc., a Delaware Corp. and**

(Company Name)

**THE INTERLOCAL PURCHASING SYSTEM (TIPS)**

**For**

**Interactive Presentation Systems #161101**

## **General Information**

This Vendor Agreement ("Agreement") made and entered into by and between The Interlocal Purchasing System (hereinafter referred to as "TIPS" respectfully) a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686 and Nearpod Inc., a Delaware for-profit corporation whose principal place of business is located at: 18305 Biscayne Blvd., Suite 301, Aventura, FL 33160 ("Nearpod" or "Vendor"). This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

The vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation as posted, including any addenda and the awarded vendor's proposal. Once signed, if an awarded vendor's proposal varies or is unclear in any way from the TIPS Agreement, TIPS, at its sole discretion, will decide which provision will prevail. Other documents to be included are the awarded vendor's proposals, task orders, purchase orders and any adjustments which have been issued.

### **Definitions**

**PURCHASE ORDER** is the TIPS member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed to between Nearpod and TIPS member will be added as addendums to the PO. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addendums possible.

## Terms and Conditions

### Freight

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

### Warranty Conditions

All services and products shall have a warranty described in Nearpod's Terms and Conditions found in Exhibit A to this document, which may be amended by Nearpod with the written approval of TIPS, which shall not be unreasonably withheld, conditioned, or delayed. The immediately preceding sentence regarding TIPS' approval of Nearpod's Terms and Conditions will only be applicable to clients or members purchasing through TIPS. Notwithstanding anything to the contrary in this contract, the warranty conditions at the time of purchase of a Nearpod license by any TIPS member shall remain in effect for the duration of that purchased license.

### Customer Support

Nearpod shall provide timely and accurate customer support to TIPS members. Nearpod shall respond to such requests within two (2) working days after receipt of the request. Nearpod shall provide training regarding products and services supplied by the Nearpod unless otherwise clearly stated in writing at the time of purchase. A working day shall be defined as any day that is not a Saturday, Sunday or legal holiday.

### Agreements

**All Agreements and agreements** between Nearpod and TIPS members shall strictly adhere to the statutes that are set forth in the Uniform Commercial Code as most recently revised.

**Agreements for purchase** will normally be put into effect by means of a purchase order(s) executed by authorized agents of the participating government entities.

**Davis Bacon Act** requirements will be met when Federal Funds are used for construction and/or repair of buildings.

### Tax exempt status

A taxable item sold, leased, rented to, stored, used, or consumed by any of the following governmental entities is exempted from the taxes imposed by this chapter: (1) the United States; (2) an unincorporated instrumentality of the United States; (3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States; (4) the State of Texas; (5) a Texas county, city, special district, or other political subdivision; or (6) a state, or a governmental unit of a state that borders Texas, but only to the extent that the other state or governmental unit exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state. Texas Tax Code § 151.309.



**Assignments of Agreements**

No assignment of Agreement may be made without the prior written approval of TIPS. Payment can only be made to the awarded Vendor or vendor assigned dealer.

**Disclosures**

1. Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in the TIPS program.
3. The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

**Renewal of Agreements**

Term of Agreement is one year with renewal options for up to two additional years as provided in the solicitation, if sales are reported through the Agreement and both parties agree in writing.

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

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

**Shipments**

If Nearpod physically ships any product, then actual shipping costs will be invoice to the TIPS member.

**Invoices**

The Vendor or vendor assigned dealer shall submit invoices, to the TIPS member. Each invoice shall include the TIPS member's purchase order number. The shipment tracking number or pertinent information for verification of TIPS member receipt shall be made available upon request

**Payments**

The TIPS member will make payments directly to the Vendor or vendor assigned dealer at net 30 days after receiving invoice.

**Pricing**

The vendor contracts to provide pricing to TIPS and its members as proposed in Nearpod's response to TIPS' RFP and that pricing shall be the lowest available to same cooperative purchase customers who have purchased same quantities and services or products. When the foregoing conditions are present, Nearpod, Inc. shall prospectively revise proposed pricing downward for the duration of the agreement. Price increases will be honored. However, the Vendor shall honor previous prices for thirty (30) days after written notification to TIPS of an increase and in compliance with the RFP price adjustment methods.

Pricing may always be less to TIPS members than proposed by Nearpod, Inc. but never greater.

All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to customer. Failure to render the participation fee to TIPS shall constitute a breach of this agreement and shall be grounds for termination of this agreement and any other agreement held with TIPS. Notwithstanding anything to the contrary in this agreement, Vendor is not required to remit the participant fee until the Vendor has received payment from the TIPS member on the assessed transaction.

The participant fee shall be 2% of the TIPS member's purchase price.

**Participation Fees**

Vendor or vendor assigned dealer contracts to pay the participation fee for all Agreement sales to TIPS on a monthly scheduled report. Vendor must login to the TIPS database and use the "Submission Report" section to report sales. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement. Failure to pay the participation fee will result in termination of Agreement. Please contact TIPS at [tips@tips-usa.com](mailto:tips@tips-usa.com) or call (866) 839-8477 if you have questions about paying fees.

## **Indemnity**

1. **Indemnity for Personality Agreements.** Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS member(s), officers and employees, from and against all third party claims and suits for damages, injuries to persons (including death), tangible property losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's negligent or intentional acts, including all such causes of action based upon common, constitutional, or statutory law except to the extent caused by the negligent or intentional acts or omissions of the TIPS, TIPS member(s), officers, employees, or agents.

**Indemnity for Performance Agreements.** The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS member(s), officers and employees from and against all third party claims and suits for damages, including injuries to persons (including death), tangible property losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's negligent or intentional acts, including all such causes of action based upon common, constitutional, or statutory law, except to the extent caused by the negligent or intentional acts or omissions of the TIPS, TIPS member(s), officers, employees, or agents.

## **Multiple Vendor Awards**

TIPS reserves the right to award multiple vendor Agreements for categories when deemed in the best interest of the TIPS membership. Bidders scoring 80% or above will be considered for an award. Categories are established at the discretion of TIPS.

## **State of Texas Franchise Tax**

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

## **Miscellaneous**

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

## **Purchase Order Pricing/Product Deviation**

If a deviation of pricing/product on a purchase order occurs, TIPS is to be notified within 24 hours of receipt of order.



**Cancellation for non-performance or Agreement deficiency**

TIPS may terminate any Agreement if TIPS Members have not used the Agreement, or if purchase volume is determined to be "low volume" in any 12-month period. TIPS reserves the right to cancel the whole or any part of this Agreement due to failure by awarded vendor to carry out any obligation, term or condition of the Agreement. TIPS may issue a written deficiency notice to awarded vendor for acting or failing to act in any of the following:

- Providing material that does not meet the specifications of the Agreement;
- Providing work and/or material that was not awarded under the Agreement;
- Failing to adequately perform the services set forth in the scope of work and specifications;
- Failing to complete required work or furnish required materials within a reasonable amount of time;
- Failing to make progress in performance of the Agreement and/or giving TIPS reason to believe that awarded vendor will not or cannot perform the requirements of the Agreement; and/or
- Performing work or providing services under the Agreement prior to receiving a TIPS reviewed purchase order for such work.

Upon receipt of the written deficiency, awarded vendor shall have ten (10) days to provide a satisfactory response to TIPS. Failure to adequately address all issues of concern may result in Agreement cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by awarded vendor under this Agreement shall become the property of the TIPS Member on demand.

**TIPS Member Purchasing Procedures**

Purchase orders are issued by participating TIPS member to the awarded vendor indicating on the PO "Agreement Number". Purchase Order is emailed to TIPS at [tipspo@tips-usa.com](mailto:tipspo@tips-usa.com).

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

**Licenses**

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the Agreement. TIPS reserves the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) expire, lapse, are suspended or terminated.

**Novation**

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

**Site Requirements (when applicable to service or job)**

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

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

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

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

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

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

**Smoking**

Persons working under Agreement shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

**Invoices**

The awarded vendor shall submit invoices to the participating entity clearly stating "Per TIPS Agreement". The shipment tracking number or pertinent information for verification shall be made available upon request.



**Marketing**

Awarded vendor agrees to allow TIPS to use their name and logo within website, marketing materials and advertisement. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS, which shall not be unreasonably withheld.

**Supplemental agreements**

The entity participating in the TIPS Agreement and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. TIPS, its agents, TIPS members and employees shall not be made party to any claim for breach of such agreement.

**Survival Clause**

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customer under the terms and conditions of the Agreement shall survive the expiration or termination of the Agreement. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Agreement.

**Legal obligations**

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

**Audit rights**

Awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. TIPS shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to TIPS Members. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm, at TIPS' sole cost and expense. In the event of an audit, the requested materials shall be provided in the format they are regularly kept by Nearpod, and at the location designated by Region 8 ESC or TIPS.

**Force Majeure**

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

**Scope of Services**

The specific scope of work for each job shall be determined in advance and in writing between TIPS Member and Nearpod. It is okay if the TIPS member provides a general scope, but Nearpod should provide a written scope of work to the TIPS member as part of the proposal.

Once the scope of the job is agreed to, the TIPS member will issue a PO and/or an Agreement with the estimate referenced as an attachment along with bond and any other special provisions agreed to for the TIPS member. If special terms and conditions other than those covered within this solicitation and awarded Agreements are required, they will be attached to the PO and shall take precedence over those in this Agreement.

**Project Delivery Order Procedures**

The TIPS member having approved and signed an interlocal agreement, or other TIPS membership document, may make a request of the awarded vendor under this Agreement when the TIPS member has services that need to be undertaken. Notification may occur via phone, the web, email, fax, or in person.

Upon notification of a pending request, the awarded vendor shall make contact with the TIPS member as soon as possible, but must make contact with the TIPS member within two working days.

**Scheduling of Projects**

Scheduling of projects (if applicable) will be accomplished when the TIPS member issues a purchase order that will serve as "the notice to proceed". The period for the delivery order will include the mobilization, materials purchase, installation and delivery, design, weather, and site cleanup and inspection. No additional claims may be made for delays as a result of these items. When the tasks have been completed the awarded vendor shall notify the client and have the TIPS member inspect the work for acceptance under the scope and terms in the PO. The TIPS member will issue in writing any corrective actions that are required. Upon completion of these items, the TIPS member will issue a completion notice and final payment will be issued.



### Support Requirements

If there is a dispute between the awarded vendor and TIPS member, TIPS or its representatives will assist in conflict resolution or third party (mandatory mediation), if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded vendors TIPS project files, documentation and correspondence.

### Incorporation of Solicitation

The TIPS Request for Proposals or the Request for Competitive Sealed Proposals solicitation and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim, and attached hereto as composite Exhibit "B".

## Special Terms and Conditions

It is the intent of TIPS to Agreement with a reliable, high performance vendor to supply products and services to government and educational agencies. It is the experience of TIPS that the following procedures provide TIPS, the Vendor, and the participating agency the necessary support to facilitate a mutually beneficial relationship. The specific procedures will be negotiated with the successful vendor.

- **Agreements:** All vendor purchase orders and/or Agreements/agreements must be emailed to TIPS at [tips@tips-usa.com](mailto:tips@tips-usa.com). Should an agency send an order direct to vendor, it is the vendor's responsibility to forward the order to TIPS at the email above within 48 business hours and confirm its receipt with TIPS.
  - **Promotion of Agreement:** It is agreed that Vendor will encourage all eligible entities to purchase from the TIPS Program. Encouraging entities to purchase directly from the Vendor and not through TIPS Agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.
  - **Daily Order Confirmation:** All Agreement purchase orders will be approved daily by TIPS and sent to vendor. The vendor must confirm receipt of orders to the TIPS member (customer) within forty-eight 48 business hours or two (2) working days.
  - **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, then updated pricing must be posted by 1<sup>st</sup> of each month.
  - **Back Ordered Products:** If product is not expected to ship within 3 business days, customer is to be notified within 48 hours and appropriate action taken based on customer request.
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# TIPS Vendor Agreement Signature Form

Interactive Presentation Systems #161101

Company Name Nearpod Inc., a Delaware corporation  
Address 18305 Biscayne Blvd., Suite 301  
City Aventura State FL Zip 33160  
Phone 305.677.5030 ext 2268 Fax 305.655.1999  
Email of Authorized Representative rfps@nearpod.com  
Name of Authorized Representative Felipe Sommer  
Title President  
Signature of Authorized Representative   
Date March 15, 2017  
TIPS Authorized Representative Name Meredith Barton  
Title Vice President of Operations  
TIPS Authorized Representative Signature   
Approved by ESC Region 8   
Date 3-17-2017

## **EXHIBIT "A" TO TIPS AGREEMENT**

### **Terms and Conditions**

By accessing or registering on the Nearpod website, or by downloading any of the Nearpod mobile applications (collectively, "Nearpod Materials"), you agree to become bound by these Terms and Conditions. If you do not agree to all the Terms and Conditions, then you may not access the Nearpod website or use any of our products or service.

**IMPORTANT NOTE:** Nearpod is intended for use by teachers and by educational institutions, public or private.

If you are interested in using Nearpod for commercial or corporate purposes, we'll be happy to discuss your options, but first you should contact us at [biz@nearpod.com](mailto:biz@nearpod.com). Commercial, corporate or other misuse of Nearpod may result in the cancellation of the account.

We provide our services to teachers, and Nearpod is available in the US to individuals aged 13 years or older.

Outside the US, if you are under the age of majority in your country of residence, you must review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand it. We will notify you of any updates by posting on Nearpod and notifying you by email using the email address on your account.

Nearpod and the Nearpod Materials comply with applicable law, including the Family Educational Rights and Privacy Act (FERPA) and Children's Online Privacy Protection

Act (COPPA). We do not intentionally collect any personally identifiable information from users under the age of 13. If you are a parent or guardian or teacher and believe that your child or student has provided Nearpod with personally identifiable information, please notify [privacy@nearpod.com](mailto:privacy@nearpod.com) so that we can immediately delete the information from our servers.

### **Terms of Service**

1. In order to access the Nearpod Materials, you may be required to provide certain information (such as name, e-mail, etc.). You agree that any information you provide will always be accurate.

2. The Nearpod Materials may contain material that is owned by or licensed to us. This material includes, but is not limited to, the design, layout, look, appearance, and graphics. Reproduction of such material outside the Nearpod Materials is prohibited.

3. Nearpod owns all legal right, title, and interest in and to the Nearpod Materials, including any intellectual property rights, whether those rights are registered or not, and wherever in the world those rights may exist. Attempting to copy, duplicate, reproduce, sell, trade, or resell the Nearpod Materials is strictly prohibited without our prior written agreement. Unauthorized use of the Nearpod Materials may give rise to a claim for damages and be a criminal offense.

4. By using the Nearpod Materials, you may provide contents and any other materials, information, ideas, concepts, and know-how ("Content"). Under no circumstances will Nearpod become liable for any payment to you for any information that you provide. You, and not Nearpod, are solely responsible for any Content you make available through your use of the Nearpod Materials. Nearpod does not control the Content hosted via the service, nor does it guarantee the accuracy, integrity or quality of such Content. Users shall retain



all rights, including intellectual property rights, for user-generated Content that they create with their Nearpod account, unless they enter a publishing agreement with Nearpod.

We are not responsible or liable in any way for any Content provided by others. However, we reserve the right at all times to determine whether Content is appropriate and in compliance with this Agreement, and may pre-screen and remove Content at any time if such Content is found to be in violation of this Agreement or is otherwise objectionable.

#### Copyright Claims (Digital Millennium Copyright Act)

Nearpod respects the intellectual property rights of others, and requires that the people who use the Sites do the same. It is our policy to respond promptly to claims of intellectual property misuse. Our procedures for responding to alleged copyright infringement are consistent with the form suggested by the United States Digital Millennium Copyright Act, the text of which can be found at the U.S. Copyright Office web site <http://www.copyright.gov/legislation/dmca.pdf>. Please note that you will be liable for damages (including costs and attorneys' fees) if you make any material misrepresentations when making or countering a copyright infringement claim.

If you believe that your work has been copied and is accessible on this site in a way that constitutes copyright infringement, you may notify us by providing our copyright agent with the following information in writing:

- a. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- b. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be

disabled, and information reasonably sufficient to permit Nearpod to locate the material (e.g., URL).

- c. Information reasonably sufficient to permit Nearpod to contact you, such as name, postal address, telephone number, and, if available, an email address at which you may be contacted.
- d. Include the following statement: "I have a good faith belief that use of the material described above in the manner complained of is not authorized by the copyright owner, its agent, or the law."
- e. Include the following statement: "The information in the notification is accurate, and under penalty of perjury, I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."
- f. A physical, electronic or digital signature, in a form reasonably acceptable to Nearpod, of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- g. Send written communication to the following contact:

18305 Biscayne Blvd.

Aventura, Florida 33160

- h. Send electronically-signed communication to [dmca@nearpod.com](mailto:dmca@nearpod.com).

DMCA Counter-Notification Procedure: After receiving a notification of alleged infringement, Nearpod will remove or disable access to the material claimed to be infringing or claimed to be the subject of infringing activity. At the same time, Nearpod will provide the provider of affected material with a copy of the notice. The provider of affected material may make a counter notification pursuant to sections 512(g)(2) and (3) of the Digital Millennium Copyright Act. Please be advised that you may be held liable for damages if you make material misrepresentations pursuant to federal law in the counter

notification. When we receive a counter notification, we may reinstate the material in question. To file a counter notification with us, the provider of affected material must provide a written communication (by postal mail, overnight mail, or, when digitally-signed, by email) that sets forth the items specified below. To expedite our ability to process your counter notification, please use the following format (including section numbers):

- a. Identify the material that Nearpod has removed or to which Nearpod has disabled access and the location at which the material appeared before it was removed or access to it was disabled.
- b. Provide your name, postal address, telephone number, email address, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in Miami, Florida (if your address is outside of the United States, for any judicial district in which Nearpod may be found), and that you will accept service of process from the person who provided the initial notification of infringement or an agent of such person.
- c. Include the following statement: "I swear, under penalty of perjury, that I have a good faith belief that the removed material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled."
- d. Sign the paper or affix an electronic or digital signature to the communication in a form reasonably acceptable to Nearpod.
- e. Send written communication to the following address:

18305 Biscayne Blvd.

Aventura, Florida 33160

- f. Send electronically- or digitally-signed communication to [copyright@nearpod.com](mailto:copyright@nearpod.com). Upon receipt of a counter notification in substantial compliance with the DMCA, Nearpod will provide the person who provided the initial notification of claimed infringement with a copy of the counter notification



promptly. After receipt of the counter notification, Nearpod will generally replace the removed material and cease disabling access to it, unless Nearpod's designated agent first receives notice from the person who submitted the initial notification that such person has filed an action seeking a court order regarding the removed material.

Nearpod is generally unable to evaluate the merits of trademark disputes because trademark rights may be based on registration or common law use, exist only for certain categories of goods or services and may differ internationally. Therefore, Nearpod expects you to resolve trademark disputes directly with the individual rather than utilizing Nearpod as an intermediary.

5. You are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Nearpod Materials and you are responsible for all activities that occur under your account(s). You are solely responsible for any consequences, losses, or damages that we may directly or indirectly incur or suffer due to any unauthorized activities conducted by you. If you become aware of any unauthorized use of your password or of your account, you agree to notify Nearpod immediately at [privacy@nearpod.com](mailto:privacy@nearpod.com)

6. You agree the use of any data related to the Nearpod Materials shall be in accordance with Nearpod's [Privacy Policy](#).

7. We may provide various open communication tools on the Nearpod Materials, such as blog comments, blog posts, chat forums, message boards, and the like. By posting information or otherwise using any open communication tools as mentioned, you agree that you will not upload, post, share, or otherwise distribute any content that: (i). is illegal, threatening, defamatory, harassing, degrading, intimidating, fraudulent, racist, and

pornographic or contains any type of inappropriate or explicit language; (ii). infringes any trademark, copyright, trade secret, or other proprietary right of any party; or (iii). attempts any type of unauthorized advertising.

8. We reserve the right to anonymously track and report a user's activity inside of the Nearpod Materials using non-personally identifiable information as more fully discussed in our [Privacy Policy](#). We will not advertise or market to students who use Nearpod, nor will any student information collected by Nearpod be shared with third parties for advertising and marketing purposes.

9. We may, at our sole discretion, suspend or terminate your access to all or part of the Nearpod Materials with or without notice and for any reason, including, without limitation, breach of this Agreement.

#### **Data Ownership**

The Nearpod account owner is the owner of any data, including student Content, submitted through the Nearpod Materials. Nearpod retains a perpetual, irrevocable, worldwide, sublicensable and transferable right to use, publish, display, modify and copy anonymized Content. For the avoidance of doubt, such anonymized Content shall not include any personally identifiable information.

#### **Cancelling Your Account**

You may cancel your Nearpod Paid Account at anytime, and cancellation will be effective immediately. Your Nearpod Paid Account will continue in effect unless and until you cancel your Paid Account or we terminate it. Should you elect to cancel your Paid Account, please note that you will not be issued a refund for any previous payments.

### **Disclaimer of Warranties**

The Nearpod Materials are provided "as is." Nearpod hereby disclaims all warranties of any kind, express or implied, including, without limitation, the warranties of merchantability, fitness for a particular purpose, and non-infringement. Nearpod does not make any warranty that the Nearpod Materials will be error-free or that access thereto will be continuous or uninterrupted.

You understand that you use the Nearpod Materials at your own discretion and risk. You are solely responsible for any damage to your computer or other devices and for any loss of data that may result from the download of such content. We do not provide any warranty or guarantee as to the accuracy, performance, completeness, or suitability of the information and materials found or offered on the Nearpod Materials. You acknowledge that such information and materials may contain inaccuracies or errors and we expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law. Nearpod does not guarantee or warrant that any content you may store or access through the Nearpod service will not be subject to inadvertent damage, loss or removal.

It is your responsibility to maintain appropriate alternate backup of your information and data.

### **Limitation of Liability**

In no event will Nearpod be liable with respect to any subject matter of this agreement under any contract, negligence, strict liability, or other legal or equitable theory for: (i) any special, incidental, or consequential damages; (ii) the cost of procurement for substitute products or services; (iii) for interruption of use or loss or corruption of data; or (iv) for any amounts that exceed the fees paid by you to Nearpod.



### **General Representation and Warranty**

You represent and warrant that (i) your use of our Product will be in strict accordance with the Privacy Policy as stated below, with this Agreement and with all applicable laws and regulations (including, without limitation, any local laws or regulations in your country, state, city, or other governmental area, regarding online conduct and acceptable content) and (ii) your use of the Product will not infringe or misappropriate the intellectual property rights of any third party.

### **Miscellaneous**

This Agreement constitutes the entire agreement between Nearpod and you concerning the subject matter hereof, and it may only be modified by a written amendment signed by an authorized executive of Nearpod, or by the posting by Nearpod of a revised version. Except to the extent that applicable law, if any, provides otherwise, this Agreement and any access to or use of the Nearpod Materials will be governed by the laws of the state of Florida, U.S.A.

#### **Contact Information:**

18305 Biscayne Blvd.  
Aventura, Florida 33160

If you have any questions or comments about this Agreement or our [Privacy Policy](#), you can contact us at: [privacy@nearpod.com](mailto:privacy@nearpod.com)

Effective Date for TIPS agreement March 15, 2015

# Composite Exhibit “B”

# The Interlocal Purchasing System (TIPS Cooperative) Supplier Response

## Bid Information

Bid Creator Mr. David Mabe General Manager  
Email david.mabe@tips-usa.com  
Phone +1 (903) 243-4759  
Fax +1 (866) 749-6674  
  
Bid Number 161101 Addendum 4  
Title Interactive Presentation Systems  
Bid Type RFP  
Issue Date 11/1/2016 12:00 AM (CT)  
Close Date 1/13/2017 03:00:00 PM (CT)

## Contact Information

Address Region VIII Education Service Center  
4845 US Highway 271 North  
Pittsburg, TX 75686  
Contact Kim Thompson, TIPS Office Manager  
  
Department Building  
  
Floor/Room  
Telephone +1 (866) 839-8477  
Fax +1 (866) 839-8472  
Email bids@tips-usa.com

## Ship to Information

Address  
  
Contact  
  
Department Building  
  
Floor/Room  
Telephone  
Fax  
Email

## Supplier Information

Company Nearpod Inc.  
Address 18305 Biscayne Blvd Ste 301  
Aventura, FL 33401  
  
Contact  
Department  
Building  
Floor/Room  
Telephone (855) 632-7763  
Fax (305) 655-1999  
Email  
Submitted 1/13/2017 02:49:23 PM (CT)  
Total \$0.00

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

Signature Felipe Sommer

Email rfps@nearpod.com

## Supplier Notes

Thank you for your business!

## Bid Notes

## Bid Activities

## Bid Messages



## Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	Yes - No	Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.	No
2	Yes - No	Highly Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB? Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.	No
3	Yes - No	The Vendor can provide services and/or products to all 50 US States?	Yes
4	States Served:	If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)	
5	Company and/or Product Description:	This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)	<p>Nearpod is a mobile learning platform and content marketplace that helps teachers reimagine the way they teach using mobile devices in the classroom. Teachers and students love the platform, and Apple and Google often highlight Nearpod as an essential classroom tool. As a result, engagement has grown exponentially since its launch in 2012 -Nearpod currently reaches almost 5M students monthly in over 10,000 schools. While most of Nearpod's usage and focus to date has been in the US, the product also sees significant adoption in leading international markets. 1.3M teachers registered with the platform, and they downloaded 1M interactive lessons from the Nearpod Store. Using Nearpod, teachers collect over 10M insights into student learning every month.</p> <p>The company has offices in Miami (FL) and San Francisco (CA) and was founded by Berkeley classmates and experienced entrepreneurs Felipe Sommer and Guido Kovalskys, a recent education fellow at Stanford's Design School. Nearpod is backed by a premium pool of investors: Reach Capital, Store Ventures, Rothenberg Ventures, Emerson Collective, Stanford University (via its StartX fund), Marc Benioff (Salesforce.com CEO), and Deborah Quazzo (Managing Partner at GSV Advisors).</p>
6	Primary Contact Name	Primary Contact Name	Natali Barski

7	Primary Contact Title	Primary Contact Title	Special Projects
8	Primary Contact Email	Primary Contact Email	rjp@nearpod.com
9	Primary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	3056775030
10	Primary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	3056551999
11	Primary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	7866831546
12	Secondary Contact Name	Secondary Contact Name	John Kruthoffer
13	Secondary Contact Title	Secondary Contact Title	VP of Sales
14	Secondary Contact Email	Secondary Contact Email	johnk@nearpod.com
15	Secondary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	3056775030
16	Secondary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	3056551999
17	Secondary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	7862009034
18	Admin Fee Contact Name	Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS.	Martin Lede
19	Admin Fee Contact Email	Admin Fee Contact Email	finance@nearpod.com
20	Admin Fee Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	3056775030
21	Purchase Order Contact Name	Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS.	Martin Lede
22	Purchase Order Contact Email	Purchase Order Contact Email	support@nearpod.com
23	Purchase Order Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	3056775030
24	Company Website	Company Website (Format - www.company.com)	<a href="https://nearpod.com/">https://nearpod.com/</a>
25	Federal ID Number:	Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789)	46-0993679
26	Primary Address	Primary Address	18350 Biscayne Blvd., Suite 301
27	Primary Address City	Primary Address City	Aventura
28	Primary Address State	Primary Address State (2 Digit Abbreviation)	FL
29	Primary Address Zip	Primary Address Zip	33160

30	Search Words:	Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. <b>YOU MAY NOT LIST NON-CATEGORY ITEMS.</b> (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)	Nearpod, e-learning, e learning, interactive, software, digital content, content, Saas, cloud based, cloud-based, licenses, common core, standard, standard-aligned, standard aligned, K12, K 12, K-12, 1st, Kinder, Kindergarten, Kindergarten, First, 2nd, Second, 3rd, Third, 4th, Fourth, 5th, Fifth, Sixth, 6th, 7th, Seventh, 8th, Eighth, tool, assessment, assessment tool, formative, mobile learning platform, content marketplace, content, curriculum, tutoring, engaging,
31	Yes - No	Do you wish to be eligible to participate in a TIPS contract in which a TIPS member utilizes federal funds on contracts exceeding \$100,000? (Non-Construction) (If YES, vendor should download the Federal Regulations for Contracts document from the Attachments section, fill out the form and submit the document in the "Response Attachments" FEDERAL FUNDS section.) (Vendor must also download the Suspension or Debarment Certificate document from the Attachments section, fill out the form and submit the document in the "Response Attachments" SUSPENSION OR DEBARMENT section.)	Yes
32	Yes - No	Certification of Residency (Required by the State of Texas) Company submitting bid is a Texas resident bidder?	No
33	Company Residence (City)	Vendor's principal place of business is in the city of?	Aventura
34	Company Residence (State)	Vendor's principal place of business is in the state of?	Florida
35	Felony Conviction Notice:	(Required by the State of Texas) My firm is, as outlined on PAGE 5 in the Instructions to Bidders document: (Questions 36 - 37)	(No Response Required)
36	Yes - No	A publicly held corporation; therefore, this reporting requirement is not applicable?	No
37	Yes - No	Is owned or operated by individual(s) who has/have been convicted of a felony? If answer is YES, a detailed explanation of the name(s) and conviction(s) must be uploaded to the "Response Attachments" FELONY CONVICTION section.	No
38	Pricing Information:	Pricing information section. (Questions 39 - 42)	(No Response Required)
39	Yes - No	In addition to the typical unit pricing furnished herein, the Vendor agrees to furnish all current and future products at prices that are proportionate to Dealer Pricing. If answer is NO, include a statement detailing how pricing for TIPS participants would be calculated in the PRICING document that is uploaded to the "Response Attachments" PRICING section.	Yes
40	Yes - No	Pricing submitted includes the TIPS administration fee?	Yes
41	Yes - No	Vendor agrees to remit to TIPS the required administration fee?	Yes
42	Yes - No	Additional discounts to TIPS members for bulk quantities or scope of work?	Yes



- 43 Start Time Average start time after receipt of customer order is \_\_\_\_ 5  
working days?
- 44 Years Experience Company years experience in this category? 4
- 45 Resellers: Does the vendor have resellers that it will name under this contract? (If applicable, vendor should download the Reseller/Dealers spreadsheet from the Attachments section, fill out the form and submit the document in the "Response Attachments" RESELLERS section. No
- 46 Prices are guaranteed for? (\_\_\_\_Month(s), \_\_\_\_ Year(s), or Term of Contract) (Standard Term of Contract term is "Term of Contract")

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Line Items

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Response Total:

\$0.00

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References

**\*\* Must have at least 3 References. References must be School, City, County, University, State Agency or Other Government.**

Organization	City	State	Contact Name	Contact Phone
Eanes ISD	Austin	Texas	Carl Hooker	512-732-9026
Round Rock ISD	Round Rock	Texas	Lannon Heflin	512-797-1895
El Paso ISD	El Paso	Texas	Timothy Holt	915 230 2640



## Regulatory Standing Form

I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not explain below or attach explanation.

n/a

Signature

FELICE SOMMER

Name of Authorized Signatory

NEARPOD, DELAWARE CORPORATION

Name of Company

12-28-2016

Date

**Notice to Vendors Conflict of Interest  
Disclosure Statements Texas Local  
Government Code, Chapter 176 for Education Service Center and TIPS**

Vendors are required to file a Conflict of Interest Questionnaire (Form CIQ) with the District if an employment or business relationship or family relationship exists between the vendor and a local government officer ("LGO") of the District or a family member of the LGO. **THERE ARE POTENTIAL CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH TEX. LOCAL GOVT. CODE CHAPTER 176.** Certain terms used herein are defined in Chapter 176. Vendors are encouraged to review and become familiar with all disclosure requirements of Chapter 176 and Form CIQ. The information contained herein is for information purposes only and shall not be construed as legal advice. "Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent (including an employee) of a vendor.

A vendor is required to file a completed Form CIQ if the vendor has a business relationship with C-FB ISD (the "District") and:

1. has an employment or other business relationship with a Local Government Officer ("LGO") of the District, or a family member of the LGO;
2. has given a LGO of the District, or a family member of the LGO, one or more gifts that have the aggregate value of more than \$100 in the 12-month period specified in Loc. Govt. Code Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1), or
3. has a family relationship with a LGO of the District.

**Form CIQ must be filed with the appropriate District records administrator:**

1. Not later than the seventh business day after the later of:
  - (1) the date that the vendor:
    - (A) begins discussions or negotiations to enter into a contract with the District; or
    - (B) submits to the District an application, response to a request for proposals or bids, correspondence, or other writing related to a potential contract with the District; or
  - (2) the date the vendor becomes aware:
    - (A) of an employment or other business relationship with a LGO, or a family member of the LGO;
    - (B) that the vendor has given one or more gifts described above; or
    - (C) of a family relationship with a LGO.
2. The vendor also shall file an updated completed questionnaire (Form CIQ) not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire in complete or inaccurate

**Local Government Officers (LGOs) of the Education Service Center Region 8 and TIPS as of September 01, 2016, include:**

1. **Members of the Education Service Center Region 8 and TIPS Board of Trustees:** current list found at [http://www.reg8.net/106311\\_2](http://www.reg8.net/106311_2)
2. Executive Director: Dr. David Fitts
3. **An employee of Education Service Center Region 8 and TIPS who exercises discretion in the planning, recommending, selecting, or contracting of a vendor** a list may be found at [http://www.reg8.net/80336\\_2](http://www.reg8.net/80336_2)

If you are required to file a Conflict of Interest Questionnaire (Form CIQ), upload the with your proposal.

**CONFLICT OF INTEREST QUESTIONNAIRE****FORM CIQ****For vendor doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.008(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

Nearpod Inc., a Delaware corp.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

N/A

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☒

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Jan. 13, 2017

Date



Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, *Federal Register* (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(Before completing certification, read attached instructions.)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NEARPOD INC., DELAWARE CORPORATION  
Organization Name

TIPS  
PR/Award Number or Project Name

Name and Title of Authorized Representative FELICE SOMMER PRES. DEUT

Signature

Date

12-28-2016



## Certification Regarding Lobbying

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 section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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.

NEARCO INC., DELAWARE CORPORATION

18305 BISCAYNE BLVD #301, AVENTURA, FLORIDA  
Name/Address of Organization

FELICE SOMMER / PRESIDENT  
Name/Title of Submitting Official

  
Signature

12-28-2016  
Date

**Contract Terms and Conditions**  
**Please initial your answer and sign on page 2 or 2 of this section**

**Indemnification**

The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ...". The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

**Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?** YES ☒ NO ☐

**Remedies**

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

**Do you agree to these terms?** YES ☒ NO ☐ If you do not, please reference objection in Deviation form section

**Choice of Law**

This agreement and any addenda or other additions and all contracts or awards resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

**Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?** YES ☒ NO ☐

**Jurisdiction and Service of Process**

Any Proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world.

**Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?** YES ☒ NO ☐

**Alternative Dispute Resolution**

Prior to filing of litigation, the parties may select non-binding mediation as a method of conflict resolution for issues arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction. The parties agree that if non-binding mediation is chosen as a resolution process, the parties must agree to the chosen mediator(s) and that all mediation venue shall be at a location in Camp or Titus, County, Texas agreed by the parties. The parties agree to share equally the cost of the mediation process and venue cost.

**Do you agree to these terms?** YES ☒ NO ☐ If you do not, please reference objection in Deviation form section



### Infringement(s)

The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights in connection with the vendor's proposal or ultimate contracts awarded and approved.

Do you agree to these terms? YES ☒ NO ☐ If you do not, please reference objection in Deviation form section

### Acts or Omissions

The successful vendor will be expected to indemnify and hold harmless the TIPS, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by TIPS and the vendor.

Do you agree to these terms? YES ☒ NO ☐ If you do not, please reference objection in Deviation form section

### Contract Governance

Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 *et seq.* Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms? YES ☒ NO ☐ Not a negotiable term.

### Payment Terms

TIP's members pay net 30 or at point of sale and complies with the State of Texas payment law, Texas Government Code, Chapter 2251. See statute for specifics or consult your legal counsel. These are minimum terms required of the TIPS by law and the parties may negotiate custom payment terms as desired provided they do not violate the statutory requirements.

### Funding Out Clause

Pursuant to Texas Local Government Code Sec. 271.903, any proposal offer accepted by TIPS and its members and all contracts to be approved are subject to the budgeting and appropriation of then currently available funds. See statute for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms? YES ☒ NO ☐ Not a negotiable term.

Signature below certifies accuracy of answers to all sections on page 1 and 2 of this document.

Authorized Signature 

Printed Name FELIPE SOMMER

Company Name and address:

NEAR POD INC., DELAWARE CORPORATION 18305 BISCAYNE BLVD #301 AVENTURA, FLORIDA

Telephone Number 305-677-5030 Date 12-28-2016 33160

## DEVIATION/COMPLIANCE SIGNATURE FORM

### TIPS

NEARPOD INC., DELAWARE CORPORATION

COMPANY NAME

18305 BISCAYNE BLVD #301

ADDRESS

AVENTURA

CITY

FLORIDA


STATE

305 677 5030

PHONE NUMBER

305 655 1999

FAX NUMBER

  
Name and signature of authorized official

If the undersigned bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this bid invitation, all such deviations must be listed on this page, with complete and detailed conditions and information included or attached. The District will consider any deviations in its bid award decisions, and the District reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this form, the bidder assures the District of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Bid Invitation.

No, Deviation



Yes, Deviations

☐

If yes is checked, please list below. Or attach to this form by stapling your deviations

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## **Insurance and Fingerprint Requirements**

### **Insurance**

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

### **FINGERPRINT**

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

If the vendor has staff that meet both of these criterion-

(1) will have continuing duties related to the contracted services;  
*and*

(2) has or will have direct contact with students

Then you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at [NCJU@txdps.state.tx.us](mailto:NCJU@txdps.state.tx.us) and you should send an email identifying you as a contractor to a Texas Independent School District. Texas DPS phone# is 512-424-2474

See form below to complete entitled:

**Texas Education Code Chapter 22 Contractor Certification for Contractor Employees**

**Texas Education Code Chapter 22 Contractor Certification for Contractor Employees**

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

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

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

On behalf of, NEARPOD, DELAWARE CORPORATION ("Contractor"), I certify that

[check one below]:

☒ None of the employees of Contractor and any subcontractors are *covered employees*, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become *covered employees*. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

Or

☐ Some or all of the employees of Contractor and any subcontractor are *covered employees*. If this box is checked, I further certify that:

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

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

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

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

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

Company name NEARPOD INC., DELAWARE CORPORATION

Printed name of Company Representative: FELICE SOMMER

Signature [Signature] Date 12-28-2016

For additional information on how to comply with this statute, please contact Richard Powell at TIPS.

## NON-COLLUSIVE BIDDING CERTIFICATE

By submission of this bid or proposal, the Bidder certifies that:

1. This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor;
2. This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor;
3. No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;
4. The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf.

Signature below certifies accuracy of answers to all sections on this page.

Authorized Signature 

Printed Name FELIPE SOMMER

Company Name and address:

NEAR 200, DELAWARE CORPORATION

18305 BISCAYNE BLVD #301, AVENTURA, FLORIDA, 33160

Telephone Number 305-677-5030

Date 12-28-2016



### FELONY CONVICTION NOTICE

Statutory citation covering notification of criminal history of contractor is found in the Texas Education Code #44.034. Following is an example of a felony conviction notice:

State of Texas Legislative Senate Bill No. 1, 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."

#### THIS NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION

Complete only one of the three below: A or B or C.

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

Official: Felipe Sommer, President  
Print Authorized Company Official's Name

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

Signature of Authorized Company Official: \_\_\_\_\_

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

Signature of Authorized Company Official: [Signature]

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): \_\_\_\_\_

Details of Conviction(s): \_\_\_\_\_

Signature of Authorized Company Official: \_\_\_\_\_



## Non-Discrimination Statement and Certification

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

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

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

*Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities*

USDA is an equal opportunity provider, employer, and lender.

I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited law and regulations.

Company Name NEARPOD, DELAWARE CORPORATION

Print name of authorized representative FELIX SOMMER

Signature of authorized representative 

Date 12-28-2016

**Federal Requirements for Procurement and Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

The TIPS members anticipate possibly using federal funds for procurement under this potential award and is required to obtain the following compliance assurance.

**1. Will you be subcontracting any of your work under this award if you are successful?** (Circle one)

☐ YES or ☒ NO

**2. If yes, do you agree to comply with the following federal requirements?** (Circle one)

☐ YES or ☐ NO

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.

Company Name NEARPOD, DELAWARE CORPORATION

Print name of authorized representative FELIX SOMMER

Signature of authorized representative 

Date 12-28-2018

CERTIFICATION BY CORPORATE OFFERER

IF OFFERER IS A CORPORATION,

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

OFFERER: Nearpod Inc., a Delaware corp.  
(Name of Corporation)

I, certify that I am the Secretary of Felipe Sommer  
(Name of Corporate Secretary)

the Corporation named as OFFERER herein above; that

Felipe Sommer  
(Name of person who completed proposal document)

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

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

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

CORPORATE SEAL

  
SIGNATURE

Jan 13, 2017  
DATE



## 2 CFR PART 200 Contract Provisions

**Required Federal contract provisions of Federal Regulations for Contracts for contracts with TIPS)**

The following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

The TIPS member is the subgrantee or Subrecipient by definition. The federal Rule numbering or identification below is only for reference purpose on this form and does not identify an actual Federal designation or location of the rule. The Rules are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards  
**2 CFR PART 200**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

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

Notice: Pursuant to Federal Rule (A) above, when federal funds are expended by a TIPS member, the TIPS member reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES ☒ Initial of Authorized Company Official

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

Does vendor agree? YES ☒ Initial of Authorized Company

(C) 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."



**2 CFR PART 200 Contract Provisions**

Pursuant to Federal Rule (C) above, when federal funds are expended by TIPS member, for all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees, the proposer certifies that during the term of an award, when federal funds are expended, by the TIPS member resulting for this procurement process the vendor will be in compliance with Equal Opportunity Employment laws specifically Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

Does vendor agree? YES ☒ Initial of Authorized Company Official

**(D) 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 Federal Rule (D) above, when federal funds are expended by TIPS member, during the term of an award for all contracts and subgrants for construction or repair, when Federal Funds are expended, by the TIPS member resulting for this procurement process the vendor will be in compliance with all provisions listed or referenced therein.

Does vendor agree? YES ☒ Initial of Authorized Company Official

**(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity 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 Federal Rule (E) above, when federal funds are expended by TIPS member, the proposer certifies that during the term of an award by the TIPS member resulting from this procurement process for construction contracts awarded by grantees and subgrantees the proposer agrees to be in compliance with all requirements listed or referenced therein.



**2 CFR PART 200 Contract Provisions**Does vendor agree? YES ☒ Initial of Authorized Company Official

(G) 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 Federal Rule (G) above, when federal funds are expended by TIPS member, TIPS member requires that the proposer certify that during the term of an award by the TIPS member resulting from this procurement process the vendor agrees to the terms listed and referenced therein.

Does vendor agree? YES ☒ Initial of Authorized Company Official

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by TIPS member, TIPS member requires the proposer certify that during the term of an award by the TIPS member resulting for this procurement process the vendor certifies that they are not debarred from receiving a contract from the federal government as provided therein.

Does vendor agree? YES ☒ Initial of Authorized Company Official

(I) 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 Federal Rule (I) above, when federal funds are expended by TIPS member, TIPS member requires the proposer certify that during the term and after the awarded term of an award by the TIPS member resulting for this procurement process the vendor certifies to the terms included or referenced therein

Does vendor agree? YES ☒ Initial of Authorized Company Official

**Federal Rule (12) 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 Federal Rule (12) above, when federal funds are expended by TIPS member, TIPS member requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess

## 2 CFR PART 200 Contract Provisions

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

Does vendor certify that it is in compliance with the Clean Air Act? YES ☒ Initial of Authorized Company Official

Company Name NEAR POD INC., DELAWARE CORPORATION

Print name of authorized representative FELICE SOMMER

Signature of authorized representative 

Date 12-28-2016