

TIPS VENDOR AGREEMENT

Between JTS and
(Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS), a Department of Texas Education Service Center Region 8 for **TIPS RFP 200105 Technology Solutions, Products and Services**

General Information

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

A Purchase Order, Agreement or Contract is the TIPS Member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed between the Vendor and TIPS Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some, but not all, of the addendums possible.

Terms and Conditions

Freight

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

Warranty Conditions

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

Customer Support

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

Agreements

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

Tax exempt status

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

Assignments of Agreements

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

Disclosures

- Vendor and TIPS affirms that he/she or any authorized employees or agents has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
- Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
- 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.

Term and Renewal of Agreements

The Agreement with TIPS is for three (3) years with an option for renewal for an additional one (1) consecutive year if both parties agree. TIPS may or may not exercise the one-year extension beyond the base three-year term and whether or not to offer the extension is at the sole discretion of TIPS. The scheduled Agreement termination date shall be the last date of the month of the last month of the agreement's legal effect. **Example:** *If the agreement is scheduled to end on May 23, the anniversary date of the award, it would actually be extended to May 31 in the last month of the last year the contract is active.*

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

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause that exceeds month to month terms 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, executed Agreement or other written instruction issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

Shipments

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the

Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed by the parties.

Invoices

Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

Payments

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

Pricing

Price increases will be honored according to the terms of the solicitation. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to TIPS Member customer.

Participation Fees and Reporting of Sales to TIPS by Vendor

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any fee conditions stated in the RFP. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Vendor or vendor assigned dealer agrees to pay the participation fee for all Agreement sales to TIPS on a monthly scheduled report or as otherwise agreed by the parties.

Reporting of Sales to TIPS by Vendor

Vendor is required to report all sales under the TIPS contract to TIPS. If the TIPS Member entity requesting a price from the awarded Vendor requests the TIPS contract, Vendor must include the TIPS Contract number on any communications with the TIPS Member entity. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the Vendor Portal User Guide will walk you through the process of reporting sales to TIPS. Please refer to the TIPS Accounting FAQ's for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS. Failure to render the participation fee to TIPS shall constitute a breach of this agreement with our parent governmental entity, Texas Education Service Center Region 8, as established by the Texas legislature and shall be grounds for termination of this agreement and any other agreement held with TIPS and possible legal action. TIPS reserves all rights under the law to collect the fees due. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR**

PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC REGION 8. Per Texas Education Code §44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

State of Texas Franchise Tax

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

Miscellaneous

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

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order or contract modification occurs between the Vendor and the TIPS Member, TIPS must be notified within five (5) business days of receipt of change order.

Termination for Convenience of TIPS Agreement Only

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty (30) days prior written notice. Termination for convenience is conditionally required under Federal Regulations 2 CFR part 200 if the customer is using federal funds for the procurement. All purchase orders presented to the Vendor, but not fulfilled by the Vendor, by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded vendor may terminate the agreement with ninety (90) days prior written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the TIPS Member customer pursuant to this agreement. TIPS Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

TIPS Member Purchasing Procedures

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

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

Licenses

Awarded vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful

provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded vendor whose

license(s) required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

Novation

If awarded vendor sells or transfers all assets, rights or the entire portion of the assets or rights required to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor. TIPS will consider Contract Assignments on a case by case basis. TIPS must be notified within five (5) business days of the transfer of assets or rights.

Site Requirements (only when applicable to service or job)

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

Preparation: 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 unless otherwise agreed by the TIPS Member. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion.

Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge. **Safety measures:** Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking

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

Marketing

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

Supplemental Agreements

The TIPS Member entity participating in the TIPS Agreement and awarded vendor may enter into a separate Supplemental Agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement such as but not limited to, invoice requirements, ordering requirements, specialized delivery, etc. Any Supplemental Agreement or contract developed as a result of this Agreement is

exclusively between the TIPS Member entity customer and the Vendor. TIPS, its agents, TIPS Members and employees not a party to the Supplemental Agreement with the TIPS Member customer, shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a Vendor submitting a Proposal requires TIPS and/or TIPS Member to sign an additional agreement, those agreements shall comply with the award made by TIPS to the Vendor. Supplemental Vendor's Agreement documents may not become part of TIPS's Agreement with vendor unless and until an authorized representative of TIPS reviews and approves it. TIPS review and approval may be at any time during the life of this Vendor Agreement. TIPS permits TIPS Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's TIPS Agreement so long as they do not materially conflict with this Agreement.

Survival Clause

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

Legal obligations

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

Audit rights

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Awarded Vendor's pricing or TIPS transaction documentation with TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third- party auditing firm to investigate any possible non-compliant conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format and at the location acceptable to Region 8 ESC or TIPS. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the TIPS Member.

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 full 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.

Choice of Law

The Agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

Venue, Jurisdiction and Service of Process

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

Venue for any dispute resolution process, other than litigation, between TIPS and the Vendor shall be located in Camp or Titus County, Texas.

Project Delivery Order Procedures

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

Status of TIPS Members as Related to This Agreement

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

Vendor's Resellers as Related to This Agreement

Vendor's Named Resellers under this Agreement shall comply with all terms and conditions of this agreement and all addenda or incorporated documents. All actions related to sales by Authorized Vendor's Resellers under this Agreement are the responsibility of the Awarded Vendor. If Resellers fail to report sales to TIPS under your Agreement, the awarded Vendor is responsible for their contractual failures and shall be billed for the fees. The awarded vendor may then recover the fees from their named reseller.

Support Requirements

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

Incorporation of Solicitation

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

SECTION HEADERS OR TITLES

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

STATUTORY REQUIREMENTS

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

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

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

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify TIPS within three (3) business day of the change by a letter on Vendor's letterhead from and signed by an authorized representative of the Vendor stating the non-compliance decision and the TIPS Agreement number and description at:

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

Insurance Requirements

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

General Liability	\$1,000,000 each Occurrence/ Aggregate Automobile
Liability	\$300,000 Includes owned, hired & non-owned
Workers' Compensation	Statutory limits for the jurisdiction in which the Vendor performs under this Agreement.
Umbrella Liability	\$1,000,000

When the contractor or its subcontractors are liable for any damages or claims, the contractors' policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the District. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Contractor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance

with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member.

Special Terms and Conditions

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

The TIPS Vendor Agreement Signature Page is inserted here.

TIPS Vendor Agreement Signature Form

RFP 200105 Technology Solutions, Products and Services

Company Name JTS

Address 5310 S. Cockrell Hill Road


City Dallas State TX Zip 75236

Phone 972-620-1435 Fax N/A

Email of Authorized Representative tom.emerick@jts.net

Name of Authorized Representative Thomas Emerick

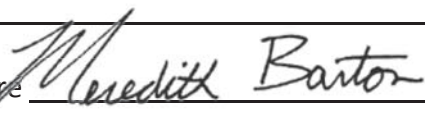
Title Vice President


Signature of Authorized Representative 

Date 2/19/2020

TIPS Authorized Representative Name Meredith Barton

Title Chief Operating Officer

TIPS Authorized Representative Signature 

Approved by ESC Region 8 

Date 5/5/2020

NOTICE TO MEMBERS REGARDING ATTRIBUTE RESPONSES

TIPS VENDORS RESPOND TO ATTRIBUTE QUESTIONS AS PART OF TIPS COMPETITIVE SOLICITATION PROCESS. THE VENDOR'S RESPONSES TO ATTRIBUTE QUESTIONS ARE INCLUDED HEREIN AS "SUPPLIER RESPONSE." PLEASE BE ADVISED THAT DEVIATIONS, IF ANY, IN VENDOR'S RESPONSE TO ATTRIBUTE QUESTIONS MAY NOT REFLECT VENDOR'S FINAL ATTRIBUTE RESPONSE, WHICH IS SUBJECT TO NEGOTIATIONS PRIOR TO AWARD. PLEASE CONTACT THE TIPS OFFICE AT 866-839-8477 WITH QUESTIONS OR CONCERNS REGARDING VENDOR ATTRIBUTE RESPONSE DEVIATIONS. PLEASE KEEP IN MIND THAT TIPS DOES NOT PROVIDE LEGAL COUNSEL TO MEMBERS. TIPS RECOMMENDS THAT YOU CONSULT YOUR LEGAL COUNSEL WHEN EXECUTING CONTRACTS WITH OR MAKING PURCHASES FROM TIPS VENDORS.



200105 Addendum 2 JTS Supplier Response

Event Information

Number: 200105 Addendum 2
Title: Technology Solutions, Products and Services
Type: Request for Proposal
Issue Date: 1/9/2020
Deadline: 2/21/2020 03:00 PM (CT)

Contact Information

Contact: Kristie Collins
Address: Region 8 Education Service Center
4845 US Highway 271 North
Pittsburg, TX 75686
Phone: +1 (866) 839-8477
Fax: +1 (866) 839-8472
Email: bids@tips-usa.com

JTS Information

Address: 5310 S. Cockrell Hill Road
Dallas, TX 75236
Phone: (972) 620-1435 x125
Fax: (972) 247-5023
Toll Free: (800) 327-1423

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

Kyle Evan Fuller

Signature

Submitted at 2/20/2020 2:56:21 PM

kyle.fuller@jts.net

Email

Requested Attachments

Vendor Agreement

200105_Vendor_Agreement.pdf

The vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.

DO NOT UPLOAD encrypted or password protected files.

Agreement Signature Form

200105_Agreement_Signature_Form JTS.pdf

If you have not taken exception or deviation to the agreement language in the solicitation attributes, download the AGREEMENT SIGNATURE FORM from the "ATTACHMENTS" 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 here.

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 here, because this is a required document.

Pricing Spreadsheet #1

200105_Pricing_form_1.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

Pricing Spreadsheet #2

200105_Pricing_form_2.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

References

Reference_Form.xls

The vendor must download the References spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.

Proposed Goods and Services

JTS_Proposed_Goods.pdf

Please upload one or more documents or sheets describing your offerings, line cards, catalogs, links to offerings OR list links to your offerings that illustrate the catalog of proposed lines of goods and or services you carry and offer under this proposal. It does not have to be exhaustive but should, at a minimum tell us what you are offering. It could be as simple as a sheet with your link to your online catalog of goods and services.

Resellers/Dealers - COMPLETE AND UPLOAD ONLY IF YOU HAVE RESELLER OF YOUR GOODS OR SERVICES PROPOSED *No response*

If the PROPOSING vendor has resellers that will be selling for the vendor UNDER this contract, the vendor must download the Resellers/Dealers spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

HUB Subcontracting Plan Form OPTIONAL

No response

Completion of the HUB Subcontracting Plan Form is OPTIONAL. THE FORM INFORMATION HAS NO EFFECT ON YOUR EVALUATION SCORE. IT IS INFORMATIONAL ONLY. Some Texas State agencies and Universities require it be a part of the file when determining if they can use a TIPS contract. If you choose to complete one, it is not project specific but the general plan the vendor would use. Complete it as best you can.

Vendor can download the HUB Subcontracting Plan Form from the "Attachments" tab and upload their HUB Subcontracting Plan Form.

D/M/WBE Certification OPTIONAL

No response

D/M/WBE Certification documentation may be scanned and uploaded if you desire to claim your status as one of the identified enterprises. (Disadvantaged Business Enterprise, Minority Business Enterprise and/or Woman Business Enterprise) If vendor has more than one certification scan into one document. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

HUB Certification OPTIONAL

No response

HUB Certification documentation may be scanned and uploaded if you desire to document your status as a HUB company. (Historically Underutilized Business) (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

Warranty

Warranty_Statements.pdf

Warranty information (if applicable) must be scanned and uploaded. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

Supplementary

JTS_Misc_Docs.pdf

Supplementary information may be scanned and uploaded. (Company information, brochures, catalogs, etc.) (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

All Other Certificates

JTS_Certifications.pdf

All Other Certificates (if applicable) must be scanned and uploaded. If vendor has more than one other certification scan into one document. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

Logo and Other Company Marks

JTSLogoCMYK.jpg

If you desire, please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the Supplementary section or another non-required section under the "Response Attachment" tab. Preferred Logo Format: 300 x 25 px - .png, .eps, .jpeg preferred

Conflict of Interest Form CIQ- ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

No response

ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

Conflict of Interest Form for Vendors that are required to submit the form. The Conflict of Interest Form is included in the Base documents or can be found at <https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>.

Certificate of Corporate Offerer - COMPLETE ONLY IF OFFERER IS A CORPORATION

CERTIFICATION_OF_CORPORATE_OFFERER_FORM JTS.pdf

COMPLETE AND UPLOAD FORM IN ATTACHMENTS SECTION ONLY IF OFFERER IS A CORPORATION

Disclosure of Lobbying Activities Standard Form LLL

No response

ONLY IF you answered "I HAVE Lobbied per above" to attribute #66, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

Confidentiality Form

REQUIRED CONFIDENTIALITY FORM. Complete the form according to your company requirements, make any desired attachments and upload to the appropriate section under "Response Attachments" THIS FORM DETERMINES HOW ESC8/TIPS RESPONDS TO LEGAL PUBLIC INFORMATION REQUESTS.

Bid Attributes

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.

2 Yes - No

Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at <https://comptroller.texas.gov/purchasing/vendor/hub/> or in a HUBZone as defined by the US Small Business Administration at <https://www.sba.gov/offices/headquarters/ohp>

Proof of one or both may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.

3 Yes - No

The Vendor can provide services and/or products to all 50 US States?

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.)

6 Primary Contact Name

Primary Contact Name

7 Primary Contact Title

Primary Contact Title

8 Primary Contact Email

Primary Contact Email

9	Primary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="972-620-1435 x.125"/>
10	Primary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="N/A"/>
11	Primary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="2143346136"/>
12	Secondary Contact Name Secondary Contact Name <input type="text" value="John Thompson"/>
13	Secondary Contact Title Secondary Contact Title <input type="text" value="General Manager"/>
14	Secondary Contact Email Secondary Contact Email <input type="text" value="john.thompson@jts.net"/>
15	Secondary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="972-620-1435 x.138"/>
16	Secondary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="N/A"/>
17	Secondary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="9032354191"/>
18	Admin Fee Contact Name Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS. <input type="text" value="Kim Sheffler"/>

19	Admin Fee Contact Email Admin Fee Contact Email <input type="text" value="accounting@jts.net"/>
20	Admin Fee Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="972-620-1435 x.133"/>
21	Purchase Order Contact Name Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS. <input type="text" value="Kyle Fuller"/>
22	Purchase Order Contact Email Purchase Order Contact Email <input type="text" value="sales@jts.net"/>
23	Purchase Order Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="972-620-1435 x.140"/>
24	Company Website Company Website (Format - www.company.com) <input type="text" value="www.jts.net"/>
25	Federal ID Number: Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789) <input type="text" value="75-2621300"/>
26	Primary Address Primary Address <input type="text" value="5310 S. Cockrell Hill Road"/>
27	Primary Address City Primary Address City <input type="text" value="Dallas"/>
28	Primary Address State Primary Address State (2 Digit Abbreviation) <input type="text" value="TX"/>
29	Primary Address Zip Primary Address Zip <input type="text" value="75236"/>

30

Search Words:

Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)

JTS, Johnston Technical Services, broadband, wireless, backhaul, microwave, point-to-point, point-to-multipoint, PTMP, PTMP, PMP, network, microwave, E-band, millimeter-wave, CBRS, WiMAX, Wi-Fi, WLAN, WiFi, 3.65, LTE, tower construction, Cambium Networks (Motorola Broadband), Ceragon, Telrad, AXIS, RADWIN, Alvarion, Meru Networks, Siklu, Samsung, Aviat Networks, BridgeWave, DragonWave, Radio Waves, Commscope/Andrew, Cielo Networks, Xirrus, CalAmp, Eupen, Valmont/Site Pro 1, GE MDS, RuggedCom, Siemens, Rohn, Sabre, FatPipe, Moxa, DDB Unlimited, Signal Inside, Trylon, Redline, FiSci, Baicells, Cambium, Airspan, Mimosa, Proxim

31

Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?

Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that are provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR)compliant.

Do you want TIPS Members to be able to spend Federal grant funds with you if awarded and is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?

32

Yes - No

Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner :

(A) has its principal place of business in Texas;

OR

(B) employs at least 500 persons in Texas?

33

Company Residence (City)

Vendor's principal place of business is in the city of?

34

Company Residence (State)

Vendor's principal place of business is in the state of?

3
5**Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION**

Remember this is a MINIMUM discount percentage so, be sure the discount percentage inserted here can be applied to ANY OFFERING OF GOODS OR SERVICES THROUGH OUT THE LIFE OF THE CONTRACT

CAUTION: BE CERTAIN YOU CAN HONOR THIS MINIMUM DISCOUNT PERCENTAGE ON ANY OFFERED SERVICE OR GOOD.

What is the MINIMUM percentage discount off of any item or service you offer to TIPS Members that is in your regular catalog (as defined in the RFP document), website, store or shelf pricing? The resulting price of any goods or services Catalog list prices after this discount is applied is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale. Must answer with a number between 0% and 100%.

3
6**TIPS administration fee**

By submitting a proposal, I agree that all pricing submitted to TIPS shall include the participation fee, as designated in the solicitation or as otherwise agreed in writing and shall be remitted to TIPS by the Vendor as agreed in the Vendor agreement. I agree that the fee shall not and will not be added by the vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.

3
7**Yes - No**

Vendor agrees to remit to TIPS the required administration fee?

TIPS/ESC Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.

3
8**Yes - No**

Do you offer additional discounts to TIPS members for large order quantities or large scope of work?

3
9**Years Experience**

Company years experience in this category? This is an evaluation criterion worth a maximum of 10 points. See RFP for more information.

4
0**Resellers:**

Does the vendor have resellers that it will name under this contract? Resellers are defined as other companies that sell your products under an agreement with you, the awarded vendor of TIPS.

EXAMPLE: BIGmart is a reseller of ACME brand televisions. If ACME were a TIPS awarded vendor, then ACME would list BIGmart as a reseller.

(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.

4
1**Pricing discount percentage are guaranteed for?**

Does the vendor agrees to honor the proposed pricing discount percentage off regular catalog (as defined in the RFP document), website, store or shelf pricing for the term of the award?

4
2**Right of Refusal**

Does the proposing vendor wish to reserve the right not to perform under the awarded agreement with a TIPS member at vendor's discretion?

4
3**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.

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

4
4**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ - Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?**

Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO

If you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS.

You may find the Blank CIQ form on our website at:

Copy and Paste the following link into a new browser or tab:

<https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>

There is an optional upload for this form provided if you have a conflict and must file the form.

4
5**Filing of Form CIQ**

If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above?

4
6

Regulatory Standing

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

Yes

4
7

Regulatory Standing

Regulatory Standing explanation of no answer on previous question.

No response

4
8

Antitrust Certification Statements (Tex. Government Code § 2155.005)

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

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law ;

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Suspension or Debarment Instructions

Instructions for Certification:

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

50

Suspension or Debarment Certification

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

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 government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive

Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

51

Non-Discrimination Statement and Certification

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

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, 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.

(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)

All U.S. Departments, including the USDA are equal opportunity provider, employer, and lender.

Not a negotiable term. Failure to agree by answering YES will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.

5 2 2 CFR PART 200 Contract Provisions Explanation

Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members:

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

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

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

5 3 2 CFR PART 200 Contracts

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

Does vendor agree?

5 4 2 CFR PART 200 Termination

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

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

Does vendor agree?

5
5**2 CFR PART 200 Clean Air Act**

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

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

Does vendor agree?

5
6**2 CFR PART 200 Byrd Anti-Lobbying Amendment**

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

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

Does vendor agree?

5
7**2 CFR PART 200 Federal Rule**

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

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

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

5 2 CFR PART 200 Procurement of Recovered Materials

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

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

Yes

5 9 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.

I HAVE NOT Lobbied per above

6 0 If you answered "I HAVE lobbied per above to the previous question.

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

6
1

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

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

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

YES

6
2

ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?

ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement,

do you agree to comply with the following federal requirements?

Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

YES

6
3

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

6
4

Remedies

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

Do you agree to these terms?

Yes, I Agree

6
5

Remedies Explanation of No Answer

No response

6
6

Choice of Law

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

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

6
7

Jurisdiction and Service of Process

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

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

6
8

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 attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.

Do you agree to these terms?

Yes, I Agree

6
9

Infringement(s) Explanation of No Answer

No response

7
0

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 Local 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.

Yes

7
1

Payment Terms and Funding Out Clause

Payment Terms:

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

Funding Out Clause:

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

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

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

Do you agree to these terms?

7
2

Insurance and Fingerprint Requirements Information

Insurance

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

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 and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474.

See form in the next attribute 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 service s to obtain criminal history record information regarding covered employees. Contractors must certify to the district t hat they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a sch ool district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing dutie s 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 o ffense, 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.

I certify that:

NONE (Section A) of the employees of Contractor and any subcontractors are covered employees, as defined abo ve. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure tha t the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain t hese precautions or conditions throughout the time the contracted services are provided.

OR

SOME (Section B) or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

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

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

☐ None

7
4

Texas Business and Commerce Code § 272 Requirements as of 9-1-2017

SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES.

7
5

Texas Government Code 2270 Verification Form

Texas Government Code 2270 Verification Form

Texas 2017 House Bill 89 has been signed into law by the governor and as of September 1, 2017 will be codified as Texas Government Code § 2270 and 808 et seq.

The relevant section addressed by this form reads as follows:

Texas Government Code Sec. 2270.002. PROVISION REQUIRED IN CONTRACT. A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. engaged by ESC Region 8/The Interlocal Purchasing System (TIPS)

4845 Highway 271 North

Pittsburg, TX, 75686

verify by this writing that the above-named company affirms that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract, or any contract with the above-named Texas governmental entity in the future. I further affirm that if our company's position on this issue is reversed and this affirmation is no longer valid, that the above-named Texas governmental entity will be notified in writing within one (1) business day and we understand that our company's failure to affirm and comply with the requirements of Texas Government Code 2270 et seq. shall be grounds for immediate contract termination without penalty to the above-named Texas governmental entity.

AND

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

I swear and affirm that the above is true and correct.

YES

7
6**Logos and other company marks**

Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

Potential uses of company logo:

* Your Vendor Profile Page of TIPS website

* Potentially on TIPS website scroll bar for Top Performing Vendors

* TIPS Quarterly eNewsletter sent to TIPS Members

* Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)

7
7**Solicitation Deviation/Compliance**

Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?

7
8**Solicitation Exceptions/Deviations Explanation**

If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.

TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.

7
9**Agreement Deviation/Compliance**

Does the vendor agree with the language in the Vendor Agreement?

8
0**Agreement Exceptions/Deviations Explanation**

If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.

8
1**Felony Conviction Notice**

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

Select A., B. or C.

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

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

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

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

8
2**If you answered C. My Firm is owned or operated by a felon to the previous question, you are REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.**

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

1. Name of Felon(s)

2. The named person's role in the firm, and

3. Details of Conviction(s).

No response

8
3**Long Term Cost Evaluation Criterion # 4.**

READ CAREFULLY and see in the RFP document under "Proposal Scoring and Evaluation".

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

increases will be 5% or less annually per question

8
4**Required Confidentiality Claim Form**

Required Confidentiality Claim Form

This completed form is required by TIPS. By submitting a response to this solicitation you agree to download from the “Attachments” section, complete according to the instructions on the form, then uploading the completed form, with any confidential attachments, if applicable, to the “Response Attachments” section titled “Confidentiality Form” in order to provide to TIPS the completed form titled, “CONFIDENTIALITY CLAIM FORM”. By completing this process, you provide us with the information we require to comply with the open record laws of the State of Texas as they may apply to your proposal submission. If you do not provide the form with your proposal, an award will not be made if your proposal is qualified for an award, until TIPS has an accurate, completed form from you.

Read the form carefully before completing and if you have any questions, email Rick Powell at TIPS at rick.powell@tjps-usa.com

8
5**Choice of Law clauses with TIPS Members**

If the vendor is awarded a contract with TIPS under this solicitation, the vendor agrees to make any Choice of Law clauses in any contract or agreement entered into between the awarded vendor and with a TIPS member entity to read as follows: "Choice of law shall be the laws of the state where the customer resides" or words to that effect.

8
6**Venue of dispute resolution with a TIPS Member**

In the event of litigation or use of any dispute resolution model when resolving disputes with a TIPS member entity as a result of a transaction between the vendor and TIPS or the TIPS member entity, the Venue for any litigation or other agreed upon model shall be in the state and county where the customer resides unless otherwise agreed by the parties at the time the dispute resolution model is decided by the parties.

8
7**Automatic renewal of contracts or agreements with TIPS or a TIPS member entity**

This clause **DOES NOT** prohibit multiyear contracts or agreements with TIPS member entities. Because TIPS and TIPS members are governmental entities subject to laws that control appropriations of funds during their fiscal years for contracts and agreements to provide goods and services, does the Vendor agree to limit any automatic renewal clauses of a contract or agreement executed as a result of this TIPS solicitation award to not longer than "month to month" and at the TIPS contracted rate.

8
8**Indemnity Limitation with TIPS Members**

Texas and other states restrict by law or state Constitution the ability of a governmental entity to indemnify others. TIPS requires that any contract entered into between a vendor and TIPS or a TIPS Member as a result of an award under this Solicitation limit the requirement that the Customer indemnify the Vendor by either eliminating any such indemnity requirement clauses in any agreements, contracts or other binding documents **OR** by prefacing all indemnity clauses required of TIPS or the TIPS Member entity with the following: "To the extent permitted by the laws or the Constitution of the state where the customer resides, ".

Agreement is a required condition to award of a contract resulting from this Solicitation.

8
9**Arbitration Clauses**

Except for certain circumstances, TIPS forbids a mandatory arbitration clause in any contract or agreement entered into between the awarded vendor with TIPS or a TIPS member entity. Does the vendor agree to exclude any arbitration requirement in any contracts or agreement entered into between TIPS or a TIPS member entity through an awarded contract with TIPS?

9
0**Required Vendor Sales Reporting**

By responding to this Solicitation, you agree to report to TIPS all sales made under any awarded Agreement with TIPS. Vendor is required to report all sales under the TIPS contract to TIPS. If the TIPS Member entity requesting a price from the awarded Vendor requests the TIPS contract, Vendor must include the TIPS Contract number on any communications with the TIPS Member entity. If awarded, you will be provided access to the Vendor Portal. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS.

REFERENCES

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

You may provide more than three (3) references.

[illegible]

CERTIFICATION BY CORPORATE OFFERER

COMPLETE ONLY IF OFFERER IS A CORPORATION,

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

OFFERER: JTS
(Name of Corporation)

Kyle Fuller certify that I am the Secretary of the Corporation
I, (Name of Corporate Secretary)

named as OFFERER herein above; that

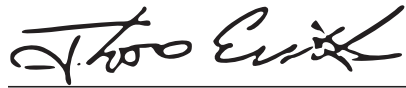
Kyle Fuller
(Name of person who completed proposal document)

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

Vice President
(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.

N/A
CORPORATE SEAL if available



SIGNATURE

2/19/2020
DATE

Required Confidential Information Status Form

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

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

JTS

Name of company

Thomas Emerick, Vice President

Printed Name and Title of authorized company officer declaring below the confidential status of material

5310 S. Cockrell Hill Road Dallas TX 75236 972-620-1435

Address

City

State

ZIP

Phone

ALL VENDORS MUST COMPLETE THE ABOVE SECTION.

I DO CLAIM parts of my proposal to be confidential and DO NOT desire to expressly waive a claim of confidentiality of all information contained within our response to the solicitation. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.


ATTACHED ARE COPIES OF _____ PAGES OF CLAIMED CONFIDENTIAL MATERIAL FROM OUR PROPOSAL THAT WE DEEM TO BE NOT PUBLIC INFORMATION AND WILL DEFEND THAT CLAIM TO THE TEXAS ATTORNEY GENERAL IF REQUESTED WHEN A PUBLIC INFORMATION REQUEST IS MADE FOR OUR PROPOSAL.

Signature _____ Date _____

OR -----

I DO NOT CLAIM any of my proposal to be confidential, complete the section below.

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

Signature  Date 2/19/2020

Building Industry Consulting Service International

THE PROFESSIONAL DESIGNATION OF

**REGISTERED TELECOMMUNICATIONS
PROJECT MANAGER**

IS AWARDED TO

Kyle E. Fuller

by BICSI in recognition of having successfully completed BICSI's registration and examination requirements.

Designation Number: 210498
Registration Start Date: 01/01/2019
Registration End Date: 12/31/2021



Bicsi
RTPM

Since

08/01/2012

Chair, Registrations & Credentials Supervision Committee

Director of Credentialing

Building Industry Consulting Service International

THE PROFESSIONAL DESIGNATION OF

**REGISTERED COMMUNICATIONS
DISTRIBUTION DESIGNER®**

IS AWARDED TO

Jim Johnston

by BICSI in recognition of having successfully completed BICSI's registration and examination requirements.

Designation Number: 127526

Registration Start Date: 1/1/2019

Registration End Date: 12/31/2021



Bicsi
RCDD
Since

1/17/2000

Chair, Registrations & Credentials Supervision Committee

Director of Credentialing

This certificate acknowledges that

Jose Quiroz

Johnston Technical Services Inc

***was certified as a Comtrain 4th ED R17 In-House
Instructor for Authorized & Competent
Climber/Rescuer on 8/16/2018***



in

Irving, TX

Certificate # 18337-105730-21

W. Zane Windham

Comtrain Authorized Signature

Certification expires 24 months from date of training

This certificate acknowledges that

Jose Luis Salazar of

Johnston Technical Services Inc

Was certified as an Authorized

Climber/Rescuer on



11/23/2018 in

Dallas, TX

Certificate #

19536-110047-57

Jose Quiroz

Comtrain Certified Instructor

Certification expires 24 months from the date of training.

SEND



This certificate acknowledges that

Kyle Caruthers of

Johnston Technical Services Inc

**Was certified as an Authorized
Climber/Rescuer on**



**2/22/2019 in
Dallas, TX**

**Certificate #
20115-113500-57**

Jose Quiroz

Comtrain Certified Instructor

Certification expires 24 months from the date of training.

This certificate acknowledges that

**Matthew Scott Rodriguez of
Johnston Technical Services Inc
was certified as an Authorized
Climber/Rescuer on**



**8/3/2019 in
Dallas, TX**

**Certificate #
20017-44389-57**

Jose Quiroz

Comtrain Certified Instructor

Certification expires 24 months from the date of training.

This certificate acknowledges that
Terry Chasteen of
Johnston Technical Services Inc
was certified as an Authorized
Climber/Rescuer on



6/6/2019 in
Dallas, TX

Certificate #
19984-44114-57

Jose Quiroz

Comtrain Certified Instructor

Certification expires 24 months from the date of training.

JTS WARRANTY STATEMENT

Seller warrants that technical, consulting or installation service(s) furnished pursuant to this contract shall be performed by trained and qualified personnel and shall, where applicable, meet JTS' specifications therefore, and/or generally accepted industry standards of workmanship and quality. This warranty shall be effective for a period of one (1) year after completion of the installation service(s). Any service found, during the warranty period, to be nonconforming to the above stated warranty shall, at JTS' expense, be re-performed to meet the warranty requirements. Any technical service or consultation beyond the scope of this contract will be provided at prevailing time & material rates.



GLOBAL WARRANTY STANDARDS

STANDARD WARRANTY AND AVIATCARE PROGRAMS

GLOBAL WARRANTY PROGRAM

Aviat Networks provides industry-leading warranty coverage for all Aviat Networks' products we sell. This includes 24x7 access to the Aviat Networks online Technical Support website, remote access to the regional Technical Assistance Centers, and support from the global network of Product Repair Centers. A strong warranty program is an integral part of Aviat Networks total solutions approach to deliver unsurpassed expertise and exceptional value to our telecommunication customers. This is reflected in our focus on ensuring not only solid warranty coverage on Aviat Networks products but also any OEM products that are included in your total solution from Aviat Networks.

STANDARD WARRANTY PERIODS

Aviat Networks warranty periods vary by the type of product being provided and the region of the world in which the product is being deployed. In the United States, Canada and the Caribbean, the standard warranty on the equipment is 24 months from ship date or 36 months if the installation is performed by Aviat Networks. For the rest of the world, the standard warranty for the equipment is 15 months from ship date or 27 months if the installation is performed by Aviat Networks.

In addition, Aviat Networks also offers a number of standalone software products (such as ProVision) where a standard 90 day warranty is included.

Aviat Networks recommends that you check with your sales representative to understand better what warranty period is associated with the solution you are looking at from Aviat Networks.

GLOBAL WARRANTY COVERAGE

The standard warranty period begins from the date the product is shipped out to the customer. From that date until the standard warranty period ends, Aviat Networks will replace or repair, at our option, any failed equipment that is returned to one of our identified regional repair centers. In addition to repair services, Aviat Networks provides access during normal business hours to our award winning Technical Assistance Centers and the resources available in those centers for remote technical support.

Additionally, under our standard warranty program, a customer has 24x7 access to the AviatCare Online Customer Support site. Customers can open cases, request Return Material Authorizations (RMA), track orders, and access our knowledge base built from years of experience addressing technical issues raised by our customers.

For more information on the Standard Warranty policies and our support commitments, please speak with your local Aviat Networks sales representative. As a customer of Aviat Networks, you can find out more about our support policies at our support website: www.aviatcareonline.com

AVIATCARE - ENHANCING AND EXTENDING YOUR WARRANTY COVERAGE



Aviat Networks offers a comprehensive suite of support services that complement our standard warranty coverage or provide extended maintenance and support well after the warranty expires. These services fall under our AviatCare program. As the AviatCare name implies, Aviat Networks' careful commitment is to work with you as our customer in order to promote reliability and ensure availability of your network by leveraging a suite of services that bring a much higher level of prioritization, personalization and ultimately protection to your operational environment.

AVIATCARE PROTECT



AviatCare Networks understands that each of our customers is unique and requires a diverse suite of services to support their operations. As a result, we offer two support levels:

Extended Warranty Program

Aviat Networks will extend the standard warranty coverage timeframe. Customers receive the same level of support provided under the original Standard Warranty coverage. Technical support will change from standard 8x5 to 7x24x365 Priority Technical Support.

WarrantyPlus Program

Customers requiring a higher level of support beyond our Extended Warranty program can opt for the WarrantyPlus Program. This provides customers with the additional benefit of Repair Logistics, Advance Replacement, & Software Maintenance.

AVIATCARE MAINTAIN



The AviatCare Maintain portfolio of services is our most expansive suite of services focused on assisting a customer maintaining their network at its peak of performance. These services go beyond the reactive services of Repair and Technical Support that primarily make up the AviatCare Protect portfolio. In this portfolio you will find a range of more proactive and preventative based service offerings which build on and enhance the services outlined under the AviatCare Protect portfolio.

With AviatCare Maintain we add in a number of value-add services which not only focus on protecting your investment but also ensuring it maintains the high level of efficiency it was originally implemented with. These proactive services include Software Installation & Optimization, Remote Surveillance, Preventative and Corrective Maintenance, and Spares Parts Management.

Please speak with your local Aviat Networks sales representative about which support services might be right for you.

Additional information can be found on our AviatCare datasheet or at www.aviatcareonline.com

WWW.AVIATNETWORKS.COM

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_f_Std.Warranty_univ_18Jan18



Extended Warranty and Next Day Replacement (NDR) Documentation

If you purchased BridgeWave's Next Day Replacement (NDR-1) or Extended Warranty with Next Day Replacement (EWNDR-2, -3 or -5) services through a VAR then you should initially work through your VAR or Distributor to resolve your support issues. BridgeWave will work directly with the Distributor and VAR as required to assist and provide the necessary support to fulfill the services you have purchased.

BridgeWave's Standard Warranty is included in the shipping boxes. BridgeWave provides a 12-month limited warranty on millimeter wave (MMW) systems. BridgeWave's Standard Warranty is included in the initial purchase price and provides the following features:

Remote Technical Support: BridgeWave is committed to providing superior customer support Monday – Friday 8am – 5pm Pacific Time by phone to its certified Distributors and Value Added Resellers (VARs) on all warranted equipment. BridgeWave's technicians are skilled at answering installation, alignment, maintenance and configuration questions, as well as troubleshooting and diagnosing link failures.

The first person a customer speaks to will isolate and resolve the problem. BridgeWave's support technicians have access to resources across the entire company, including Engineering, Manufacturing and Network Architecture, and, if necessary, will pull these groups together to ensure the problem is resolved.

Warranty Claims Processing. If, as a result of troubleshooting a link outage, BridgeWave and the customer determine the cause to be failure of equipment under warranty, BridgeWave will issue the customer a Return Materials Authorization (RMA) number. BridgeWave will only accept return shipments with valid RMA numbers. BridgeWave's Warranty Claims Processing is available Monday – Friday 8am – 5pm Pacific Time by phone. The customer will pay for shipping.

30-Day Parts Replacement. If a defect is discovered, BridgeWave will ship a repaired or replacement unit within 30 days of receiving the defective unit. For defects identified within the first 30 days after shipment, a replacement will be sent the next business day. Standard replacement timeframe can be expedited by purchasing Next Day Replacement service. BridgeWave will pay for shipment of the product to the customer.

Software Releases For products with configurable software, BridgeWave will make new software releases and upgrades available to customers who are within warranty terms. Customers may access releases along with installation instructions via BridgeWave's web site or by purchasing an upgrade kit (including a CD-ROM, release notes and instructions for installing the new release) by calling Order Processing.

Extended Warranty

By purchasing BridgeWave's Extended Warranty, you extend the Standard Equipment Warranty coverage to the second and third year of operation of BridgeWave equipment. Extended Warranty provides the same features as the BridgeWave Standard Equipment Warranty with Next Day Replacement covering all three years.

Next Day Replacement

If you purchased Next Day Replacement service you will have an accelerated replacement timeframe. When Next Day Replacement is purchased, replacement parts are shipped within one business day for shipments within the United States and two business days to the shipping company for international destinations. Next Day Replacement is offered to complement the Standard Equipment Warranty for one year or complements Extended Warranty to cover all years (2, 3 or 5) and is included in the price of EWNDR services.

If BridgeWave is contacted and an RMA number is provided by 1:30PM Pacific Time (Monday - Friday non-Holidays), a replacement unit will be shipped for arrival Next Day (domestic US). For weekend or holiday delivery, special shipping arrangements will have to be made prior to BridgeWave providing a delivery date and time.

Next Day Replacement commences the day payment is received by BridgeWave and will terminate on the same date as the applicable Warranty service (Standard Warranty is 12 months from date of shipment and Extended Warranty is 24, 36 or 48 months from the date of shipment, depending on warranty purchased).

If the failed unit is not received within 10 days of the RMA number being provided, the distributor, VAR or customer, as appropriate, will be billed the List Price of the unit. All shipping instructions of the failed unit to BridgeWave will be covered by specific information provided when the RMA is assigned. BridgeWave pays the shipping costs of the replacement product within the United States and will work with international customers to coordinate pickup by their freight forwarder for further shipment abroad. All international customers will pay insurance, tariffs, duties and shipping fees.

Support Process

If your BridgeWave product is not functioning to specifications:

- refer to the Field Installation Service Manual (FISM) included in the shipping box for troubleshooting processes
- try to perform the troubleshooting processes to isolate the problem. If unable to resolve the problem,
- contact the VAR that sold you the BridgeWave product
- if unable to contact your VAR, contact the Distributor that the VAR purchased the product from if you know the Distributor

- if unable to contact your VAR or Distributor, contact BridgeWave Technical Support at (408) 567-6900
- BridgeWave will issue a Return Merchandise Authorization (RMA) number via the Distributor or VAR
- if an RMA is provided, you will need to repack the non-functioning product in a suitable box to protect it from damage and ship it freight prepaid to FOB BridgeWave's dock:

Attention: RMA # _____
 BridgeWave Communications, Inc.
 3350 Thomas Road
 Santa Clara, CA 95054, USA

- If the customer purchased Next Day Replacement service, BridgeWave will ship a replacement product Next Business Day if the RMA is authorized before 1:30pm Pacific Time Monday – Friday. BridgeWave will prepay return freight charges on RMA products
- If the customer does NOT have Next Day Replacement service and the product is under warranty, BridgeWave will receive the failed product, repair or replace the failed product, notify the customer and ship the repaired or replacement product. It could take 14-30 days to perform these tasks. BridgeWave will prepay return freight charges on RMA products.
- your VAR or you will be expected to install the replacement product

The replacement product's warranty shall expire on the later of ninety (90) days after shipment date or the last day of the Standard Equipment or Extended Warranty period with respect to the originally purchased product.

No Fault Found

If after the RMA product has been received and fully tested, it is determined that there is "No Fault Found" with the product; BridgeWave will contact the customer to further investigate the possible problems. If after further investigation the product still has a "No Fault Found" status and BridgeWave cannot replicate the problem, the customer will be contacted again and the product will be shipped back at the customer's expense with an additional \$350 fee to cover the costs of technical support and shipping fees to receive the product.

Delivery Schedule

Service	RMA issued by 1:30pm PT (M-F)	RMA Issued after 1:30PT (M-F)
Standard Warranty (1st 12 months)	Delivery next business day within 1st 30 days; 2nd through 12 months upon repair of product (14-30 days)	Delivery 2 business days within 1st 30 days; 2nd through 12 months upon repair of product (14-30 days)
Next Day Replacement with Standard or Extended Warranty	Delivery next business day	Delivery 2 business days later

BridgeWave recognizes the following holidays: New Year's day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, day following Thanksgiving Day and Christmas Day. On these days, BridgeWave will not be able to process RMA's or ship repaired or replacement products.

For all international shipments add an additional day for the products to be picked up by the freight forwarder (shipping company). The customer is responsible for coordinating and paying all freight forwarding, insurance, duties, tariffs and custom fees.

Terms and Conditions for Sale of Products and Services (GE MDS Warranty)
Form ES 104 (Rev. 4)

NOTICE: Sale of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. No facility entry form shall modify these Terms and Conditions even if signed by Seller's representative. Any order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance.

1. Definitions

"Buyer" means the entity to which Seller is providing Products or Services under the Contract.

"Contract" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Products or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site.

"Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"Products" means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.

"Seller" means the entity providing Products or performing Services under the Contract.

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"Site" means the premises where Products are used or Services are performed, not including Seller's premises from which it performs Services.

"Terms and Conditions" means these "Terms and Conditions for Sale of Products and Services", including any relevant addenda pursuant to Article 18, together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

2. Payment

2.1 Buyer shall pay Seller for the Products and Services by paying all invoiced amounts in U.S. dollars, without set-off for any payment from Seller not due under this Contract, within thirty (30) days from the invoice date. If the Contract Price is less than U.S. Two Hundred Fifty Thousand Dollars (\$250,000), Seller shall issue invoices upon shipment of Products and as Services are performed. If the Contract Price is U.S. Two Hundred Fifty Thousand Dollars (\$250,000) or more, progress payments shall be invoiced starting with twenty-five percent (25%) of the Contract Price for Products and Services upon the earlier of Contract signature or issuance of Seller's order acknowledgement and continuing such that ninety percent (90%) of the Contract Price for Products is received before the earliest scheduled Product shipment and Services are invoiced as performed ("Progress Payments"). For each calendar month, or fraction thereof, that payment is late, Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.

2.2 As and if requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Products are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("Payment

Security"). The Payment Security shall be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened at least sixty (60) days prior to both the earliest scheduled shipment of Products and commencement of Services, and (d) remain in effect until the latest of ninety (90) days after the last scheduled Product shipment, completion of all Services and Seller's receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s) and make other appropriate modifications to any Payment Security within ten (10) days of Seller's notification that such adjustment is necessary in connection with Buyer's obligations under the Contract.

2.3 Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable Progress Payments have been received. For each day of delay in receiving Progress Payments or acceptable Payment Security, Seller shall be entitled to a matching extension of the schedule. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of Payment Security, suspend its performance or terminate the Contract.

3. Taxes and Duties

Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Contract ("Seller Taxes"). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Seller Taxes ("Buyer Taxes"). The Contract Price does not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Contract Price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

4. Deliveries; Title Transfer; Risk of Loss; Storage

4.1 For shipments that do not involve export, including shipments from one European Union ("EU") country to another EU country, Seller shall deliver Products to Buyer FCA Seller's facility or warehouse (Incoterms 2010). For export shipments, Seller shall deliver Products to Buyer FCA Port of Export (Incoterms 2010). Buyer shall pay all delivery costs and charges or pay Seller's standard shipping charges plus up to twenty-five (25%) percent. Partial deliveries are permitted. Seller may deliver Products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption. If Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten (10) days after receipt.

4.2 For shipments that do not involve export, title to Products shall pass to Buyer upon delivery in accordance with Section 4.1. For export shipments from a Seller facility or warehouse outside the U.S., title shall pass to Buyer upon delivery in accordance with Section 4.1. For shipments from the U.S. to another country, title shall pass to Buyer immediately after each item departs from the territorial land, seas and overlying airspace of the U.S. The 1982 United Nations Convention of the law of the Sea shall apply to determine the U.S. territorial seas. For all other shipments, title to Products shall pass to Buyer the earlier of (i) the port of export immediately after Products have been cleared for export or (ii) immediately after each item departs from the territorial land, seas and overlying airspace of the sending country. When Buyer arranges the export or intercommunity shipment, Buyer will provide Seller evidence of exportation or intercommunity shipment acceptable to the relevant tax and custom authorities. Notwithstanding the foregoing, Seller grants only a license, and does not pass title, for any software provided by Seller under this Contract, and title to any leased equipment remains with Seller.

4.3 Risk of loss shall pass to Buyer upon delivery pursuant to Section 4.1, except that for export shipments from the U.S., risk of loss shall transfer to Buyer upon title passage.

4.4 If any Products to be delivered under this Contract or if any Buyer equipment repaired at Seller's facilities cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the Products and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products or equipment into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery.

4.5 If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Seller shall be responsible for damage to the equipment while at Seller's facility to the extent such damage is caused by Seller's negligence.

5. Warranty

5.1 Seller warrants that Products shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

5.2 The warranty for Products shall expire one (1) year from first use or twenty-four (24) months from delivery, whichever occurs first, except that software is warranted for ninety (90) days from delivery. The warranty for Services shall expire one (1) year after performance of the Service, except that software-related Services are warranted for ninety (90) days.

5.3 If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. Seller shall (i) at its option, repair or replace defective Products and (ii) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Products and Services. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

5.4 Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination, re-installation and transportation of defective Products to Seller and back to Buyer.

5.5 The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of Products, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Products or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void. Seller is not responsible for normal wear and tear.

5.6 This Article 5 provides the exclusive remedies for all claims based on failure of or defect in Products or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. THE WARRANTIES PROVIDED IN THIS ARTICLE 5 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.

6. Confidentiality

6.1 Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. "Confidential Information" means (a) information that is designated in writing as "confidential" or "proprietary" by Disclosing Party at the time of written disclosure, and (b) information that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within twenty (20) days after the oral or visual disclosure. In addition, prices for Products and Services shall be considered Seller's Confidential Information.

6.2 Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and use of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

6.3 The obligations under this Article 6 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly

notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

6.4 Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Buyer nor Seller shall make any public announcement about the Contract without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this Article 6 shall expire five (5) years after the date of disclosure. Article 6 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

7. Intellectual Property

7.1 Seller shall defend and indemnify Buyer against any claim by a non-affiliated third party (a "Claim") alleging that Products or Services furnished under this Contract infringe a patent in effect in the U.S., an EU member state or the country of the Site (provided there is a corresponding patent issued by the U.S. or an EU member state), or any copyright or trademark registered in the country of the Site, provided that Buyer (a) promptly notifies Seller in writing of the Claim, (b) makes no admission of liability and does not take any position adverse to Seller, (c) gives Seller sole authority to control defense and settlement of the Claim, and (d) provides Seller with full disclosure and reasonable assistance as required to defend the Claim.

7.2 Section 7.1 shall not apply and Seller shall have no obligation or liability with respect to any Claim based upon (a) Products or Services that have been modified, or revised, (b) the combination of any Products or Services with other products or services when such combination is a basis of the alleged infringement, (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim, (d) unauthorized use of Products or Services, or (e) Products or Services made or performed to Buyer's specifications.

7.3 Should any Product or Service, or any portion thereof, become the subject of a Claim, Seller may at its option (a) procure for Buyer the right to continue using the Product or Service, or applicable portion thereof, (b) modify or replace it in whole or in part to make it non-infringing, or (c) failing (a) or (b), take back infringing Products or Services and refund the price received by Seller attributable to the infringing Products or Services.

7.4 Article 7 states Seller's exclusive liability for intellectual property infringement by Products and Services.

7.5 Each party shall retain ownership of all Confidential Information and intellectual property it had prior to the Contract. All new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer agrees to deliver assignment documentation as necessary to achieve that result.

8. Indemnity

Each of Buyer and Seller (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of Seller's indemnity obligation, no part of the Products or Site is considered third party property.

9. Insurance

During the term of the Contract, Seller shall maintain for its protection the following insurance coverage: (i) Worker's Compensation, Employer's Liability and other statutory insurance required by law with respect to work related injuries or disease of employees of Seller in such form(s) and amount(s) as required by applicable laws; (ii) Automobile Liability insurance with a combined single limit of \$2,500,000.00; and (iii) Commercial General Liability or Public Liability insurance for bodily injury and property damage with a combined single limit of \$2,500,000.00. If required in the Contract, Seller shall provide a certificate of insurance reflecting such coverage.

10. Excusable Events

Seller shall not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers. If an excusable event occurs, the schedule for Seller's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the Buyer or its contractors or suppliers cause the delay, Seller shall also be entitled to an equitable price adjustment.

11. Termination and Suspension

11.1 Buyer may terminate the Contract (or the portion affected) for cause if Seller (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide

Seller with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.

11.2 If Buyer terminates the Contract pursuant to Section 11.1, (i) Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Contract Price allocable to Products completed, (b) lease fees incurred, and (c) amounts for Services performed before the effective date of termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates.

11.3 Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Contract, including, but not limited to, failure or delay in Buyer providing Payment Security, making any payment when due, or fulfilling any payment conditions.

11.4 If the Contract (or any portion thereof) is terminated for any reason other than Seller's default under Section 11.1, Buyer shall pay Seller for all Products completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates. In addition, Buyer shall pay Seller a cancellation charge equal to 80% of the Contract Price applicable to uncompleted made-to-order Products and 15% of the Contract Price applicable to all other uncompleted Products.

11.5 Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event (as described in Article 10) lasting longer than one hundred and twenty (120) days. In such case, Buyer shall pay to Seller amounts payable under Section 11.4, excluding the cancellation charge for uncompleted Products.

11.6 Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension, including, but not limited to, expenses for repossession, fee collection, demobilization/remobilization, and costs of storage during suspension. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

12. Compliance with Laws, Codes and Standards

12.1 Seller shall comply with laws applicable to the manufacture of Products and its performance of Services. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Products and Services.

12.2 Seller's obligations are conditioned upon Buyer's compliance with all U.S. and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

12.3 Notwithstanding any other provision, Buyer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfillment of Buyer's obligations, except that Seller shall obtain any license or registration necessary for Seller to generally conduct business and visas or work permits, if any, necessary for Seller's personnel. Buyer shall provide reasonable assistance to Seller in obtaining such visas and work permits.

13. Environmental, Health and Safety Matters

13.1 Buyer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including physical LOTO or a mutually agreed upon alternative method.

13.2 Buyer shall timely advise Seller in writing of all applicable Site-specific health, safety, security and environmental requirements and procedures. Without limiting Buyer's responsibilities under Article 13, Seller has the right but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the Site.

13.3 If, in Seller's reasonable opinion, the health, safety, or security of personnel or the Site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part

of the Contract, and/or remotely perform or supervise work. Any such occurrence shall be considered an excusable event. Buyer shall reasonably assist in any such evacuation.

13.4 Operation of Buyer's equipment is the responsibility of Buyer. Buyer shall not require or permit Seller's personnel to operate Buyer's equipment at Site.

13.5 Buyer will make its Site medical facilities and resources available to Seller personnel who need medical attention.

13.6. Seller has no responsibility or liability for the pre-existing condition of Buyer's equipment or the Site. Prior to Seller starting any work at Site, Buyer will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Buyer's equipment or the Site that Seller may encounter while performing under this Contract. Buyer shall disclose to Seller industrial hygiene and environmental monitoring data regarding conditions that may affect Seller's work or personnel at the Site. Buyer shall keep Seller informed of changes in any such conditions.

13.7 Seller shall notify Buyer if Seller becomes aware of: (i) conditions at the Site differing materially from those disclosed by Buyer, or (ii) previously unknown physical conditions at Site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. If any such conditions cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and schedule shall be made.

13.8 If Seller encounters Hazardous Materials in Buyer's equipment or at the Site that require special handling or disposal, Seller is not obligated to continue work affected by the hazardous conditions. In such an event, Buyer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that Seller's work under the Contract may safely proceed, and Seller shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in Seller's cost of, or time required for, performance of any part of the work. Buyer shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site.

13.9 Buyer shall indemnify Seller for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were (i) present in or about Buyer's equipment or the Site prior to the commencement of Seller's work, (ii) improperly handled or disposed of by Buyer or Buyer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on Site by parties other than Seller.

14. Changes

14.1 Each party may at any time propose changes in the schedule or scope of Products or Services. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

14.2 The scope, Contract Price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's Site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. However, no adjustment will be made on account of a general change in Seller's manufacturing or repair facilities resulting from a change in laws or regulations applicable to such facilities. Unless otherwise agreed by the parties, pricing for additional work arising from such changes shall be at Seller's time and material rates.

14.3 It shall be acceptable and not considered a change if Seller delivers a Product that bears a different, superseding or new part or version number compared to the part or version number listed in the Contract.

15. Limitations of Liability

15.1 The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Products or Services, shall not exceed the (i) Contract Price, or (ii) if Buyer places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order and ten thousand US dollars (US \$10,000) for all claims not part of any particular order.

15.2 Seller shall not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of replacement power, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's customers for any of the foregoing types of damages.

15.3 All Seller liability shall end upon expiration of the applicable warranty period, provided that Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period.

15.4 Seller shall not be liable for advice or assistance that is not required for the work scope under this Contract.

15.5 If Buyer is supplying Products or Services to a third party, or using Products or Services at a facility owned by a third party, Buyer shall either (i) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article 15, or (ii) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this Article 15.

15.6 For purposes of this Article 15, the term "Seller" means Seller, its affiliates, subcontractors and suppliers of any tier, and their respective employees. The limitations in this Article 15 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Seller's liability.

16. Governing Law and Dispute Resolution

16.1 This Contract shall be governed by and construed in accordance with the laws of (i) the State of New York if Buyer's place of business is in the U.S. or (ii) England if the Buyer's place of business is outside the U.S., in either case without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction (the "Governing Law"). If the Contract includes the sale of Products and the Buyer is outside the Seller's country, the United Nations Convention on Contracts for the International Sale of Goods shall apply.

16.2 All disputes arising in connection with this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Article 16. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration or court proceedings, depending upon the location of the Buyer, in accordance with the following:

(a) if the Buyer's pertinent place of business is in the U.S, legal action shall be commenced in federal court with jurisdiction applicable to, or state court located in, either Cobb County, Georgia or the location of Buyer's principal place of business; or (b) if the Buyer's pertinent place of business is outside the U.S., the dispute shall be submitted to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The number of arbitrators shall be one, selected in accordance with the ICC rules, unless the amount in dispute exceeds the equivalent of U.S. \$5,000,000, in which event it shall be three. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third within thirty (30) days, who shall be the Chairman. The seat, or legal place, of arbitration, shall be London, England. The arbitration shall be conducted in English. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found in the Contract, shall apply the governing law of the Contract. The decision of the arbitrator(s) shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.

16.3 Notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Contract, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in Article 6 and/or the nuclear use restrictions set forth in Section 19.1, or to seek interim or conservatory measures. Monetary damages shall only be available in accordance with Section 16.2.

17. Inspection and Factory Tests

Seller will apply its normal quality control procedures in manufacturing Products. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

18. Software, Leased Equipment, Remote Diagnostic Services, PCB Services

If Seller provides any software to Buyer, the Software License Addendum shall apply. If Seller leases any of Seller's equipment or provides related Services to Buyer, including placing Seller's equipment at Buyer's site to provide remote Services, the Lease Addendum shall apply. If Seller provides remote diagnostic services to Buyer, the Remote Diagnostic Services Addendum shall apply. If Seller provides PCB Services to Buyer, the PCB Services Addendum shall apply. If there is any conflict between these "Terms and Conditions for the Sale of Products and Services, Form ES 104" and the terms of any addendum incorporated pursuant to this Article 18, the terms of the addendum shall take precedence with respect to the applicable scope.

19. General Clauses

19.1 Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent,

affiliates, suppliers and subcontractors) harmless against all such liability. Consent of Seller to any such use, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.

19.2 Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) shall be void.

19.3 Buyer shall notify Seller immediately upon any change in ownership of more than fifty percent (50%) of Buyer's voting rights or of any controlling interest in Buyer. If Buyer fails to do so or Seller objects to the change, Seller may (a) terminate the Contract, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment), and/or (c) put in place special controls regarding Seller's Confidential Information.

19.4 If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

19.5 The following Articles shall survive termination or cancellation of the Contract: 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 18, 19 and 20.

19.6 The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract shall be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Products and Services sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing.

19.7 Except as provided in Article 15 (Limitations of Liability) and in Section 19.1 (no nuclear use), this Contract is only for the benefit of the parties, and no third party shall have a right to enforce any provision of this Contract, whether under the English Contracts (Rights of Third Parties) Act of 1999 or otherwise.

19.8 This Contract may be signed in multiple counterparts that together shall constitute one agreement.

20. US Government Contracts

20.1 This Article 20 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government.

20.2 Buyer agrees that all Products and Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Contract, the country of origin of Products is unknown unless otherwise specifically stated by Seller in this Contract. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). Buyer represents and agrees that this Contract is not funded in whole or in part by American Recovery Reinvestment Act funds unless otherwise specifically stated in the Contract. The version of any applicable FAR clause listed in this Article 20 shall be the one in effect on the effective date of this Contract.

20.3 If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

20.4 If Buyer is procuring the Products or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

Warranty

Mimosa End User Product Warranty

Products purchased from Mimosa Networks, Inc. ("Mimosa") are warranted against defects in material, and workmanship for a period of either (i) twelve (12) months from the date of first unlock, or (ii) thirty-six (36) months from the original date of shipment, whichever is earlier.

The sole responsibility of Mimosa under this warranty shall be limited to the repair or replacement of in-warranty defective product, at Mimosa's sole option.

Out of warranty products shipped to Mimosa will not be returned.

This warranty does not cover costs associated with the removal and/or reinstallation of the product for repair nor for any parts that are readily replaced in normal use.

Mimosa or its designated partner will repair or replace product found to be defective during the defined warranty period.

The End User is responsible for delivering defective product in accordance with Mimosa's published [Return Material Authorization \(RMA\) process](#).

Limitation of Warranty

Mimosa's product warranty is invalidated if the RMA product is altered or otherwise tampered with in a manner that modifies the product from its original shipping configuration and/or form factor, unless said activity was performed by or with the written authorization of a Mimosa representative.

Modifications include:

- External surfaces that have been painted, labeled, or otherwise modified from the original shipping condition.

- Modifications of the product with third party hardware, firmware, and/or software.

- Any product subjected to abnormal physical or electric stress, including, but not limited to, lightning strikes, negligence, accident, or misuse.

- Any product damaged due to incorrect installation, including, but not limited to, improper product mounting, cabling or connection to power.

- Failure induced by connected third party products.

Mimosa will not warrant any product which has been installed without the use of shielded CAT 6 Ethernet cable and/or proper earth grounding.

For additional instructions or help, please contact support@mimosa.co.

Proxim General Warranty Policy

The following is a general summary of warranties Proxim Wireless Corporation (Proxim) provides for its products. This document itself does not create any warranty rights or obligations. Contractual warranty provisions are contained in Proxim's agreements with its direct customers, who (if distributors or resellers) then typically pass the benefits of the warranties through to their customers. In the event of any inconsistency between the terms of this summary of general warranty policies and contractual warranty provisions, the contractual warranty provisions control.

Scope of Hardware Warranty:

Proxim generally warrants that its broadband wireless hardware products:

- will perform in accordance with the products' specifications,
- are free and clear of any security interest, lien, or encumbrance,
- are free from factory defects in material and workmanship, and
- are manufactured, labeled, and packaged in compliance with any applicable United States federal laws and regulations in effect at the date of delivery of the products to Proxim's customer.

Duration of Hardware Warranty:

The duration of Proxim's warranties for its broadband wireless hardware products is generally **one (1) or two (2) years**, provided that some products have different warranty periods as established by Proxim from time to time such as:

- Cables and Other Accessories: **Thirty (30) days – One (1) year**
- Software: **Ninety (90) days**

The warranty period generally starts on the date of delivery by Proxim to Proxim's direct customer (typically a distributor), but in some situations for shorter - term warranty products (one year or less), the warranty may start from the date of delivery by Proxim's direct customer to the initial purchaser of the products from Proxim's direct customer.

Repair or Replacement of Non-Conforming Product:

When Proxim determines that a returned product does not meet the warranted criteria during the warranty period, Proxim, at its option, will either: (a) repair the defective product; (b) replace the defective product with a new or refurbished product that is at least equivalent to the original; or (c) refund the price paid for the defective product. Generally, products are repaired or replaced within thirty (30) business days of receipt of the product at a Proxim Logistical/Repair Center. The warranty period for repaired or replacement products is ninety (90) days or the remainder of the original warranty period, whichever is longer. These three alternatives constitute the customer's sole and exclusive remedy and Proxim's sole and exclusive liability under warranty provisions.

In-Warranty Repair or Replacement Procedures:

If a direct or indirect customer has a Proxim product which they believe is still in warranty but does not meet the warranted criteria, that person can contact a Proxim Customer Service Center either by telephone or via the Internet. Calls for warranty issues for products that are near the end of their warranty period should be made no later than seven (7) days after expiration of warranty. Contact information is shown below.

- Domestic (United States) calls: 866-674-6626
- International calls: +1(408) 383-7700; 088-916475 (France); 8-800-100-9485 (Russia)

When contacting the Customer Service Center for support, please be prepared to provide the product description and serial number and a description of the problem. The serial number should be on the product.

In the event the Customer Service Center determines that the problem can be corrected with a software update, you may be instructed to download the update from Proxim's web site or, if that's not possible, the update will be sent to you. In the event the Customer Service Center instructs you to return the product to Proxim for repair or replacement, the Customer Service Center will provide you with a Return Material Authorization ("RMA") number and shipping instructions. **No product will be accepted for repair or replacement by Proxim without a RMA number.** The product must be returned to Proxim, properly packaged to prevent damage, shipping and handling charges prepaid, with the RMA number prominently displayed on the outside of the container. If Proxim determines that a returned product is not defective or is not covered by the terms of the warranty, you will be charged a service charge and return shipping charges.

Additional support information can be found at Proxim's web site at <http://my.proxim.com>.

Extended Warranty / Out-of-Warranty:

Repair of products that are out of warranty will be subject to a repair fee. Proxim does offer extended warranties and enhanced service options for its direct and indirect customers who desire those enhanced features. Please contact Proxim Customer Service Center either by telephone or via the Internet if you would like more information about these options.

Software-Specific Provisions:

Proxim generally warrants that its standalone software products will perform substantially in accordance with the applicable Proxim documentation for the software product for a period of ninety (90) days from delivery to Proxim's direct customer.

If Proxim software fails to comply with the warranty set forth above, Proxim will, at its discretion and as the customer's exclusive remedy, (i) make a reasonable effort to cause the software to perform substantially in accordance with the applicable documentation or (ii) return the purchase price. This limited warranty applies only if all copies of the product, together with proof of purchase, are returned to Proxim during the warranty period.

This limited software warranty is VOID if failure of the software is due to modification of the software not made by Proxim or the abuse or misapplication of the software. Proxim does not warrant that any software is error free, that the customer will be able to operate the software without problems or interruptions, or that the software or any equipment, system or network on which the software is used will be free of vulnerability to intrusion or attack.

Warranty Limitations:

Proxim's warranties do not apply to any product (hardware or software) which has (a) been subjected to abuse, misuse, neglect, accident, or mishandling, (b) been opened, repaired, modified, or altered by anyone other than Proxim, (c) been used for or subjected to applications, environments, or physical or electrical stress or conditions other than as intended and recommended by Proxim, (d) been improperly stored, transported, installed, or used, or (e) had its serial number or other identification markings altered or removed.

Warranty Disclaimer:

PROXIM'S SPECIFIC WARRANTIES SUMMARIZED ABOVE ARE THE ONLY WARRANTIES GIVEN BY PROXIM WITH RESPECT TO ITS PRODUCTS (HARDWARE AND SOFTWARE) AND ARE GIVEN IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR ARISING BY CUSTOM, TRADE USAGE, OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND PROXIM DISCLAIMS ANY AND ALL OTHER WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW. Without limiting the generality of the foregoing sentence, Proxim makes no warranty representation, either expressed or implied, as to, and disclaims all liability and responsibility for, (a) the operation, compliance, labeling, or packaging of any of its products under the laws of any jurisdiction outside of the United States of America and (b) the regulatory compliance of any products in any jurisdiction in which it has not specifically identified compliance or the use of any product in any jurisdiction in any manner other than as contemplated in the regulatory certifications and approvals for that product in that jurisdiction. To the extent an implied warranty cannot be excluded, such warranty is limited in duration to the warranty period. The disclaimer and exclusion applies even if the express warranty fails of its essential purpose.

General Technical Support:

Proxim's general technical support policy can be found at Proxim's website at <http://proxim.com/support>

1.0 RedCare Standard Warranty, Protection and Bundled Plans

RedCare Standard Warranty, Protection & Bundled Plans offer flexible maintenance services for your field and operations personnel and enable you to selectively tailor the required protection & support plans to meet your operations specific requirements.

1.1 Standard Warranty

All Redline products have a 12-month limited standard warranty included as part of the equipment purchase price. Redline products are warranted to be free from defects in material and workmanship under normal use and service for a period of twelve months following shipment of product.

Standard Warranty provides for repair & return of hardware defects, correctional software (as deemed necessary by Redline) and excludes user induced or environmental damage. Shipping of the defective unit to Redline is the responsibility of the Customer and return shipment of the repaired unit is the responsibility of Redline.

1.2 RedCare Extended Warranty Plan

RedCare Hardware Protection Plan offers continued warranty coverage for repair & return of RDL-3000 hardware defects in one year increments up to a maximum period of four additional years following the Standard Warranty term and can be purchased at the time of product purchase or at any subsequent date provided the product's Standard Warranty is in effect.

Excludes user induced or environmental damage.

1.3 RedCare Bundled Protection Plan

The **RedCare** Bundled Protection Plan is a sound choice for clients who want full product protection and require technical support services from Redline. The **RedCare** Bundled Protection Plan is a bundled plan comprising of 3 key protection & support services; is available in 1 year terms up to 5 years and can be purchased at the time of initial product purchase or any subsequent date provided the product's Standard Warranty is in effect.

The **RedCare** Bundled Protection Plan includes the following:

- Hardware Protection
 - Offers coverage for repair & return of RDL-3000 standard power hardware defects. Excludes user induced or environmental damage.
- Software Protection
 - Offers all software releases (correctional, updates & upgrades) associated with your installed RDL-3000 standard power hardware. With this plan you are provided advanced notification of new features & functionality and the flexibility to choose the right time to install new software to increase the efficiency of your network, achieve



higher performance levels, improve overall network manageability or add new functionality.

- Unlimited Remote TAC Support
 - Provides unlimited remote access to Redline's Technical Assistance Centre (TAC) for support assistance and technical advice to resolve problems.
- On-line Portal Access for Trouble Ticket & RMA Reporting/Tracking
- Management VPN to provide secured remote access for Redline's TAC support technicians.



2.0 General Terms and Processes

2.1 General Terms

A **RedCare** Plan may be started or modified at any time for any number of Redline Fixed Wireless or Nomadic systems that are currently supported under Standard Warranty or an existing **RedCare** Plan. The minimum term for a **RedCare** Plan is one year.

RedCare Plans are product agnostic. All serial numbers of the products to be covered under a plan must be registered with Redline.

Prior to the activation of a **RedCare** Plan, Redline may (at their discretion) check the supportability status of the equipment involved. Should the Standard Warranty or existing **RedCare** Plan have expired, Redline may request validation that the product is operating satisfactorily to complete registration. Redline may choose to authenticate the applicability of the equipment by performing a network audit of all systems to be covered in the **RedCare** Plan contract. The fee for the network audit is incremental to the **RedCare** plan and will be recovered as part of a Professional Service which must be completed prior to the initialisation of the **RedCare** Plan.

RedCare Plans provide coverage for all registered Redline fixed and nomadic wireless devices with the exception of any device that has reached Manufacture Discontinued prior to the beginning of the contract.

Exclusions to Standard Warranty and **RedCare** Plans:

- Defects or damage resulting from improper/non-standard use of the product
- Defects or damage occurring from improper or unauthorized testing, operation, maintenance, service, repair, installation, alteration, modification or adjustment
- Defects or damage resulting from environmental impact (lightning, power surge, water ingress)
- Illegal or unauthorized alteration of the products software/firmware
- Normal and customary wear & tear

2.2 RMA Process

2.2.1 Return Material Authorization for Replacement of Defective Units

The Return Material Authorization (RMA) process is used to repair or replace product defects that:

- have failed standardized bench testing when performed by Redline or a Redline Authorized Partner
- have been recommended as part of a trouble ticket investigation by the Redline Customer Support Team (TAC)
- Redline is in receipt of a PO for Out-of-Warranty Repair Service

The RMA process involves requesting a Return Material Authorization (RMA) case number via the Support Portal. Upon approval, Redline will provide a case number, authorization code, and shipping instructions. Upon receipt of the authorization code and shipping instructions the suspected unit is sent to Redline. Once received, Redline will verify that the fault is covered under warranty or a **RedCare** plan,



make the necessary repairs and return the unit. If the unit cannot be repaired a replacement will be shipped. For Out-of-Warranty – refer to section 2.3 of this document.

2.2.2 RMA Shipping Costs and Disbursements

The Customer/Partner is responsible for paying all applicable shipping costs to the Redline shipping point for repair. For equipment covered by Standard Warranty or a **RedCare** Plan, Redline will pay for the return shipping of repaired or replacement equipment to the customer premise or to the partner point of sale.

2.2.3 No Defect Found Charges

When an RMA returned unit is tested and no defect is found matching the RMA description, the unit is rigorously tested in accordance with factory quality tests. If no errors are found, the unit is declared “No Defect Found” (NDF). A no defect found charge of \$350 is levied. NDF charges will only be waived when Redline Customer Support personnel have recorded that the RMA is recommended in a support ticket.

2.3 Out-of-Warranty Repair Service

Out-of-warranty repair service is a per-use service that provides repair or replacement of defective product that is not covered under the Standard Warranty or a **RedCare** Plan. Out-of-warranty repair provides a 90 day warranty for the repaired or replaced product. The repair will be completed within 60 days from the time the unit is received by Redline’s RMA coordinator. Redline will provide the details for the cost of repairs and shipping and a PO will be required from the Customer prior to the commencement of any repair work or if repairs cannot be undertaken shipment of a replacement unit.

The provisions of this **RedCare** Overview Guide are subject to the agreement between the Customer and Redline under which Redline agrees to provide the services that are described in this Guide (the provisions of this Guide are also subject to Redline Communications' standard Terms and Conditions). In the event of any conflict, the provisions of the agreement shall (including the standard Terms and Conditions) govern over the provisions of this Guide. Redline Communications may change the provisions of this Guide from time to time in its sole discretion.



1. All quotation, proposals, prices, or other terms are made for acceptance within 30 days (after 30 days, prices in effect at time of shipment will apply) and shipment within 30 days of purchase order date, unless otherwise stated. They are subject to change without notice; however, ROHN invites your request for an extension. They are also subject to Credit and Marketing Department approval prior to acceptance. No other price protection is available.

2. Every effort will be made to maintain shipping schedules, either on ROHN equipment or via common carrier. ROHN cannot be responsible for delays in shipping caused by state or local agencies with regard to permits, routing, weather, detours, etc. All deliveries and schedules are contingent on availability of raw materials, fuel, and transportation. ROHN will not be liable for damages on account of any delays or abnormalities caused in shipping due to causes beyond our reasonable control. ROHN reserves the right to make partial shipments and to submit invoices accordingly.

3. Changes or modifications to orders can be made only by written agreement executed by all parties affected thereby, which agreement shall include any price modification.

4. ROHN's responsibility ceases upon delivery of all shipments to the carrier. The unloading of all shipments is the responsibility of the Buyer, not the carrier or ROHN. Buyer is warned against receipting for merchandises until careful inspection has been made. Any claim made against ROHN must be made within 90 days after receipt of merchandise. All merchandise leaving ROHN's factory has been carefully inspected and ROHN does not assume responsibility for damages or shortages which occur in transit. Buyer must make all claims and report all damages and losses to the delivering transportation company.

5. No federal, state, or local taxes are included in quoted prices. All quotations, proposals, prices, or other terms are subject to increase without notification by the amount of any sales, excise, or other tax levied or charged to seller by any governmental agency and any such tax will be passed onto purchaser as a tax or as an addition to the selling price. This also applies to all costs incurred due to local statutes or governmental regulations.

6. Orders are not subject to cancellation by Buyer except by written agreement with seller. Any order canceled, after any work has been done by ROHN, such as drawings, production, etc., will have a cancellation charge, to be determined solely at the discretion of ROHN for whatever work has been performed with a minimum of 25% of the purchase order price. If Buyer so chooses, he shall have the right to receive the material already performed at time of cancellation at the quoted price. If an order is canceled before any work has been done by ROHN, a \$200 cancellation charge will apply.

7. Material received may not be returned by Buyer except by written agreement with seller. In all cases, permission must be secured from ROHN prior to the returning of any goods for credit. All returned goods are subject to a minimum service charge of 25%, plus all transportation charges, and are subject to inspection by ROHN. Returned goods will be offered and paid for only upon proof of purchase (i.e. invoice no.) and credit will be issued against invoice value. ROHN reserves the sole right to determine amount of credit to be issued on all goods returned for credit. Only standard, currently manufactured ROHN products may be considered for return and credit. Unsaleable products will be scrapped and no credit will be received. If returned goods are determined to have no value and Buyer wishes them returned, the Buyer will be charged return freight. Safety equipment, erection equipment, insulators, transformers, nuts and bolts are not returnable.

8. ROHN warrants the commercial items of its manufacture only, to be reasonably fit for the purpose for which they are manufactured and sold, provided, however, that this warranty shall be effective only if purchaser installs all material according to ROHN's recommendations and specifications and that purchaser during the warranty period shall regularly, not less than semi-annually, inspect and properly maintain all items. Any item found unfit for its purpose within 12 months from date of delivery will be repaired or replaced free of charge, F.O.B. ROHN's plant. ROHN shall be immediately notified in writing of such unfitness. ROHN reserves the sole right to determine if any material is to be repaired or replaced free of charge or to be supplied at ROHN's standard prices. Such obligation shall be limited to parts returned for inspection, properly packed and expenses prepaid, and providing inspection shall satisfactorily indicate defects. The warranty herein made is in lieu of all other warranties and, except as expressly stated herein, ROHN does not make and there are no warranties or obligations of any kind or nature whatsoever either expressed or implied including, but not restricted to, warranty or obligations as to product, material, workmanship, or manufacture or as to the use of the items covered hereby. ROHN shall not under any circumstances be liable to third persons for any claims for damages including direct, special, indirect, or consequential damages for any reason. The Buyer agrees to indemnify and to hold ROHN harmless for, of, and from any loss, claims, damages, expenses and attorney's fees, including but not limited to, any fines, penalties and corrective measures ROHN may sustain by reason of Buyer's failure to comply with said laws, rules, and regulations in connection with the performance of this sale. The above warranty warranted applies only to items manufactured by ROHN. Items not manufactured by ROHN are guaranteed only to the extent and in the manner warranted and guaranteed to ROHN by the manufacturer of

such items and then only to the extent ROHN is liable to enforce such warranty or guarantee. ROHN will assume no responsibility for the adequacy of any product if material is used which is not totally supplied by ROHN. The above sets forth the only warranty made by ROHN in connection with items manufactured or sold by it, and any provisions in any proposals, specifications, advertising, or other provisions hereof, are merely descriptive and are not to be construed as warranties made by ROHN. All warranties are void on drawings made by others, whether by a professional engineer, sealed or not, that are not rechecked by ROHN and approved by ROHN. ROHN assumes no liability for the adequacy of the drawings or the product. Without limiting the generality of the foregoing, the Buyer hereby indemnifies ROHN and hold ROHN harmless from any and all claims and/or damages (including direct, special, indirect or consequential damages, attorneys' fees and costs) relating to or arising out of any highway structure or component not designed by ROHN. ROHN hereby disclaims any and all warranties, including express or implied warranties of merchantability and fitness for any particular purpose, relating to or arising out of metal fatigue.

9. ROHN reserves the right to change or modify the product and construction of any product manufactured by ROHN and to substitute material equal to or superior to that originally specified.

10. Buyer agrees not to disclose or make available to any third party processes, drawings, specifications, reports, photographs, data and other technical or proprietary information relating to ROHN products without obtaining prior written consent of ROHN.

11. No proposal, order, quotation, or acceptance may be changed or varied by verbal agreement, and all orders are accepted only under the provisions set forth herein.

12. Purchase orders and requests for quotations must be submitted in writing to ROHN. It is the responsibility of the Buyer or Buyer Representative to provide ROHN design criteria (environmental loads, equipment loads, operational limitations, geotechnical information, etc.) based on site-specific data. In designing the product for the Buyer, ROHN is relying solely and entirely on design criteria provided by the Buyer to ROHN. Without limiting the generality of the indemnities in these Terms & Conditions, the Buyer hereby indemnifies ROHN and holds ROHN harmless from and against any and all claims and/or damages (including direct, special, indirect or consequential damages, attorneys' fees and costs) relating to or arising out of any inaccuracy or incompleteness in design criteria provided to ROHN by the Buyer, and the Buyer waives all claims against ROHN for same.

13. If outside source inspection, assembly, etc. is required prior to shipment of an order, \$50.00 per man hour (plus equipment time, if applicable) is chargeable, with \$300.00 as a minimum.

14. Any welding inspection required by Buyer or Buyer's specifications must be done at ROHN's plant prior to packing and shipment of material from ROHN's plant.

15. A minimum charge of \$25.00 will be billed for special handling and preparation of material for air shipments.

16. ROHN reserves the right to apply all remittances and credit memos to the oldest outstanding balance in your account. No credits will be issued for any reason against a purchase order whose billing is more than 90 days old. Buyer corrections or complaints must be made within this period of time.

17. Standard catalog prices do not include special drawings or product evaluations. If any are required, there will be a charge.

18. ROHN at all times reserves the right to take pictures of any or all of its products after installation for advertising purposes, except those which are under classified governmental control.

19. The Buyer will be responsible for any extra charges incurred on prepaid shipments.

20. A service charge not to exceed 2% per month or maximum allowable per State law will be billed on all accounts not paid within 30 days of invoice date.

21. Minimum total net worth of merchandise which can be ordered is \$100.00. Any orders placed for less will be billed at \$100.00.

22. Storage charges will be .02% of invoice amount per day with a minimum charge of \$8.00 a day. These charges will be invoiced on a monthly basis for material requested to be withheld from shipment starting 30 days from the initial notification from ROHN, that the material was available for shipment.

23. All CIA requirements must be met with certified checks or money orders to insure prompt shipment.

24. All expenses incurred by ROHN during any collection effort shall be charged to the Buyer.

25. There will be a minimum of a \$100 fee per truck or container, for ROHN to receive, handle and pack for reshipment, any material not purchased through ROHN, but drop shipped to ROHN for shipment with a ROHN structure. This includes light kits, platforms, mounts, rigging equipment, etc. that is provided by others. There will be a minimum \$250 per truck or container for those drop shipped items that must be handled with ROHN forklifts or other mechanical device.

SABRE PREMIUM WARRANTY

In consideration of the award of the quoted project, Sabre Communications Corporation makes the following Warranty under the terms and conditions set forth below.

Sabre will warrant the product against failure as follows:

Material Defects – (1) Year
Internal Corrosion – (1) Year

COVERAGE: This Warranty covers design, fabrication, and all other goods supplied with the original tower by Sabre which are not specifically included in this Warranty. Certain items are not covered this Warranty. These items include, but are not limited to: antennas, lines and related ancillary equipment, lighting equipment, light bulbs, or other materials. In addition, Sabre does not warrant defects or failure caused by any of the following items which include, but are not limited to, normal wear and tear, vandalism, faulty installation by Buyer or its employees or agents, failure due to winds and/or ice that exceed the Buyer's design requirements, anchor failure caused by electrolytic corrosion, flying objects, improper modifications or repair, lightening, flood, earthquake, vehicles, or animals.

REQUIREMENTS TO SUSTAIN WARRANTY: This Warranty will remain valid for the periods set forth only if you do the following:

- a. Make adequate tower inspections at six-month intervals;
- b. Perform proper maintenance of the tower pursuant to industry standards;
- c. Maintain inspection/maintenance reports; and,
- d. Maintain load levels at or under design parameters.

LIMITATIONS ON WARRANTY: If the tower is loaded with antennas, lines, or other appurtenances which overstress the tower beyond its original design parameters, or if you fail to do required inspections and/or maintenance, then this Warranty shall be null and void, not merely voidable. In addition, Sabre retains the right, in the event of a claim under this Warranty to inspect the tower and fully investigate all claims. Any repair or replacement contemplated under this Warranty shall not include foundations and/or anchors.

REMEDIES UNDER WARRANTY: In the event of a claim under this Warranty, which, after inspection and full investigation by Sabre, Sabre determines, in its sole discretion, to be covered by the Warranty, then Sabre's sole obligation under these Warranties will be limited to either, at Sabre's option and expense, repairing or furnishing a replacement F.O.B. first point of shipment for the products or parts thereof which Sabre reasonably determines do not conform with these warranties, and Buyer's exclusive remedy for breach of any such warranties will be enforcement of such obligation of Sabre.

IN NOT EVENT SHALL SABRE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, NOR SHALL SABRE BE LIABLE FOR ANY LOSS OF REVENUE. IN ANY EVENT, SABRE'S DAMAGES ON ANY CLAIMS ARISING OUT OF OR CONNECTED WITH THE QUOTED PROJECT SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE. ANY ACTION FOR BREACH OF WARRANTY MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES.

DISCLAIMER OF OTHER WARRANTIES

THIS DOCUMENT IS A COMPLETE AND EXCLUSIVE STATEMENT OF WARRANTIES OFFERED BY THE SELLER. THERE ARE NO WARRANTIES BEYOND THOSE EXPRESSLY STATED IN THIS WRITING. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE AND OF ANY OTHER TYPE, WHETHER EXPRESSED OR IMPLIED.

General Terms and Conditions of Sale for RUGGEDCOM Products

The following terms and conditions of sale shall apply to any sale of goods and services by Siemens Canada Limited (hereinafter called "Siemens"). Purchaser shall be deemed to have full knowledge of the terms and conditions herein and such terms and conditions shall be binding if either the goods and services referred to herein are delivered to and accepted by Purchaser, or if Purchaser does not within five days from the date hereof deliver to Siemens written objection to said terms and conditions or any part thereof.

1. GENERAL In the event of any conflict or inconsistency between the terms and conditions of sale herein and the terms and conditions contained in Purchaser's order or in any other form issued by Purchaser, whether or not any such form has been acknowledged or accepted by Siemens, Siemens' terms and conditions herein shall prevail. No waiver, alteration or modification of these terms and conditions shall be binding upon Siemens unless made in writing and signed by a duly authorized representative of Siemens.
2. QUOTATIONS Unless otherwise stated, Siemens' quotation shall be null and void unless accepted by Purchaser within thirty (30) days from the date of quotation.
3. PRICES / COST OF TRANSPORTATION All quoted prices are based on the current exchange rates, tariffs and costs of manufacture. Unless otherwise stated in the quotation, quoted prices are subject to change by Siemens with or without notice until Purchaser's acceptance. Prices are subject to correction for error. Unless otherwise stated, all prices are FCA factory Incoterms 2010 and include domestic packing. Customary methods of transportation shall be selected by Siemens and such transportation will be at Purchaser's expense. Special methods of transportation will be used upon Purchaser's request and at Purchaser's additional expense provided reasonable notice of Purchaser's transportation requirements are given by Purchaser to Siemens prior to shipment.
4. TAXES Prices do not include Goods & Services Tax, Provincial or Municipal sales, use, value-added or similar tax. Accordingly, in addition to the price specified herein, the amount of any present or future sales, use, value-added or similar tax applicable to the sale of the goods hereunder to or the use of such goods by Purchaser shall be paid by Purchaser to the entire exoneration of Siemens.
5. DELIVERY Delivery schedules are approximate and are based on prevailing market conditions applicable respectively at the time of Siemens' quotation and Siemens' acceptance of Purchaser's order. Delivery shall also depend on the prompt receipt by Siemens of the necessary information to allow maintenance of the manufacturer's engineering and manufacturing schedules. Siemens may extend delivery schedules or may, at its option, cancel Purchaser's order in full or in part without liability other than to return any deposit or prepayment which is unearned by reason of the cancellation.
6. FORCE MAJEURE Siemens shall not be responsible or liable for any loss or damage incurred by Purchaser herein resulting from causes beyond the reasonable control of Siemens including, but without limitation, acts of God, war, invasion, insurrection, riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdown, sabotage, lock-outs, strikes or labour disputes, faulty castings or forgings, or the failure of Siemens' suppliers to meet their delivery promises. The acceptance of delivery of the equipment by Purchaser shall constitute a waiver of all claims for loss or damage due to any delay whatsoever.
7. SHIPMENT/DAMAGES OR SHORTAGES IN TRANSPORT/RISK Except for obligations stated under "Warranty" herein, Siemens' responsibility for goods ceases upon delivery to the carrier. In the event of loss or damage during shipment, Purchaser's claim shall be against the carrier only. Siemens will, however, give Purchaser any reasonable assistance to secure adjustment of Purchaser's claim against the carrier provided immediate notice of such claim is given by Purchaser to Siemens. Claims for shortages must be made in writing within ten (10) days after receipt of goods by Purchaser. If Siemens does not receive written notification of such shortages within such ten (10) days, it shall be conclusively presumed that the goods were delivered in their entirety. Unless agreed upon otherwise in writing, Siemens reserves the right to make partial shipments and to submit invoices for partial shipments.
8. TITLE Title to the goods or any part thereof shall not pass from Siemens to Purchaser until all payments due hereunder have been duly made in cash, except as otherwise expressly stipulated herein. The goods shall be and remain personal or moveable property, notwithstanding their mode of attachment to realty or other property. If default is made in any of the payments herein, Purchaser agrees that Siemens may retain all payments which have been made on account of the purchase price as liquidated damages, and Siemens shall be free to enter the premises where the goods may be located and remove them as Siemens' property, without prejudice to Siemens' right to recover any further expenses or damages Siemens may suffer by reason of such nonpayment.
9. LIABILITY Siemens shall not be liable for and shall be held harmless by Purchaser from any damage, losses or claims of whatever kind, contractual or delictual, consequential or incidental, direct or indirect, arising out of, in connection with or resulting from the sale governed hereby or the goods, including, but without limitation, the manufacture, repair, handling, installation, possession, use, operation or dismantling of the goods and any and all claims, actions, suits, and proceedings which may be instituted in respect to the foregoing.
10. WARRANTY Siemens warrants to Purchaser that Products are free from defects in material and workmanship for five (5) years after shipment. This warranty is conditioned upon proper storage, installation, connection, operation, and maintenance of Products, prompt written notice to Siemens of any defects, and, if required, prompt availability of Products to Siemens for correction.

In case of Products with removable modules designed for field modification, the warranty covers manufacturing defects only and can only be maintained if field modifications are conducted in accordance with the factory installation instructions provided, carried out by skilled technicians and appropriate ESD measures are applied. The warranty does not cover damage caused to the Product or to any module or component during modification. Siemens recommends that any Product modification be carried out in the factory to ensure Products get appropriately retested, configured, labelled, and meet applicable standards and safety certifications.

This warranty shall be void in its entirety in the event of any use of Products for any applications that require product listing or qualification not specifically included in the Siemens written quotation or proposal. If any Product fails to conform to this warranty, Purchaser properly notifies Siemens of such failure, and Purchaser returns the Product to the Siemens factory for diagnosis (and pays all expenses for such return), Siemens shall correct any such failure by, at its sole discretion, either repairing any defective or damaged Product part(s) or making available, any necessary replacement part(s). Any Product repaired by Siemens shall be covered by this warranty for the longer of one (1) year from date of repair or the remainder of the original five (5) year warranty period.

This warranty shall be exclusive and in lieu of all other warranties, whether statutory, express, oral or implied (including warranties of merchantability and fitness for particular purpose and warranties arising from course of dealing or usage of trade), except title and patent infringement. Siemens shall perform Services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Siemens does not warrant products or prototypes provided by Siemens for testing or marketing purposes. For components not supplied by Siemens, the original manufacturer's warranty shall apply to the extent assignable by Siemens. Purchaser shall assume all responsibility and expense for dismantling, removal, re-installation and freight in connection with the foregoing. The same obligations and conditions extend to replacement parts furnished by Siemens hereunder. Siemens does not assume liability for installation, labour or consequential damages. Siemens makes no warranty other than the one set forth herein. The warranty ceases to be effective if Purchaser fails to operate and use the goods sold hereunder in a safe and reasonable manner and in accordance with any written instructions from the manufacturers.

11. INSTALLATION Unless otherwise expressly stipulated, the goods shall be installed by and at the risk and expense of Purchaser. In the event that Siemens is requested to supervise such installation, Siemens' responsibility shall be limited to exercising that degree of skill customary in the trade in supervising installations of the same type. Purchaser shall remain responsible for all other aspects of the work including compliance with the local regulations.
12. RETURNED GOODS No goods may be returned to Siemens without Siemens' prior written permission. Siemens reserves the right to decline all returns or to accept them subject to a handling/restocking charge. Even after Siemens has authorized the return of goods for credit, Siemens reserves the right to adjust the amount of any credit given to Purchaser on return of the goods based on the conditions of the goods on arrival in Siemens' warehouse. Credit for returned goods will be issued to Purchaser only where such goods are returned by Purchaser and not by any subsequent owner of the goods. Goods will be considered for return only if they are in their original condition and packaging.
13. TERMS OF PAYMENT Unless otherwise stated, invoices on "open account" shipment are payable within thirty (30) days of invoice date. Unless specifically provided, no cash discount shall be available to Purchaser. When cash discount is offered, the discount price is computed from the date of invoice. Siemens does not offer cash discount on C.O.D. shipments.

Should payment not be made to Siemens when due, Siemens reserves the right, until the price has been fully paid in cash, to charge Purchaser with interest on such overdue payments at the rate of eighteen percent (18%) per annum. The charging of such interest shall not be construed as obligating Siemens to grant any extension of time in the terms of payment.

14. CHANGES AND CANCELLATION Orders accepted by Siemens are not subject to changes or cancellation by Purchaser, except with Siemens' written consent. In such cases where Siemens authorizes changes or cancellation, Siemens reserves the right to charge Purchaser with reasonable costs based upon expenses already incurred and commitments made by Siemens, including, without limitation, any labour done, material purchased and also including Supplier's usual overhead and reasonable profit and cancellation charges from Siemens' suppliers.

15. COMPLIANCE WITH EXPORT CONTROL REGULATIONS If Purchaser transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Siemens or works and services (including all kinds of technical support) performed by Siemens to a third party, Purchaser shall comply with all applicable national and international (re-) export control regulations. In any event, Purchaser shall comply with the (re-) export control regulations of Canada, of the Federal Republic of Germany, of the European Union and, to the extent permissible under Canadian law, of the United States of America. If required to conduct export control checks, Purchaser, upon request by Siemens, shall promptly provide Siemens with all information pertaining to the particular end customer, the destination and the intended use of goods, works and services provided by Siemens, as well as any export control restrictions existing. Purchaser shall indemnify and hold harmless Siemens from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Purchaser, and Purchaser shall compensate Siemens for all losses and expenses resulting thereof. This provision does not imply a change in burden of proof. Siemens shall not be obligated to fulfill this agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

16. PRIVACY Purchaser and Siemens are each responsible for complying with their respective obligations under applicable data and privacy protection laws.

17. THE AGREEMENT An acceptance and official confirmation of Purchaser's order by Siemens shall constitute the complete agreement, subject to the terms and conditions of sale herein set forth, and shall supersede all previous quotations, orders or agreements. The law of the Province of Ontario shall govern the validity, interpretation and enforcement of these terms and conditions of sale and of any contract of which these terms and conditions are a part.

25/10/2013 | Author: Name



Standard Warranty Services

Siklu shall provide customer with the warranty services detailed hereunder, for products purchased directly from Siklu by customer for the duration of the warranty period under the definition and conditions of its LIMITED PRODUCT WARRANTY detailed hereunder.

The delivery of support services by Siklu is subject to the payment of applicable service fees and the compliance of customer with the requirements detailed hereunder.

1. Definitions and Scope

1.1 Definitions

For purpose of providing the support services, the following capitalized terms shall have the following meanings:

1. "Business Day" means Monday through Friday, excluding US holidays (for customers in the US&Canada) and Sunday through Thursday, excluding Israeli holidays (for customers in the rest of the world).
2. "Business Hours" means 09:00-18:00, EST local time (GMT -5) of a Business Day (for customers in the US&Canada) and 09:00-18:00, Israel local time (GMT +2) of a Business Day (for customers in the rest of the world).
3. "Customer" means customer who purchases Products or Services from Siklu.
4. "End-Customer" means any third party who purchases Products or Services from Customer.
5. "Documentation" means the technical documentation of Products.
6. "Products" means Siklu's proprietary mmWave radio point-to-point and point-to-multipoint products and all related accessories, Hardware or Software, and Documentation.
7. "Services" means technical services, such as technical support, customer service and warranty services as described hereunder.
8. "Software" means software, computer programs, object code and firmware and the documentation thereof included as part of the Products, including all improvements, corrections, updates, new releases and new versions and any derivatives of such software programs and documentation.
9. "Spare Units" - means those Product and/or spare part units, which are used for the operation and maintenance of the Products at customer's or end-customer's service.

10. "Warranty Period" – means the first twelve (12) months, commencing the date shipment of Products from Siklu to Customer, unless otherwise agreed between the parties.

1.2 Support Tiers Definition and Responsibility

Customer shall provide Tier-1 and Tier-2 Support services for all the Products purchased and to its end-customers and Siklu will provide Tier-3 Support to the customer, according the definitions specified herein.

1. "Tier-1 Support" means receiving first customer report of problem or inquiry by phone, email or web as sole Point Of Contact, including
 - Recording all service calls on CRM system
 - Providing technical support to customer's service calls regarding problems or questions
 - Answering routine questions regarding the products operation and configuration
 - Verifying installation and configuration per Siklu's guidelines and documentation
 - Implementing all SW upgrades and patches
 - Providing on-site support for the products as necessary, including troubleshooting, parts replacement and commissioning
 - Managing and dispatching spare parts to sites
 - Providing installation and commissioning services for the products as necessary
 - Escalating service calls that could not be resolved to Tier-2 Support
2. "Tier-2 Support" means the first level of escalation for Tier-1 Support teams for service calls that could not be resolved. The Tier-2 Support team should have greater and in-depth knowledge and experience with the Products, with greater and more advanced troubleshooting, fault simulation, configuration and planning capabilities.
 - Answering routine questions regarding the products operation, features, configuration, interoperability and planning
 - Performing advance troubleshooting, via remote connection or on site, including loops and configuration changes,
 - Performing in-house fault simulation and configuration verification
 - Providing on-site support for the products as necessary
 - Performing interoperability testing with 3rd party products
 - Responsibility for providing all planning and pre-sales activities with its end-customers
 - Managing acceptance tests and product evaluation tests with its end-customers
 - Providing training and guidance for the products internally and to end-customers
 - Escalate service calls that could not be resolved to Siklu, following Siklu's escalation procedures, criteria and guidelines.

3. "Tier-3 Support" means the support services Siklu will provide the customer for service calls that could not be resolved, following Siklu's escalation procedures, criteria and guidelines.
 - Provide advance troubleshooting and in-depth analysis of faults that could not be resolved by Tier-1 and Tier-Support
 - Working together with the customer on resolving such faults, including remote connection and fault simulation till fault is resolved
 - Provide reasonable support answering customer's inquiries and requests
 - Facilitating together with the customer support procedures and workflows, network configurations and configuration guides

1.3 Customer's Obligations

1. Siklu shall provide customer with Tier-3 support services only. Tier-1 and Tier-2 support will be provided by customer to customer's end-customers.
2. Customer may escalate service call to Siklu's helpdesk providing all Siklu's guidelines and procedures followed.
3. Only trained and certified customer personnel with sufficient knowledge and experience with Siklu products that were certified and approved by Siklu may escalate service call to Siklu.
4. Customer shall purchase and maintain sufficient products as spare parts, required for the immediate maintenance of customer's network.
5. Customer shall purchase and maintain sufficient products, as per Siklu recommendation, dedicated for fault simulation and fault analysis.

2. Support Services Description

2.1 Technical Support Helpdesk

Siklu shall operate technical support helpdesk aimed to respond to service calls.

Customer may submit technical inquiries by email, phone call or web including questions or problem reports to Siklu's helpdesk during business hours, following Siklu's support procedures.

2.2 Software Maintenance

Siklu shall provide its customers with software maintenance updates, including defect correction and patches, upon release.

"Software Maintenance Updates" shall mean routine corrections for reproducible Software errors that Siklu generally incorporates into its Software version updates.

Siklu shall notify the customer about the availability of such software maintenance updates and provide customer with the associated documentation and release information.

SW upgrades, including additional features and functionality will be offered to customers for purchase.

2.3 Technical Updates

Siklu shall provide its customers from time to time with Product documentation updates, to the extent generally made available by Siklu.

Technical updates may include Product's manuals, guides, technical notes, technical alerts and maintenance procedures.

Technical updates shall be made available upon release, in a form of computer file, in English language, available for download from Siklu's partners site.

2.4 Hardware Warranty Repair

Siklu shall maintain hardware repair center to repair defective hardware.

Customer may raise a request for hardware repair, following Siklu's Return Material Authorization (RMA) procedure.

The authorization to return a part for repair will be after technical discussion of the case and only after Siklu's confirmation of the defect.



At Siklu's sole discretion, Siklu shall repair or replace the defective hardware within thirty (30) days from the arrival date of the defective part at Siklu's repair center until shipment of the part from Siklu's repair center.

RMA shipment charges shall be divided between the parties: shipment of the products to Siklu (DDU terms) shall be paid by the customer and shipment of the products to customer (DDU terms) shall be paid by Siklu.

In case no failure was identified by Siklu with the returned product (No Failure Found), the shipment charges of the product back to customer shall be paid by the customer.

3. Limited Product Warranty

Subject to the terms and conditions set forth below and in the distribution/purchase agreement signed between the parties, Siklu warrants to Customer that the Products will substantially conform to the applicable Documentation and will be free from material defects in workmanship under normal use and conditions for a period of twelve (12) months from the date of purchase from Siklu by Customer (the "Warranty Period"). The foregoing Warranty Period may be extended by Customer by additional twelve (12) month periods subject to payment to Siklu of applicable maintenance agreement fees, up to five additional twelve (12) months warranty periods

If during the Warranty Period (or extended warranty period, as applicable), a Product component should fail to comply with the foregoing warranty, Customer's sole remedy and Siklu's sole liability shall be for Siklu to repair or replace such component within 30 days of receipt of the defective Product without charge to Customer, subject to the terms and conditions set forth below.

For the avoidance of doubt, it is clarified that the Products are not authorized for use as critical components or services in life support devices or systems. Life support devices or systems are those which are intended to support or sustain life and whose failure to perform can be reasonably expected to result in a significant injury to the user. Critical components are those whose failure to perform can be reasonably expected to cause failure of a life support device or system or affect its safety or effectiveness.

Conditions of Limited Product Warranty:

1. Customer shall be responsible for administering and submitting all warranty claims to Siklu. Siklu will not process any claims received directly from a end-customer or other third party, and shall not be responsible for any shipping costs other than as set forth herein. Shipment of non-conforming Products under warranty from Customer to Siklu shall be to a place designated by Siklu, at Customer's expense, and repaired or replaced Products shall be shipped by Siklu to Customer at Siklu's expense. Repaired or replaced Products shall be warranted for an additional period of 3 months from delivery to Customer or the remainder of the original Warranty Period, whichever is longer.
2. This Limited Product Warranty shall not apply where (a) the defect is caused by the use of the Product contrary to the Documentation; (b) the defect is caused by negligence, misuse, improper installation, abnormal use, abuse or circumstances beyond Siklu's control, and/or (c) the Product has been modified, altered, opened, or serviced by anyone other than a service person authorized by Siklu.

Terms and Conditions

Acceptance. Purchase Orders shall be considered final upon acceptance by Trylon TSF (hereafter "Supplier") by issuance of a written order confirmation. The issuance by Purchaser of a Purchase Order to Supplier shall constitute acceptance by Purchaser of these Terms and Conditions which shall supersede all additional or conflicting terms and conditions on Purchaser's Purchase Order. The contract between Purchaser and Supplier shall consist of Supplier's written confirmation and these Terms and Conditions.

Pricing. Price quotation and terms shall remain in effect for thirty (30) days from date of issuance. Supplier reserves the right to change published pricing at any time.

Payment Terms. Terms of payment shall be Net thirty (30) calendar days from the date of invoice for all Product shipped by Supplier.

Finance and Collection Charge. Purchaser agrees to pay a finance charge, at a monthly rate of 2%, on past due invoices where allowed by applicable law. Purchaser agrees to pay Supplier all costs of collection including but not limited to reasonable legal fees, collection fees and court costs incurred by Supplier to collect properly due payments.

Taxes. Purchaser is responsible for all sales, use, and similar taxes, and agrees to reimburse Supplier for any such charges paid on Purchaser's behalf.

Credit Limits. Credit limits shall be determined and modified at the sole discretion of the Supplier. In the event that Purchaser is delinquent in payment, Supplier may suspend any shipment or delivery or refuse to perform any work until all past due amounts, including finance charges, have been paid in full.

Shipping Terms. Shipping terms for shipments within Canada and the United States are F.O.B. Supplier's Point of Shipment. Shipping terms for international shipments are EXW Supplier's Point of Shipment (Incoterms 2000).

Title and Risk of Loss. Title to and risk of loss and damage to the Products shall pass to Purchaser immediately upon delivery of the Products to a common carrier, or to an employee or other agent of Purchaser, at Supplier's facility.

Inspection. Purchaser or its designated representative shall inspect all Products within seven (7) calendar days after delivery of Products (hereinafter "Inspection Period") and Purchaser shall notify Supplier of any defects, shortages, overshipments, or nonconformance in any of the Products. Any Products not rejected by Purchaser within such period shall be deemed to have been accepted by Purchaser.

Shortages/Overshipments. In the event that Supplier delivers less than the scheduled requirements and Supplier is notified of such shortage within the Inspection Period, Supplier shall correct such shortage within a commercially reasonable period of time after receipt of written notice from Purchaser or as otherwise agreed by the parties. If Supplier delivers more than the quantity ordered, Purchaser can return any excess Product at Supplier's expense or retain such excess as mutually agreed by the parties.

Shipping Damage. All claims for transportation damage shall be filed and processed by the Purchaser.

Mode of Shipment. In the event that the Purchaser specifies in a Purchase Order the shipping carrier, type of service, and payment method (collectively hereinafter "Mode of Shipment"), freight costs shall be charged in a manner consistent with the Purchase Order. In the event that Purchaser has not specified a Mode of Shipment on a Purchase Order, at the sole discretion of Supplier, such charges may be prepaid by Supplier and added to Supplier's invoice to Purchaser.

Purchase Orders. Purchaser shall order Products from Supplier by issuing a Purchase Order (hereinafter "Purchase Order(s)"). All Purchase Orders must be issued in writing and signed by Purchaser's authorized representative. Any and all pre-printed terms and conditions on Purchaser's forms and documents are null and void and hereby expressly rejected, and are superseded by the terms and conditions of this Agreement.

Cancellation. All requests for cancellation or changes of Purchase Orders must be submitted in writing by Purchaser. In the event that Purchaser cancels or changes a Purchase Order, Purchaser agrees to pay a restocking fee of not less than 35% for standard Products and 100% for custom Products of the dollar value of the Purchase

Order line item(s) cancelled.

Returns.

(a) Purchaser may submit a request for return of Products once Products have been delivered to a common carrier, or to an employee or other agent of Purchaser, at Supplier's facility. All requests by Purchaser to return Products must be submitted in writing to Supplier utilizing Supplier's Return Request Form. Supplier shall not consider return requests received later than ninety (90) calendar days after shipment of Products.

(b) Supplier shall evaluate the Return Request Form in a timely manner. Supplier may, at its sole discretion, issue Purchaser written authorization to ship Product back to Supplier (hereinafter "Return Material Authorization"). The issuance of a Return Material Authorization is not acceptance of the returned Product, merely authorization to return the Product for inspection. In the event that Supplier deems that the request is not made in compliance with the terms of this Agreement, Supplier shall notify Purchaser in writing that the request for return has been denied.

(c) Upon receipt of such Products, Supplier shall inspect the Products and, at its sole discretion, accept or deny the return of such Products. In the event that Supplier accepts the return of Products from Purchaser, Supplier shall issue a credit to Purchaser in the amount of the original invoice amount for the Products less a restocking charge (hereinafter "Restocking Fee"). Purchaser acknowledges that customary Restocking Fees are 35% for standard Products and 100% for custom Products. In the event that Supplier denies the return of Products from Purchaser, Supplier shall ship Products back to Purchaser at Purchaser's sole expense. All shipping costs for the return of goods are the responsibility of the Purchaser. In the event that, upon inspection, Supplier determines that the Products are subject to the terms of Supplier's warranty or that the Products were shipped by the Supplier to Purchaser due to an error by Supplier, Supplier shall waive any Restocking Fees and shall issue a credit to Purchaser for any shipping costs for the shipment of Products back to Supplier.

Specifications. All Products shall be manufactured to meet Supplier's current manufacturing and engineering standards. All Products shall be packaged and labelled in accordance with Supplier's standard commercial practices. Supplier reserves the right to change or modify Products at any time.

Warranty. Supplier warrants that, at time of shipment, the Products furnished by Supplier are free from defects in material and workmanship. Supplier's obligation under this warranty is limited to repair and replacement of any defective Product within one (1) year from the date of shipment to the first Purchaser. Supplier shall have the sole discretion as to which of these remedies it shall provide. These warranties shall not apply to any Product which has been subjected to misuse, neglect, alteration, accidental damage, damage or defects attributable after shipment, defects during storage or installation, defects attributable to improper installation or use for purposes other than the Product was intended, and any other defects out of the reasonable control of Supplier. Seller makes no warranties, guarantees, covenants or representations other than those expressly set out in this Warranty. The warranties and remedies provided herein are Purchaser's sole and exclusive remedies and are provided expressly in lieu of all other warranties, whether express, implied, or arising by statute or otherwise in law or from a course of dealing or usage of trade, including but not limited to, warranties of merchantability or fitness for a particular purpose. Purchaser agrees that Supplier's liability under this Agreement, and any Purchase Order issued pursuant to this Agreement, shall never exceed the purchase price of the line item upon which liability is based. Under no circumstances shall Supplier be liable for consequential, incidental, special, direct, or indirect damages including but not limited to labour costs, installation costs, inconvenience, cost of replacement goods, loss of revenue or profits, or other costs of any nature as a result of the use of Products manufactured by Supplier.

Force Majeure. Supplier shall not be liable for failure to perform any of its obligations under this Agreement to the extent such failure is caused by fire; flood; explosion; war; riot; embargo; labour disputes; compliance with any laws, regulations, orders, acts or requirements from the government, civil or military authorities; acts of God or the public enemy; or any act or event of any nature beyond the Supplier's reasonable control. In no event shall Supplier be liable to Purchaser for any special, incidental, or consequential damages as a result of delay in performance or failure to perform hereunder.