

TIPS VENDOR AGREEMENT

TIPS RFP 240101 Technology Solutions, Products, and Services

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

Mutualink, Inc.

(ENTER ENTITY NAME]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 31. Insurance Requirements.** Vendor agrees to maintain the following minimum insurance requirements for the duration of this Agreement. All policies held by Vendor to adhere to this term shall be written by a carrier with a financial size category of VII and at least a rating of "A-" by A.M. Best Key Rating Guide. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Vendor(s). Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member. Vendor agrees that when Vendor or its subcontractors are liable for any damages or claims, Vendor's policy, shall be primary over any other valid and collectible insurance carried by the Member or TIPS.

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

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

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

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

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

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

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

Preparation: Vendor shall not begin a project for which a TIPS Member has not prepared the site, unless Vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in the TIPS Sale Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered Sex Offender Restrictions: For work to be performed at schools, Vendor agrees that no employee of Vendor or a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the TIPS Member. Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the TIPS Sale at the TIPS Member's discretion. Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

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

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

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

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

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

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

TIPS VENDOR AGREEMENT SIGNATURE

FORM TIPS RFP 240101 Technology Solutions, Products, and Services

Vendor Name: Mutualink, Inc.

Vendor Address: 1269 S Broad Street

City: Wallingford State: CT Zip Code: 06492

Vendor Authorized Signatory Name: Mark Hatten

Vendor Authorized Signatory Title: CEO

Vendor Authorized Signatory Phone: 860-798-5500

Vendor Authorized Signatory Email: mhatten@mutualink.net

Vendor Authorized Signature:  Date: 2/15/2024

(The following is for TIPS completion only)

TIPS Authorized Signatory Name: Dr. David Fitts

TIPS Authorized Signatory Title: Executive Director

TIPS Authorized Signature:  Date: 5/14/2024



240101
Mutualink, Inc.
Supplier Response

Event Information

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

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

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

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

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

Contact Information

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

Mutualink, Inc. Information

Contact: Dawn Odams Hannigan
Address: 1269 S Broad Street
Wallingford, CT 06492
Phone: (866) 957-5465 x101
Fax: (928) 396-0344
Toll Free: (866) 957-5465
Email: dodams@mutualink.net
Web Address: www.mutualink.net

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

Dawn Odams Hannigan

Signature

Submitted at 2/16/2024 11:23:08 AM (CT)

dodams@mutualink.net

Email

Requested Attachments

Alternate or Supplemental Pricing Documents

No response

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

Vendor Logo (Supplemental Vendor Information Only)

Mutualink logo FullColor horz.jpg

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

Disclosure of Lobbying Activities - Standard Form - LLL

No response

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

Required Confidentiality Claim Form

240101 Required Confidentiality Claim Form - Mutualink 2-15-24.pdf

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

Vendor Agreement

240101 Vendor Agreement-Mutualink.pdf

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

Conflict of Interest Questionnaire - Form CIQ

No response

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

Current Form W-9

1-Mutualink W-9 2-15-24.pdf

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

Vendor Agreement Signature Form

240101 Vendor Agreement
Signature Form - ML 2-15-24.pdf

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

Certificates & Licenses (Supplemental Vendor Information Only)

Mutualink, Inc - DHS Safety Act
Certificate of Conformance.pdf

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

Pricing Form 1

240102 Pricing Form 1 Mutualink
Inc 2-15-2024.xlsx

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

Reference Form

240101 Reference Form
Mutualink Inc.xls

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

Pricing Form 2

240102 Pricing Form 2 Mutualink
Inc 2-15-2024.xlsx

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

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

Mutualink, Inc Master Commercial
SW License HW Services.pdf

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

Supplemental Vendor Information (Supplemental Vendor Information Only)

Mutualink Marketing.pdf

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

Response Attachments

Mutualink Cover Letter TIPS RFP 240101.pdf

Cover Letter

Bid Attributes

1	Disadvantaged/Minority/Women Business & Federal HUBZone Some participating public entities are required to seek Disadvantaged/Minority/Women Business & Federal HUBZone ("D/M/WBE/Federal HUBZone") vendors. Does Vendor certify that their entity is a D/M/WBE/Federal HUBZone vendor? If you respond "Yes," you must upload current certification proof in the appropriate "Response Attachments" location. <input data-bbox="110 380 305 422" type="text" value="NO"/>
2	Historically Underutilized Business (HUB) Some participating public entities are required to seek Historically Underutilized Business (HUB) vendors as defined by the Texas Comptroller of Public Accounts Statewide HUB Program. Does Vendor certify that their entity is a HUB vendor? If you respond "Yes," you must upload current certification proof in the appropriate "Response Attachments" location. <input data-bbox="110 730 305 772" type="text" value="No"/>
3	National Coverage Can the Vendor provide its proposed goods and services to all 50 US States? <input data-bbox="110 894 354 936" type="text" value="Yes - All 50 States"/>
4	States Served If Vendor answered "No" to the question entitled "National Coverage," please list all states where vendor can provide the goods and services proposed directly below. Your response may dictate which potential TIPS Member customers consider purchasing your offerings. <input data-bbox="110 1150 1559 1192" type="text" value="No response"/>

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

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

Mutualink, Inc. is a recognized leader in multimedia critical communications for public safety, emergency support, & critical infrastructure organizations. Mutualink maintains facilities in Wallingford, Connecticut, Allen Texas, and Westford Massachusetts. Over 2,000 agencies across the country use Mutualink, and thousands of schools rely on Mutualink for school safety, including over 10 counties in Arizona & 20 counties in Florida that embedded Mutualink after the Parkland shootings. Proven reliability and flexibility made Mutualink FEMA's choice to power the U.S. National Continuity Program (NCP), the communications network backbone employed to handle large-scale national disasters. Mutualink holds over 130 U.S. and international patents covering its systems and is unique in the world in its capabilities. Mutualink is DHS Safety Act certified with the highest designation as a Qualified Antiterrorism Technology (QATT) and possesses a DHS Authority to Operate on FEMA's network. Mutualink is bringing its nationally proven pedigree in providing multimedia critical communication leadership to schools by providing automated emergency response systems (AER) that automatically initiate direct emergency communications between a school & law enforcement during an emergency. • At the press of a button, Mutualink begins securely sharing critical live school camera streams with law enforcement. Cameras are located & identified on floor plans, allowing responders to select as many camera views as they need. • Mutualink's smart platform can accept emergency connection signals from access control systems & panic buttons at schools, initiating an emergency response within seconds. • Law enforcement agencies required during the emergency response have the ability to connect their disparate radio systems for interagency communications. • Rules-based engines allow multiple emergency response protocols, while design flexibility allows dispatch to invite any other Mutualink-powered agencies on an ad hoc basis by simply dragging them into an incident. Mutualink LNK360 Software Solutions LNK360™ is the on-ramp to the broader Mutualink ecosystem, comprised of community participants from public safety, private enterprise, smart cities & critical infrastructure entities who have a need to instantly collaborate & share communications. LNK360™ extends beyond basic radio interoperability to provide multi-faceted connections inclusive of LMR to LTE, real-time video sharing, geospatial information, & data sharing capabilities. Our goal is to reduce response times & time to resolution in emergencies. In both the public & private sectors reduced response times protect the lives of students, employees, worshippers, ordinary citizens, & innocent bystanders. That's why we created LNK360™ — the best interoperable communications system available today. Many public facilities, such as K-12 schools, colleges & universities, hospitals, & government buildings—use Mutualink's LNK360™ technology, many private security companies use it too. The ability to have interoperability in law enforcement radio communications via console or a control station gateway can now be shared by any security agencies that use LNK360™. LNK360 Capabilities • Voice Communications: LNK360 bridges all forms of public safety & commercial radios (LMR), mobile phones, push-to-talk (PTT) apps, IP and analog phones, & public address and intercom systems. • Multimedia Sharing: Collaborate using group messaging, pictures, video – handset to command or command to handset. • Create on-demand communities & teams in managed talk-groups within an agency, a facility, operational site or across the nation. • Offers secure end-to-end communication: Encrypted using federally approved AES ciphers, mutually authenticated using standards-based public-key cryptography. • Control information sharing: Control of communications & data assets through our peer-to-peer distributed architecture.

6 Primary Contact Name

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

Dawn Odams Hannigan

7 Primary Contact Title

Primary Contact Title

Executive Director - Sales Operations

8 Primary Contact Email

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

dodams@mutualink.net

9 Primary Contact Phone
Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).
Please provide the accurate and current phone number where the individual who will be primarily responsible for all TIPS matters and inquiries for the duration of the contract can be reached directly.

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

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

12 Secondary Contact Name
Please identify the individual who will be secondarily responsible for all TIPS matters and inquiries for the duration of the contract.

13 Secondary Contact Title
Secondary Contact Title

14 Secondary Contact Email
Please enter a valid email address that will definitely reach the Secondary Contact.

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

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

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

18	Administration Fee Contact Name Please identify the individual who will be responsible for all payment, accounting, and other matters related to Vendor's TIPS Administration Fee due to TIPS for the duration of the contract. <input type="text" value="Glenn Schultz"/>
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19	Administration Fee Contact Email Please enter a valid email address that will definitely reach the Administration Fee Contact. <input type="text" value="gschultz@mutualink.net"/>
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20	Administration Fee Contact Phone Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="2037415603"/>
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21	Purchase Order and Sales Contact Name Please identify the individual who will be responsible for receiving and processing purchase orders and sales under the TIPS Contract. <input type="text" value="Dawn Odams Hannigan"/>
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22	Purchase Order and Sales Contact Email Please enter a valid email address that will definitely reach the Purchase Order and Sales Contact. <input type="text" value="dodams@mutualink.net"/>
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23	Purchase Order and Sales Contact Phone Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477). <input type="text" value="8669575465"/>
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24	Company Website Company Website (Format - www.company.com) <input type="text" value="www.mutualink.net"/>
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25	Entity D/B/A's and Assumed Names You must confirm that you are responding to this solicitation under your legal entity name. Go now to your Supplier Profile in this eBid System and confirm that your profile reflects your "Legal Name" as it is listed on your W9. In this question, please identify all of your entity's assumed names and D/B/A's. Please note that you will be identified publicly by the Legal Name under which you respond to this solicitation unless you organize otherwise with TIPS after award. <input type="text" value="Mutualink, Inc."/>
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26	Primary Address Primary Address <input type="text" value="1269 S Broad Street"/>
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27	Primary Address City Primary Address City <input type="text" value="Wallingford"/>
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28	Primary Address State
	Primary Address State (2 Digit Abbreviation) <input type="text" value="CT"/>

29	Primary Address Zip
	Primary Address Zip <input type="text" value="06492"/>

30	Search Words Identifying Vendor
	Please list all search words and phrases to be included in the TIPS database related to your entity. Do not list words which are not associated with the bid category/scope (See bid title for general scope). This will help users find you through the TIPS website search function. You may include product names, manufacturers, specialized services, and other words associated with the scope of this solicitation. <input type="text" value="Mutualink, AER, Automated Emergency Response, Interoperability, Communications, First Responders, School Safety, Panic Alerts"/>

31	Certification of Vendor Residency (Required by the State of Texas)
	Does Vendor's parent company or majority owner: (A) have its principal place of business in Texas; or (B) employ at least 500 persons in Texas? Texas Education Code Section 44.031 requires that this information be considered in evaluation for certain contracts. However, Vendor response does not affect points, scoring, or potential award. <input type="text" value="No"/>

32	Vendor's Principal Place of Business (City)
	In what city is Vendor's principal place of business located? <input type="text" value="Wallingford"/>

33	Vendor's Principal Place of Business (State)
	In what state is Vendor's principal place of business located? <input type="text" value="Connecticut"/>

34	Vendor's Years in Business
	How many years has the business submitting this proposal been operating in its current capacity and field of work? <input type="text" value="17"/>

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

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

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

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

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

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

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

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

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

37 Honoring Vendor's Minimum Percentage Discount

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

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

38 Volume and Additional Discounts

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

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

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"Catalog Pricing" and Pricing Requirements

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

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

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

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

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

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EXCEPTIONS & DEVIATIONS TO TIPS STANDARD TERMS AND CONDITIONS

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

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

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

4
1 **TIPS Sales Reporting Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

4 Non-Collusive Bidding Certificate

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

By submission of this proposal, the Vendor certifies that:

- 1) This proposal has been independently arrived at without collusion with any other entity, bidder, or with any competitor;
- 2) This proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other bidder, competitor or potential competitor;
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to modify, submit, or not to submit a bid or proposal; and
- 4) The person signing this bid or proposal certifies that they are duly authorized to execute this proposal/contract on behalf of Vendor and they have fully informed themselves regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the bidder as well as to the person signing in its behalf;

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

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

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

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

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

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

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

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

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Required Confidentiality Claim Form

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

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

If TIPS receives a public information act or similar request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For Vendor documents deemed confidential by you in this manner, TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law, including Attorney General determination and opinion.

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

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Non-Discrimination Statement and Certification

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

In accordance with Federal civil rights law, all U.S. Departments, including but not limited to the USDA, USDE, FEMA, are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by federal funds (not all bases apply to all programs).

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

Yes, I certify

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Limitation of Vendor Indemnification and Similar Clauses

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

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

Does Vendor agree?

Yes, I Agree

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Alternative Dispute Resolution Limitations

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

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

Does Vendor agree?

51

No Waiver of TIPS Immunity

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

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

Does Vendor agree?

Yes, Vendor agrees

52

Payment Terms and Funding Out Clause

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

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

Funding-Out Clause: Vendor agrees to abide by the applicable laws and regulations, including but not limited to Texas Local Government Code § 271.903, or any other statutory or regulatory limitation of the jurisdiction of any TIPS Member, which requires that contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

Does Vendor agree?

Yes, Vendor agrees

53

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

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

Does Vendor certify?

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

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

When applicable, does Vendor certify?

Yes, Vendor certifies

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

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

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

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

When applicable, does Vendor certify?

Yes, Vendor certifies

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

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

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

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

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

When applicable, does Vendor certify?

Yes, Vendor certifies

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

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

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

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

When applicable, does Vendor certify?

Yes, Vendor certifies

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

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

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

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

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

When applicable, does Vendor certify?

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Felony Conviction Notice - Texas Education Code 44.034

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Subsection (b) states, "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

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

Vendor certifies one of the following:

- A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable, or;
- B. My firm is not owned nor operated by anyone who has been convicted of a felony, or;
- C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony.

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

60 Felony Conviction Notice - Texas Education Code 44.034 - Continued

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

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

No response

61 Conflict of Interest Questionnaire Requirement

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

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

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

Yes, Vendor certifies - VENDOR HAS NO CONFLICT

62 Conflict of Interest Questionnaire Requirement - Form CIQ - Continued

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

Have you uploaded this form if applicable?

Not Applicable

63 Upload of Current W-9 Required

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

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

64 Regulatory Good Standing Certification

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

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

Yes, Vendor certifies

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

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

No response

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

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.

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

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

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

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

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

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

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

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

6 **Suspension or Debarment Certification**

7

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

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

Does Vendor certify?

Yes, Vendor certifies

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

8

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

DEFINITIONS

Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students.

Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

Vendor certifies:

NONE (Section A): None of the employees of Vendor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Vendor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided under this procurement.

OR

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

Which option does Vendor certify?

Yes, I certify - NONE (Section A)

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

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

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

Does Vendor agree?

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

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

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

Does Vendor agree?

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

1 Vendor agrees that no TIPS Sale may incorporate an "Automatic Renewal" clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated into a TIPS Sale Supplemental Agreement shall only be valid and enforceable when Vendor received written confirmation of acceptance of the renewal term from the TIPS Member for the specific renewal term. The purpose of this clause is to avoid a TIPS Member inadvertently renewing a Supplemental Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. Any TIPS Sale Supplemental Agreement containing an "Automatic Renewal" clause that conflicts with these terms is rendered void and unenforceable.

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

Does Vendor agree?

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

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

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

Does Vendor agree?

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

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

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

Does Vendor agree?

**7
4 2 CFR PART 200 AND FEDERAL CONTRACT PROVISIONS EXPLANATION**

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

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

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

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

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

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

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2 CFR Part 200 or Federal Provision - Contracts

Contracts for more than the simplified acquisition threshold currently set at \$250,000 (2 CFR § 200.320), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

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

Does vendor agree?

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2 CFR Part 200 or Federal Provision - Termination

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

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

Does vendor agree?

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

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

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

Does vendor agree?

Yes, Vendor agrees

7 **2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment**

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

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members require the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

Does Vendor agree?

Yes, Vendor agrees

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

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

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

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

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

Yes, Vendor certifies - NO Reportable Lobbying

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

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

8 2 2 CFR Part 200 or Federal Provision - Federal Rule

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

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$250,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify compliance?

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - 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: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

Yes, Vendor certifies

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2 CFR Part 200 or Federal Provision - Rights to Inventions

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

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

Does vendor certify?

Yes, Vendor certifies

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

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

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

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

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

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

Does Vendor Certify?

Yes, Vendor certifies

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

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

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

Does vendor certify?

Yes, Vendor certifies

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

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

Does Vendor certify?

Yes, Vendor certifies

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

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

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

opportunity clause is incorporated by reference here.

Does Vendor Certify?

Yes, Vendor certifies

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

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

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

Does Vendor certify?

Yes, Vendor certifies

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

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

Does Vendor certify?

Yes, Vendor certifies

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

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

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

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

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

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

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

Does Vendor certify?

Yes, Vendor certifies

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

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

Does Vendor certify?

Yes, Vendor certifies

93 **2 CFR Part 200 or Federal Provision - Certification of Compliance with Never Contract with the Enemy**

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

Does Vendor certify?

94 **2 CFR Part 200 or Federal Provision - Certification of Compliance with EPA Regulations**

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

Does Vendor certify?

95 **2 CFR Part 200 or Federal Provision - Record Retention Requirements**

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

Does Vendor certify?

96 **2 CFR Part 200 or Federal Provision - Subcontracting and Affirmative Steps for Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

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

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

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

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

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

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

Does Vendor certify?

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ACKNOWLEDGMENT & BINDING CORPORATE AUTHORITY

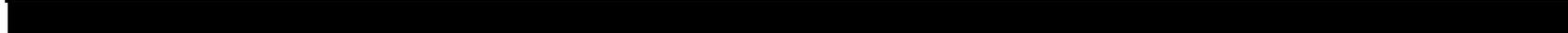
By submitting this proposal, the individual(s) submitting on behalf of the Vendor certify that they are authorized by Vendor to complete and submit this proposal on behalf of Vendor and that this proposal was duly submitted on behalf of Vendor by authority of its governing body, if any, and within the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

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

TIPS 240101 Technology Solutions, Products, and Services	Mutualink, Inc.
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TIPS REFERENCE FORM

All requested information must be typed and uploaded in Excel format. Do not handwrite or upload in any format other than Excel. Emails provided must be current and active. Do not include TIPS/Region 8 employees as a reference. The entities that you provide must be paying customers, not affiliates/partners/manufacturers/resellers, etc.



You must provide below at least three (3) references from three different entity customers, preferably government or non-profit entities, who have purchased goods or services from your vendor entity within the last three years.

Customer Entity Name	Customer Contact Name	Valid Contact Email	Valid Contact Phone
Example: ABC University	Director John Doe	jdoe@abcuniverisity.edu	800-111- 2222
New Hampshire Department of Safety	John T. Stevens, Statewide Interoperability Coordinator	John.T.Stevens@desc.nh.gov	603-223-8003
Seminole County Sheriff's Office	Captain Mark Pergola	mpergola@seminolesheriff.org	407-402-0776
East Texas Texas Anti Gang Center (TAG)	Chief Deputy James Jackson	JJackson2@smith-county.com	903-245-0789
Bovina Independent School District	Sergio Menchaca, Superintendent	Sergio.menchaca@bovinaisd.net	432-638-4869

REQUIRED CONFIDENTIALITY CLAIM FORM

(VENDOR MUST COMPLETE THE FOLLOWING VENDOR INFORMATION)

Vendor Entity Name: Mutualink, Inc.

Vendor Authorized Signatory Name: Mark Hatten

Vendor Authorized Signatory Title: CEO

Vendor Authorized Signatory Email: mhatten@mutualink.net

Vendor Address: 1269 S Broad Street

City: Wallingford State: CT Zip Code: 06492

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

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

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

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

(Confirm each bullet point and sign below)

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

Number of pages attached deemed confidential: _____

Authorized Signature: _____

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

(Confirm each bullet point and sign below)

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

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

Authorized Signature: 

VENDOR SUPPLEMENTAL INFORMATION

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



Certificate of Conformance

*This will certify that, on this date,
the United States Department of Homeland Security granted to*

Mutualink Inc.

*A Connecticut corporation,
a Certification for its
Mutualink*

*as an 'Approved Product for Homeland Security' under the
Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act).*

André L. Hentz

Deputy Under Secretary (Acting) for Science and Technology

11/22/2019

Date



MASTER COMMERCIAL SOFTWARE LICENSE,
HARDWARE & SERVICES AGREEMENT

License No.: _____
Licensee Name: _____
Licensee Address: _____
Licensee Contact Name: _____
Licensee Contact Email: _____
Date Issued: _____, 202__

Initial Order(s):
Award/Contract #: _____
ML Quotation #: _____ Date: _____
P.O./Task Order #: _____ Date: _____
Other Information: _____
*Add-on Orders to be referenced in "Addendum O"

IMPORTANT — READ CAREFULLY

This Master Commercial Software License, Hardware and Services Agreement (this "Agreement") is a legal agreement between the named licensee above ("you") and Mutualink, Inc. (the "Company").

ABOUT

Mutualink products and services are made available in a variety of form factors and access and delivery mechanisms. Please refer to your Purchase Orders when reviewing this Agreement because they contain a description of the type and quantity of products you are buying, the software you are licensing, and the services to which you are subscribing.

The Company's Mutualink LNK360™ Software, Mutualink Edge™ Software and other software families consist of downloadable, executable software designed to be installed and used on your authorized client computing devices ("Client Software").

- (a) multimedia interoperable application server software installed and operated on a server maintained by you ("Application Server Software") or
(b) an application service provided by the Company and accessed via an Internet connection, where the application service may be furnished through a shared computing resource environment (the "Cloud Application Service") or a remoted dedicated or logically partitioned computing resource environment (a "Hosted Application Service", and together with Cloud Application Services, referred to as "Software as a Service" or "SaaS"),

and is intended to connect to and access through accessible network points of presence, the Company's True Interoperability® Network (the "Interoperability Network") and its network of endpoints.

The Interoperability Network consists of network services, including in-network digital communications connectivity, routing and/or monitoring services and functions that enable the sharing, transmission or receipt of information by and among any two or more network endpoints, monitoring of network quality health and other endpoint functions, dynamic software updating services, applicable Data Services, and peer network directory services (collectively, the "Network Access Services").

Multimedia gateways function to enable you to connect various types of media systems such as video, telephony, radio, and sensor systems to the Interoperability Network ("Multimedia Gateways") and may be either furnished through Dedicated Appliances operating a specific version of Dedicated Appliance Software, on-premises software-based servers or through software defined virtual gateway services accessed via the Internet and delivered through SaaS Services ("Virtual Gateway Services").

DEFINITIONS

Additional Defined Terms: In addition to the terms defined above, for purposes of this Agreement, the following terms have the meanings associated with them.

"Authorized APIs" means applicable application programming interfaces, documentation, sample source code and/or testing and emulation services that may be made available by the Company from time to time to you subject to the terms of use, policies, security requirements, use limitations and other conditions imposed under any user agreement or other program.

"Artificial Intelligence" means a computing based decision-making software, firmware or system that uses neural networks, statistical modelling and/or learning algorithms in conjunction with or derived from data sets to identify persons, things, conditions, circumstances, or contexts within a probabilistic accuracy framework, and may include computer based agents or human agents making decisions through commands to initiate one or more actions or combination thereof.

"Authorized Hardware" means computing devices upon which Company Software is authorized and intended to operate and which utilize a specified version of operating system and system configurations.

"Authorized Mobile Hardware" means third party mobile and computing devices upon which the Client Software or Application Server Software operates utilizing the specified version of an operating system.

"Authorized User" means a distinct end user licensed to use a Client, Software instance or Service instance through an assigned user identification and/or access credential.

"Client" means an instance of authorized Client Software.

"Client Software" means versions of, LNK360 Software, Mutualink Edge Software or any other Company Software intended for Authorized User use that connects to Mutualink Application Server Software or SaaS Services.

"Company Hardware" means any Hardware manufactured or assembled by the Company as finished goods under the "Mutualink" original manufacturing name, along with any accessories which may be bundled as part thereof, such as, but not limited to, spares, batteries, cables, harnesses and connectors.

"Company Service(s)" means the Network Access Service, SaaS Services, Data Services, Software Maintenance Services, installation, configuration and set-up services, training services, customer engineering, development or design and any other services rendered by the Company to you.

"Company Software" means the Client Software, Dedicated Appliance Software, Application Server Software and any other Company developed software products which may offered and licensed to you from time to time but excludes Other Third Party Software.

"Data Services" means data or information content originated or transmitted or received from any third party system, device or source, for consumption, interpretation, transformation, command execution, communication replay, and/or display by, or used in connection with, the Software, SaaS Services, Network Access Services, or other Company furnished Services, including information, event or other data generated from alarm systems, alert or notification systems, weather, traffic, or social media information services, geospatial systems and information, video monitoring or surveillance systems, environmental sensors or devices, and the like.

"Dedicated Appliance" means Company provisioned, configured, and assembled computing hardware upon which Dedicated Appliance Software is installed and operated, including Multimedia Gateways.

"Dedicated Appliance Software" means Company proprietary software installed and intended to be operated upon authorized Dedicated Appliance Hardware.

"Hardware" means any hardware or equipment sold, leased, or licensed to you as specified on a. Order, including Authorized Hardware and Other Third Party Hardware.

"IoPST®" is a registered trademark of the Company used in connection with IoT based Software, Hardware and Services furnished by the Company, and may include Company Software, Complementary Third Party Software, Other Third Party Software, Data Services, Company Hardware and Third Party Hardware.

"IoT" means the Internet of Things, and more specifically means systems where one or more functional objects or devices can digitally send data about themselves or the environment in which they are situated to a data receiver, receive remote commands from a remote controller to perform functions, ad/or autonomously execute functions using AI or other decision logic, through a network connection.

"License and Service Subscription Period" means the period identified in your Purchase Order, as renewed and extended, or such shorter period of time as a result of termination. If not so stated, the minimum period is one (1) year from access availability to SaaS Services, a Mutualink Application Server Software or Network Access Services.

"Mobile Client" means a Client designed to be installed and operated on particular Authorized Mobile Hardware operating a specified version of mobile operating system such as Apple iOS™ or Android™.

"Open Source Software" means software, libraries and other utilities that are made available to the general public without royalty under license terms which requires a licensee to make freely available a copy of the source code to any party to whom the licensee redistributes it without greater restriction than those imposed under the original license and often referred to as "share and share alike" licenses, "copyleft" and "permissive" licenses, including versions of GNU GPL and LGPL, Apache License, Mozilla Public License, MIT License, and Free BSD.

"Order" means the Hardware, Software and Services that are specified as being subject to purchase, license and/or subscription in a Purchase Order that is accepted by the Company.

"Other Third Party Hardware" means Hardware manufactured by third parties that are not components of or accessions to Mutualink Hardware, including any standalone finished goods.

"Other Independent Third Party Software" means end-user Software or SaaS Services licensed or furnished by third parties to you either directly, or by or through the Company (excluding Third Party Complementary Software) and firmware installed in equipment or hardware manufactured by third parties that are not embedded components of, or accessions to, Company Hardware.

"Purchase Order" means any purchase authorization document, requisition form, task order, contract or other order document or request (written or electronic) initiated, issued, created or accepted by you and furnished to the Company regarding the intended purchase of, or authorization to purchase, subscribe to or license any Company products, goods or services or Other Third Party Software or Products.

"Sale Quotation" means a written sales quotation issued by the Company to you which is referenced in or forms the basis for a Purchase Order issued by you and accepted by the Company.

"SaaS Service" means the provision of Software application as a service for use by a Client during the applicable Service Subscription Period.

"Seat-based Subscription or License" means access to or use of an available instance of Software or Service by an Authorized User subject to a maximum number of concurrent Authorized Users.

"Service(s)" means the Company Services and Third Party Services..

"Service Subscription Period" means the period of service subscribed for in the Order for the indicated Service, as renewed from time to time.

"Software" means the Company Software, Third Party Complementary Software and, where applicable, Other Third Party Software as set forth in an Order.

"Software Maintenance Service" means the Software updates, fixes and modifications furnished by the Company, and which may be provided independently or bundled as part of the Network Access Service and/or SaaS Service.

"Third Party Service" means any Data Services or application services which may be furnished in connection with or integrated with Company Software or Company Services independently provided to you by such third party provider or provided by the Company to you by means of resale or redistribution under such party's name brand.

"Third Party Complementary Software" means software libraries, drivers, and utilities, and programs which are intended to operate in conjunction with and enable Company Software.

"User-based Subscription or License" means access to an instance of Software or a Service where authorized access or use is limited to a specified Authorized User or Users.

TERMS

EXCEPT AS PROVIDED OTHERWISE IN A CONTROLLING AGREEMENT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY INSTALLING, OPERATING, OR OTHERWISE USING ANY SOFTWARE OR DISTRIBUTING CLIENT SOFTWARE TO AUTHORIZED END-USERS, AND/OR USING ANY SOFTWARE, SAAS SERVICES AND/OR NETWORK ACCESS SERVICES. THIS AGREEMENT MAY BE APPENDED TO OR REFERENCED IN AN ORDER AND THE TERMS SHALL BE DEEMED INCORPORATED INTO THE ORDER. **IF YOU DO NOT AGREE, DO NOT INSTALL, OPERATE, OR USE THE SOFTWARE OR HARDWARE.**

1. **HARDWARE, SOFTWARE AND SERVICE ORDERS.** You understand that you are licensing (and not buying) the Software as specified in your Order. You agree to purchase and pay for the Hardware in the Order ("**Ordered Equipment**") together with all related installation, set-up and configuration services rendered at the prices and rates stated therein, and to pay for the Company's Services to which you are subscribed as specified in your Order. You understand and agree that you are responsible and agree to pay for applicable sales taxes and other government fees and impositions, customs charges, shipping, warehousing and inspection fees, insurance premiums and other charges incurred in connection with your purchase and subscription. This Agreement may not be superseded or modified by additional or modifying terms in your Purchase Order, unless signed and acknowledged by an authorized officer the Company. You acknowledge you have reviewed these terms prior to submitting your Order and understand that the Company has not accepted or agreed to any modifications unless it has agreed to them in writing, even of it accepts and fills your Order.

2. **BILLING AND PAYMENT.** You agree to promptly pay the amounts specified in your Order, as and when due below, unless stated otherwise in a Controlling Agreement:

(a) **Hardware.** In the case of the purchase of Ordered Equipment and installation related Services, you agree that full payment is due upon delivery of the Equipment and installation fees are due and payable upon installation and in each case shall be due and payable not more than 30 days after the date of invoice. As a condition to the acceptance of any Purchase Order and sale, the Company may require deposit(s) in such amounts and payable at such times as specified in the Company's Order form or as written as a condition to Purchase Order acceptance. All deposits are non-refundable, except in the case where the Company elects to terminate a Purchase Order because it is unable to fulfill it without unreasonable delay (delays due to Force Majeure being excluded). The Purchase of Dedicated Hardware requires the purchase of Network Access Services and/or Software Maintenance Services to interoperate and collaborate with other Interoperability Network endpoints and is required to be subscribed for and paid in advance of the Order Service Period specified under your Order.

(b) **Client Software and Network Access and Related Services.** In the case of Software, SaaS Services, Network Access Services, Software Maintenance Services, and Data Services, all fees for the initial specified License and Service Subscription Period together with any installation, configuration, set-up fees and other related one-time Service charges specified under the Order are due and payable, in advance, promptly upon the "Commencement Date" which is the first to occur of: (i) the installation or activation of access to the applicable Service or the first business use of the Software accessing the Service, but (ii) in any case not more than sixty (60) days after the date of delivery of the Service or Software, unless the reason for delay was due to the fault of the Company. The Commencement Date shall be used to establish the beginning of the License and Services Subscription Agreement. If additional Software or Services are purchased under another Purchase Order or the initial Order is renewed, extended, or changed ("**Subsequent Orders**"), such additional Software or Services shall

have a Commencement Date which corresponds with the Subsequent Order. All license and service fees for any renewal period after the initial paid License and Service Subscription Period are due and payable on or prior to the renewal period or within thirty (30) days of the date of invoice, whichever is later.

- (c) **Other Services.** All other billings for Services not specified above or other additional Services rendered, or materials delivered, if any, are due and payable within thirty (30) days of the date of the invoice.
- (d) **Late Payment.** If you fail to make payment of any amount when due, you agree that the Company may impose late payment charges being equal to the lesser of: (i) one and one-quarter percent (1.25%) per 30-day period based on the number of days elapsed until paid in full, or (ii) the highest rate permitted by law. In the event the Company undertakes any action to collect amounts due or to enforce your obligations under this Agreement, you also agree that the Company may recover costs of collection, including court costs and reasonable attorneys' fees.
- (e) **Recurrent Services and Renewal.** For any Software or Service with an applicable License and Services Subscription Period, the Software license or Service shall automatically renew for an equal term but not to exceed one (1) year in each renewal instance, unless you send written notice of termination not less than thirty (30) days prior to the end of the period then in effect.

3. MASTER SOFTWARE LICENSE.

- (a) **License Grant.** Subject your payment, when due, of all applicable Software license, Network Access Service, Software Maintenance, Data Services and Cloud Application Services fees and all other Services fee and amounts due to the Company (collectively, "**Fees**") and your faithful performance of and compliance with the terms and conditions of this Agreement, the Company grants to you, to the extent licensed and subscribed for under your Order(s) and you accept, a limited, non-exclusive, non-transferable license (the "**License**"), to:

(i) operate the compiled executable version of Application Server Software up to the maximum number of Seat-based or User-based Subscription or License Authorized Users in conjunction with associated Network Access Services as specified under the Order(s),

(ii) to download and install compiled, executable versions of the Client Software for use up to the maximum number of Seat-based or User-based Subscription or License Authorized Users in conjunction with associated SaaS Services or Network Access Services as specified in the Order,

(iii) use the instances of Dedicated Appliance Software in conjunction with the associated Dedicated Appliance Hardware upon which it is installed in conjunction with associated Network Access Services and Maintenance Services as specified in the Order(s),

(iv) use Authorized APIs, as and when and for so long as they are made available from time to time in conjunction with the associated instances of applicable Software or Services under subparagraphs (i), (ii) and (iii); and

(v) use Data Services in connection with associated licensed instances of Software, subject to applicable the terms of use and policies of the Third Party Service providers and the Company,

in each instance above, solely for your internal business or governmental use for a period commensurate with the specified License and Service Subscription Period, unless sooner terminated in accordance with Section 14 of this Agreement. Except as prohibited by law, any transfer or assignment of any License or rights granted hereunder without the prior written consent of the Company (which may be granted or withheld in Company's sole discretion) and shall be automatically void and of no further force and effect, and the License relating thereto immediately terminated without notice.

IMPORTANT NOTICE: IN THE CASE OF A USER-BASED SUBSCRIPTION AND LICENSE YOU MAY DOWNLOAD AND INSTALL AN UNLIMITED NUMBER OF INSTANCES OF CLIENT SOFTWARE ON DEVICES THAT YOU OR YOUR AUTHORIZED END-USERS OWN OR CONTROL, HOWEVER THE ABILITY TO USE THE CLIENT SOFTWARE FOR COMMUNICATIONS PURPOSES MAY BE LIMITED BY A MAXIMUM NUMBER OF CONCURRENT USERS. ACCORDINGLY, USERS MAY EXPERIENCE A DENIAL OF SERVICE DUE TO OVER-SUBSCRIPTION. YOU ARE ADVISED THAT TO ENSURE ACCESS A USER-BASED SUBSCRIPTION AND LICENSE IS RECOMMENDED TO AVOID SERVICE DENIAL, ESPECIALLY IN THE CASE WHERE USE IS INTENDED FOR EMERGENCY COMMUNICATIONS PURPOSES.

- (b) **Third Party Complementary Software.** The Company Software is accompanied by or utilizes certain Third Party Complementary Software for certain enabling purposes. The Third Party Complementary Software may include third party executable versions of proprietary software which is licensed to the Company for redistribution in conjunction with or as part of the Company Software and in certain instances may include executable or binary code versions of Open Source Software which may be redistributed subject to the terms of such Open Source Software licenses. Title and intellectual property rights in and to Third Party Complementary Software, Open Source Software and Other Independent Third Party Software, and any content displayed by or accessed through the Software furnished by the Company belongs to the respective owners and is subject to the terms of use and reservation of rights of the owning third parties. NOTWITHSTANDING THE FOREGOING, THE COMPANY WARRANTS THAT YOU MAY USE THIRD PARTY COMPLEMENTARY SOFTWARE THAT IS FURNISHED TO YOU BY THE COMPANY IN CONJUNCTION WITH COMPANY SOFTWARE AS CONFIGURED IN ACCORDANCE WITH THE TERMS WITHOUT ANY ADDITIONAL ROYALTY OR PAYMENT TO SUCH OWNERS AND WITHOUT VIOLATING SUCH OWNER'S RIGHTS THEREIN.

In the case of any Other Independent Third Party Software furnished to You under an Order, you also agree to and accept the license terms and conditions of the Other Independent Third Party Software as set forth in **Schedule B**, or as otherwise referenced in the applicable Purchase Order, or furnished to you. If you do not agree to the license terms of Third Party Software do not use it.

- (c) **Open Source Software.** THE FOREGOING LICENSE TERMS DO NOT RESTRICT YOUR ACCESS TO OR RIGHTS TO USE OPEN SOURCE SOFTWARE. TO THE EXTENT THE TERMS OF AN OPEN SOURCE LICENSE SO REQUIRES, YOU ARE ENTITLED TO RECEIVE A COPY OF THE SOURCE CODE FROM THE COMPANY IN A READABLE PHYSICAL FORMAT OR THROUGH AN ELECTRONIC DOWNLOAD AT NO CHARGE. ANY REQUEST FOR A COPY MAY BE MADE BY LICENSEE BY SENDING A WRITTEN REQUEST TO THE COMPANY AS PROVIDED UNDER THE SECTION 23 OF THIS AGREEMENT REGARDING NOTICES.

4. **RESERVATION OF RIGHTS AND OWNERSHIP.** The Company reserves all rights not expressly granted to you under this Agreement. The Software is protected by copyright and other intellectual property laws and treaties. You acknowledge that the Company or its suppliers own all (a) patents, copyrights, trade secrets, trademarks, trade names and other intellectual property and proprietary rights relating to or residing in the Software, (b) software and programming code that supports the operation of this Software, and (c) all copyright works associated with Data Services provided by Third Party Services. **ALL SOFTWARE IS LICENSED, NOT SOLD, EVEN IF IT IS PRE-LOADED OR INSTALLED, OR EMBEDDED IN A DEDICATED APPLIANCE OR OTHER AUTHORIZED HARDWARE.**

5. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY.** You may not, nor allow or assist others to, modify, alter, reverse engineer, decompile, emulate, or disassemble the Software, SAAS Services, or otherwise attempt to derive the source code of the Software or SAAS Services.

6. **NO RENTAL/COMMERCIAL HOSTING.** You may not rent, lease, lend, sell, resell, partition, sublicense, transfer (including indirect transfers), assign or otherwise transfer for value the Software or provide commercial hosting services with the Software or any of the Services. Any such sale, assignment, or other form of conveyance of title, right or use is prohibited. Notwithstanding the foregoing, if you are a governmental entity, you may use Company Software, Network Access Services, SaaS Services and Company Data Services to any other governmental Authorized User within your political subdivision (e.g., if you are county, you may permit authorized end-users from other county departments and city agencies within the county), provided the Company shall only be obligated to you and no other person or agency may make a claim by or through you.

7. **CONSENT TO USE OF DATA.** You agree that Company and its affiliates may collect and use non-personal identifying information gathered as part of the product support and optimization of product functions and Services provided to you, including Software and Services related to IoPST® and AI, as applicable. **Except as required by law or as otherwise permitted by you in writing, the Company agrees that it shall not use, access, or disclose any personally identifying information (PII) of any end-user for any purpose other than for verification of user identity, access security and enforcement, delivery of Services and shall use commercially reasonable efforts to keep such information confidential.** The Company further agrees that it shall not, except pursuant to a lawful court order or governmental subpoena, eavesdrop upon, wiretap, or surveil, or attempt to eavesdrop upon, wiretap or surveil, the content of any communications or data transmitted by end-users for any purpose.

8. **SOFTWARE AND SERVICES UPGRADES.** This Agreement applies to updates, supplements, add-on components, or modifications (“**Upgrades**”) of the Company Software or Company Services provided or made available to you. The Company agrees to make available to you all regular Company Software bug fixes and maintenance updates made available for general commercial release during the applicable License and Service Subscription Period, provided you are not in default of the terms of this Agreement. The Company shall have no obligation to furnish any new functions, features or Services to you, except upon such terms, prices and conditions as it shall determine from time to time. The Company reserves the right to discontinue or replace any function or Service provided to you or made available to you through the use of the Software, Network Access Service or any other Service. You understand and agree that the Company shall have no obligation to support any Company Software or Company Services versions that are more than three (3) major releases behind the most current available version made available for use, and you acknowledge and agree that it is your responsibility to have Authorized Hardware that meets the necessary specifications to operate such versions. In the case of Third Party Software and Third Party Services, you shall be entitled to such Upgrades as provided under the Applicable Third Party Terms of Service and the Company has no obligation to furnish Upgrades to you other than those made available to the Company for redistribution to you.

9. **GOVERNMENTAL RIGHTS AND USERS.** United States Government users of the Software and any contractor thereof are licensed only under the terms of this License, which is the Company’s standard licensing agreement for commercial end use. All Software and related documentation are “Commercial Items”, as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights are reserved under the copyright laws of the United States and all other jurisdictions.

10. **NETWORK ACCESS & SAAS SERVICES - SERVICES LEVEL GUARANTEE.** Your use of the Company Software is limited to use in conjunction with the Interoperability Network (unless otherwise specifically authorized to operate on a designated private network by the Company in writing) and is conditioned upon your subscribing to and paying for Network Access Services and in the case of Clients, the SaaS Service. The Company shall make available to Clients, and Authorized Users of Clients may access, the SaaS Service and Authorized Users of Company Software and Dedicated Appliances may access the Interoperability Network for so long as you are current in the payment of your Fees and not otherwise in default of this Agreement. You understand and agree that the Company may suspend or terminate Network Access Service and SaaS Services in the event of your non-payment or breach of any terms of this Agreement.

You understand that broadband internet access is required for Clients to access the SaaS Services and to access and use the Interoperability Network. The Company is not responsible for providing broadband internet access to Clients, and does not guarantee the performance, reliability or suitability of any third party broadband internet service or mobile data service.

If subscribed for, the Company shall provide SaaS Services to you which may be accessed via broadband internet connections from your Clients. The availability of the Company’s SaaS Service shall be sufficient to provide Customer with up-time application availability at the point of internet access to and from the application server in the case of SaaS, and at the Interoperability Network PoP host, in the case of Interoperability Network access host, at the annual rate of 99.999% (5.26 minutes per 365 days per year) (“**Five Nines Uptime**”) with a minimum committed information rate (“**CIR**”) of 128Kbps of bandwidth per instance on a shared bandwidth basis, excluding planned service outages for upgrades or repairs. The Company shall provide you with a minimum of 24 hours’ advance notice of any planned service outage, except in cases of emergency where a repair or upgrade will avoid the risk of a more significant outage. The Company, upon your request, shall provide you with a monthly report of all server-based outages and any reported bandwidth outage or diminution in bandwidth below the minimum guaranteed bandwidth availability. For any unplanned outage or outages in excess of 4.3 Minutes per calendar month in the aggregate (the “**Maximum Monthly Outage Level**”) due to either a SaaS application server failure or internet access at the host, the Company shall rebate you for such outage in the form of a credit against the next unpaid service period (a “**Credit**”). The credit shall be calculated at the prorated rate for the number of days during which an actual outage (excluding down time for fail over) occurred while in excess of the Maximum Monthly Outage Level for the calendar month. For example, if outages occur on 2 separate days after exceeding the Maximum Monthly Outage Limit, a credit will be calculated at the rate of 2/30^{ths} of the attributable monthly License and Service Fee for each licensed or subscribed for unit affected. If there is any sustained outage exceeding 24 hours in duration (a “**Major Outage**”) due to any reason other than an act of God, insurrection, act of

war, terrorist attack, insurrection, cyber-attack, or chemical, biological or nuclear event (a “**Force Majeure Event**”), you will be credited for the entire month in which such Major Outage occurred. If two or more separate Major Outages occur in any six (6) month rolling period or the Company fails to provide Five-Nines Uptime during any 365-day period for any reason other than Force Majeure events, you may terminate the remaining License and Subscription Period service term without liability, and any prepaid Fees for such period shall be rebated to you. In the case of a Force Majeure Event, the Company shall notify you of any Services interruption as soon as practical and provide you with an estimated time to restoration or repair on a best efforts basis. During the pendency of a Force Majeure Event resulting in a Major Outage, the License and Subscription Period for the Services impacted thereby will be suspended and tolled until the Service is restored, and once restored, the License and Subscription Period shall resume and be extended by the period of time during which the Major Outage occurred.

11. **EXCESS BANDWIDTH CONSUMPTION.** The Company may impose, and you agree to pay for bandwidth consumption or utilization at the Company’s POPs or SaaS server access points in excess of 2 GBs per Authorized User for any 1 hour period, 5 GBs within any twenty-four-hour period in the aggregate, or more than a total of 30 GB per thirty (30) day period (“**High Bandwidth Use**”). The rate payable for High Bandwidth Use shall be \$15.00 per additional 1GB increment of High Bandwidth Use. This High Bandwidth Use charge rate may be changed by the Company at any time by the Company upon sixty (60) days’ prior written notice to you setting forth the new charge rate and its intended effective date. If you do not agree to the change in rate, your sole recourse is to limit your bandwidth usage so as not incur such overage charges. You agree that the above allocations of bandwidth are fair and reasonable for your needs.

12. **NETWORK INTERFACE DEVICE.** As may be required, you consent and agree that the Company may install and maintain a network interface device (a “**NID**”) upon or at your premises at no cost to the Company. This device is licensed for use by you in connection with the Edge Software and Multimedia Gateways during the License and Subscription Period and shall be returned by you to the Company upon the termination of the License and Subscription Period in good working order, normal wear and tear excepted. You agree to provide the Company with reasonable access to your premises for the purposes of installing, configuring, testing and repairing any NIDs. Access shall be provided to the Company during your normal business hours with reasonable advance notice, and promptly in the case of emergencies. You further agree as follows:

- a) You will declare and be responsible for the value of the NID for property taxes in the jurisdiction of the premises upon which it is located and installed and agree to pay all property taxes that may be assessed upon it while it is located upon your premises. In the event that the Company is required to report NID as taxable personal property within your jurisdiction and pay property taxes thereon, the Company may bill you for such assessed taxes, and you agree to promptly make payment thereon not later than thirty (30) days after receipt.
- b) The NID equipment, unless otherwise stated as sold to you, is leased to you and remains the sole and exclusive property of the Company. Unless otherwise authorized by the Company you may not remove any cover or external enclosure from, or otherwise access the internal parts of such device, remove or disturb any physical conduit, transmission lines, cables, power cords or plugs, battery units or other devices connected into such device, or in any other way tamper with or interfere with access to, or the operation of, such device.

13. **CUSTOMER REPRESENTATIONS.** You represent and warrant to the Company that (i) you are authorized and legally permitted to enter into this Agreement, (ii) all information and materials you or your Authorized Users submit to the Company when installing, configuring, or furnishing the Software and providing Services is true and accurate, and (iii) the signatory or representative making the applicable Purchase Order is duly authorized and has the authority to bind you (the purchasing and subscribing entity specified in the applicable Purchase Order).

14. **TERMINATION.** Without prejudice, to any other rights, the Company may elect to terminate this Agreement, and/or the associated Software and Services if you (i) breach any terms or conditions of this Agreement or other agreement between you and the Company and fail to cure the same to the Company’s reasonable satisfaction within thirty (30) days of written notice for demand for cure, (ii) fail to pay any amount when the same is due to the Company and such amount remains unpaid after the applicable grace period, if any, such termination to be effective immediately without notice, (iii) cease to do business in the normal course, and/or (iv) become or are declared insolvent or bankrupt, become the subject of any proceeding relating to liquidation or insolvency or make an assignment for the benefit of your creditors. Without limiting the foregoing, in the case of Third Party Software or Services, you agree that either the Company, acting on behalf of or for the benefit of, or the owner or original licensor of, Third Party Software or Service may terminate the Third Party Software or Service if you violate the applicable license or terms of Service accompanying this Agreement.

You may elect to terminate this Agreement and your License and Services Subscription “for cause” if the Company (i) breaches any terms or conditions of this Agreement and fails to reasonably cure any breach within thirty (30) days of written notice for demand for cure or within such other timeframe provided for cure, (ii) ceases to do business in the normal course, and/or (iii) become or are declared insolvent or bankrupt, or becomes the subject of any proceeding relating to involuntary liquidation or insolvency or make an assignment for the benefit of your creditors.

Upon termination for any reason, you shall promptly return all Hardware in your possession that you did not purchase to the Company and remove any Software from computing devices and equipment and return any copies stored on media. In the event of that you elect to terminate this Agreement “for cause”, any Fees paid by you in advance for Services not yet rendered as of the date of termination shall be rebated to you in an amount calculated on a prorated basis for any unexpired License and Service Subscription Period after termination. In the event of termination by the Company, all amounts unpaid or payable shall immediately be due and payable by you and all amounts paid in advance shall not be recoverable or repaid to you.

In the event of any termination of this Agreement, Sections 4, 5, 7, 12, 13 through 21, and 23 through 26 of this Agreement shall continue in effect.

15. LIMITED WARRANTY.

- (a) **COMPANY SOFTWARE.** The Company warrants to you that (i) the Company Software and Company SaaS Services will perform its intended programmed function materially free from error when operated on properly functioning and routinely updated and maintained on Authorized Hardware or Clients that meets the specified performance and operating requirements established by the Company, (ii) it has full title to, and/or has obtained the necessary rights from third parties for, the Company Software in order to license the Company Software to you under the terms of the license granted to you, and (iii) the Company Software and Company Services, when used in accordance with this Agreement, do not violate or infringe upon the intellectual rights of third parties. EXCEPT AS EXPRESSLY PROVIDED ABOVE AND AS PROVIDED UNDER SECTION 10 OF THIS AGREEMENT, THE COMPANY MAKES NO, AND DISCLAIMS ALL, WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE OR ITS SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE (EVEN IF COMPANY HAD BEEN INFORMED OF SUCH PURPOSE), WORKMANSHIP, FREEDOM FROM DEFECTS AND UNINTERRUPTED OPERATION OR AVAILABILITY. In the case of any defect which is subject to warranty coverage (a “**Warrantable Defect**”), the Company will make commercially reasonable efforts to repair the Warrantable Defect in a reasonable period of time at no cost to you (a “**Repair**”). In the event that the Company determines that it is unable to make a Repair without incurring unreasonable cost or expense, as determined by the Company in its sole discretion, the Company may elect to make refund to you in the amount paid by you for License Fees and Service Fees, if any, paid in advance for any uncompleted license or service period not yet completed (a “**Refund**”). You agree that Repair or a Refund are your sole and exclusive only remedies, and that you are not entitled to, and waive, any other rights to damages. Notwithstanding anything to the contrary above, the Company is not liable to you and the limited warranty shall not apply to instances where Software or Services do not operate, function or experience defects due to third party hardware and equipment defects, operating system related defects or errors, incompatibilities or conflicts arising with other third party applications installed on Authorized Hardware, defects in third party software or components upon which the Software or its functions or Services are dependent, changes or damaged caused by unauthorized access, tampering or modification of Software or third party software or components. In case of any claim of infringement of third party intellectual rights made against you by a third party arising out of your licensed use of the Company Software (a “**Third Party IP Claim**”), the Company shall either: (1) promptly attempt to secure all necessary permissions to enable you to continue to use the Software, (2) make modifications to the Company Software so as to render the Company Software non-infringing at no cost to you, or (3) if either of the foregoing remedies can be reasonably secured, rebate you the amount of Fees paid by you for licensed use of the Company Software. The Company further agrees that it shall defend, indemnify and hold you harmless from and against Third Party IP Claims to the extent of any alleged infringing use of the Company Software by you while in compliance with the terms of the License. The foregoing remedies are the sole and exclusive remedies available to you under such circumstances, and the Company’s liability and obligation to you in relation to any such matter is limited solely to such remedies.

FOR OTHER INDEPENDENT THIRD PARTY SOFTWARE LICENSED OR THIRD PARTY SERVICES FURNISHED TO YOU, YOU SHALL BE ASSIGNED AND ENTITLED TO SUCH WARRANTIES, IF ANY, PROVIDED BY SUCH THIRD PARTY TO END-USERS AS SET FORTH IN THE TERMS AND CONDITIONS ATTACHED OR DESCRIBED IN SCHEDULE B OR AS OTHERWISE STATED UNDER THE LICENSE OR SERVICE TERMS THEREOF THAT ARE FURNISHED TO YOU. OTHER THAN THE WARRANTIES PROVIDED BY THE THIRD PARTY, THE COMPANY MAKES NO, AND DISCLAIMS ALL, REPRESENTATIONS AND WARRANTIES OF WHATSOEVER KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, REGARDING OTHER INDEPENDENT THIRD PARTY SOFTWARE AND THIRD PARTY SERVICES, INCLUDING DISCLAIMERS OF ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THEIR ERROR FREE NATURE OR OPERATION, RELIABILITY, ACCURACY, SECURITY, OR SUITABILITY FOR A PARTICULAR PURPOSE.

- (b) **Hardware.** EXCEPT AS SET FORTH IN THE CERTIFICATE OF HARDWARE WARRANTY ATTACHED HERETO AS **SCHEDULE C** AND ISSUED IN CONNECTION WITH THE PURCHASE OF DEDICATED HARDWARE, THE COMPANY DISCLAIMS ALL WARRANTIES OF WHATSOEVER NATURE OR KIND, INCLUDING ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FREEDOM FROM DEFECTS, OR SUITABILITY FOR A PARTICULAR PURPOSE. THE COMPANY MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO THIRD PARTY EQUIPMENT AND YOU SHALL BE ONLY ENTITLED TO SUCH WARRANTIES, IF ANY, FURNISHED BY THE ORIGINAL MANUFACTURER.

16. **GENERAL DISCLAIMER/ASSUMPTION OF RISKS.** THE COMPANY DOES NOT WARRANT, REPRESENT, GUARANTEE OR PROMISE THAT ANY SOFTWARE OR SERVICES WILL MEET YOUR FUNCTIONAL NEEDS OR PERFORMANCE REQUIREMENTS, OR THAT SOFTWARE WILL ALWAYS BE COMPATIBLE WITH VARIOUS OTHER APPLICATIONS OPERATING ON, OR CHANGES MADE TO, THE OPERATING SYSTEM OF YOUR CLIENT OR OTHER COMPUTING DEVICES. YOU AGREE AND UNDERSTAND THAT THE SOFTWARE IS ONLY DESIGNED AND INTENDED TO OPERATE ON THE VERSION OF THE OPERATING SYSTEM AND SPECIFIED AUTHORIZED HARDWARE, AND INSTALLATION AND USE ON OTHER DEVICES OR VERSIONS OF OPERATING SYSTEMS OR HARDWARE MAY NOT FUNCTION AS INTENDED OR AT ALL. YOU FURTHER ACCEPT THE INHERENT RISKS OF USING THE SOFTWARE AND SERVICES WITH ALL POSSIBLE FAULTS AND CONDITIONS WHICH MAY ARISE OR IMPAIR THEIR USE OR OPERATION, INCLUDING THE FAILURE, INTERRUPTION OR DEGRADATION OF COMMUNICATIONS TRANSMISSIONS, ERRONEOUS, INACCURATE, INTERRUPTIONS OR LOSS OF ACCESS TO GEO-POSITIONING DATA OR LOCATION INFORMATION, DELAYS OR LOSS OF SERVICES DUE TO LACK OF WIRELESS DATA OR COMMUNICATIONS COVERAGE, THIRD PARTY DENIAL OF SERVICE ATTACKS OR OTHER CYBER-ATTACKS, THIRD PARTY ORIGINATED MALICIOUS EXECUTABLES, VIRUSES OR TROJAN SOFTWARE, INTERRUPTIONS FROM UNINTENTIONAL OR INTENTIONAL ELECTRONIC INTERFERENCE OR JAMMING OF COMMUNICATIONS, THIRD PARTY CARRIER THROTTLING OF COMMUNICATIONS OR DATA CAPACITY OR DENIAL OF ACCESS DUE TO OVER USE, CONGESTION OR OTHER CONDITIONS, THIRD PARTY SURREPTITIOUS MONITORING OR EAVESDROPPING, UNLAWFUL OR UNAUTHORIZED COPYING OR REPRODUCTION OF INFORMATION SENT BY OR THROUGH ANY SOFTWARE OR SERVICES BY OR THROUGH AUTHORIZED USERS OR OTHER THIRD PARTIES, MESSAGE OR COMMUNICATION DEGRADATION THROUGH PACKET LOSS, TRANSMISSION DELAYS, MISROUTING OR REROUTING OF COMMUNICATIONS THROUGH THIRD PARTY EQUIPMENT OR NETWORKS, FAILURE OR DAMAGE OR DESTRUCTION TO HARDWARE DEVICES OR EQUIPMENT NECESSARY FOR THE ROUTING, DELIVERY, ACCESSING, AUTHENTICATING OR PROCESSING OF COMMUNICATIONS OR AUTHENTICATION OF AUTHORIZED USERS, SUCH AS, BUT NOT LIMITED TO SERVERS, ROUTERS AND STORAGE DEVICES USED IN CONNECTION WITH THE DELIVERY OF SAAS, NETWORK ACCESS SERVICES OR DATA SERVICES. **WITHOUT LIMITING THE FOREGOING, ALL PUBLIC SAFETY, EMERGENCY, SECURITY, HEALTH AND SAFETY, AND CRITICAL SERVICE PERSONNEL UNDERSTAND AND ACCEPT ALL RISKS INHERENT WITH WIRELESS COMMUNICATIONS AND RELATED APPLICATION SOFTWARE AND UNDERSTAND THAT THE POTENTIAL RISK OF INJURY OR DEATH MAY OCCUR DUE TO A LOSS OF COMMUNICATIONS, AND NO USER SHOULD RELY ON A SINGLE METHOD, SERVICE AND/OR DEVICE FOR COMMUNICATIONS.**

WARNING: THE USE OF E CLIENTS WHILE OPERATING MOTOR VEHICLES OR USING DANGEROUS MACHINERY SHOULD BE AVOIDED AND IS PROHIBITED IN THOSE JURISDICTIONS WHERE USE OF MOBILE PHONES AND/OR TEXTING WHILE OPERATING A VEHICLE IS UNLAWFUL.

17. **LIMITATION OF LIABILITY.** YOU AGREE THAT IN NO CASE SHALL THE COMPANY BE LIABLE TO YOU, OR ANY OF ITS RELATED PARTIES FOR ANY CLAIMS OR DAMAGES, EXCEPT FOR THOSE OBLIGATIONS AND REMEDIES THAT ARE AVAILABLE UNDER EXPRESS WARRANTIES FROM THE COMPANY OR IN THE CASE OF WILLFUL AND INTENTIONAL MISCONDUCT BY COMPANY. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL COMPANY BE LIABLE TO YOU FOR ANY PERSONAL INJURY OR DEATH, DAMAGE TO OR LOSS OF PROPERTY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE SOFTWARE OR ANY SERVICES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY AND WITHOUT LIMITING THE EFFECT OF ANY OTHER PROVISION LIMITING LIABILITY OR DAMAGES, THE MAXIMUM LIABILITY THAT COMPANY SHALL HAVE WITH RESPECT TO ANY PARTY FOR ANY "CLAIMS AND DAMAGES" ARISING OUT ANY CLAIM OR CAUSE OF ACTION RELATING TO THE PURCHASE, USE OR OPERATION OF ANY HARDWARE, SOFTWARE AND/OR SERVICES SOLD, LICENSED OR FURNISHED BY THE COMPANY SHALL BE LIMITED TO THE LESSER OF \$10,000 IN THE AGGREGATE OR THE AMOUNT PAID BY YOU AND RECEIVED BY THE COMPANY IN RESPECT OF THE ACTUAL HARDWARE, SOFTWARE AND/OR SERVICES SOLD, LICENSED OR FURNISHED WHICH DIRECTLY RELATE TO THE CONTROVERSY WITHIN THE PRECEDING 12 MONTHS.

YOU ACKNOWLEDGE THAT THE FOREGOING LIMITATION OF LIABILITY IS COMPLETE AND EXCLUSIVE AND REFLECTS A FAIR AND REASONABLE ALLOCATION OF RISK BETWEEN YOU AND THE COMPANY IN VIEW OF THE FEES THAT WE CHARGE TO YOU. YOU ACKNOWLEDGE AND AGREE THAT FOR ADDITIONAL FEES YOUR RISK AND EXPOSURE TO LOSS COULD BE MINIMIZED AND YOU HAVE DECLINED TO DO SO.

18. **SALES AND USE TAXES.** Unless otherwise provided in the Purchase Order, all amounts and Fees payable are exclusive of applicable sales and use taxes and unless tax exempt you will be responsible for the timely reporting and payment of any such taxes. In the case of sales taxes or similar amounts collected, the Company is not responsible for any under assessments or errors other than to remit what has been collected, or refund any overage amounts once recovered.

19. **UCITA.** The interpretation and enforcement of this Agreement, or any of its terms or provisions, shall not be governed by or construed in accordance with the Uniform Computer Information Transaction Act in 2000, as adopted by the National Conference of Commissioners on Uniform State Laws ("UCITA"), if, as or when the same, or any portion thereof, may be adopted or enacted by the jurisdiction pursuant to whose governing substantive laws this EULA shall be interpreted and enforced. Without limiting or in any way diminishing the foregoing exclusion or inapplicability of UCITA, and only to the extent and solely for the purpose of perfecting or giving full legal effect to such exclusion, the parties agree that the substantive provisions of Section 904 of UCITA would apply to the extent the same were to be enacted by the governing jurisdiction and shall apply if necessary to give full effect to this exclusionary provision, if and when the same or a similar provision is enacted.

20. **EXPORT CONTROL.** You agree to comply with all applicable export control, anti-corruption, anti-terrorism, anti-laundering or similar laws, rules, regulations and orders of the United States, including but not limited to, all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), Department of State, or other United States agency or authority, and to not export, or allow the export or re-export of the Software or any Services in violation of any such restrictions, laws or regulations (including, without limitation, export or re-export to countries prohibited in the then current Supplement No. 1 to Part 770, or to embargoed persons such as Specially Designated Terrorists (SDT), Foreign Terrorist Organizations (FTO), Specially Designated Global Terrorists (SDGT), and Specially Designated Narcotics Traffickers (SDNT), as provided in Part 744 of, the U.S. Export Administration Regulations (or any successor supplement or regulations)("EAR"), or prohibited or unauthorized persons under the OFAC regulations (31 C.F.R. §500 et seq.), or barred entities or persons under International Traffic in Arms Regulations (ITAR) (22 C.F.R. §127.7). THE SOFTWARE CONTAINS ENCRYPTION SOFTWARE AND THE EXPORT OF ANY SUCH ENCRYPTION SOFTWARE TO ANY DESTINATION OUTSIDE OF THE UNITED STATES IS PROHIBITED ABSENT A LICENSE OR OTHER APPLICABLE EXEMPTION UNDER PART 740 OF THE EXPORT ADMINISTRATION REGULATIONS.

21. **GOVERNMENT CONTRACTOR DEFENSE/EXCULPABILITY.** If you are a federal, state or local government entity, or a quasi- governmental entity entitled to assert sovereign immunity, you agree that the Company is deemed a government contractor agent entitled to assert sovereign immunity defenses in such capacity with respect to all claims or causes of action raised by third parties against the

Company directly or by and through you arising out or relating to the installation, operation, use or performance of the Hardware, Software and/or Services sold, licensed or furnished to you.

22. **CLIENT EULA FOR INDIVIDUAL USERS.** The Client Software may be accompanied by an End-User License Agreement (EULA) which sets forth Authorized Users' rights of use, restrictions and limitations that shall apply under your license. The breach of the terms of the EULA by an Authorized User will constitute a breach by you of this Agreement and may result in the termination of the Software and Services and licenses granted to you. You agree that the Company is not required to pursue enforcement action against any Authorized User that you have authorized or given permission to download or use any Software or access or use any Service. A copy of the EULA is attached in "**Schedule A – End-User License Agreement.**"

23. **NOTICES.** All notices required to be given, unless otherwise stated, shall be made in writing and sent to the other party by US Mail, postage pre-paid, return receipt requested (or by certified mail) or by a national overnight parcel carrier to the parties' respective address below, or such other address as may be specified in writing in compliance with this provision, and any such notice shall be deemed received by the addressee three(3) days after such notice was deposited with the US Postal Service, or the date actually delivered by the overnight carrier. Notices to the parties shall be sent as follows:

If to the Company:

Mutualink, Inc.
1269 South Broad Street
Wallingford, Connecticut 06103
Attention: Legal Department

If to you: At the address specified above or such other address specified in the referenced purchase order, award contract or the last known address as reflected in the Company's billing or service records.

24. **GOVERNING LAW.** Unless otherwise provided in a Controlling agreement, the substantive laws of the State of Connecticut shall govern the validity, construction, interpretation, and performance of this Agreement. Each party irrevocably agrees that any legal action, suit or proceeding brought by it arising out of this Agreement must be brought solely and exclusively in the appropriate state or federal court located within the State of Connecticut (the "**Venue**"), irrespective of the convenience of forum, which objections are irrevocably waived, and each party submits to the personal jurisdiction of such courts. You agree that service of process made by the Company and shall be deemed effective by means of U.S certified mail, postage pre-paid to your notice address specified in Section 23 above. You acknowledge and agree that transaction contemplated under this agreement are commercial or governmental in nature and are not consumer transactions, and any personal use of the Software or Services, in whole or in part, does not change its characterization.

25. **US GOVERNMENT, STATE, COUNTY AND MUNICIPAL AGENCY LICENSEES UNDER CONTRACT AWARDS/MODIFYING OR SUPPLEMENTAL TERMS.** This Agreement may be amended, supplemented, and modified by the inclusion of a "**Schedule B – Supplemental Terms**", which if attached shall be deemed to be incorporated and part of this Agreement. Schedule B may provide for special terms and conditions as specified and agreed under any a contract award, and such terms shall take precedence to the extent so specified. If Schedule B contains Other Third Party Software license terms and conditions, such terms shall apply solely with respect to matters only relating to such Other Third Party Software, and you acknowledge and agree that the Company may enforce such terms and conditions and that such third party may have a beneficial interest sufficient for standing to enforce the same against you.

Schedule B: Not Included Included

If the above is not marked, no Schedule B is deemed included or incorporated. If a "Schedule B" is marked as being included, such Schedule must be attached and countersigned by an Officer of the Company to be valid.

26. **FACSIMILE SIGNATURES/COUNTER PARTS.** This Agreement may be executed in one or more counterparts which when taken together shall constitute one and the same document. Further, this Agreement may be executed and delivered by means of facsimile or digital copy, which facsimiles or electronic copies, when delivered, shall be deemed genuine and original execute signatures.

27. **MODIFICATIONS/ADDITIONAL SERVICES.** This Agreement shall not be modified, whether by course of conduct, waiver, failure to act, or otherwise, unless such modification or change is made in writing and executed by the Company. Any failure to act or enforce any right or provision under this Agreement shall not operate as a waiver or estoppel against the party failing to take action in a timely manner.

28. **FOR PARTIES REQUIRING SIGNATURE.** If you are required, by law or other condition of authority, to execute and deliver written agreements to be bound, you may not use or operate the Software or take any Services until to you indicate your agreement and acceptance as provided below. If you fail to execute this Agreement and acceptance below and you undertake any act of acceptance, the Company is entitled to rely on such other acts of acceptance and agreement as specified in this Agreement.

29. **EU CITIZENS DATA PROTECTION AGREEMENT.** If you or any Authorized User is a citizen of the European Union (EU) or located within the jurisdictional boundaries of the EU, the Data Protection Agreement attached as **Schedule D** applies and is incorporated by reference as and only to such persons.

ACCEPTANCE AND AGREEMENT

(Execute and Complete as Required by Law or Your Organization and return an executed original to the Company)

You, being the undersigned party, do hereby agree to the terms and conditions of this Agreement, and have evidenced your agreement by your execution and delivery of this Agreement.

Your Legal Name:

Signature of Representative:

Representative's Title:

Affix Seal (if required): ----- SEAL -----

If you require a second authorizing signature or consent:

The undersigned being duly authorized and empowered does hereby approve the execution and delivery of this Agreement by aforementioned signature party and terms of this Agreement.

Signature of Representative:

Representative's Title: _____

Affix Seal (if required): -----SEAL-----



SCHEDULE A: End-User License Agreement

MUTUALINK, INC. - END-USER SOFTWARE LICENSE (EULA) FOR MASTER LICENSES

BY DOWNLOADING OR INSTALLING OR USING THE SOFTWARE YOU ARE AGREEING TO TERMS OF THIS LICENSE. IF YOU DO NOT AGREE WITH THE TERMS OF THIS LICENSE DO NOT DOWNLOAD OR USE THIS SOFTWARE OR ACCESS THE ASSOCIATED APPLICATION SERVICES, OR IF DOWNLOADED IMMEDIATELY REMOVE THE SOFTWARE FROM YOUR CLIENT COMPUTING DEVICE.

THIS END-USER LICENSE MAY BE PART OF OR ISSUED PURSUANT TO A MASTER COMMERCIAL SOFTWARE LICENSE OR OTHER FORM OF CONTRACT WITH LICENSE TERMS ("MASTER LICENSE") BETWEEN MUTUALINK, INC. ("MUTUALINK") AND THE NAMED LICENSEE (THE "LICENSEE"), THE TERMS OF WHICH GOVERN YOUR USE AND OPERATION AS AN AUTHORIZED USER ("YOU") OF CERTAIN SOFTWARE ("LICENSED SOFTWARE") AND ACCESS TO AND UTILIZATION OF ASSOCIATED APPLICATION, NETWORK ACCESS, AND DATA SERVICES (THE "SERVICES"), AND WITH THE LICENSED SOFTWARE, THE "LICENSED SOFTWARE AND SERVICES") AS PERMITTED UNDER THE MASTER LICENSE BY THE LICENSEE AND ITS AUTHORIZED END-USERS ("AUTHORIZED USERS").

B. You agree to use the License Software and Services in compliance with all applicable laws, including local laws of the country or region in which you reside or in which you download or use the License Software and Services. The push to talk (PTT), mapping location (Mapping), video sharing (Video), text (Text), and file sharing (File) functionality of the Licensed Software and Services requires broadband internet access and may not be available in all areas of use or operation.

ORGANIZATIONAL END-USERS/AUTHORIZED END-USERS OF LICENSEE: IF YOU ARE AN AUTHORIZED USER OF LICENSED SOFTWARE AND SERVICES, YOUR USE OF IS PERMITTED ONLY AS AN AUTHORIZED USER SUBJECT TO COMPLIANCE WITH THE TERMS OF THIS LICENSE AND THE TERMS OF THE MASTER LICENSE.

C. By using the Licensed Software and Services, you agree that Mutualink and the Master Licensee may use and store your application access credentials and other information that you provide, including unique account identifiers, passwords, identifying information for the purpose of authenticating and validating your user identity, your access privileges, and other related matters.

WHAT THIS APPLIES TO: THIS LICENSE APPLIES TO ALL SOFTWARE AND SERVICES DESIGNED AND INTENDED FOR OPERATION BY AN AUTHORIZED USER UPON SPECIFIED COMPUTING CLIENTS, INCLUDING MOBILE WIRELESS COMPUTING AND COMMUNICATIONS DEVICES SUCH AS AND INCLUDING APPLE IOS® IPHONE® AND IPAD™ DEVICES, ANDROID BASED MOBILE PHONES AND TABLETS ("MOBILE PLATFORM VERSIONS") AND PERSONAL COMPUTER DEVICES RUNNING OPERATING PLATFORMS SUCH AS WINDOWS OR COMPATIBLE LINUX DISTRIBUTIONS.

D. You may not, and you agree not to, copy decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Licensed Software and Services, or any part thereof, or to enable or assist others to do the same.

IMPORTANT NOTE REGARDING COPYRIGHT MATERIALS: THE LICENSED SOFTWARE AND SERVICES HAVE UNCTIONS THAT ENABLE THE SHARING AND REPRODUCTION OF DIGITAL MATERIALS AND IS LICENSED ONLY FOR SENDING AND THE REPRODUCTION OF NON-COPYRIGHTED MATERIALS, MATERIALS IN WHICH THE LICENSEE HAS OWNERSHIP, OR THIRD PARTY'S COPYRIGHT WORKS OR MATERIALS WITH AUTHORIZATION OR PERMISSION.

1. General. The Licensed Software and Services (including any third party software and services), and the associated content and documentation accompanying the Licensed Software and Services are only licensed, not sold, by Mutualink for use only under the terms of the Master License Agreement between Mutualink and the Licensee through whom you have been authorized to download, install and use executable Licensed Software and Services.

3. Limited Consent to Use of Data for Support, Services Delivery and Upgrades/Organizational Licensee Rights versus Authorized Users. You agree that Mutualink and its authorized agents may collect and use diagnostic, technical, usage and related information, including but not limited to information about your mobile or computing device, operating system and application software, and peripherals, that may gathered to facilitate the provision of software updates, product support, product services and functions, network services and other services to you (if any) related to the Licensed Software and Services.

2. Permitted License Uses and Restrictions.

A. Subject to the terms and conditions of this License and Master License in effect, you are granted a limited non-transferable license to install, operate and use the Licensed Software in object code form only on computing devices authorized by the Master Licensee.

4. Termination. Your rights under this License will terminate automatically without notice from Mutualink upon the expiration, suspension, or termination of the Master License. It may also be terminated if you fail to comply with any term(s) of this License or the Master License.

shall survive any such termination. You understand that the Licensed Software may contain license keys or other mechanisms that may disable the use or functioning of the software upon termination.

5. Disclaimer of Warranties.

A. The Licensed Software and Services are intended solely for trade, business, and governmental use and not for consumer use. Your use of the Licensed Software and Services is licensed solely for the internal trade, business, and governmental use of the Licensee through whom you are authorized as an Authorized User and not for your personal or consumer use. If you use the Licensed Software and Services for personal or consumer use, even if Mutualink is apprised of your intended or actual use, or is permitted by the rules, regulations, requirements, or convenience of your Licensee, even if the Licensed Software and Services is installed and used on your personal mobile or computing device, you agree that such use does not change the characterization and purpose of the Licensed Software and Services. Accordingly, Mutualink makes no warranties to you as an individual or consumer and **All WARRANTIES OF WHATSOEVER KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED.**

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Mutualink, Inc.
1269 South Broad Street
Wallingford, Connecticut 06492
Attention: Legal Department
Email: legal@mutualink.net
Facsimile: (203) 774-1034



SCHEDULE C

Certificate of Hardware Warranty

MUTUALINK, INC. - CERTIFICATE OF LIMITED HARDWARE WARRANTY

Hardware Product Model: _____ Hardware Serial #: _____

1. Warranty.

- 1.1 For a period of ONE (1) year from the date of delivery of the Hardware as specified on the customer Order Form ("Warranty Period"), Mutualink, Inc. ("Company") warrants to Customer (as set forth on the Order Form) that: (a) it has sufficient rights to and in the Hardware purchased by Customer from Company or an authorized agent of Company to sell such Hardware and (b) during the Warranty Period the Hardware shall (i) materially conform to the specifications and (ii) will be free from material defects in workmanship and materials. In no event shall Company have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (c) normal wear and tear, (u) accident, disaster or event of force majeure, (d) misuse, fault or negligence of or by Customer, (e) use of the products in a manner for which they were not designed, (f) causes external to the Hardware such as, but not limited to, power failure or electrical power surges, (g) improper storage of the Hardware or (h) use of the Hardware in combination with equipment or software not supplied by Company. If Company provides repair services or replacement parts not covered by the warranty hereunder, Customer shall pay or reimburse Company for all costs of investigating and responding to such request at Company's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE HARDWARE PERFORMED BY ANY PERSON OR ENTITY OTHER THAN COMPANY WITHOUT COMPANY'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY COMPANY, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED HARDWARE.
1.2 During the Warranty Period, Company shall, without undue delay, use commercially reasonable efforts to correct or replace any Hardware or component thereof that does not conform to the warranties stated in Subsection 1.1, provided Customer has promptly, as may be reasonable under the circumstances, notified Company in writing of the non-conformity, and cooperates with Company in its correction efforts. All returned Hardware must be packed appropriately so as to not cause any damage to the Hardware while in transit and shall conspicuously bear the Return Materials Authorization ("RMA") number Customer must obtain from Company prior to return. Customer shall be solely responsible for all packaging and shipping costs associated with returned Hardware. The sole remedy of Customer with respect to any Hardware warranty or defect is as stated in this Subsection 1.2.
1.3 COMPANY DOES NOT WARRANT THE RESULTS THAT MAY BE OBTAINED BY USING THE HARDWARE NOR THAT OPERATION OF THE HARDWARE SHALL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. EXCEPT FOR THE WARRANTIES MADE DIRECTLY TO CUSTOMER IN SECTION 1.1 ABOVE, TO THE GREATEST EXTENT ALLOWED BY LAW, COMPANY MAKES NO WARRANTIES TO ANY PERSON WITH RESPECT TO THE HARDWARE OR ANY LICENSES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF COMPANY HAD BEEN INFORMED OF SUCH PURPOSE).
1.4 Company's sole liability with respect to Third Party Hardware or any other equipment, materials, or parts of third parties shall be limited to the assignment by Company to Customer of any such third party warranty to the extent the same is assignable, unless the warranty is issued directly from a third party to Customer for the Third Party Hardware. Company makes no representations or warranties regarding the merchantability, suitability or fitness of Third Party Hardware in relation to the Hardware other than that the same, when delivered, is compatible with the Hardware in material respects when used or operated in its installed default configuration and in accordance with applicable Specifications. Company shall have no responsibility to Customer to process or administer any warranty claims made by Customer under Third Party Hardware warranties, nor does Company guaranty or warranty the performance of such parties.
1.5 "Hardware" shall mean the equipment manufactured and assembled by Company and identified by serial number(s) as listed on this Warranty Certificate and specifically excludes Third Party Hardware. "Third Party Hardware" shall mean those Hardware items listed on the Customer Order Form that are manufactured and sold as finished goods or products by third parties, whether or not sold as part of, or affixed, attached to, or connected to the Hardware. "Specifications shall mean the technical information that is furnished to Customer concerning the Hardware or other technical information relating to Third Party Hardware, including without limitation, drawings, sketches, models, manufacturing level schematics, computer or other apparatus programs, user manuals, troubleshooting guides and descriptions of the same or which are otherwise furnished to Customer from time to time, including technical updates and notices.
1.6 The foregoing are Customer's sole and exclusive remedies for breach of warranty.

2. Limitation of Liability

- 2.1 COMPANY SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS HEREUNDER OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIABILITY OF COMPANY TO THE CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE LESSER OF THE AMOUNT PAID TO COMPANY BY CUSTOMER FOR THE HARDWARE OR \$1,000 (ONE THOUSAND DOLLARS). THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. CUSTOMER UNDERSTANDS AND AGREES THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NONCONFORMITY BETWEEN THE PARTIES AS AUTHORIZED BY THE UNIFORM COMMERCIAL CODE AND BY OTHER APPLICABLE LAWS.
2.2 No employee, agent, representative or affiliate of Company has authority to bind Company to any oral representations or warranty concerning the Hardware. Any written representation or warranty not expressly contained herein is not enforceable.

3. Disclaimer

- 3.1 To the extent that Customer uses the Hardware in connection with any public safety, emergency response or other critical response environment, including but not limited to uses by fire, police, emergency medical personnel or systems, entities or agencies responsible for roads and/or transportation, entities or agencies responsible for utilities monitoring or emergency response systems, Company shall not be responsible for any injuries, damages, settlements, attorneys' fees and expenses that may be attributable, in whole or in part, to any delays in response time or errors that may arise out of or relate to any communications failures, audio or data corruption, misrouting or wrongly delivered communications content, misuse or negligent use of the Hardware or its functions, unauthorized access, malicious code or virus, third party communications systems failures, power failures, or any other Mutualink equipment failures, that result in interruptions, delays, or lost, corrupted or compromised data .

4. Miscellaneous

- 4.1 Unless otherwise specified in the MASTER COMMERCIAL SOFTWARE LICENSE, HARDWARE & SERVICES AGREEMENT ("Master Agreement") under which this Certificate has been issued, the laws of the State of Connecticut shall govern the validity, construction, interpretation, and performance of this Certificate of Warranty. Each party irrevocably agrees that any legal action, suit or proceeding brought by it arising out of this Certificate of Warranty must be brought solely and exclusively in the appropriate state or federal court within the State of Connecticut.
- 4.2 The remedies stated in this Certificate of Warranty are the sole and exclusive remedies available, and all others, whether at law or in equity, are irremovably and expressly waived by Purchaser.
- 4.3 In the event of any litigation arising out of this Certificate of Warranty or for its enforcement by either party, the prevailing party shall be entitled to recover as part of any judgment, reasonable attorneys' fees and court costs in connection with such litigation.
- 4.4 If any provision, or part thereof, in this Certificate of Warranty, is held to be invalid, void or illegal, it shall be severed from the remainder, and shall not affect, impair, or invalidate any other provision, or part thereof, and if possible it shall be replaced by a provision which comes closest to such severed provision, or part thereof, in language and intent, without being invalid, void or illegal. Company shall be entitled to rely upon the enforceability of the provisions of the Certificate of Warranty as being duly valid and enforceable notwithstanding any administrative regulation, policy statement or executive order to the contrary which may be binding upon and restrict the actual authority of any governmental agency or entity, unless the Company is notified in writing in advance of any such limitation on authority, and an addendum is issued acknowledging such limitation and restriction and revising the terms hereof. To the greatest extent possible, every Customer that is a governmental entity waives sovereign immunity with respect any claim or action relating to or arising out of the subject matter of this Certificate of Warranty.
- 4.5 The rights, duties and obligations of Customer under this Certificate of Warranty may not be assigned or transferred in whole or in part by operation of law or otherwise. Company may assign this Certificate of Warranty, subject to applicable law governing assignment. Any purported transfer or assignment in contravention of this Section 4.5 is void. This Certificate of Warranty and the rights and obligations hereunder shall be binding on the parties and their respective successors and permitted assigns, heirs and representatives.
- 4.6 All waivers under this Certificate of Warranty must be in writing. Any express waiver or failure to exercise promptly any right under this Certificate of Warranty will not create a continuing waiver or any expectation of non-enforcement of such right or any other.
- 4.7 Customer acknowledges that its use of the Hardware may require certain governmental permits and licenses and hereby represents that it has acquired or prior to use of the Hardware shall acquire any such required permits or licenses. The parties hereby agree that Company shall have no obligation to inform Customer of any required permits or licenses and, further, shall have no obligation to secure any of the foregoing.
- 4.8 Customer shall only use the Hardware in a manner that complies with all applicable laws.
- 4.9 This Certificate of Warranty, including the Master Agreement (and, if purchased through an authorized reseller or distributor, any required terms and provisions imposed by the Company that must be included in any reseller purchase order form or sales agreement, or a supplemental agreement for the benefit of the Company) is the entire agreement relating to this subject matter. It supersedes all prior or contemporaneous oral or written agreements, communications, proposals, conditions, representations and warranties with respect to its subject matter. No modification of this Certificate of Warranty will be binding, unless in writing and signed by an authorized representative of Company.
- 4.10 Extended warranties purchased under the Master Agreement shall extend the Warranty Period under Section 1 of this Certificate for the additional time specified under the applicable Purchase Order.
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Schedule D

GDPR Data Protection Agreement (DPA)

(include as Required)