



PURCHASING DEPARTMENT  
STAMFORD PUBLIC SCHOOLS  
BID/RFP/CONTRACT AWARD - RECOMMENDATION

To: Vivens Joachim  
From: Olympia Della Flora  
Description: Food Service POS Software  
Date: 6/1/21

Attached hereto is a copy of the bid submission log together with copies of the actual bids for Bid/RFP/Contract Number: 111915 11/19/15-11/30/21  
181105

Please review and examine the attached information. After completing your review, please advise the Director of Finance or Purchasing Agent of your bid award recommendation. Please be aware that the Director of Finance or Purchasing Agent has the sole authority to award a bid in accordance with Section C5-50-2 of the City Charter and the Purchasing Ordinance. Please return this form to the Purchasing Department once your review is complete.

☒ Low Bid is accepted. Please Award.

Funds Available: \$ 25,187.00

Funding Source: Operating ☐  
Grant ☐  
Other ☒

☐ Low Bid is not accepted. Reason (s) if applicable: \_\_\_\_\_

☒ Please Award to: Heartland

☐ BOE Bid ☐ City Bid ☒ Consortium Bid ☐ State Contract ☐ GSA

TIPS

Please provide the requisition number for this project: 310106

Signature: Olympia Della Flora Date: 6/1/21  
BOE Purchasing Agent

Signature: [Signature] Date: 6/1/21  
BOE Director of Finance

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Superintendent of Schools, if in excess of \$50,000

BOE Resol Number: \_\_\_\_\_ Date: \_\_\_\_\_  
If in excess of \$100,000



Heartland School Solutions  
8320 S Hardy Drive  
Tempe, AZ 85284  
Phone: 1-800-724-9853 x3092  
Fax: +1 585-785-2392  
Email: patrick.clemens@e-hps.com

Account: Stamford Public School  
HSS ID: 2427893-118335  
Date: 5/28/2021  
Contact: Audrey Way  
Sales Rep: Patrick Clemens

**This Proposal must be signed within 30 days from the above date in order to guarantee pricing and discounts.**

Product Code	SAAS Products	Quantity	Price	Total
HSS1015	SAAS: Mosaic Cloud Front of the House	23	\$ 900.00	\$ 20,700.00
HSS0147	SAAS: MySchoolBucks Payment Services	1	\$ 0.00	\$ 0.00
HSS0670	SAAS: Discount-Value	1	\$ (1,760.00)	\$ (1,760.00)
HSS2003	SAAS: MySchoolApps Online 2001-5000 Subscription	1	\$ 2,700.00	\$ 2,700.00
HSS0661A	SAAS: Discount Compass Subscription	1	\$ (3,105.00)	\$ (3,105.00)
SAAS Total				\$18,535.00

Product Code	Professional Services	Quantity	Price	Total
HSS0970E	PSV: Mosaic FOH District Remote Implementation Daily	7	\$ 750.00	\$ 5,250.00
HSS0970D	PSV: Mosaic Serving Line Configuration	3	\$ 59.00	\$ 177.00
HSS2014	PSV: Install/Setup MySchoolApps	1	\$ 375.00	\$ 375.00
HSS1342	PSV: FOH Remote Setup Daily	1	\$ 750.00	\$ 750.00

Professional Services Total \$6,552.00

**Total: \$25,087.00**  
**Grand Total: \$25,087.00**

#### Annual Subscription

The effective start date of your Subscription begins on the first day of delivery of service which will be considered the anniversary date for the subsequent year. Annual Subscription includes all subscription enhancements and technical phone support to customers who are in good financial standing with Heartland School Solutions. Your signature on this proposal confirms that you understand this agreement.

Product Code	Subscription Products	Quantity	Price	Total
HSS1080	SUB: Mosaic Cloud Front of the House	23	\$ 900.00	\$ 20,700.00
HSS2010	SUB: MySchoolApps Online 2001-5000 Subscription	1	\$ 2,700.00	\$ 2,700.00
Subscription Total				\$23,400.00

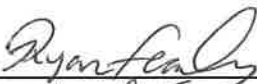
**Support, Subscription, Warranty Total: \$23,400.00**

## GENERAL NOTES

1. Upon agreement to proceed, the client must provide Heartland School Solutions with a signed Proposal and an original Purchase Order. If the District does not generate Purchase Orders it must provide a signed Letter of Intent to purchase.
2. Sales tax will be included on your invoice unless a tax exemption certificate is on file for your district. **Please forward a current Tax Exempt Certificate and W9 for our files. This will ensure timely order processing.**
3. When applicable, travel expenses (air travel, lodging, rental car, meals, mileage, and other related charges) incurred while conducting onsite services will be included on your invoice.
4. When applicable, shipping charges will be included on your invoice. The Purchase Order and/or Letter of Intent must include the proposed shipping charges. This will ensure timely order processing.
5. Heartland School Solutions product pricing is subject to change without notice.
6. When applicable, implementation dates will be confirmed by the HSS Project Coordinator.
7. The effective start date of your Subscription begins on the first day of delivery of service which will be considered the anniversary date for the subsequent year. Annual Subscription includes all subscription enhancements and technical phone support to customers who are in good financial standing with Heartland School Solutions. Your signature on this proposal confirms that you understand this agreement.

**This Proposal is subject to written acceptance by an authorized Purchaser and Heartland School Solutions. By signing this proposal you are agreeing to the terms and conditions set forth in this Proposal and the agreement(s) included with this Proposal or attached hereto and made a part hereof.**

Approved By Authorized Purchaser  
Title  
PO# (please attach PO)

  
Director of Finance

Date

6/2/21



## P U R C H A S E   O R D E R

PAGE: 1

P.O. #: 737818

DATE: 06/07/21

VENDOR #  
2021166INVOICE TO:  
City of Stamford  
STAMFORD PUBLIC SCHOOLS  
PURCHASING DEPT 3RD FL SO  
888 WASHINGTON BOULEVARD  
STAMFORD, CT 06901TO: HEARTLAND SCHOOL SOLUTIONS  
P.O. BOX 936565  
ATLANTA, GA 31193-6565SHIP TO:  
City of Stamford  
STAMFORD PUBLIC SCHOOLS  
PURCHASING DEPT 3RD FL SO  
888 WASHINGTON BOULEVARD  
STAMFORD, CT 06901DELIVER BY: SHIP VIA:  
06/01/21

F.O.B.

REQ. NO.  
310106CONFIRM BY  
OLYMPIADL/RFEALEYCONFIRM TO  
JEAN VALENTINEREQUISITIONED BY  
9033/RF/JV/P/25087

FREIGHT

CONTRACT NO. ACCOUNT NO.  
181105 003825600629049449709739PROJECT REQ. DATE  
06/01/21

LINE#	QUANTITY	UOM	ITEM NO. AND DESCRIPTION	UNIT COST	EXTENDED COST
1	1.00	EA	SUBSCRIPTION FOR FY 2020/21 - TIPS #181105	25087.0000	25087.00
SUB-TOTAL					25087.00
TOTAL					25087.00

REMARKS:  
TIPS CONTRACT 181105 EXP 11-30-2021



\*\*\*Please reference Heartland's response to Bid Attribute 79-Agreement Deviation/Compliance and Bid Attribute 80-Agreement Exceptions/Deviations Explanation outlined within the "Attributes" section of the website. Please also reference the "Explanations/Deviations" section of our response for additional information.

## TIPS VENDOR AGREEMENT

**Between** Heartland Payment Systems, LLC dba Heartland School Solutions **and**  
(Company Name)

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

### General Information

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

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

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

# Terms and Conditions

## Freight

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

## Warranty Conditions

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

## Customer Support

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

## Agreements

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

## Tax exempt status

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

## Assignments of Agreements

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

## Disclosures

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

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

### **Renewal of Agreements**

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

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

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

### **Shipments**

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

### **Invoices**

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

## Payments

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

## Pricing

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

## Participation Fees

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

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

## Indemnity

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

### **State of Texas Franchise Tax**

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

### **Miscellaneous**

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

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

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

### **Termination for Convenience**

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

### **TIPS Member Purchasing Procedures**

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

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

### **Licenses**

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

**Novation**

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

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

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

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

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

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

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

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

**Smoking**

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

**Marketing**

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

### **Supplemental agreements**

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

### **Survival Clause**

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

### **Legal obligations**

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

### **Audit rights**

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



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

### **Force Majeure**

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

### **Project Delivery Order Procedures**

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

### **Status of TIPS Members as Related to This Agreement**

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

### **Vendor's Resellers as Related to This Agreement**

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

### **Support Requirements**

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

### **Incorporation of Solicitation**

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

### **SECTION HEADERS OR TITLES**

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

### **NEW STATUTORY REQUIREMENT EFFECTIVE SEPTEMBER 1, 2017.**

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

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

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

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

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

### **Insurance Requirements**

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

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

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

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

## Special Terms and Conditions

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

Page 11 of 11 will be the TIPS Vendor Agreement Signature Page

# TIPS Vendor Agreement Signature Form

RFP 181105 Cafeteria Point-of-Sale

Company Name Heartland Payment Systems, LLC dba Heartland School Solutions

Address 1620 W. Fountainhead Parkway, Suite 501

City Tempe State AZ Zip 85282

Phone (480) 305-6909 Fax (585) 227-8594

Email of Authorized Representative Jeremy.Loch@e-hps.com

Name of Authorized Representative Jeremy Loch

Title VP Sales & Marketing, School Solutions

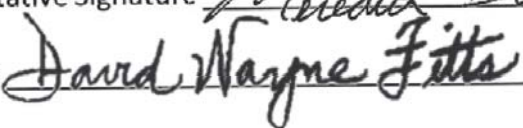
Signature of Authorized Representative 

Date December 3, 2018

TIPS Authorized Representative Name Meredith Barton

Title Vice-President of Operations

TIPS Authorized Representative Signature 

Approved by ESC Region 8 

Date 12/7/18

# The Interlocal Purchasing System (TIPS Cooperative) Supplier Response

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

## Supplier Information

Company	Heartland School Solutions (Heartland Payments Systems, Inc.)		
Address	One Heartland Way		
	Jeffersonville, IN 47130		
Contact			
Department			
Building			
Floor/Room			
Telephone	(812) 280-8222		
Fax	(812) 284-8936		
Email			
Submitted	11/20/2018 10:33:33 AM (CT)		
Total	\$0.00		

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

Signature Shelley Lorren Email Shelley.Lorren@e-hps.com

## Supplier Notes

## Bid Notes

## Bid Activities

## Bid Messages

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

#### Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	Yes - No	Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.	NO
2	Yes - No	Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at <a href="https://comptroller.texas.gov/purchasing/vendor/hub/">https://comptroller.texas.gov/purchasing/vendor/hub/</a>  or in a HUBZone as defined by the US Small Business Administration at <a href="https://www.sba.gov/offices/headquarters/ohp">https://www.sba.gov/offices/headquarters/ohp</a>  Proof of one or both may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.	No
3	Yes - No	The Vendor can provide services and/or products to all 50 US States?	Yes
4	States Served:	If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)	N/A
5	Company and/or Product Description:	This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)	The nature of our business is to provide software, hardware, installation, training, support services, online meal/store payments and digital signage/suite to School Food & Nutrition Departments in the K-12 educational industry.
6	Primary Contact Name	Primary Contact Name	Debbie Ricks
7	Primary Contact Title	Primary Contact Title	National Account Manager
8	Primary Contact Email	Primary Contact Email	Deborah.Ricks@e-hps.com
9	Primary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	5857563025
10	Primary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	5857852325
11	Primary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	
12	Secondary Contact Name	Secondary Contact Name	Shelley Lorren
13	Secondary Contact Title	Secondary Contact Title	Senior Sales Operations Specialist
14	Secondary Contact Email	Secondary Contact Email	Shelley.Lorren@e-hps.com

15	Secondary Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	5857563719
16	Secondary Contact Fax	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	8777369560
17	Secondary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	
18	Admin Fee Contact Name	Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS.	Teresa Meske/Client Relations & Billings Supervisor
19	Admin Fee Contact Email	Admin Fee Contact Email	Teresa.Meske@e-hps.com
20	Admin Fee Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	4803981423
21	Purchase Order Contact Name	Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS.	Debbie Ricks or Shelley Lorren
22	Purchase Order Contact Email	Purchase Order Contact Email	sales@heartlandschoolsolutions.com
23	Purchase Order Contact Phone	Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477	5857563719
24	Company Website	Company Website (Format - www.company.com)	<a href="https://www.heartlandpaymentsystems.com/s">https://www.heartlandpaymentsystems.com/s</a>
25	Federal ID Number:	Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789)	58-2567903
26	Primary Address	Primary Address	1620 W. Fountainhead Parkway, Suite 301
27	Primary Address City	Primary Address City	Tempe
28	Primary Address State	Primary Address State (2 Digit Abbreviation)	AZ
29	Primary Address Zip	Primary Address Zip	85282
30	Search Words:	Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)	Point of Sale, POS, Menu Planning, Inventory, Production, Ordering, USDA, Free & Reduced, nutrition software, food service software, hardware, installation, training, support services, online payments, meal payments, store payments, K-12, online applications, web-based, web based, scanning, school nutrition, nutritional analysis and application, Menu Boards; Nutrition Software; Menu App; Digital Signage and Mobile Menu App



31	Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?	<p>Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that are provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR)compliant.</p> <p>Do you want TIPS Members to be able to spend Federal grant funds with you if awarded and is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?</p>	Yes
32	Yes - No	<p>Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner:</p> <p>(A) has its principal place of business in Texas;</p> <p>OR</p> <p>(B) employs at least 500 persons in Texas?</p>	No
33	Company Residence (City)	Vendor's principal place of business is in the city of?	Tempe
34	Company Residence (State)	Vendor's principal place of business is in the state of?	AZ
35	Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION	<p>Remember this is a MINIMUM discount percentage so, be sure the discount percentage inserted here can be applied to ANY OFFERING OF GOODS OR SERVICES THROUGH OUT THE LIFE OF THE CONTRACT</p> <p>CAUTION: BE CERTAIN YOU CAN HONOR THIS MINIMUM DISCOUNT PERCENTAGE ON ANY OFFERED SERVICE OR GOOD.</p> <p>What is the MINIMUM percentage discount off of any item or service you offer to TIPS Members that is in your regular catalog (as defined in the RFP document), website, store or shelf pricing? The resulting price of any goods or services Catalog list prices after this discount is applied is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale. Must answer with a number between 0% and 100%.</p>	0%
36	TIPS administration fee	By submitting a proposal, I agree that all pricing submitted to TIPS shall include the participation fee, as designated in the solicitation or as otherwise agreed in writing and shall be remitted to TIPS by the Vendor as agreed in the Vendor agreement. I agree that the fee shall not and will not be added by the vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.	(No Response Required)
37	Yes - No	Vendor agrees to remit to TIPS the required administration fee? Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.	Yes
38	Yes - No	Do you offer additional discounts to TIPS members for large order quantities or large scope of work?	No
39	Years Experience	Company years experience in this category? This is an evaluation criterion worth a maximum of 10 points. See RFP for more information.	30

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

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

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

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

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

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

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

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

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

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

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

50 Suspension or Debarment Certification

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

51 Non-Discrimination Statement and Certification

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

Yes

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

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

52 2 CFR PART 200 Contract Provisions Explanation

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

(No Response Required)

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

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

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

53 2 CFR PART 200 Contracts

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

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

Does vendor agree?

54 2 CFR PART 200 Termination

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

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

Does vendor agree?

55 2 CFR PART 200 Clean Air Act

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

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



Does vendor agree?

- 56 2 CFR PART 200 Byrd Anti-Lobbying Amendment
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.
- Does vendor agree?
- 57 2 CFR PART 200 Federal Rule
- Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)
- Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$100,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- Does vendor certify that it is in compliance with the Clean Air Act?
- 58 2 CFR PART 200 Procurement of Recovered Materials
- A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

59 Certification Regarding Lobbying

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

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

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

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

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

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

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

(No Response Required)

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

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

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

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

of State of Texas."

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

64 Remedies

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

Yes, I Agree

Do you agree to these terms?

65 Remedies Explanation of No Answer

N/A

66 Choice of Law

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

Yes

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

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

71 Payment Terms and Funding Out Clause

Payment Terms:

Yes

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

Funding Out Clause:

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

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

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

Do you agree to these terms?

72 Insurance and Fingerprint Requirements Information

Insurance

(No Response Required)

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

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

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

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

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at [NCJU@txdps.state.tx.us](mailto:NCJU@txdps.state.tx.us) and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474. form in the next attribute to complete entitled: Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

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

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

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

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

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

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

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

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



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

76	Logos and other company marks	<p>Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred</p> <p>Potential uses of company logo: Your Vendor Profile Page of TIPS website Potentially on TIPS website scroll bar for Top Performing Vendors TIPS Quarterly eNewsletter sent to TIPS Members Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)</p>	(No Response Required)
77	Solicitation Deviation/Compliance	Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?	Yes
78	Solicitation Exceptions/Deviations Explanation	<p>If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.</p> <p>TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.</p> <p>In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.</p>	Not Applicable
79	Agreement Deviation/Compliance	Does the vendor agree with the language in the Vendor Agreement?	No
80	Agreement Exceptions/Deviations Explanation	If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.	Please reference the "Explanations/Deviations" section of our response for additional information.

81 Felony Conviction Notice

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

A. Firm is a publicly held corporation.

Select A., B. or C.

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

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

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

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

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

N/A

1. Name of Felon(s)

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

3. Details of Conviction(s).

83 Long Term Cost Evaluation Criterion # 4.

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

increases will be 5% or less annually per question

Line Items		
Response Total:		\$0.00

## REFERENCES

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

You may provide more than three (3) references.

Entity Name	Contact Person	VALID EMAIL IS REQUIRED	Phone
<b>Conroe ISD, TX</b> *60 sites currently utilizing our MCS Point of Sale, MCS Free & Reduced, MySchoolApps Online Applications, MCS Menus & Inventory and MySchoolBucks (Meals) software modules.	Theresa Perry/Supervisor of Business Operations	<a href="mailto:lyperry@conroeisd.net">lyperry@conroeisd.net</a>	(936) 709-8184
<b>Dallas ISD, TX</b> *219 sites currently utilizing our MCS Point of Sale, MCS Free & Reduced, MCS Menus & Inventory and MySchoolBucks (Meals) software modules.	Paul Vitela/Executive Analyst, Food and Child Nutrition Services	<a href="mailto:pvitela@dallasisd.org">pvitela@dallasisd.org</a>	(214) 932-5507
<b>Fort Worth ISD, TX</b> *141 sites currently utilizing our MCS Point of Sale, MCS Free & Reduced, MCS Menus & Inventory and MySchoolBucks (Meals + Store) software modules.	Roy Headlee/Food Service Director	<a href="mailto:roy.headlee@fwisd.org">roy.headlee@fwisd.org</a>	(817) 814-3510
<b>Ouachita Parish School Board, LA</b> *35 sites currently utilizing our MCS Point of Sale, MCS Free & Reduced, MySchoolApps Online Applications, MCS Menus & Inventory and MySchoolBucks (Meals) software modules.	Jo Lynne Correro/Director of Child Nutrition Services	<a href="mailto:correro@opsb.net">correro@opsb.net</a>	(318) 398-1990 ext. 310

<b>Goose Creek Consolidated ISD, TX</b> *28 sites currently utilizing our Mosaic Cloud Point of Sale, Mosaic Free & Reduced and MySchoolBucks (Meals) software modules.	Natalie Edwards/Director	<a href="mailto:natalie.edwards@gccisd.net">natalie.edwards@gccisd.net</a>	(281) 707-3384
<b>Temple ISD, TX</b> *15 sites currently utilizing our Mosaic Point of Sale, Mosaic Free & Reduced, Heartland NutriLink Online Applications, NUTRIKIDS Menu Planning/Nutrient Analysis, NUTRIKIDS Production Records, NUTRIKIDS Inventory/Purchasing/ Ordering and MySchoolBucks (Meals) software modules.	Israel Garcia/Assistant Director of School Nutrition	<a href="mailto:israel.garcia@tisd.org">israel.garcia@tisd.org</a>	(254) 215-6526
<b>Huffman ISD, TX</b> *6 sites currently utilizing our Mosaic Point of Sale, Mosaic Free & Reduced, NUTRIKIDS Menu Planning/Nutrient Analysis, NUTRIKIDS Production Records and MySchoolBucks (Meals + Store) software modules.	Joseph Russo/Director Child Nutrition	<a href="mailto:jrusso@huffmanisd.net">jrusso@huffmanisd.net</a>	(281) 324-7613
<b>Spokane Public Schools 81, WA</b> *53 sites currently utilizing our Mosaic Point of Sale, Mosaic Free & Reduced, Heartland NutriLink Online Applications, Mosaic Menu Planning/Nutrient Analysis, Mosaic Production Records and MySchoolBucks (Meals + Store) software modules.	Doug Wordell/Director of Nutrition Services	<a href="mailto:dougw@spokaneschools.org">dougw@spokaneschools.org</a>	(509) 354-7391

<b>Grapevine-Colleyville ISD, TX</b> *19 sites currently utilizing our NUTRIKIDS Point of Sale, NUTRIKIDS Free & Reduced, Heartland NutriLink Online Applications, NUTRIKIDS Menu Planning/Nutrient Analysis, NUTRIKIDS Production Records, NUTRIKIDS Inventory/Purchasing/ Ordering and MySchoolBucks (Meals) software modules.	Julie Telesca/Director Nutrition Services	<a href="mailto:julie.telesca@gcisd.net">julie.telesca@gcisd.net</a>	(817) 251-5615
<b>Coppell ISD, TX</b> *16 sites currently utilizing our NUTRIKIDS Point of Sale, Heartland NutriLink Online Applications, NUTRIKIDS Menu Planning/Nutrient Analysis, NUTRIKIDS Production Records and MySchoolBucks (Meals) software modules.	Jean Mosley/Child Nutrition Director	<a href="mailto:jmosley@coppellisd.com">jmosley@coppellisd.com</a>	(214) 496-8050
<b>Richland Parish School Board, LA</b> *12 sites currently utilizing our NUTRIKIDS Point of Sale, Heartland NutriLink Online Applications, NUTRIKIDS Menu Planning/Nutrient Analysis, NUTRIKIDS Production Records, NUTRIKIDS Inventory/ Purchasing/Ordering and MySchoolBucks (Meals) software modules.	Gracie Hosea/Director	<a href="mailto:ghosea@richland.k12.la.us">ghosea@richland.k12.la.us</a>	(318) 728-5964 ext. 227

**CERTIFICATION BY CORPORATE OFFERER**

**COMPLETE ONLY IF OFFERER IS A CORPORATION,**  
**THE FOLLOWING CERTIFICATE SHOULD BE EXECUTED AND INCLUDED AS PART OF**  
**PROPOSAL FORM/PROPOSAL FORM.**

**OFFERER:** Heartland Payment Systems, LLC dba Heartland School Solutions

**(Name of Corporation)**

David Green

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

**named as OFFERER herein above; that**

Jeremy Loch

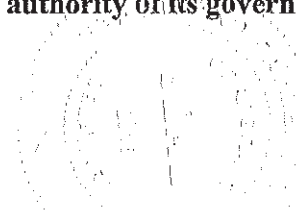
**(Name of person who completed proposal document)**

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

VP Sales & Marketing, School Solutions

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

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



**CORPORATE SEAL** if available

A handwritten signature, appearing to be "David Green", is written over the signature line.

**SIGNATURE**

November 19, 2018

**DATE**



**Insert TIPS RFP #** 181105 for Cafeteria Point-of-Sale

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

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

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

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

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

\_\_\_\_\_  
**Name of company claiming confidential status of material**

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

\_\_\_\_\_  
**Address City State ZIP Phone**

ATTACHED ARE COPIES OF \_\_\_\_\_ PAGES OF CONFIDENTIAL MATERIAL FROM OUR  
PROPOSAL

Signature \_\_\_\_\_ Date \_\_\_\_\_

**OR** -----

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

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

Jeremy Loch

VP Sales & Marketing, School Solutions

**Printed Name authorized company officer**

**Title of authorized company officer**

1620 W. Fountainhead Parkway, Suite 501 Tempe

AZ 85282

(480) 305-6909

Address

City

State

ZIP

Phone

Signature \_\_\_\_\_

Date November 19, 2018

## Warranty

Warranty information (if applicable) must be scanned and uploaded. (PDF Format ONLY) DO NOT UPLOAD encrypted or password protected files.

## Hardware & Warranty

**Point of Sale Terminals are not proprietary. Heartland does offer a compact and rugged all-in-one unit that has exceptional performance at a competitive price. The Pioneer X5 comes with a 3 year warranty with an option of an extended warranty for Year 4&5.**

### **Pioneer X5 All-In-One Computer Terminal**

- Includes 3-Year Manufacturer Warranty with an optional extension for Years 4 & 5 for a total of 5 years.

Warranty: the purchase price includes a 3-year Advanced Replacement Warranty ("Next Business Day Spare in the Air"). This means that when it is necessary to Repair Maintenance Authorization (hereinafter referred to as "RMA") hardware, Heartland will authorize an "Advance Replacement RMA" then immediately ship a replacement unit (same business day or next business day if the RMA request is made after the daily shipping cutoff). This means that the hardware is more than likely in route to you before you have boxed up the unit to be returned.

Warranty RMA Shipping Express: all shipping costs incurred in conjunction with a warranty replacement RMA will be absorbed by Heartland during the warranty (whether the included 3-year or purchased 5-year warranty) terms. District will not incur any shipping expenses associated with an RMA during the warranty term.

**Input Devices are not proprietary, however the Heartland Pin Pad Optical Scanner combination device has been designed to work with all Heartland Point of Sale Solutions. The device comes with a 1 year warranty with an option of an extended warranty for Year 2&3.**

### **Heartland Pin Pad Optical Scanner**

- Includes 1-Year Advanced Exchange Warranty with an optional extension for Years 2&3 for a total of 3 years.

Warranty: the purchase price includes a 1-year Advanced Replacement Warranty ("Next Business Day Spare in the Air"). This means that when it is necessary to Repair Maintenance Authorization (hereinafter referred to as "RMA") hardware, Heartland will authorize an "Advance Replacement RMA" then immediately ship a replacement unit (same business day or next business day if the RMA request is made after the daily shipping cutoff). This means that the hardware is more than likely in route to you before you have boxed up the unit to be returned.

Warranty RMA Shipping Express: all shipping costs incurred in conjunction with a warranty replacement RMA will be absorbed by Heartland during the warranty (whether the included 1-year or purchased 2-3 year warranty) terms. District will not incur any shipping expenses associated with an RMA during the warranty term.

## Proposed Goods and Services

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

- Please reference, the documents outlined below, uploaded to the “Response Attachments” section of the TIPS eBid System website.
  - MCS Flipbook
  - Mosaic Flipbook
  - NUTRIKIDS Flipbook
  - MySchoolApps Online Applications Overview
  - MealViewer Overview
  - MySchoolBucks/MSB Anywhere Flipbook

**Supplemental Agreements for use for TIPS Members for  
181105 Cafeteria Point-of-Sale**



## Heartland Annual Subscription Support Agreement

This Subscription Support Agreement is made and entered into this day 7th of November, by and between Heartland School Solutions with its principal office located at 1620 W. Fountainhead Parkway, Suite 501, Tempe, AZ 85282, Telephone: (800) 724-9853, Email: [sales@heartlandschoolsolutions.com](mailto:sales@heartlandschoolsolutions.com) ("Heartland")

And

\_\_\_\_\_

A School District having its principal place of business located at

\_\_\_\_\_

In the City of \_\_\_\_\_

In the State of \_\_\_\_\_

(Hereinafter referred to as "Customer")

Permitted Users: District and their employees, agents and contractors for purposes of implementing the Subscription to make it available to, and, any end user individuals to whom access to the Subscription is made available by the District.

Subscription \_\_\_\_\_

---

Customer and HEARTLAND agree as follows:

### 1. HEARTLAND SUBSCRIPTION PRODUCTS

By entering into this Agreement, Customer licenses from HEARTLAND the right to use the Subscription identified above (the "Subscription") pursuant to the terms and conditions of the "Software as a Service License" annexed hereto and made part hereof (the "SAAS Agreement" or the "License Agreement").

**THE SOFTWARE AS A SERVICE LICENSE AGREEMENT IS OFFERED ONLY IN CONJUNCTION WITH ANNUAL SUBSCRIPTION SUPPORT SERVICES. BY CUSTOMER AGREEING TO AND EXECUTING THIS ANNUAL SUBSCRIPTION SUPPORT AGREEMENT, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ ALL OF THE TERMS AND CONDITIONS OF THE SOFTWARE AS A SERVICE LICENSE AGREEMENT ANNEXED HERETO AND REPRESENTS TO HEARTLAND THAT CUSTOMER UNDERSTANDS AND AGREES TO BE BOUND BY THE SOFTWARE AS A SERVICE LICENSE AGREEMENT.**

### 2. DEFINITIONS

2.1 Error means a reproducible failure of the Subscription to perform in substantial conformity with the Subscription specifications set forth in the corresponding User's Guide(s), help files or other printed documentation. Error does not include a nonconformity resulting from customer's improper use,

alteration of or damage to the Subscription, or customer's combining or merging the Subscription with any Equipment or Subscription not supplied by HEARTLAND or specified as compatible by HEARTLAND.

2.2 Initial Support Term means through July 31st of next fiscal year from the Effective Date of this Agreement.

2.3 Major Enhancement means any major functional revision to the Subscription (designated by a renumbered release number such as 3.4 to 4.0) released by HEARTLAND during the Initial Support Term or any Renewal Support Term.

2.4 Minor Enhancement means any minor release, update, modification or "bug fix" (designated by a renumbered release number such as 3.3 to 3.4) which does not necessarily provide materially new functionality, as determined by HEARTLAND in its reasonable discretion, and made generally available to HEARTLAND's supported customers.

2.5 Renewal Support Term means each successive one (1) calendar year period starting on August 1<sup>st</sup> following the Initial Support Term agreed upon by the parties pursuant to Section 7.1.

2.6 Support Times means: Monday through Friday, 7:00 a.m. through 8:00 p.m. (CST), excluding the following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day. Additionally, hours may be limited on other national holidays and/or days preceding or following certain holidays. 24/7 extended support hours including weekends are available if scheduled ahead of time, subject to any fees associated with such extended support hours.

2.7 Support Incident is defined as one specific Error or other technical issue that begins when a customer calls HEARTLAND Technical Support and ends when either the single specific Error or other technical issue is resolved or HEARTLAND Technical Support deems it non-resolvable. Each specific Support Incident will generate a "ticket", which will be opened, tracked and closed separately from any other specific Support Incidents.

2.8 Support Plan means the specific Subscription support and maintenance plan offered by HEARTLAND and selected by Customer. HEARTLAND may offer different plans with specific support levels, number of covered incidents and extent of Subscription maintenance provided. The Support Plan selected shall be reflected on the quotation, invoice, purchase order or support order.

2.9 Updates means modifications, enhancements, changes and alterations to the Subscription provided by HEARTLAND after the initial delivery of the Subscription, including all Major Enhancements and Minor Enhancements; the term Subscription includes all Updates.

2.10 Other capitalized terms have the meaning set forth herein or in the License Agreement.

### 3. SUBSCRIPTION SUPPORT

3.1 Subscription Support Services. During the Initial Support Term and any Renewal Support Term, HEARTLAND shall render the Subscription support services set forth in this section ("Support Services") to Customer subject to:



(i) Customer's payment of the Support Fees set forth in Exhibit A, attached hereto, and (ii) Customer's compliance with its obligations set forth in this Agreement.

3.2 Services. The Subscription Support Services to be provided by HEARTLAND pursuant to this Agreement are as follows:

(a) Help Desk. HEARTLAND will provide Customer with reasonable Help Desk assistance during the Support Times regarding the installation and implementation of the Subscription, and the identification, diagnosis and correction of Errors. HEARTLAND will attempt to resolve any support questions posed by Customer. If HEARTLAND reasonably determines that it would be appropriate to do so, HEARTLAND may defer resolution of a support question until a later time. At its discretion, HEARTLAND may provide Customer with Help Desk support during times other than the Support Time and/or beyond the maximum number of monthly and/or annual Support Incident limits (if applicable) at HEARTLAND's then standard rates. Customer shall be responsible for paying charges for such additional Help Desk support.

(b) Web Site. HEARTLAND will provide Customer with access to technical information via its web site(s) on the internet.

(c) Minor Enhancements. HEARTLAND will provide Customer with copies of all Minor Enhancements at no additional cost to Customer.

(d) Major Enhancements. Major Enhancements for the Subscription are not included under this Agreement unless otherwise agreed. HEARTLAND may, but is not obligated to, offer Major Enhancements to Customer at a reduced fee or at no additional charge.

3.3 Excluded Services. Support shall not include training, installation, consultancy services, or on-site support. However, these services are available at an additional charge to the customer.

3.4 Procedures for Submitting Support Requests or Subscription Enhancements.

(a) Notification. To obtain Error correction services, Customer must notify HEARTLAND immediately of any suspected Error and must provide HEARTLAND with reasonable detail of the nature of and circumstances surrounding the Error. "Reasonable detail" includes complete Subscription, hardware and network configuration information as requested by HEARTLAND.

Notification Means (listed in order of preference and efficiency):

Logging a case directly into our customer portal website.

Sending a detail email to the support center.

Calling into our technical Help Desk via toll-free number.

(b) Remote Diagnostics. HEARTLAND may perform remote diagnostics to determine the existence and nature of an Error.

(c) Error Correction. HEARTLAND will make reasonable efforts to correct and resolve Errors that Customer reports to HEARTLAND and which HEARTLAND is able to reproduce. Customer will promptly provide HEARTLAND with all information requested by HEARTLAND to reproduce such Errors. For each such Error, HEARTLAND will use reasonable efforts to provide Customer with a workaround, a Subscription patch or, if HEARTLAND is unable to provide Customer with either of the foregoing, a specific action plan

for addressing the Error, including a good faith estimate of the time required to correct and resolve such Error.

(d) Remote Correction. HEARTLAND may perform any Error correction work via remote telecommunications. If such remote support is unavailable, in HEARTLAND' opinion, to satisfactorily resolve the Confirmed Error, HEARTLAND may require Customer to provide data files on removable media via overnight courier (or other shipping method that provides end-to-end tracking) or other mutually agreed upon electronic medium at Customer's expense.

3.5 Response Times. HEARTLAND will use reasonable efforts to communicate with Customer, by telephone, e-mail, fax or HEARTLAND' website within the following targeted response times, regarding Errors that Customer reports to HEARTLAND during the Support Times; for purposes of this Agreement, a "response" means HEARTLAND' acknowledgment of an Error, and does not necessarily mean that a resolution will be achieved.

#### ERROR PRIORITIES AND RESPONSE TIMES:

LEVEL ONE RESPONSE: Where a major fault occurs such that a business critical function is not operational and major user inconvenience is being caused then; between 7 a.m. and 7 p.m. EST, Monday through Friday the Developer shall endeavor to respond within two hours; or

LEVEL TWO RESPONSE: Where a fault occurs such that a function is not operational but a workaround is available and is causing significant user inconvenience then; between 7 a.m. and 7 p.m. EST, Monday through Friday, the Developer Solutions shall respond within four hours; or

LEVEL THREE RESPONSE: Where a fault occurs such that a non-critical function is not operational and is causing an inconvenient problem but is not causing significant user inconvenience then; between 7 a.m. and 7 p.m. EST, Monday through Friday, the Developer shall respond within one business day; or

LEVEL FOUR RESPONSE: Where a fault occurs such that a cosmetic, non-urgent problem is being caused, e.g. a field is in the wrong position then; between 7 a.m. and 7 p.m. EST, Monday through Friday the Developer shall respond within three business days.

3.6 Limitations on HEARTLAND's Support Obligations. Notwithstanding anything to the contrary elsewhere in this Agreement, HEARTLAND will have no obligation to provide any support services to Customer if:

(a) Such support relates to or involves any products, data, features, devices or equipment not provided or specified as compatible by HEARTLAND;

(b) Customer or a third party has altered or modified any portion of the Subscription in any manner without the prior written consent of HEARTLAND;

(c) Customer has not installed or used the Subscription in accordance with instructions provided by HEARTLAND, including failure to follow implementation procedures;

(d) Customer has failed to replace earlier versions of the Subscription with Enhancements provided



to Customer;

(e) A party other than HEARTLAND (or a party authorized by HEARTLAND) has serviced the Subscription and the Subscription no longer conforms to its specifications; or

(f) Customer is not in full compliance with the other terms of this Agreement, the terms of the License Agreement, or any other agreement between HEARTLAND and Customer.

3.7 Hardware. HEARTLAND's support obligations under this Agreement shall not include computer hardware, computer network, electrical, telephone, interconnection, or the installation or repair of accessories, alterations, parts or devices not furnished by HEARTLAND.

3.8 Additional Services. In its discretion, HEARTLAND may provide Customer with additional support, consulting, design, implementation or other services with respect to the Subscription not otherwise covered under this section or specifically excluded pursuant to Section 3.4 above, provided that Customer pays HEARTLAND for such service at HEARTLAND's then standard hourly and expense reimbursement rates, or pursuant to any separate agreement between Customer and HEARTLAND. Except to the extent specifically otherwise provided in this Agreement, such support service is not included within the terms of this Agreement.

#### 4. FEES AND PAYMENT TERMS

4.1 Support Fees. The fees for the Support Services (the "Support Fee(s)") shall be those fees set forth in Exhibit A. All Support Fees are subject to change at the beginning of any Renewal Support Term. HEARTLAND reserves the right to charge additional amounts to any Customer who requires additional or excessive support at its reasonable discretion. Customer shall bear all costs associated with procuring, installing, and maintaining all equipment, telephone lines and communications interfaces necessary for Customer to obtain HEARTLAND Support Services.

4.2 Payment Procedures. On or before the Effective Date and on an annual basis 60 days prior to any Renewal Support Term, HEARTLAND will invoice Customer for all Support Fees incurred by Customer pursuant to this Agreement. Customer shall pay all invoiced amounts in U.S. dollars within thirty (30) days of the date of invoice. Any invoiced amounts not paid when due will incur interest at 1.5% per month until paid in full. All fees specified herein: (i) are non-cancelable, non-refundable and non-contingent; (ii) are payable in U.S. dollars; and (iii) shall be sent to the attention of HEARTLAND's Accounts Receivable Department.

4.3 Nonpayment. In addition to all rights exercisable by HEARTLAND, in the event of Customer's nonpayment when due of any amounts owed to HEARTLAND, HEARTLAND reserves the right to terminate this Agreement and/or withhold performance of any obligations, whether arising under this Agreement or otherwise, and/or change its credit terms.

4.4 Purchase Orders. If Customer's internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to HEARTLAND, Customer will timely issue such purchase order and inform HEARTLAND of the number and amount thereof. Customer agrees that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of Customer's obligations hereunder, including payment of amounts owed to HEARTLAND.



## 5. CUSTOMER'S OBLIGATIONS

5.1 Self Help. Before attempting to contact HEARTLAND, use every effort to refer to:

- (a) Continually updated Parent FAQ's provide answers to many commonly asked questions
- (b) Online Video Tutorials
- (c) Browse imbedded or preprinted help documentation of individual Subscription modules.

5.2 Access. During the Initial Support Term or any Renewal Support Term, Customer will provide HEARTLAND with reasonable access (via remote telecommunications or on-site access at Customer's premises) to Customer's copies of the Subscription to the extent necessary, in HEARTLAND's discretion, to enable HEARTLAND to meet its support obligations as set forth in this Agreement.

5.3 Communications Link. During the Agreement, Customer, at its sole expense, will provide access via the internet. HEARTLAND shall be entitled to use this internet connection in discharging its responsibilities under this Agreement. HEARTLAND shall have no liability to Customer if HEARTLAND's ability to render support is impaired by Customer's inability to provide telecommunications functionality required for remote support.

5.4 Support Contact. Customer shall designate one employee and one alternate as its Support Contacts to be generally available during the Support Times to confer with HEARTLAND regarding Errors and other support-related issues. Customer shall notify HEARTLAND immediately of any changes in the persons designated as Support Contacts. HEARTLAND will provide technical support only to Customer's Support Contacts. If Customer requires HEARTLAND to provide technical support to Customer's employees, representatives or consultants other than Customer's Support Contacts, HEARTLAND may charge additional fees for such support at its sole discretion.

5.5 Enhancement Request Contact. Customer shall designate one employee and one alternate as its Enhancement Request Contacts to be generally available during the Support Times to confer with HEARTLAND regarding details for the enhancement requests. Customer shall notify HEARTLAND immediately of any changes in the persons designated as Enhancement Request Contacts. HEARTLAND will only honor requests from the Enhancement Request Contacts.

5.6 Competence of Support and Enhancement Contacts. Customer is responsible for ensuring that the above Support Contacts have sufficient training to attain and maintain competence in the operation of the Subscription.

5.7 Language. Customer shall communicate with HEARTLAND in English only.

5.8 Follow HEARTLAND Support Policies. Customer shall follow any procedures and recommendations provided by HEARTLAND in an effort to resolve issues or for the submitting of support requests.

5.9 All Customer Subscription Users. Customer shall ensure that its relevant staff comprehend and follow all operation instructions and procedures as specified in HEARTLAND's support documentation, and in any other documentation or correspondence relating to the Subscription.

## 6. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY



6.1 Warranty. The support services under this Agreement will be provided in a workman-like manner by individuals who are knowledgeable in the operation of the Subscription. All Subscription bug fixes, work-a-rounds, Error corrections and Updates are provided on an "AS IS" basis. This Subscription Support Agreement does not augment or alter the warranties provided under the Subscription License Agreement, or any other agreements between Customer and HEARTLAND.

6.2 Disclaimer. Except as provided in this Agreement or the License Agreement, HEARTLAND expressly disclaims all other warranties related to the Subscription or services provided under this Agreement, whether express or implied, including (without limitation) any warranty of merchantability or fitness for a particular purpose, or non-infringement. HEARTLAND does not warrant that all Errors will be corrected. HEARTLAND shall have no liability to Customer for any liability or damage sustained by Customer as a result of any claim or action brought or asserted against Customer.

6.3 Maximum Liability. In no event shall HEARTLAND's cumulative liability for any claim arising in connection with this Agreement exceed the amount of the total Support Fees paid to HEARTLAND by Customer during the twelve (12) month period preceding any such claim.

6.4 Consequential Damages. In no event shall HEARTLAND be liable to customer for any indirect, consequential, special, exemplary, or incidental damages of any kind and however caused, even if HEARTLAND knew or should have known of the possibility of such damages and whether or not such damages are foreseeable.

6.5 Indemnification. To the extent permitted by the constitution and laws of the jurisdiction where the Customer is located, customer shall indemnify and hold harmless HEARTLAND, its respective employees, officers, directors, shareholders and agents (collectively, the 'Indemnity') and hold the Indemnity harmless against any and all losses, costs (including court costs and reasonable attorneys' fees), damages, settlements, suits, actions, expenses, liabilities, and claims sustained by the Indemnity arising out of or resulting from any material breach by Customer of the terms and conditions of this Agreement or the License Agreement.

## 7. TERM AND TERMINATION

7.1 Term. This Agreement will commence on the Effective Date and continue in effect during the Initial Support Term.

7.2 Prior to Renewal Term. If at any point, HSS decides not to renew this Agreement, it shall provide the Customer written notice of its intention not to renew at least sixty (60) days prior to the end of the Initial Support Term or the then-current Renewal Support Term, as the case may be.

7.3 Additional Termination Rights. This Agreement may be terminated as follows:

(a) License Agreement. This Agreement shall immediately and automatically terminate upon the termination of the License Agreement. The License Agreement shall automatically terminate upon termination of this Agreement.

(b) For Breach. Either HEARTLAND or Customer may terminate this Agreement immediately upon the occurrence of an uncured breach by the other party of a material provision of this Agreement, or any other agreement that exists between HEARTLAND and Customer. This includes but is not limited to, the License



Agreement, and any Supplemental Subscription Support Agreement or Statement of Work. An uncured breach is defined as a breach or violation of any agreement that the breaching party has not corrected to the non-breaching party's reasonable satisfaction within thirty (30) days after the non-breaching party has provided the breaching party with written notice specifying details of the breach.

(c) Customer may terminate this Agreement for any reason upon providing thirty (30) days prior written notice to HEARTLAND and HEARTLAND shall return the unused portion of the fee paid to Customer.

(d) Financial Condition. Either party may terminate this Agreement on the occurrence of the filing of a petition or seeking of relief under applicable bankruptcy or insolvency laws by or against the other party.

7.4 Post-Termination Responsibilities. Following termination of this Agreement, HEARTLAND shall immediately invoice Customer for all previously accrued fees and charges and all reimbursable expenses, and Customer shall pay the invoiced amount immediately upon receipt of such invoice.

## 8. GENERAL

8.1 Amendment. No amendment of this Agreement shall be effective unless in a writing specifically referencing this Agreement and signed by the duly authorized representative of both parties.

8.2 Assignment. Customer may not assign or transfer this Agreement (by operation of law, as a result of a change of control, or otherwise), grant a security interest in the Subscription, or sublicense the Subscription without the prior written consent of HEARTLAND (such consent not to be unreasonably withheld or delayed), and any such assignment, grant or sublicense without such consent shall be null and void. Notwithstanding the foregoing, in the event of a merger, consolidation or acquisition of all or substantially all of the assets or stock of Customer, Customer may assign its rights under this Agreement to the resulting entity upon written notice to HEARTLAND, provided that such entity: (a) is not a HEARTLAND competitor; (b) is not an entity that has failed to, or is unable or unwilling to, protect the confidentiality of the Subscription or HEARTLAND's intellectual property and proprietary rights; (c) possesses sufficient resources (financial or otherwise) to perform Customer's obligations under this Agreement; (d) is not a Customer of HEARTLAND; and (e) signs an amendment with HEARTLAND assuming all of the obligations of Customer under this Agreement. In addition, Customer understands and agrees that a condition of assignment shall be the payment of additional license fees in accordance with HEARTLAND's pricing in effect at the time of the assignment.

8.3 Choice of Law. The validity, construction, and enforcement of this Agreement, and the determination of the rights and duties of the parties, shall be governed by the laws of the State where the Customer is located exclusive of any choice of law provisions and venue shall be exclusively in the federal and or state courts located in the State where the Customer is located.

8.4 Notices. Unless otherwise specified in this Agreement, all notices shall be in writing and shall be mailed (via registered or certified mail, return receipt requested), telecopied, telegraphed, delivered by a nationally recognized express courier service, or personally delivered to the other party at the address set forth below (or at such other address as either party may designate in writing to the other party). All notices will be effective upon receipt. For HEARTLAND: 1620 West Fountainhead, Suite 501, Tempe, AZ 85282. For Customer: the address and facsimile of the Customer's Main Contact set forth in a schedule provided by HEARTLAND, or the Customer's invoice address if none.



8.5 Headings. The headings in this Agreement are for convenience of reference only and shall not be used for the construction or interpretation of this Agreement.

8.6 Entire Agreement. This Agreement, together with the SAAS Support Agreement and attached schedules, and the proposed and accepted proposal terms and conditions of the TIPS RFP 181105, including the applicable TIPS Vendor Agreement signed by HSS, which is incorporated herein as if copied verbatim, constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior or contemporaneous statements or agreements with respect to such subject matter are superseded by this Agreement.

8.7 Force Majeure. Except for making payments, should either party fail to perform or should its performance under this Agreement be delayed by any factor beyond the reasonable control of the delayed party, then the time for performance of the delayed party shall be extended by a period of time equal to the duration of such delay provided that the parties work diligently to minimize any such delay.

8.8 Severability. A holding by a court of competent jurisdiction that one or more of the provisions contained in this Agreement is unenforceable in any respect shall have no effect on the validity of any of the remaining provisions of this Agreement.

8.9 Time Limitation. No action arising out of the performance of services by HEARTLAND under this Agreement may be brought by Customer more than one (1) year after such cause of action arose.

8.10 Waiver. Waiver by any party of the breach of any provisions of this Agreement by the other party shall not be construed as a continuing waiver of such provision or a waiver of any other breach of any other provision of this Agreement. To be enforceable, a waiver must be in writing and signed by the waiving party.

## 9. NONDISCLOSURE OBLIGATIONS

### 9.1 Definitions.

(a) HEARTLAND's Confidential Information includes, without limitation, the Subscription, object and source code for the Subscription, and any associated documentation; information concerning HEARTLAND's plans for products or functionality, or service offerings; business policies or practices; information identified as proprietary or confidential to HEARTLAND; any agreements and the terms, conditions, and pricing contained in the agreement(s); information received from others that HEARTLAND has agreed to keep confidential or to not disclose; HEARTLAND's research activities and plans, marketing and sales plans, strategic plans, forecasts, training materials, pricing and pricing strategies, methods of operation, internal controls, security procedures, Customer lists; unpublished financial information; and information presented to Customer in focus groups, guide groups, or other advisory groups sponsored by HEARTLAND or its customers.

(b) Customer's Confidential Information means any and all information disclosed by Customer to HEARTLAND which is identified as confidential or proprietary, including information concerning Customer's plans for products or service offerings; business policies or practices; information identified as proprietary or confidential to Customer; Customer's research activities and plans, marketing and sales



plans, strategic plans, forecasts, methods of operation, internal controls, security procedures, Customer's customer lists, and unpublished financial information;

(c) Discloser is the party that is disclosing Confidential Information.

(d) Recipient is the party that is receiving Confidential Information.

9.2 During the course of the parties' relationship, they may have access to Confidential Information of the other. Recipient will not disclose Discloser's Confidential Information, orally or in writing, to any third party without the prior written consent of Discloser, except as provided below. The parties will protect each other's Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which the Recipient utilizes for its own information that it does not wish disclosed to others. Recipient shall use Discloser's Confidential Information only to the extent necessary to exercise its rights or perform its obligations hereunder.

9.3 The Agreement imposes no obligation on Recipient with respect to Discloser's Confidential Information that Recipient can establish by legally sufficient evidence: (a) was, prior to receipt from Discloser, in the possession of, or rightfully known by Recipient, without an obligation to Discloser to maintain its confidentiality; (b) is or becomes generally known to the public or comes into the public domain without violation of the Agreement or without a violation of an obligation of confidentiality owed to the Discloser; or (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality to Discloser. For purposes of this Section, a disclosure of Confidential Information will not render the Confidential Information "generally known to the public" when the (i) disclosure is enjoined by Discloser, (ii) disclosure is the subject of a written settlement agreement between Discloser and a third party resolving a dispute between Discloser and such third party as to the alleged wrongful disclosure of the Confidential Information, provided that such information remains confidential pursuant to the terms of the settlement, or (iii) disclosing party is held liable to Discloser for damages in an action alleging wrongful disclosure or misappropriation of the Confidential Information.

9.4 Recipient may provide access to and use of the Discloser's Confidential Information only to those third parties that have a need to use and access the Confidential Information in the course of providing Support Services to Recipient concerning Customer's use of the Subscription and have agreed to non-disclosure obligations substantially similar to those contained herein. Disclosure of Discloser's Confidential Information by any such third party will be deemed a breach by Recipient hereunder. To the extent Recipient may be required to disclose Confidential Information in a legal proceeding, Recipient may make such disclosure provided that Recipient notifies Discloser of such requirement prior to disclosure and makes diligent efforts to avoid and/or limit disclosure, and cooperates with Discloser in seeking a protective order.

9.5 The Recipient will not obtain, by virtue of the Agreement, any right, title, or interest in any Confidential Information of the Discloser, except as expressly provided herein. Immediately on termination of the Agreement, each party will certify in writing to the other that all copies of Confidential Information in any form, including partial copies, have been destroyed or returned to the Discloser, unless explicitly permitted in writing otherwise by the Discloser.


9.6 ALL CONFIDENTIAL INFORMATION PROVIDED TO THE RECIPIENT IS "AS-IS" AND WITHOUT WARRANTY OR CONDITION OF ANY KIND, UNLESS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT.

## 10. ACCEPTANCE

Receipt by HEARTLAND of payment, approval of any HEARTLAND quotation, any purchase order or support order form, via e-mail, fax, postal mail, express mail or delivery, electronic form submission from website or any other means, or use of Support Services or acceptance by Customer of any Update from HEARTLAND, shall constitute Customer's complete and unconditional acceptance of the Support Fees, the License Fees, the License Agreement and this Agreement.

CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE ANNEXED SUBSCRIPTION LICENSE AGREEMENT. CUSTOMER REPRESENTS TO HEARTLAND THAT CUSTOMER UNDERSTANDS THOSE TERMS AND CONDITIONS AND AGREES TO BE BOUND BY THEM.

Accepted by:

  
District

This Document has been accepted as minimum terms and conditions by TIPS and ESC Region 8 for use with TIPS Members, when applicable to a purchase from Heartland through TIPS RFP 181105 Cafeteria Point of Sale.

12/7/18

Date



Heartland School Solutions- Jeremy Loch

Vice President Sales & Marketing

12/6/18

Date



# GOVERNMENT AND PUBLIC EDUCATION ACH PROCESSING AGREEMENT TERMS & CONDITIONS

If you chose ACH processing on the Heartland Payment Systems Merchant Processing Agreement (the "Application"), this ACH Processing Agreement (the "Agreement") is a part of your Application. The "Effective Date" is the earlier of the date that HPS approved your Application or the date on which HPS processed your first ACH transaction.

1. **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings provided in the rules of the National Automated Clearinghouse Association, and any amendments that may be adopted from time to time. The following definitions shall apply for the purposes of this Agreement:
  - 1.1 **"ACH"** means the Federal Reserve Bank's Automated Clearing House, a funds transfer system, governed by the NACHA operating rules, that provides for the inter-bank clearing of electronic entries for participating financial institutions.
  - 1.2 **"EFT"** means Electronic Funds Transaction, electronic debits and credits processed through the ACH Network.
  - 1.3 **"Entries"** shall have the meaning provided in the Rules and shall also mean the data received from Merchant hereunder from which HPS prepares Entries.
  - 1.4 **"Initiation"** means the initial presentation by HPS of a transaction to Settlement.
  - 1.5 **"Merchant"** means the business customer that initiates ACH entries into the payment system according to an arrangement with a Receiver.
  - 1.6 **"Merchant Account"** means the commercial demand deposit checking account designated by Merchant for use in conjunction with ACH Services.
  - 1.7 **"NACHA"** means the National Automated Clearing House Association.
  - 1.8 **"ODFI"** means the bank acting as the Originating Depository Financial Institution as defined by NACHA Rules.
  - 1.9 **"RDFI"** means the Receiving Depository Financial Institution that receives ACH entries from the ACH Network and posts the entries to the Receiver's account.
  - 1.10 **"Receiver"** means the person or organization that has authorized a Merchant to initiate an ACH entry to the Receiver's account with the RDFI.
  - 1.11 **"Re-initiation"** or **"Re-presentment"** means the second or third attempt at Settlement by HPS of a previously Returned ACH transaction.
  - 1.12 **"Return"** means a Receiver transaction that is returned unpaid by either the Receiver's bank or the ACH Network.



- 1.13 **“Returned Item Service Charge”** means the fee charged to Receiver as allowed by applicable law for a transaction that is returned unpaid by the Receiver's bank or ACH Network.
- 1.14 **“Rules”** means the rules of the National Automated Clearinghouse Association (NACHA), and any amendments that may be adopted from time to time hereafter. Please refer to the following website for the Rules: <https://www.nacha.org/rules>
- 1.15 **“Settlement”** means the movement of electronic information into the ACH Network under the ODFI sponsorship which results in the debiting or crediting of funds to designated bank accounts.
- 1.16 **“Submit”, “Submitted” and “Submission”** means the Merchant's action of utilizing HPS's ACH Services for the purpose of processing a transaction.
2. **Entries and Related Warranties.** Merchant shall transmit only those types of Entries designated in the Application. Entries that are part of a payment transaction that involves a financial agency's office that is not located within the territorial jurisdiction of the United States must be identified using the International ACH Transaction (IAT) Standard Entry Class Code. With respect to each Standard Entry Class Code indicated by Merchant, Merchant shall comply with all requirements and warranties set forth in the Rules with respect to such Standard Entry Class Code.
3. **Security Procedures.** Merchant is strictly responsible to establish and implement security procedures to safeguard against unauthorized transmissions. Merchant warrants that no individual shall be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any passwords, codes, security devices and related instructions provided by HPS. If Merchant discovers that any such information or instructions have been known or accessed by unauthorized persons, Merchant agrees to notify HPS within a reasonable time followed by written confirmation. The occurrence of unauthorized access shall not affect any transfers made in good faith by HPS prior to receipt of such notice and within a reasonable time after such notice.
- (a) If HPS accepted the Entry in good faith with respect to such Entry, then with respect to a credit Entry, Merchant shall be obligated to pay HPS the amount of such Entry, and with respect to a debit Entry, Merchant shall maintain sufficient funds in the Merchant Account to fund the reversal of such Entry.
- (b) If an Entry (or request for cancellation or amendment of an Entry) received by HPS was transmitted or authorized by Merchant, Merchant shall pay HPS the amount of any such credit Entry and shall maintain funds in the Settlement Account to fund the reversal of any debit Entry, whether or not that Entry was erroneous in any respect.
4. **Recording and Use of Communications.** Merchant and HPS agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party for any reasonable use which is in compliance with this Agreement.
5. **Processing Deadlines.** Merchant acknowledges that HPS has specific processing deadlines imposed by its ODFI and the ACH Operator for ACH Transactions and that HPS will process Merchant's ACH transactions within the constraints placed upon HPS.
6. **Rejection of Entries.** HPS may reject any Entry which does not comply with the requirements of this Agreement.



7. **Cancellation or Amendment by Merchant.** Merchant shall have no right to cancel or amend any Entry after its receipt by HPS. HPS shall use reasonable efforts to act on a request by Merchant for cancellation of a file prior to transmitting such file to the ODFI, but HPS shall have no liability if such cancellation is not effected. Merchant shall reimburse HPS for any expenses, losses, or damages HPS may incur in effecting or attempting to affect Merchant's request.
8. **Merchant Account.** Merchant agrees to immediately reimburse HPS for any shortfalls that occur due to non-sufficient funds in Merchant Account that are covered by HPS. Merchant also agrees to authorize HPS to suspend Settlement of all funds to Merchant Account, without prior notice to Merchant, if Merchant should breach or fail to comply with any terms of this Agreement, or if HPS or ODFI in its sole opinion deems itself at risk relative to any services performed under this Agreement.
9. **Returns.** For transactions provided for under this Agreement, unless otherwise provided herein, Returns for non-sufficient funds and uncollected funds will be electronically Re-initiated by HPS as applicable and allowed by current NACHA rules and regulations. Merchant agrees to be liable for all EFT items that are returned, dishonored, reversed or that cannot be collected through Receiver's account and that are not subsequently covered by debit against Merchant Account. In the event that funds in Merchant Account are not sufficient to cover Returns, Merchant shall immediately upon request from HPS, deposit sufficient funds in Merchant Account to cover such Returns. HPS may deduct or offset Returns against amounts to be paid Merchant for current or future ACH transactions. With regards to any Returns, Merchant shall promptly notify HPS if:
- (a) a Receiver makes any payment to Merchant on said transaction;
  - (b) a Receiver returns Goods or Services in whole or in part which were paid by said transaction, or
  - (c) there is a dispute concerning the Goods or Services or amount of said transaction.
10. **Returned Item Service Charges.** Returned Item Service Charges will be assessed as allowed by applicable law.
11. **Account Reconciliation.** Entries transmitted by HPS shall be reflected on Merchant's periodic statement issued by HPS with respect to the Merchant Account or the Reserve Account, as applicable, pursuant to the Application between HPS and Merchant with respect to such account. Merchant agrees to notify HPS promptly of any discrepancy between Merchant's records and the information shown on any periodic statement. If Merchant fails to notify HPS of any discrepancy within one hundred twenty (120) days of receipt of a periodic statement containing such information, then Merchant shall be precluded from asserting such discrepancy against HPS and HPS shall not be liable for any other losses resulting from Merchant's failure to give such notice or any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement.
12. **Merchant Representations.**
- (a) With respect to each and every Entry initiated by Merchant, Merchant represents and warrants to HPS and agrees that Merchant shall initiate Entries only in compliance with the provisions of Rules,
  - (b) Merchant agrees to assume the responsibilities of a Merchant under the Rules, including ensuring that all international payment transactions are properly labeled as IAT entries and include the appropriate data elements under the Rules, and Merchant makes the warranties and assumes the liabilities as provided in the Rules,
  - (c) each person shown as the Receiver on an Entry received by HPS from Merchant has authorized the initiation of such Entry and the debiting or crediting of its account in the amount and on the Effective Entry Date shown on such Entry,
  - (d) such authorization is operative at the time of transmittal or at the time of debiting or crediting by HPS as provided herein,



- (e) Entries transmitted to HPS by Merchant are limited to those types of Entries agreed to by HPS and Merchant,
- (f) Merchant shall perform its obligations under this Agreement in accordance with all applicable federal and state laws and regulations, including the sanctions laws administered by the Office of Foreign Assets Control ("OFAC"), and
- (g) Merchant shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision making payment of a credit Entry by the Receiving Depository Financial Institution to the Receiver provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry.
- (h) Merchant accepts responsibility for compliance with the Rules and will reimburse HPS for any fees or penalties for which it is responsible.
- (i) Merchant specifically acknowledges that it has received notice of the Rules regarding provisional payment and of the fact that, if such settlement is not received, the Receiving Depository Financial Institution shall be entitled to a refund from the Receiver of the amount credited and Merchant shall not be deemed to have paid the Receiver the amount of the Entry.

**13. Responsibilities.**

In the performance of the services required by this Agreement, HPS shall be entitled to rely solely on the information, representations, and warranties provided by Merchant pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. HPS shall be responsible only for performing the services expressly provided for in this Agreement, and, subject to the disclaimers and limits on HPS's liability set forth herein. HPS shall not be responsible for Merchant's acts or omissions, including without limitation the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Merchant or for the return of an Entry by such Receiver or Receiving Depository Financial Institution, and no such person shall be deemed HPS's agent.

**LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE THAT THE OTHER PARTY MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE OTHER PARTY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY THAT THE OTHER PARTY MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM LOSS OF BUSINESS, PROFITS, OR SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM THE OTHER PARTY'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT. IN ADDITION TO THE FOREGOING, HPS's LIABILITY UNDER THIS AGREEMENT FOR PROVEN AND DIRECT DAMAGES SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR TO BE PAID BY MERCHANT TO HPS UNDER THIS AGREEMENT FOR A SIX MONTH PERIOD PRIOR TO THE DATE ON WHICH THE CLAIM AROSE.

- 14. Interruption of Services.** Merchant acknowledges and agrees that HPS's provision of ACH services hereunder may be interrupted from time to time and that HPS shall have no liability whatsoever as a result of such an interruption or delay. Without limiting the generality of the foregoing provisions, HPS shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, loss of power, equipment or software error or malfunction, war, terrorist actions, acts of God, earthquakes, flood, embargo, riot, sabotage, labor shortage or dispute, emergency conditions or circumstances beyond HPS's control. From time to time HPS may need to temporarily suspend processing of a transaction (particularly an international ACH transaction) for greater scrutiny or verification, including, but not limited to, suspending processing to review for OFAC compliance in accordance with applicable OFAC guidance, and HPS shall be excused if this action causes delay in the settlement and/or availability of the transaction while review is in process. In addition, HPS shall be excused, while review is in process, from failing to transmit or delay in transmitting an Entry if such transmittal would result, in



HPS's reasonable judgment, in violation of any rule or regulation of any U.S. governmental regulatory authority or NACHA Rule.

15. **Risk Mitigation.** In order to reduce the risk of loss to which HPS is subject under this Agreement, HPS may in its sole discretion establish such risk mitigation procedures as HPS deems necessary, including without limitation, requiring prefunding of credit Entries, delayed availability of funds to Merchant to cover returned debit Entries, and submission of unbalanced files (submission of a credit file for which HPS shall then create the offsetting debit file.)
16. **Inconsistent Name and Account Number.** Merchant acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, posting of the Entry transmitted by HPS to the RDFI may be made by the RDFI on the basis of the account number supplied by Merchant, even if such account number identifies a person different from the named Receiver, and that Merchant's obligation to settle the amount of the Entry to HPS is not excused in such circumstances.
17. **Payment for Services.** Merchant shall pay HPS the charges for the services provided in connection with this Agreement, as set forth in the Application. HPS may debit the Merchant Account, or if necessary, the Merchant Reserve Account, for the amount of any such charges. All fees and services are subject to change upon sixty (60) days prior written notice from HPS to Merchant. In the event HPS changes the fees and services pursuant to this section, Merchant shall have the right to terminate this Agreement upon thirty days' notice anytime thereafter without penalty. The charges set forth in the Application do not include, and Merchant shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the Account Agreements.
18. **Right to Audit.** Upon ten (10) business days' notice, Merchant shall permit HPS, and any regulatory authority having jurisdiction over HPS, to review Merchant's operations as they relate to compliance with this Agreement and the Rules, and to examine and copy any books, records, and source documents related thereto.
19. **Confidential Information.**
  - (a) In performing its obligations pursuant to this Agreement, each party may have access to and receive disclosure of certain confidential information about the other party, including but not limited to data and other information identifying or otherwise concerning HPS's consumers or customers, marketing representatives, marketing plan, methods, objectives and test results, and proprietary computer source code (hereinafter "Confidential Information"). HPS and Merchant each agree that it will use the Confidential Information of the other solely in the performance of its obligations pursuant to this Agreement. A party receiving Confidential Information may disclose such Confidential Information pursuant to a judicial or other governmental order, provided that such receiving party shall first provide the disclosing party with prompt notice prior to any such disclosure so that the disclosing party may seek other legal remedies to maintain the confidentiality of such Confidential Information, and the receiving party shall comply with any applicable protective order or its equivalent. The Confidential Information shall constitute "trade secrets" defined by applicable law. The parties also acknowledge that the restrictions on the disclosure of the Confidential Information set forth in this Agreement constitute efforts reasonable under the circumstances to maintain the secrecy thereof.
  - (b) Upon request or upon the termination of this Agreement, each party shall return to the other party all Confidential Information in its possession in hard copy or electronic form.
  - (c) HPS and Merchant acknowledge that to the extent Confidential Information is disclosed to any affiliate or third party the disclosing party shall have a written contract protecting the



confidentiality of same and shall ensure that such affiliates and third parties use and disclose Confidential Information only as needed for purposes of this Agreement.

- (d) During the term of this Agreement and any renewal, Merchant shall retain information and data as is necessary to demonstrate compliance with this Agreement and applicable law.

**20. Reserved.**

**21. Amendments.** From time to time HPS may amend any of the terms and conditions contained in this Agreement. Notice of such amendments shall be made in writing to Merchant and shall become effective thirty (30) days after written notice is given. Merchant may, at its sole discretion, terminate this Agreement, without fee or penalty, if it does not wish to accept the amendments to the Agreement.

**22. Notices.**

- (a) Except as otherwise expressly provided herein, HPS shall not be required to act upon any notice or instruction received from Merchant or any other person, or to provide any notice or advice to Merchant or any other person with respect to any matter.
- (b) HPS shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth in the APPLICATION. Such notice shall be effective on the second business day following the day of receipt by HPS.
- (c) Notice of Receipt of Entry. Under the NACHA operating rules, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statement we provide to you.
- (d) All notices, requests, and approvals required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as indicated in the APPLICATION, unless notified in writing of a change in address, and (iii) shall be deemed to have been given either when personally delivered or when sent by regular United States mail, in which event it shall be sent postage prepaid upon delivery thereof, or, if sent by a delivery service, telegram, facsimile, or e-mail, upon delivery thereof.

**23. Tapes and Records.** All diskettes, Entries, security procedures and related records used by HPS for transactions contemplated by this Agreement shall be and remain HPS's property. HPS may, at its sole discretion, make available such information upon Merchant's request. Any expenses incurred by HPS in making such information available to Merchant shall be paid by Merchant.

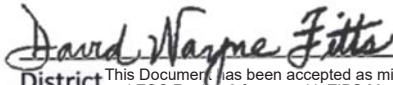
**24. Evidence of Authorization/Provision of Information.** Merchant shall obtain, or shall ensure that all applicable consents and authorizations required under the Rules are obtained and shall retain, or shall ensure that all applicable consents and authorizations are retained for two (2) years after they terminate. Within five (5) banking days of a request by HPS, Merchant shall provide HPS with any information requested pursuant to this Agreement or required to comply with the Rules.

**25. Term and Termination.** This Agreement shall become effective upon acceptance of the first Merchant deposit by HPS and shall continue in effect for a term of sixty (60) months therefrom. Either Party may terminate by giving ninety (90) days written notice prior to the end of any term. HPS may terminate the Agreement immediately as required by the ODFI or as may otherwise be required by the Rules.



26. **Entire Agreement.** This Agreement, together with the SAAS Support Agreement and attached schedules, and the proposed and accepted proposal terms and conditions of the TIPS RFP 181105, including the applicable TIPS Vendor Agreement signed by HSS, which is incorporated herein as if copied verbatim, constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior or contemporaneous statements or agreements with respect to such subject matter are superseded by this Agreement. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which HPS is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and HPS shall incur no liability to Merchant as a result of such violation or amendment. No course of dealing between HPS and Merchant shall constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between HPS and Merchant regardless of whatever practices and procedures HPS and Merchant may use.
27. **Non-Assignment.** Neither party may assign this Agreement or any of the rights or duties hereunder to any person without the other parties' prior written consent except that upon notice to the other party, either party may assign the Agreement to a parent, subsidiary, or affiliate without the other's consent.
28. **Waiver.** Either party may waive enforcement of any provision of this Agreement. Any such waiver shall not affect the waiving party's rights with respect to any other transaction or modify the terms of this Agreement.
29. **No Third Party Beneficiary.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against HPS or Merchant hereunder.
30. **Headings.** Headings are used for reference purposes only and shall not be deemed a part of this Agreement.
31. **Severability.** If any provision of this Agreement is held void or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and the void or unenforceable term shall be amended such that it is enforceable to the maximum extent permitted by law.
32. **Relationship of the Parties.** HPS and Merchant are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between them. Except as provided in this Agreement, HPS and Merchant each shall bear its own costs and expenses in connection with the performance of its obligations under this Agreement. Neither HPS nor Merchant will have the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.
33. **Governing Law and Jurisdiction.** This Agreement shall be construed in accordance with and governed by the laws of the State of residence of the government or public educational entity without regard to its choice of law provisions. The parties hereto agree and consent to the personal and exclusive jurisdiction of courts of competent jurisdiction within the State of residence of the government or public educational entity over them as to all such actions, and further waive any claim that such action is brought in an improper or inconvenient forum.

Accepted by:



District

This Document has been accepted as minimum terms and conditions by TIPS and ESC Region 8 for use with TIPS Members, when applicable to a purchase from Heartland through TIPS RFP 181105 Cafeteria Point of Sale.

12/7/18

Date



Heartland School Solutions- Jeremy Loch

Vice President Sales & Marketing

12/6/18

Date

# GOVERNMENT AND PUBLIC EDUCATION CREDIT/DEBIT CARD PROCESSING AGREEMENT

## TERMS & CONDITIONS

### 1. Services

HPS will, during the term of this Agreement and pursuant to its terms and conditions, (a) be responsible for and will settle funds with the Merchant; (b) provide the following payment processing solutions to the Merchant: (i) Web Payment Solutions; (ii) Cashiering Payment Solutions as may be selected by Merchant on the Merchant Application.

### 2. Definitions

- 2.1 **“Account”** means a commercial checking account maintained by Merchant for the crediting of collected funds and the debiting of fees and charges pursuant to the terms of this Agreement.
- 2.2 **“ACH”** means the Automated Clearing House service offered by the Federal Reserve.
- 2.3 **“Agreement”** means this Merchant Processing Agreement, the Merchant Application and the Addendum, as applicable. This contract incorporates the Merchant Processing Agreement, the Merchant Application, and the Addendum, as applicable, by reference, with the same force and effect as if it were given in full text. Upon request, HPS will make their full text available.
- 2.4 **“Authorization”** means the act of obtaining approval from the Card Issuer for an individual Transaction.
- 2.5 **“Card”** means a valid credit, debit, charge or other payment card accepted by Merchant under this Agreement with HPS.
- 2.6 **“Card Schemes” used interchangeably with Card Brands** means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc., Discover Financial Services or any other Card Issuer that provides Cards that are accepted by Merchant under this Agreement with HPS, including on-line debit card Transactions and on-line debit networks.
- 2.7 **“Card Issuer”** means the financial institution or company that has provided a Card to the Cardholder.
- 2.8 **“Cardholder” used interchangeably with Card Member** means the person or Card Member whose name is embossed upon the face of the Card.



- 2.9 **“Card-Not-Present Transaction”** means any Transaction for which required data is not electronically captured by reading information encoded in or on the Card and includes mail order, telephone order and Internet Transactions.
- 2.10 **“Cashiering Payment Solution”** means an automated solution which will allow Cardholders to pay Merchant via an HPS-provided virtual terminal or physical terminal.
- 2.11 **“Chargeback”** means the procedure by which (i) a sales Transaction (or disputed portion thereof) is returned to HPS by a Card Issuer because such item does not comply with the Card Issuer’s applicable rules or operating regulations or for any other reason as provided in this Agreement and (ii) the Merchant’s Account is debited for such return.
- 2.12 **“Convenience Fee”** means a fee charged to a consumer that will cover the costs of providing the convenient alternative payment solutions such as the Web Payment Solution and certain Cashiering Solutions.
- 2.13 **“Credit Voucher”** means a document or transaction executed by Merchant evidencing any refund or price adjustment relating to products or services to be credited to a Cardholder account.
- 2.14 **“Debit Networks”** means the authorization networks utilized by Merchant for PIN Debit Transactions.
- 2.15 **“EMV Card”** refers to a form of smart payment card with technical standards originally created by Europay, MasterCard and Visa (EMV) embedded with a chip containing encrypted Cardholder account information, which is readable by an EMV-enabled device. An EMV Card may be used by: (1) inserting it into a card reader that is integrated with a point of sale system; or (2) by tapping it against a point of sale device’s contactless reader. Visit <http://www.emv-connection.com/> for more information on EMV.
- 2.16 **“EMV Transaction”** means the electronic acceptance of an EMV Card’s chip data by point of sale equipment or other electronic payment device at the time of Sale, and the inclusion of that data with the electronic submission of the Sale. Only a “Card Swipe”, “EMV Transaction” or its manual equivalent, an “Imprint”, is acceptable by the Card Scheme as proof that the Card was present at the time of the Sale.
- 2.17 **“HPS”** means collectively Heartland Payment Systems, Inc., and its sponsoring banks, and other vendors and subcontractors.
- 2.18 **“Member Sponsor Bank”** is a bank that has obtained a membership with the Card Brands to allow processor access to the Card Brand Networks.
- 2.19 **“Merchant”** generally means the party identified as the recipient of this Agreement. It can cover the merchant itself and any third party that may be associated with them (i.e. VARs, gateway providers etc.).

- 2.20 **“MCC” also known as “Merchant Category Code”** is a 4 digit number used to describe the Merchants primary business.
- 2.21 **“Outbound Telemarketing Transaction”** means a transaction in which a sale of products or services results from a Merchant-initiated contact with a Cardholder via a telephone call, or a mailing (other than a catalog) that instructs the Cardholder to call the Merchant.
- 2.22 **“Pass Through”** means charging the Merchant the precise amount of monies designated as Interchange, Costs, Dues, Assessments and Fees as per the Card Schemes. Pass Thru or Pass Through means no mark-ups are taken by the Payment Processor or any other party when Interchange, Dues, Fees, Costs and Assessments are collected from the Merchant.
- 2.23 **“Payment Facilitator”** is a merchant of record who facilitates transactions on behalf of a sub-merchant whose volume is less than USD 100,000 in MasterCard and Maestro volume combined.
- 2.24 **“Payment Service Provider (PSP)”** is an entity contracting with a Visa, Discover or American Express member to provide payment services to sponsored merchants. The new term PSP replaces the old terminology IPSP which now includes all commerce type aggregation, including face-to-face in addition to ecommerce merchant aggregation.
- 2.25 **“Products”** means all goods and payment services that are sold or offered by the Merchant.
- 2.26 **“Rules”** means the operating regulations, requirements terms and conditions of the Card Schemes presently in effect and as they may be amended from time to time.
- 2.27 **“Sales Draft”** means an electronic receipt evidencing a sales Transaction.
- 2.28 **“Sub-merchant”** is a customer conducting business through a Third Party relationship acting as a Payment Facilitator (PF) or Payment Service Provider (PSP).
- 2.29 **“Third Party Agent (TPA)”** means entities that have been engaged by a Merchant or a member to perform contracted services on behalf of that Merchant or member, including value add resellers (VARs) and payment gateway providers.
- 2.30 **“Transaction”** means any retail sale of Products or Services, or credit therefore, from a Merchant for which the customer makes payment using any Card presented to HPS for payment.
- 2.31 **“Virtual Terminal”** means a credit Card processing equipment on a secure server on the Internet whereby Merchant can key enter credit Card Transactions manually.
- 2.32 **“Voice Authorization”** means an Authorization obtained by a direct-dialed telephone call.



- 2.33 “Web Payment Solution” may be used interchangeably with “Heartland/TouchNet Hosted Website” and means an automated solution that will allow Cardholders to pay a Merchant on a hosted website.

### **3. Data Security Requirements**

- 3.1 The PCI Security Standards Council (“PCI SSC”) was founded by American Express, Discover Financial Services, JCB, MasterCard Worldwide and Visa, Inc. All five founders agreed to incorporate PCI Data Security Standards (“PCI DSS”) as the technical requirements of each of their data security compliance programs. The PCI SSC is responsible for the Payment Application Data Security Standard (“PA-DSS”) and PIN Transaction Security Requirements for PIN-Entry Devices (“PED”).

More information, including the complete PCI DSS specifications can be found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

Each of the Card Schemes has requirements based on PCI DSS that define a standard of due care and enforcement for protecting sensitive information. Merchant must meet the compliance validation requirements defined by the Card Schemes available at:

[www.visa.com/cisp](http://www.visa.com/cisp)

[www.mastercard.com/sdp](http://www.mastercard.com/sdp)

[www.discovernetwork.com/fraudsecurity/disc.html](http://www.discovernetwork.com/fraudsecurity/disc.html)

[www.americanexpress.com/datasecurity](http://www.americanexpress.com/datasecurity) - For American Express Direct Merchants Only.

The Card Schemes or HPS may levy fines, suspend or terminate services, or impose other restrictions if it is determined that Merchant is not compliant with applicable security standards.

### **4. Rights, Duties, and Responsibilities of Merchants**

- 4.1 Merchant agrees that during the term of this Agreement HPS/TouchNet shall be the primary provider for all payment processing services provided hereunder.
- 4.2 Merchant’s policy for the adjustment of payment rendered shall be disclosed to the Cardholder before a Card sale is made. If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder’s Card account must be given. In no circumstances shall any cash refunds be given on any item originally charged to a card.
- 4.3 MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT CONSTITUTE (A) A WARRANTY THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER, OR (B) A PROMISE OR GUARANTEE BY HPS THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO MERCHANT FOR THE AUTHORIZED TRANSACTION. AN AUTHORIZATION DOES NOT PREVENT A

SUBSEQUENT CHARGEBACK OF AN AUTHORIZED TRANSACTION PURSUANT TO THIS AGREEMENT.

- 4.4 Merchant shall at all times maintain a direct deposit account (the "Account" or "DDA"), in good standing, at a bank that is a Receiving Depository Financial Institution (RDFI) of the Federal Reserve Bank ACH System or other ACH settlement network. Merchant agrees that all credits for collected funds shall be made automatically to the Account. Merchant also agrees that it is responsible for all fines, fees, Chargebacks, Credit Vouchers, payments and adjustments under the terms of this Agreement which shall be automatically made to the Account. Merchant shall not close, restrict or change the Account without prior written approval from HPS. Merchant is solely liable for all fees and all overdrafts, as listed in section 4.4. HPS shall have the unlimited right to debit without prior notice, any Account containing funds for the purpose of satisfying any liability incurred on behalf of Merchant.
- 4.5 Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance, or make a cash disbursement to any other Cardholder (including Merchant when acting as a Cardholder), or receive monies from a Cardholder and subsequently prepare a credit to Cardholder's account.
- 4.6 As partial consideration for this Agreement, Merchant expressly authorizes HPS to change the Member Sponsor Bank providing settlement services to Merchant. Merchant agrees to execute all necessary documents enabling HPS to effect such change, as may be required by HPS.
- 4.7 Intentionally Removed
- 4.8 **MERCHANT SHALL GIVE HPS IMMEDIATE WRITTEN NOTICE OF ANY COMPLAINT, SUBPOENA, CIVIL INVESTIGATIVE DEMAND OR OTHER PROCESS ISSUED BY ANY STATE OR FEDERAL GOVERNMENTAL ENTITY THAT ALLEGES, REFERS OR RELATES TO ANY ILLEGAL OR IMPROPER CONDUCT OF MERCHANT. FAILURE TO GIVE SUCH NOTICE SHALL BE DEEMED TO BE A MATERIAL BREACH OF THIS AGREEMENT.**
- 4.9 Omitted.
- 4.10 Merchant shall ensure HPS has the correct business taxpayer ID ("TIN") and legal name on file for Form 1099-K tax reporting purposes. Any merchant reporting an invalid TIN and legal name combination is subject to backup withholding of an amount as defined by applicable state tax and IRS regulations.
- 4.11 Merchant shall at all times comply with the Rules and operating regulations of each of the Card Schemes and American Express as well as all applicable federal, state, and local, rules and regulations. Moreover, in the event of Merchant's non-compliance, Merchant accepts the responsibility for the payment of any and all fees and penalties levied because of its non-compliance.



- 4.12 Merchant agrees that it will not knowingly introduce into HPS' System any virus, "time bomb", or any other contaminant, including but not limited to, codes, commands, or instructions that could damage or disable HPS' System or property.
- 4.13 Merchant shall assume responsibility for managing the repair of problems associated with Merchant's own telecommunications and processing system (both hardware and software), including terminals.
- 4.14 MSP/TPA/PSP/PF must comply with all Rules as set forth in this Agreement and the following websites:
- [http://usa.visa.com/merchants/risk\\_management/thirdparty\\_agents.html](http://usa.visa.com/merchants/risk_management/thirdparty_agents.html)
  - [http://www.mastercard.com/us/merchant/pdf/BMEntire\\_Manual\\_public.pdf](http://www.mastercard.com/us/merchant/pdf/BMEntire_Manual_public.pdf)
- 4.15 Payment Service Provider (PSP)/ Payment Facilitator (PF) agrees to promptly disclose to their Sub-merchant any new or increased Card Scheme related Dues, Assessments and Fees, including but not limited to Convenience fees, in accordance to the contracted services performed by the Merchant.
- 4.16 Merchant must meet requirements as defined by the Card Schemes. Information is available at:
- [www.visa.com](http://www.visa.com)
  - [www.mastercard.com](http://www.mastercard.com)
  - [www.discovernetwork.com](http://www.discovernetwork.com)
  - [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide) - For American Express OptBlue Program Merchants Only.
  - [www.americanexpress.com](http://www.americanexpress.com) - For American Express Direct Merchants Only.

## **5. Debit Card Processing**

- 5.1 Merchant understands and agrees that HPS and Bay Bank, FSB or any other bank to which this agreement is assigned is a sponsored affiliate or member of each debit network and HPS is a service provider for processing Merchant's debit card Transactions pursuant to the terms herein.
- 5.2 Any claims Merchant may have regarding Debit services may not be offset against Bankcard sales.
- 5.3 Debit transactions are governed by network regulations as well as federal and state laws and regulations, including but not limited to the Electronic Funds Transfer Act, and Regulation E, pursuant to which consumers may have up to sixty (60) days to dispute a Transaction. Merchant shall comply with all applicable federal, state and local laws and regulations.

## **6. Fees**

- 6.1 HPS may amend the Fees set forth in the Merchant Application as follows: If Convenience Fees are fixed, then HPS may amend such Fees if (i) any Card Scheme or third party changes its fees with HPS or (ii) the average ticket size increases from the average ticket size of the previous thirty (30) day period. If Convenience Fees are percentage-based, then HPS will only amend such Fees if any Card Scheme or third party changes its fees with HPS. The amended Fees shall be effective on the date specified in a written notice thereof, which date shall not be fewer than fifteen (15) days after the date of notice. Merchant shall attach each such revised Schedule of Fees, or written notice to the Merchant's copy of this Agreement.
- 6.2 Merchant shall pay all applicable sales taxes for services and products provided by HPS.
- 6.3 Merchant shall pay such fees and charges as may be set by HPS for any requested system enhancements or services in addition to those specified herein or in the Application or as may be requested by applicable law or changes in Card Scheme Rules.

## **7. Rights, Duties and Responsibilities of HPS**

- 7.1 Merchant acknowledges that HPS may provide payment transaction processing services hereunder through contracts or subcontracts with third parties engaged in the business of transaction processing and authorizations, and specifically authorizes such third parties to exercise all of the rights of HPS hereunder. Upon request in writing by Merchant, HPS will identify the third parties involved in Merchant's processing.
- 7.2 HPS may, through its performance of the Services, provide Merchant with access to equipment and other hardware, software, including interface applications, processes and other such tangible or intangible property of HPS. HPS retains all ownership rights to such property and does not provide any license or any other use other than as specifically set forth herein.
- 7.3 HPS will accept all Sales Drafts deposited by Merchant that comply with the terms of this Agreement. HPS will pay to Merchant the total face amount of each Sales Draft, less any Credit Vouchers, or adjustments determined. All payments, credits and charges are subject to audit and final review by HPS and prompt adjustment shall be made as required. Notwithstanding any other provision in this Agreement, HPS may refuse to accept any Sales Draft, revoke its prior acceptance, or delay processing of any Sales Draft for any reasonable period of time, as HPS deems necessary and appropriate. HPS shall have no liability to Merchant for additional charges, higher rates, or any other loss, expense or damage Merchant may incur directly or indirectly due to any such refusal, revocation or delay.
- 7.4 HPS will accept all customer service calls and other communications from Merchant, relating to the services provided under this Agreement including, but not limited to,



equipment service, disbursement of funds, account charges, Merchant statements and Chargebacks. Merchant waives any claim relating to amounts charged to Merchant or amounts paid to unless presented within forty-five (45) days of statement date.

- 7.5 HPS will process all requests for Sales Drafts and Chargebacks from Card Issuers and will provide Merchant with prompt notice of requests and Chargebacks.

## **8. Chargebacks**

- 8.1 Merchant agrees to pay HPS the actual amount of any Transaction processed by HPS pursuant to this Agreement whenever any Card or Debit Transaction is reversed.
- 8.2 Merchant agrees to pay HPS any fees or fines imposed on HPS resulting from Chargebacks and any other fees or fines imposed with respect to or resulting from acts or omissions of Merchant.
- 8.3 HPS agrees to mail or electronically transmit all Chargeback documentation to Merchant promptly at Merchant's address shown in the Application. Merchant is responsible for verifying its monthly statement and its daily deposit for Chargebacks and Chargeback handling fees pursuant to this Agreement. Merchant shall notify HPS in writing within forty-five (45) days after any debit or credit is or should have been affected. If Merchant notifies HPS after such time, HPS shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by HPS to assist Merchant in investigating such matters after the 45 day notification has expired, shall not create an obligation to continue such investigation or any future investigation. Merchant must provide all information requested by HPS by the time specified in a request for information; failure to do so shall constitute a waiver by Merchant of its ability to dispute or reverse a Chargeback or other debit, and Merchant shall be solely responsible. If HPS elects, in its sole discretion, to take action on a Chargeback or other debit after the time specified to respond has expired, Merchant agrees to pay all costs incurred by HPS. Merchant agrees to pay HPS a processing fee for Sales Draft retrieval requests at HPS discretion.

## **9. Limitation of Liability: Due Care**

- 9.1 Except as provided in section 9.4 hereof, HPS's sole liability to Merchant hereunder shall be to correct, to the extent reasonably practical, errors that have been caused by HPS, except that any claim by the Merchant relating to statement accuracy or amounts owed by HPS to the Merchant is waived unless presented within One hundred Eighty Days (180) days of statement date.

- 9.2 No claim for damages for any performance or failure of performance by HPS under this Agreement shall exceed the Convenience Fee amount and any other fees or charges paid to HPS in connection with the Card Transaction that is the subject of the alleged failure of performance.
- 9.3 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES, AND BUSINESS OPPORTUNITIES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. Without limitation of the foregoing, HPS shall not be liable to Merchant for delays in data transmission. Merchant acknowledges that any losses pursuant to this Agreement are commercial in nature.
- 9.4 HPS MAKES NO WARRANTY WHATSOEVER REGARDING CARD AUTHORIZATIONS, DECLINES OR REFERRAL CODES, RESPONSES TO REQUESTS FOR AUTHORIZATION, PROCESSING, SETTLEMENT, OR ANY OTHER SERVICES PROVIDED BY OR ON BEHALF OF HPS HEREUNDER, AND HPS HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, and HPS shall have no liability to Merchant or any other person for any loss, liability or damage arising directly or indirectly in connection herewith. Without limitation of the foregoing, Merchant acknowledges that HPS has no liability or responsibility for the actions of any Card Scheme, Card Issuer or Cardholder.
- 9.5 Neither Party shall be liable for delays in processing or other non-performance caused by such events as fires; telecommunications failures; equipment failures; strikes; riots; war; non-performance of vendors, suppliers, processors or transmitters of information; acts of God or any other causes over which the Party has no control.

#### **10. Display of Materials: Trademarks**

- 10.1 If permissible under state law, Merchant agrees to prominently display the promotional materials provided by HPS in its place(s) of business or on an eCommerce site whereby Card Scheme logos must prominently be displayed. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with Card(s) shall fully comply with specifications contained in applicable Card Scheme operating regulations.
- 10.2 Merchant shall not use any promotional materials or Marks in any way that suggests or implies that a Card Scheme endorses Merchant's products or services.
- 10.3 Merchant agrees that it will discontinue use of any Mark of a Card Scheme wherever such Marks are displayed, including on the Merchant's website(s), once (a) the Agreement is



terminated or expires or (b) Merchant discontinues acceptance of a Card or participation in a Card Scheme Program.

## **11. Term: Termination**

- 11.1** This Agreement shall become effective upon acceptance of the first Merchant deposit by HPS and shall continue in effect for a term of sixty (60) months therefrom. In case of an Event of Default by Merchant or as required by a Card Scheme, this Agreement may be terminated by HPS immediately, and HPS shall give Merchant written notice within ten (10) days thereafter.
- 11.2** In the event HPS fails to provide the Services as stated herein, prior to exercising any right of termination, Merchant must (i) notify HPS of such breach; (ii) give HPS a reasonable period to cure, depending on the nature of the breach. The parties shall agree on the duration of such reasonable period in writing; and if, HPS is unable to cure within such time, Merchant may terminate the Agreement subject to the terms herein.
- 11.3** If any of the following events shall occur (each an "Event of Default"):
- (i) Merchant shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement; or
  - (ii) A reasonable belief by HPS that Merchant will constitute a risk to HPS by failing to meet the terms of this Agreement; or
  - (iii) Material adverse change in the business, financial condition, business procedure or services of Merchant; or
  - (iv) any information contained in the Application was or is incorrect in any material respect, is incomplete or omits any information necessary to make such information and statements not misleading to HPS; or
  - (v) irregular Card sales or credits by Merchant, Card sales substantially greater than the average ticket amount stated on Merchant's Application, excessive Chargebacks or any other circumstances which in the sole discretion of HPS, may increase the risk of Merchant Chargebacks or otherwise present a financial or security risk to HPS; or
  - (vi) reasonable belief by HPS that Merchant is engaged in practices that involve elements of fraud or conduct deemed to be injurious to Cardholders, including, but not limited to fraudulent, prohibited or restricted Transaction(s); or
  - (vii) any voluntary or involuntary bankruptcy or insolvency proceedings involving Merchant, its parent or an affiliated entity, or any other condition that would cause HPS to deem Merchant to be financially insecure; or
  - (viii) Merchants engages in any Outbound Telemarketing Transactions; or
  - (ix) Merchant or any other person owning or controlling Merchant's business is or becomes listed in any Card Scheme's security reporting;

Then, upon the occurrence of any Event of Default, all amounts payable hereunder by Merchant to HPS shall be immediately due and payable in full.

- 11.4 In the event of termination, regardless of cause, Merchant agrees that (a) all obligations and liabilities of Merchant with respect to any Sales Draft or Credit Voucher presented prior to the effective date of termination shall survive such termination and expressly authorizes HPS to withhold and discontinue the deposit to Merchant's Account for all Card and other payment transactions of Merchant in the process of being collected and deposited; and (b) it will discontinue all use of Marks of a Card Scheme or HPS.
- 11.5 Merchant agrees that all obligations incurred or existing under the terms of this Agreement as of the date of termination, shall survive such termination. After the termination or expiration of the terms of the agreement, Client shall discontinue using and shall remove all hyperlinks, signs, displays or other materials containing the name or logo of HPS/TouchNet and/or its suppliers.
- 11.6 Neither the expiration nor termination of this Agreement shall terminate the obligations, or rights of the parties pursuant to provisions of the Agreement, which by their terms are intended to survive or be perpetual or irrevocable.
- 11.7 If any Event of Default shall have occurred and be continuing, HPS may, in its sole discretion, exercise all of its rights and remedies under in equity, contract or applicable law, including, without limitation, those provided in this Agreement.
- 11.8 The provisions governing processing and settlement of Card Transactions, all related adjustments, fees and other amounts due from Merchant and the resolution of any related Chargebacks, will continue to apply after termination of this Agreement until all Card Transactions made prior to such termination are settled or resolved. Upon termination of this Agreement, Merchant agrees to promptly send HPS all data relating to Card Transactions made to the date of termination.

## **12. Terminated Merchant File**

- 12.1 If Merchant is terminated for any of the reasons specified as cause by Visa, MasterCard and Discover Network, HPS may report Merchant's business name and the names and other identification of its principals to the Terminated Merchant File. Merchant expressly agrees and consents to such reporting, and HPS shall have no liability to Merchant for any loss, expense or damage Merchant may sustain directly or indirectly due to such reporting.

## **13. Notices**

- 13.1 All notices and other communication required or permitted under this Agreement shall be deemed delivered when mailed first-class mail, postage prepaid, addressed to the Merchant at the address stated in the Application and to HPS at the address set forth below, or at such other address as the receiving party may have provided by written notice to the other:



**Heartland Payment Systems**

Attn: Customer Care  
One Heartland Way  
Jeffersonville, IN. 47130  
1 (888) 963-3600

**Member Bank Sponsors****Issues Regarding Credit Cards****Barclay Bank**

125 South West Street  
Wilmington, DE 19801  
Phone #: 1 (201) 622-8990

**The Bancorp Bank**

409 Silverside Road, Suite 105  
Wilmington, DE 19809  
Ph #: 1 (302) 385-5000

**Wells Fargo Bank, N.A.**

1200 Montego  
Walnut Creek, CA 94598  
Phone #: 1 (925) 746-4167

**Issues Regarding Debit Cards****Bay Bank**

7151 Columbia Gateway Drive  
Suite A  
Columbia, MD 21046

**14. Additional Terms**

- 14.1 Truth of Statements:** Merchant represents to HPS that all information and all statements contained in the Application are true and complete and do not omit any information necessary to make such information and statements not misleading to HPS.
- 14.2 Entire Agreement:** This Agreement, together with the SAAS Support Agreement and attached schedules, and the proposed and accepted proposal terms and conditions of the TIPS RFP 181105, including the applicable TIPS Vendor Agreement signed by HSS, which is incorporated herein as if copied verbatim, constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior or contemporaneous statements or agreements with respect to such subject matter are superseded by this Agreement. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or

government policy to which HPS is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and HPS shall incur no liability to Merchant as a result of such violation or amendment. No course of dealing between HPS and Merchant shall constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between HPS and Merchant regardless of whatever practices and procedures HPS and Merchant may use.

- 14.3 Amendments:** Except as otherwise provided herein, no provision of this Agreement may be waived, amended or modified except in writing signed by an authorized representative of each party.
- 14.4 No Waiver of Rights:** Any failure of a Party hereto to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any rights under this Agreement.
- 14.5 Section Headings:** All section headings contained herein are for descriptive purposes only, and the language of such section shall control.
- 14.6 Assignability:** Neither Party hereto may assign this Agreement directly or by operation of law, without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld. Either party may assign this Agreement to a parent, subsidiary, or affiliate without the other's consent. This Agreement shall be binding upon the parties hereto, their successors and permitted assigns. Any assignment without the prior written consent of the non-assigning party shall be void.
- 14.7 Damages:** In any judicial or arbitration proceedings arising out of or relating to this Agreement, including but not limited to these actions or proceedings related to the collection of amounts due from merchant, the providing party shall recover, in addition to all damages awarded, all court costs, fees and expenses of experts.
- 14.8 Relationship of the Parties:** Nothing contained herein shall be deemed to create a partnership, joint venture or, except as expressly set forth herein, any agency relationship between HPS and Merchant.
- 14.9 Severability:** If the performance by either party of any provision of this Agreement is determined to be unlawful or in violation of any state, federal or local statute, law, ordinance, regulation or rule, or of the rules of any Card Scheme, said party shall seek to cure the illegality or violation within thirty (30) days following the date that such party is first informed of such violation or illegality. If such cure is not effected within such thirty (30) days period, the illegal or violating provision shall be null and void, and this Agreement shall remain in full force and effect and the parties shall use their best efforts to agree upon legal and non-violating substituted provisions that will serve the intent of the parties.
- 14.10 Privacy Policy:** All financial and personal information about Merchant and a Merchant's vendors and suppliers, is considered confidential data. Merchant acknowledges and agrees



that this information or other personal information will be used only in connection with the services provided by HPS and third parties designated by HPS to Merchant under the terms of this agreement and the performance of this Agreement. Notwithstanding the foregoing or anything else contained herein, Merchant information may be provided by HPS to any third party including but not limited to, Card Schemes, collection agencies, financial institutions or organizations, or merchant associations in the event of a default by merchant in any obligation under this agreement.

**14.11 Governing Law:** This Agreement shall be construed and governed by the laws of the state of in which the government or public educational entity is located without regard to legal principles related to conflict of laws.

**14.12 Jurisdiction & Venue:** This Agreement shall be construed in accordance with and governed by the laws of the State of residence of the government or public educational entity without regard to its choice of law provisions. The parties hereto agree and consent to the personal and exclusive jurisdiction of courts of competent jurisdiction within the State of residence of the government or public educational entity over them as to all such actions, and further waive any claim that such action is brought in an improper or inconvenient forum.

**14.13 No Third Party Beneficiary.** Under no circumstance, shall any third party be considered a third party beneficiary of Merchant's rights or remedies under this Agreement or otherwise be entitled to any rights or remedies of Merchant under this Agreement.

**14.14 Changes:** HPS may change the terms of or add new terms to this Agreement at any time in accordance with applicable law and the changes are limited to compliance with said law. Any such changes or new terms shall be effective when notice thereof is given by HPS either through written communication with Merchant. If changes are for any other purpose or reason other than compliance with law or other regulatory mandate, HPS shall notify the Merchant in writing of the proposed change and shall not become effective unless the Merchant agrees in writing by signature of authorized person.

**14.15 Public Statements.** Merchant shall obtain the prior written consent of HPS prior to making any written or oral public disclosure or announcement, whether in the form of a press release or otherwise, which directly or indirectly refers to HPS.

## **15. Optional Card Brand Fees:**

**Convenience Fee:** A fee charged to the Cardholder by the Merchant for a true convenience for accepting a credit or debit card. Examples of a "true convenience" are payment through the internet, mail order or phone order. All Card Schemes allow Merchants to charge a convenience fee. All Card Schemes must be charged equally. The Merchant is required to disclose the fee to the Cardholder and provide the Cardholder with the opportunity to cancel the Transaction, if the Cardholder does not want to pay the convenience fee. In addition to the foregoing, (i) Visa requires Merchants to have a brick and mortar location

in order to be allowed to charge a convenience fee; (ii) MasterCard requires processors to register any Government or Education merchant; and (iii) AMEX requires that the convenience fee be shown as a separate charge on the Cardholder's receipt for the goods or services.

**Surcharge:** A charge in addition to the initial amount of the sale on a credit card to cover the Merchant's cost of acceptance. All Card Schemes allow surcharging. Visa, MasterCard and Discover require Merchants to register with the Card Schemes. The Merchant is required to disclose the fee at the entry of their establishment and at the point of sale. The cardholder must be given the opportunity to cancel the Transaction if they do not want to pay the surcharge fee. The amount of the charge cannot exceed the amount of the Merchant's discount fee on Visa, MasterCard and Discover and is capped at 4%. The surcharge must appear on the sales receipt separately from the sales amount. All Card Schemes must be charged equally. Currently there are several states that prohibit surcharging. Merchants should check their state and local laws prior to initiating a surcharge.

**Service Fee:** Visa allows government and education Merchants to charge a different type of fee called a "service fee". This fee is assessed for accepting payments for taxes, fees and fines for government MCCs and for tuition, room and board, lunch programs, etc. for education MCC Merchants. The service fee can be charged on credit and debit Transactions, in a face-to-face or card not present environment. The service fee must appear separate from the sales amount on the receipt. Merchants must be registered through Visa. Service fee must be disclosed prior to completion of the transaction, allowing the cardholder to cancel the Transaction if they do not wish to accept the service fee. MasterCard allows government and education merchants to charge "convenience fees" and has no separate "service fee" for these MCCs.

**Other Fees:** Handling fees and payment fees are allowed on all Card Schemes as long as these fees are charged on all payment channels; cash, checks, ACH, etc. These are not governed by the Card Schemes specifically. State and local laws may apply and merchants should ensure the fees are allowed in their area of business.

[Name of School]

By: David Wayne Fitts

This Document has been accepted as minimum terms and conditions by TIPS and ESC Region 8 for use with TIPS Members, when applicable to a purchase from Heartland through TIPS RFP 181105 Cafeteria Point of Sale.

Title: Executive Director

Date: 12/7/18

Heartland Payment Systems, LLC.

By: [Signature]

Title: Vice President Sales & Marketing School Solutions

Date: 12/6/18

Revised: 02/19/16



**MySchoolBucks Agreement**  
**between**  
**Heartland Payment Systems, LLC.**  
**and**  
**[Name of School]**

**THIS MySchoolBucks Agreement** ("the Agreement") is made as of the date of the last signature below (the "Effective Date"), by and between Heartland Payment Systems, LLC (d/b/a Heartland School Solutions). ("HPS"), a Delaware corporation, with its principal place of business at 10 Glenlake Parkway North East, North Tower, Atlanta, GA 30328-3473 and [Name of School] with its principal place of business at [street address of School] ("School"). HPS and School are collectively from time to time referred to herein as the "Parties" with each being individually referred to as a "Party."

**1. DEFINITIONS**

1.1 "**Affiliate**" means a company owned and/or controlled by HPS.

1.2 "**HPS Data**" means all HPS-created information, files, content, figures, images, text, files or other data provided by HPS to School in connection with School's or its Users' use of the Services.

1.3 "**Personal Identifiable Information**" means (i) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (ii) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. Included is all information as defined in §99.3 of the Family Educational Rights and Privacy Act (FERPA).

1.4 "**School Data**" means all information, files, content, figures, images, text, files or other data, including data concerning school lunch purchases, as well as student Personal Identifiable Information, provided by the School to HPS in connection with the Services.

1.5 "**Services**" mean the websites, mobile applications, or online services owned or operated by HPS and its Affiliates which provide a means for making payments to a child's school account or accounts or to the School for fees, purchases, etc. by using a credit/debit card or an electronic check. The application and use of funds, including prepayments, to and within a child's school account is governed exclusively by the School, and HPS is not responsible for the School's handling of prepayments after the School receives the funds from the Service. In addition, HPS will provide those services to School found in Schedule 1 hereto.

1.6 "**Student-generated content**" means any student materials created by a student including, but not limited to, essays, research papers, portfolios, creative writing, music or other audio files or photographs, none of which shall be required, accepted or stored by HPS in providing the Services under this Agreement.

1.7 “**User**” means any person who uses MySchoolBucks to make a payment or receive information via the Services. Also included as Users are customer support, parents, school administrators, and any others who are authorized to access an account.

1.8 “**Work Product**” means any programs, interfaces, configurations developed by HPS in the performance of Services.

## **2. SERVICES**

2.1 **Services.** HPS will provide a means for a User to make payments to a child’s school account or accounts or to the School for fees, purchases, etc. by using a credit/debit card or an electronic check, provided that the School has payment processing services available. In addition, HPS will provide those services to School found in Schedule 1 hereto. Use of prepayments to a child’s school account is governed exclusively by the School, and HPS is not responsible for the School’s handling of prepayments after the School receives the funds from the Service.

## **3. FEES; PAYMENT TERMS**

3.1 **Fees.** All fees to be paid to HPS are set forth in the Merchant Application, hereto attached.

3.2 **Taxes.** School shall be solely and exclusively responsible for the payment of required federal, state and local taxes arising from or relating to the Services, except for taxes related to the net income of HPS and any taxes or obligations imposed upon HPS under federal, state and local wage laws.

## **4. TERM**

4.1 **Term.** This Agreement shall become effective upon acceptance of the first deposit to the School’s account or accounts by HPS and shall continue in effect for the term of the attached Merchant Application.

4.2 **Termination.** This Agreement will terminate upon the termination of the attached Merchant Application.

## **5. DATA OWNERSHIP; USE OF DATA**

5.1 **School Data.** School retains ownership and control of all right, title and interest in and to all School Data.

5.2 **HPS Data.** HPS retains ownership of all right, title and interest in and to all HPS Data.

5.3 **Use of Data.** HPS will use School Data only for the purposes of this Agreement.

5.4 **Work Product.** HPS retains ownership of all information, software and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all Work Product compiled or developed by HPS in the performance of this Agreement.



## **6. SECURITY OF PERSONAL IDENTIFIABLE INFORMATION**

6.1 HPS agrees that any and all Personal Identifiable Information will be stored and maintained in a secure location and solely on designated servers. No Personal Identifiable Information, at any time, will be processed on or transferred to any portable computing device or any portable storage medium, unless the data is encrypted at rest or that storage medium is in use as part of the HPS' designated support, backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the Service shall be contained within the United States unless an alternate location is specifically agreed to, in writing, by the School. Notwithstanding the foregoing, a User of the application, may retrieve Personal Identifiable Information associated with the account, from portable and non-portable devices alike. Personal Identifiable Information, collected from the Services' Users, whether via letter, voice, fax, email, chat, SMS, social media, mobile application, or browser, will be handled in accordance with MySchoolBucks Terms of Use and Privacy Policy.

6.2 HPS maintains reasonable administrative, technical and physical safeguards to protect the confidentiality of information transmitted online, including but not limited to encryption, firewalls, Secure Sockets Layer (SSL). HPS has implemented policies and practices pursuant to various security rules and regulations relating to the security and safeguarding of payment data, including the Payment Card Industry Data Security Standards (PCI-DSS). However, no precautions, means, or method of transmission which uses the internet or method of storage is absolutely 100% secure.

6.3 When sharing Personal Identifiable Information with its Affiliates, HPS will require those Affiliates to comply with this Agreement.

6.4 All of HPS' personnel are trained on information security. HPS' information security policy requires that all personnel who come into contact with School Data receive training on the proper techniques for handling such data. Such training is required on at least an annual basis.

6.5 Users may supply data, including confidential data, to utilize the Services. The MySchoolBucks Terms of Use and Privacy Policy govern the sharing of data supplied by MySchoolBucks Users.

## **7. CONFIDENTIALITY**

7.1 **Confidentiality.** HPS agrees that any and all data obtained from the School shall be used expressly and solely for the purposes enumerated in this Agreement. School Data shall not be distributed, used, or shared for any other purpose HPS shall not sell, transfer, share or process any School Data for any purposes other than those under this Agreement, including commercial advertising, marketing, or any other commercial purpose. Notwithstanding the foregoing, HPS may, in its sole discretion, advertise the availability of MySchoolBucks to promote its use to make payments and to provide the services listed in Schedule 1 for the School.

7.2 HPS, in cooperation with the School, shall ensure compliance with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended from time to time.



**7.3 Disclosure.** HPS is permitted to disclose School Data to its employees, authorized subcontractors, agents, consultants and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants, and auditors have written confidentiality obligations to HPS at least as required by this Agreement. HPS will work cooperatively with the School to permit a student, parent, or guardian to review Personally Identifiable Information in student data that has been shared with HPS, and to correct any erroneous information. The confidentiality obligations shall survive termination of any agreement with HPS for so long as the information remains confidential, and will inure to the benefit of the School.

**7.4 Exclusions.** Notwithstanding the foregoing, confidential information will not include information that (i) is approved for release by prior written approval of the School; (ii) is otherwise required by law, legal process or government regulation, provided that HPS gives the School reasonable prior written notice to permit the School to contest such disclosure, and such disclosure is otherwise limited to the required disclosure; or (iii) is publicly available, by other than unauthorized disclosure.

**7.5 Return and Retention of School Data.** HPS agrees that, upon the School's request, if this Agreement is terminated or upon expiration, HPS shall erase, destroy, and render unreadable, all School Data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities. HPS shall certify in writing that these actions have been completed within thirty (30) days from receipt of the request by the School. Notwithstanding the foregoing, School Data may be retained or available to HPS upon termination of the Agreement if a student, parent or legal guardian of a student chooses to maintain an electronic account with HPS which requires the storing of School Data.

**7.6 Injunctive Relief.** HPS acknowledges and agrees that unauthorized disclosure or use of School Data may irreparably damage the School in such a way that adequate compensation could not be obtained solely in monetary damages. Accordingly, the School shall have the right to seek injunctive relief restraining the actual or threatened unauthorized disclosure or use of any protected information, in addition to any other remedy otherwise available (including reasonable attorney fees). HPS hereby waives the posting of a bond with respect to any action for injunctive relief.

## **8. LIMITED WARRANTY**

**8.1 Warranty and Remedy.** HPS warrants that the Services will be performed in a timely and professional manner.

## **9. INDEMNIFICATION**

**9.1 HPS Indemnification.** HPS will indemnify, defend and hold School harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against School alleging that the use of the Services as permitted hereunder infringes any United States copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (i) use of the Services in violation of this



Agreement or applicable law, (ii) use of the Services after HPS notifies School to discontinue use because of an infringement claim, or (iii) modifications to the Services made other than by HPS. If the Services are held to infringe, HPS will, at its own expense, in its sole discretion use reasonable commercial efforts either (a) to procure a license that will protect School against such claim without cost to School; (b) to replace the Services with non-infringing Services; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the School any prepaid unused fees paid to HPS for the infringing Services. The rights and remedies granted School under this Section 9.1 state HPS's entire liability, and School's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

HPS agrees to comply with the requirements of all applicable laws that require the notification of individuals in the event of unauthorized release of Personal Identifiable Information or other event requiring notification to the extent such laws expressly apply to HPS. In the event of a breach of any of HPS' security obligations or other event requiring notification under applicable law, HPS agrees to notify the School immediately, if legally permitted to do so, and assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the School and its employees from and against any and all claims, damages, or causes of action directly related to the unauthorized release.

**9.2 Indemnification Procedure.** The indemnified party shall (i) promptly notify HPS in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove HPS' obligation except to the extent it is prejudiced thereby, and (ii) allow HPS to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. The indemnified party shall also provide HPS with reasonable cooperation and assistance in defending such claim (at HPS' cost).

## **10. LIMITATION OF LIABILITY.**

**10.1** HPS AND ITS AFFILIATES, MAKE NO WARRANTY, AND DISCLAIM LIABILITY THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM VIRUSES OR OTHER DEFECTS OR HARMFUL COMPONENTS. HPS AND ITS AFFILIATES MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NON-INFRINGEMENT, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULL EXTENT PERMISSABLE BY APPLICABLE LAW, THIS DISCLAIMER OF LIABILITY APPLIES TO ANY CLAIMS, LOSSES, ACTIONS, DAMAGES OR INJURY RESULTING FROM ANY FAILURE OF PERFORMANCE OF THE SERVICE.

**10.2** NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE THAT THE OTHER PARTY MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE OTHER PARTY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY THAT THE OTHER PARTY MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM LOSS OF BUSINESS,



PROFITS, OR SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM THE OTHER PARTY'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

## **11. GENERAL PROVISIONS**

11.1 **Trademarks.** The MySchoolBucks name, logo, button icons, child character, and all related logos, products and services described in the MySchoolBucks website are trademarks or registered trademarks of HPS. All other trademarks that appear on the website that are not owned by HPS, or its Affiliates, are the property of their respective owners.

11.2 **Copyright.** All content, titles, graphics, logos, button icons, images and software on the MySchoolBucks website are the copyrighted material of HPS, or its licensors. The compilation of all content on the MySchoolBucks website is the exclusive property of HPS, and is protected by U.S. and international copyright laws.

11.3 **Use of Name and Logo.** School grants HPS a non-exclusive license during the term of this Agreement to list School's name and display School's logo in the School section of HPS's website and as may otherwise be necessary to provide the Services as requested by School.

11.4 **Governing Law.** This Agreement shall be construed and governed by the laws of the state of in which the government or public educational entity is located without regard to legal principles related to conflict of laws.

11.5 **Jurisdiction & Venue.** Any suit, action or proceeding (collectively "action") arising out of or relating to this Agreement shall be brought only in the courts of the state of which the government or public educational entity is located or in the applicable United States District Court within said state. The Parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions, and further waive any claim that such action is brought in an improper or inconvenient forum. .

11.6 **Reserved.**

11.7 **Amendments.** Except as otherwise provided herein, no provision of this Agreement may be waived, amended or modified except in writing signed by an authorized representative of each Party.

11.8 **Audit.** In accordance with applicable state and federal law, HPS agrees that auditors from any state, federal, or other agency, as well as auditors so designated by the School, shall have the option to audit HPS' Service. Records pertaining to the Service shall be made available to auditors during normal business hours upon reasonable prior notification.

11.9 **Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such terms or provisions shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced



accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties herein set forth.

**11.10 No Waiver of Rights.** Any failure of either Party to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any rights under this Agreement.

**11.11 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. A facsimile or scanned version of an original signature transmitted to the other Party is effective as if the original was sent to the other Party.

**11.12 Assignment.** Neither Party hereto may assign this Agreement directly or by operation of law, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon the Parties hereto, their successors and permitted assigns. Any assignment without the prior written consent of the non-assigning Party shall be void.

**11.13 Relationship of the Parties.** HPS and School are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

**11.14 Section Headings; Interpretation.** All section headings contained herein are for descriptive purposes only, and the language of such section shall control. All references to the plural herein shall also mean the singular and the singular shall also mean the plural unless the context otherwise requires.

**11.15 Force Majeure.** Other than with respect to any payment or confidentiality obligation, neither Party will be liable to the other Party for any delay, error, failure in performance or interruption of performance resulting from causes beyond its reasonable control, including, but not limited to, work stoppages, fires, civil disobedience, earthquakes, floods, acts of God and similar occurrences. If a force majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and its expected duration and use its best efforts to mitigate its effects and perform hereunder.

**11.16 Non-Discrimination.** In its performance of this Agreement, HPS warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, marital status or national origin.

**11.17 Notices.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges



pre-paid or any other means of rapid mail delivery for which a receipt is available, to the address of the Party set forth in the first sentence of this Agreement. Either Party may change its address by giving written notice of such change to the other Party.

**11.18 No Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed to confer upon any third party any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

**11.19 Support.** School may contact HPS support for assistance resolving issues with the Service. HPS support can be accessed by calling 1-855-832-5226 or by filling out the support request form online: <https://www.myschoolbucks.com/ver2/etc/getsupportrequest>. The MySchoolBucks support center is open Monday through Friday, from 8am – 5pm Eastern Time.

**IN WITNESS WHEREOF,** each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized representative.

**[Name of School]**

By: David Wayne Fitts

This Document has been accepted as minimum terms and conditions by TIPS and ESC Region 8 for use with HPS Members, when applicable to a purchase from Heartland through TIPS RFP 181105 Cafeteria Point of Sale.

Title: Executive Director

Date: 12/7/18

**Heartland Payment Systems, LLC.**

By: [Signature]

Title: Vice President Sales & Marketing School Solutions

Date: 12/6/18

**SCHEDULE 1**  
**ADDITIONAL SERVICES**

1. Dissemination of information to Users.

This information may include any or all of the following:

- A. Menus, student participation in various school programs, including nutrition programs, events, and products sold through the MySchoolBucks website;
- B. Services and fees managed through the MySchoolBucks website;
- C. District-to-parent messaging, and other information published through the MySchoolBucks website.

## Heartland School Solutions SAAS License Agreement

This Software as a Service License Agreement (the "SAAS Agreement" or the "License Agreement") is made and entered into this day \_\_\_\_\_ of \_\_\_\_\_, which is also the effective date of the "SAAS Support Agreement" to which this License Agreement is attached, by and between Heartland School Solutions with its principal office located at 1620 W. Fountainhead Parkway, Suite 501, Tempe, AZ 85282, Telephone: (800) 724-9853, Email: [sales@heartlandschoolsolutions.com](mailto:sales@heartlandschoolsolutions.com) ("Heartland")

And

\_\_\_\_\_  
A School District having its principal place of business located at  
\_\_\_\_\_

In the City of \_\_\_\_\_

In the State of \_\_\_\_\_

(Hereinafter referred to as "Customer")

Customer and Heartland hereby agree as follows:

### 1. HEARTLAND SAAS LICENSE

1.1 HEARTLAND grants Customer an annually renewable, nonexclusive, nontransferable license, subject to termination and all other provisions hereof, to:

- a) run and display the SAAS;
- b) provide access to and allow use of the SAAS by Permitted Users;
- c) modify or merge the SAAS with other SAAS, and use such modified or merged SAAS as part of SAAS use hereunder
- d) make and use copies of, and modify, the Documentation and use same;
- e) provide access to the SAAS and allow SAAS use to third parties that have a need to access the SAAS in the course of providing services to Customer concerning Customer's use of the SAAS subject to the terms and conditions specified herein; and
- f) utilize the SAAS in any other manner agreed to by HEARTLAND.

The foregoing are herein referred to as "use" of the SAAS or SAAS "use".

1.2 No modification or merger of the SAAS with other SAAS or modification of the Documentation, however extensive, shall diminish HEARTLAND's right, title or interest in the SAAS and Documentation.



## 2. DEFINITIONS

2.1 SAAS means the SAAS identified in the HEARTLAND SAAS Support Agreement to which this License Agreement is attached. This License shall not apply to any program, module, code, programming, HEARTLAND trade name, trademark or other intellectual property.

2.2 Documentation means all manuals, instructions, writings electronic or other media provided by HEARTLAND relating to the SAAS.

2.3 Permitted Users means the Permitted Users identified in the SAAS Support Agreement, provided that end users shall not have the rights to use the SAAS in the manner set forth in items 1(a), 1(b), 1(d) 1(e), or 1(f) above.

2.4 Support Services means the services that Customer has contracted HEARTLAND to provide pursuant to the SAAS Support Agreement to which this License Agreement is annexed.

2.5 Third Party SAAS means SAAS utilized by HEARTLAND as a component of the SAAS under license from any unrelated party.

2.6 Updates means modifications, enhancements, changes and alterations to the SAAS provided by HEARTLAND after the initial delivery of the SAAS, including all Major Enhancements and Minor Enhancements as defined in the SAAS Support Agreement; the term SAAS includes all Updates.

2.7 Other capitalized terms have the meaning set forth herein or in the SAAS Support Agreement.

## 3. LIMITATIONS ON LICENSE

3.1 Except as otherwise specified in this Agreement, Customer and Permitted Users shall not:

(a) Intentionally access or use any portion of the SAAS delivered by HEARTLAND but not expressly licensed and paid for by Customer;

(b) Intentionally access or use any SAAS, except through enterprise integration points documented by HEARTLAND;

(c) Cause or permit decompilation or reverse assembly of all or any portion of the SAAS;

(d) Disclose or publish performance benchmark results for SAAS (as delivered or subsequently modified) without HEARTLAND's prior written consent;

(e) Transfer the SAAS to a different SAAS database platform or operating system, except as may be specifically allowed by HEARTLAND.

(f) Export or use the SAAS or Documentation in violation of U.S., Canadian, or other applicable laws or regulations, including the U.S. Department of Commerce export administration regulations;

(g) Use or authorize the use of, the SAAS except as expressly permitted herein;

(h) Use Third Party SAAS except solely in conjunction with the SAAS;

(i) Delete, fail to reproduce or modify, any patent, copyright, trademark or other proprietary rights notices which appear on or in the SAAS or Documentation;

(j) Directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the SAAS or Documentation, or any portion thereof, for third party use, third party training, facilities management, time-sharing, use as an application service provider, or service bureau use; or

(k) Use the SAAS to create new applications, modules, products or services.

3.2 Both parties reserve all rights not expressly granted in this Agreement.

#### 4. FEES AND PAYMENT TERMS

4.1 License Fees. The fees for the right to use the SAAS (the "License Fee(s)") shall be those fees established by HEARTLAND and set forth in a written quotation or invoice provided to Customer. The License Fee may be a separately stated fee or may be included in the Support Fee. If separately stated, the License Fee may be a one time fee charged as of the Effective Date, with no subsequent License Fees during any Renewal Support Term, or may be an annual fee payable by Customer along with the Support Fee for the Initial Support Term and any Renewal Support Term. The quotation or invoice provided by HEARTLAND shall specify if any License Fee is payable separately from the Support Fee. Except as provided in any quotation all License Fees are subject to change annually.

4.2 Payment Procedures. On or before the Effective Date and on an annual basis 60 days prior to any Renewal Support Term, HEARTLAND will invoice Customer for all License Fees incurred by Customer pursuant to this Agreement. Customer shall pay all invoiced amounts in U.S. dollars within thirty (30) days of the date of invoice. Any invoiced amounts not paid when due will incur interest at 1.5% per month until paid in full. All fees specified herein: (i) are non-cancelable, non-refundable and non-contingent; (ii) are payable in U.S. dollars; and (iii) shall be sent to the attention of HEARTLAND's Accounts Receivable Department.

4.3 Taxes. If Customer is tax exempt, Customer is required to provide Heartland with a valid tax exemption certificate which exempts Customer from such taxes. If Customer is not tax exempt, excluding taxes based on HEARTLAND's income, Customer is liable for all taxes, including but not limited to sales, use and ad valorem or property taxes relating to the SAAS, Documentation, and/or Support Services whether or not HEARTLAND invoices Customer for such taxes, duties or customs fees.

4.4 Nonpayment. In addition to all rights exercisable by HEARTLAND, in the event of Customer's nonpayment when due of any amounts owed to HEARTLAND, HEARTLAND reserves the right to terminate this Agreement and/or withhold performance of any obligations, whether arising under this Agreement or otherwise, and/or change its credit terms.

4.5 Purchase Orders. If Customer's internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to HEARTLAND, Customer will timely issue such purchase order and inform HEARTLAND of the number and amount thereof. Customer agrees that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of Customer's obligations hereunder, including payment of amounts owed to HEARTLAND.

#### 4. TITLE AND PROTECTION

4.1 The SAAS and Documentation contain valuable intellectual property rights and proprietary information. HEARTLAND (or its licensors) retains title to the SAAS and Documentation, and all copyright and other rights to all portions of the SAAS and Documentation, and all modifications and alterations



thereto, and all copies thereof. Customer is not obligated to notify or disclose HEARTLAND of its modifications. Except as specified herein, Customer does not acquire any rights, express or implied, in the SAAS and Documentation, and has no right to commercialize or transfer any SAAS or Documentation, in whole or in part, or any modifications or alterations thereto. No license, right, or interest in any HEARTLAND trademark, trade name, or service mark is granted pursuant to this Agreement. Customer shall at its own expense take all reasonable actions necessary to require, insure, and verify that all Permitted Users and other persons having access to or dealing with the SAAS by reason of their SAAS use through Customer not infringe upon the rights of HEARTLAND and abide by the terms of this Agreement in the same manner as Customer is obligated to, and to cause any person who does so infringe to come into compliance herewith.

4.2 Title to the physical media for the SAAS and the Documentation vests in Customer upon HEARTLAND's shipment to Customer.

4.3 The SAAS was developed at private expense, is commercial, and is published and copyrighted. The SAAS may be transferred to the U.S. government only with the prior written consent of HEARTLAND and solely with "Restricted Rights" as that term is defined in FAR 52.227-19(c)(2) (or DFAR 252.227-202.32 (c)(1) if the transfer is to a defense-related agency) or subsequent citation. If Customer is an agency of the United States government or licensing the SAAS for operation on behalf of the United States government, the SAAS is licensed to Customer with rights no greater than those set forth in Federal Acquisition Regulation 52.227-19(c)(2) [or DFAR 252.227-7202.32 (c)(1) if the Customer is a defense-related agency] or subsequent citation.

## 5. INDEMNITIES

5.1 HEARTLAND will defend and indemnify (including the associated legal expenses) Customer, Permitted Users, their affiliates and their respective officers, directors, employees, agents, successors and assigns against any claims by third parties for damages incurred by such third parties alleging that the SAAS infringes the third party's intellectual property rights ("Indemnified Claim"). Customer will give HEARTLAND prompt written notice of such claim, and information, reasonable assistance, and the sole authority to defend or settle such claim. In addition to the obligations stated above, in the event that HEARTLAND becomes aware of an actual or potential Indemnified Claim, HEARTLAND shall, in its reasonable judgment and in a commercially reasonable timeframe, and at its option and expense either: (i) obtain for Customer the right to continue using the allegedly infringing SAAS; or (ii) replace or modify the allegedly infringing SAAS so that it becomes noninfringing while providing substantially similar functionality. HEARTLAND will have no obligation to defend or indemnify Customer in the event that Customer agrees to settle any infringement claim without the prior written consent of HEARTLAND, Inc. (which shall not be unreasonably withheld) or for any liability arising out of or relating to any allegations or claims of infringement, to the extent the alleged infringement is based on: (a) a modification of the SAAS by anyone other than HEARTLAND or its agents that is not an Update; (b) use of the SAAS other than in accordance with the Documentation or the terms of this Agreement; (c) use of a release of the SAAS no longer supported by HEARTLAND because HEARTLAND has replaced or modified the SAAS so as to make it non-infringing; provided Customer was notified by HEARTLAND of the potential infringement and the availability of such replacement or modification, and given a reasonable opportunity to implement the replacement or modification prior to the use which serves as the basis for the claim of infringement; (d) use of a release of the SAAS without having implemented all Updates provided by HEARTLAND, the use of which would have cured the alleged infringement; (e) exclusively on any Third Party SAAS; (f) use of the SAAS in combination with any other hardware, SAAS (other than Third Party SAAS) or material where, absent such combination, the SAAS would not be infringing, or (g) SAAS or Support Services for which



HEARTLAND has not been paid in accordance with the terms of this Agreement. This Section 5.1 states HEARTLAND's entire liability for actual or alleged infringements and Customer's sole and exclusive remedy in relation thereto.

5.2 To the extent permitted by the constitution and laws of the jurisdiction where the Customer is located, Customer will defend and indemnify HEARTLAND against any claims by third parties for damages incurred by such third parties, alleging that any data or materials produced and/or distributed and/or received in any media resulting from use of the SAAS: (i) are factually inaccurate, misleading or deceptive; (ii) infringe or misappropriate any intellectual property rights any third party; (iii) are libelous, defamatory, obscene or pornographic, (iv) comprise unsolicited commercial e-mail or spam, or (v) violate civil or criminal laws or regulations, including those regulating the use and distribution of content on the internet and protection of personal privacy, provided that such claims are not solely attributable to a nonconformity of the SAAS to perform substantially in accordance with the Documentation or to the SAAS violating any civil or criminal laws or regulations. HEARTLAND will give Customer prompt written notice of such claim and information, reasonable assistance, and the sole authority to defend or settle such claim.

5.3 EXCEPT FOR CUSTOMER'S INFRINGEMENT OF HEARTLAND'S INTELLECTUAL PROPERTY RIGHTS, THE FOREGOING PROVISIONS OF THIS SECTION ENTITLED "INDEMNITIES" STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF THE PARTIES, AND THE EXCLUSIVE REMEDY OF THE INDEMNIFIED PARTY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

## 6. LIMITED WARRANTY; LIMITED LIABILITY

6.1 HEARTLAND warrants that the SAAS, as delivered to Customer, for the duration of this License Agreement will perform substantially in accordance with the Documentation, provided that: (a) Customer remains a compliant, continuous subscriber to Support Services and has installed all maintenance Updates provided by HEARTLAND, which would have cured the alleged nonconformity to perform in accordance with the Documentation; (b) Customer is using the SAAS in accordance with the Documentation; (c) any error or defect detected is reproducible by HEARTLAND; (d) the performance issue, error or defect does not relate exclusively to Third Party SAAS; and (e) Customer notifies HEARTLAND of such nonconformance within the warranty period or within thirty days following expiration of the warranty period. HEARTLAND warrants that it has title to, or the authority to grant a license to, the SAAS, excluding Third Party SAAS, to Customer in accordance with the terms of this Agreement. As to Third Party SAAS, if any, HEARTLAND warrants that it is licensed by the third party that has licensed the Third Party SAAS to HEARTLAND, to sublicense such Third Party SAAS to Customer pursuant to the terms of this Agreement. Customer's sole and exclusive remedy for any breach of the foregoing warranties shall be the remedy set forth in Section 5 of this Agreement. HEARTLAND DOES NOT WARRANT THAT THE SAAS IS ERROR-FREE OR THAT THE SAAS WILL RUN UNINTERRUPTED, OR THAT ALL SAAS ERRORS CAN OR WILL BE CORRECTED. HEARTLAND warrants that the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary corporate action of the part of HEARTLAND (none of which actions have been modified or rescinded, and all of which actions are in full force and effect), and that this Agreement constitutes a valid and binding obligation of HEARTLAND enforceable in accordance with its terms. Customer warrants that the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary corporate action of the part of Customer (none of which actions have been modified or rescinded, and all of which actions are in full force and effect), and that this Agreement constitutes a valid and binding obligation of Customer enforceable in accordance with its terms.



6.2 For SAAS which does not conform to the warranties contained in this Agreement, HEARTLAND will, at its sole option, and provided Customer otherwise complies with the terms of this Agreement: repair or replace the nonconforming SAAS within a commercially reasonable period of time after receiving notice from Customer of such nonconformance.

6.3 Customer accepts sole responsibility for (i) Customer's system configuration, design and requirements, (ii) the selection of the SAAS to achieve Customer's intended results, and (iii) modifications, changes or alterations to the SAAS by anyone other than HEARTLAND or its agents that is not an Update. Customer acknowledges that it has had an opportunity to review the Documentation, it understands the functionality of the SAAS and its ability to work with Customer's systems and to support Customer's business, and that it has made its own evaluation in deciding to license the SAAS.

6.4 HEARTLAND will pass through to Customer, to the fullest extent possible, the warranties from HEARTLAND's licensors as they relate to Third Party SAAS, if any.

6.5 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY SCHEDULE HERETO), NEITHER PARTY MAKES ANY WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE SAAS, DOCUMENTATION, OR ANY SERVICES PROVIDED HEREUNDER INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND EACH PARTY EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES AND CONDITIONS.

6.6 EXCEPT FOR CLAIMS: (I) ALLEGEDLY ARISING OUT OF INFRINGEMENT, OR MISUSE OF EITHER PARTY'S INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OR THEIR USE IN A MANNER WHICH IS INCONSISTENT WITH THE TERMS OF THIS AGREEMENT, OR (II) ALLEGEDLY ARISING OUT OF EITHER PARTY'S VIOLATION OF UNITED STATES OR OTHER LAWS APPLICABLE TO THE SAAS OR DOCUMENTATION, INCLUDING U.S. DEPARTMENT OF COMMERCE EXPORT ADMINISTRATION REGULATIONS, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES RESULTING FROM LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.7 EXCEPT FOR CLAIMS: (I) ALLEGEDLY ARISING OUT OF INFRINGEMENT, OR MISUSE OF EITHER PARTY'S INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OR THEIR USE IN A MANNER WHICH IS INCONSISTENT WITH THE TERMS OF THIS AGREEMENT, OR (II) ALLEGEDLY ARISING OUT OF EITHER PARTY'S VIOLATION OF UNITED STATES OR OTHER LAWS APPLICABLE TO THE SAAS OR DOCUMENTATION, INCLUDING U.S. DEPARTMENT OF COMMERCE EXPORT ADMINISTRATION REGULATIONS, OR (III) NONPAYMENT OF AMOUNTS OWED TO EITHER PARTY, NEITHER PARTY'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THE RELATIONSHIP OF THE PARTIES, THIS AGREEMENT, ITS NEGOTIATION OR TERMINATION, OR THE PROVISION OR NON-PROVISION OF SAAS, DOCUMENTATION OR SUPPORT SERVICES (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL EXCEED THE AMOUNT OF THE TOTAL LICENSE FEES PAID TO HEARTLAND BY CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING ANY SUCH CLAIM. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION ENTITLED "LIMITED WARRANTY; LIMITED LIABILITY". CUSTOMER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE FEES CHARGED FOR THE SAAS WOULD BE HIGHER.

## 7. TERM AND TERMINATION



7.1 This Agreement will remain in effect only during the period in which the SAAS Support Agreement is in effect. The SAAS Support Agreement is assigned dates of August 1 – July 31 with the option for annual extensions.

7.2 Either party may terminate this Agreement in the event of the other party's failure to materially comply with any term of this Agreement and such noncompliance remains uncured for more than thirty (30) days after written notice thereof. The Customer may terminate this Agreement for any reason providing thirty (30) days' prior written notice to HEARTLAND.

7.3 Upon termination, Customer shall immediately cease using and destroy or return to HEARTLAND all copies of HEARTLAND's Confidential Information, including, without limitation, SAAS and Documentation in any form, including partial copies and modified versions, and shall certify in writing to HEARTLAND that all such copies have been destroyed or returned.

7.4 Except as expressly provided otherwise in this Agreement, (i) all remedies available to either party are cumulative and not exclusive; and (ii) termination of this Agreement or any license shall not limit either party from pursuing other remedies available to it, including injunctive relief. Upon termination, all amounts owed under this Agreement and all Schedules shall immediately become due and payable.

## 8. GENERAL

8.1 Amendment. No amendment of this Agreement shall be effective unless in a writing specifically referencing this Agreement and signed by the duly authorized representative of both parties.

8.2 Assignment. Except as set forth herein, this Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which approved shall not be unreasonably withheld. In the event of assignment or transfer, fees may apply. Customer may not assign or transfer this Agreement (by operation of law, as a result of a change of control, or otherwise), grant a security interest in the SAAS, or sublicense the SAAS without the prior written consent of HEARTLAND (such consent not to be unreasonably withheld or delayed), and any such assignment, grant or sublicense without such consent shall be null and void. Notwithstanding the foregoing, in the event of a merger, consolidation or acquisition of all or substantially all of the assets or stock of Customer, Customer may assign its rights under this Agreement to the resulting entity upon written notice to HEARTLAND, provided that such entity: (a) is not a HEARTLAND competitor; (b) is not an entity that has failed to, or is unable or unwilling to, protect the confidentiality of the SAAS or HEARTLAND's intellectual property and proprietary rights; (c) possesses sufficient resources (financial or otherwise) to perform Customer's obligations under this Agreement; (d) is not a Customer of HEARTLAND; and (e) signs an amendment with HEARTLAND assuming all of the obligations of Customer under this Agreement. In addition, Customer understands and agrees that a condition of assignment shall be the payment of additional license fees in accordance with HEARTLAND's pricing in effect at the time of the assignment.

8.3 Choice of Law. The validity, construction, and enforcement of this Agreement, and the determination of the rights and duties of the parties, shall be governed by the laws of the State where the Customer is located exclusive of any choice of law provisions and venue shall be exclusively in the federal and or state courts located in the State where the Customer is located.

8.4 Notices. Unless otherwise specified in this Agreement, all notices shall be in writing and shall be mailed (via registered or certified mail, return receipt requested), telecopied, telegraphed, delivered by a nationally recognized express courier service, or personally delivered to the other party at the address set forth below (or at such other address as either party may designate in writing to the other party). All notices



will be effective upon receipt. For HEARTLAND: 1620 W. Fountainhead Parkway, Suite 501, Tempe, AZ 85282, Telephone: (800) 724-9853, Email: [sales@heartlandschoolsolutions.com](mailto:sales@heartlandschoolsolutions.com). For Customer: the address and facsimile of the Customer's Main Contact set forth in a schedule provided by HEARTLAND, or the Customer's invoice address if none.

8.5 Headings. The headings in this Agreement are for convenience of reference only and shall not be used for the construction or interpretation of this Agreement.

8.6 Entire Agreement. This Agreement, together with the SAAS Support Agreement and attached schedules, and the proposed and accepted proposal terms and conditions of the TIPS RFP 181105, including the applicable TIPS Vendor Agreement signed by HSS, which is incorporated herein as if copied verbatim, constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior or contemporaneous statements or agreements with respect to such subject matter are superseded by this Agreement.

8.7 Force Majeure. Except for making payments, should either party fail to perform or should its performance under this Agreement be delayed by any factor beyond the reasonable control of the delayed party, then the time for performance of the delayed party shall be extended by a period of time equal to the duration of such delay provided that the parties work diligently to minimize any such delay.

8.8 Severability. A holding by a court of competent jurisdiction that one or more of the provisions contained in this Agreement is unenforceable in any respect shall have no effect on the validity of any of the remaining provisions of this Agreement.

8.9 Time Limitation. No action arising out of SAAS use may be brought by Customer more than one (1) year after such cause of action arose.

8.10 Waiver. Waiver by any party of the breach of any provisions of this Agreement by the other party shall not be construed as a continuing waiver of such provision or a waiver of any other breach of any other provision of this Agreement. To be enforceable, a waiver must be in writing and signed by the waiving party.

9. SURVIVABILITY. The terms of Sections herein entitled "Title and Protection", "Term and Termination", "Limited Warranty; Limitation of Liability", "Indemnities" (with respect to claims arising from use of the SAAS during the term of the Agreement), "Survivability" and "Verification and Audit" shall survive termination of this Agreement.

10. VERIFICATION AND AUDIT. Within ten (10) days after a written request by HEARTLAND, which request shall occur no more often than once annually, Customer shall furnish to HEARTLAND a certification signed by an appropriate officer of Customer certifying that Customer is using the SAAS in accordance with the terms of this Agreement. No more often than once annually, HEARTLAND may conduct audits of Customer's Use of the Licensed Product to ensure compliance with this Agreement (each, a "Compliance Audit").

#### 11. ACCEPTANCE

Acceptance may only be by signature of applicable agreements and issuance of official purchase order or contract by the Customer (TIPS Member entity) in accordance with the Member's policies and procedures. via e-mail, fax, postal mail, express mail or delivery, , shall constitute Customer's complete and unconditional acceptance of the Support Fees, the License Fees, the License Agreement and this Agreement.

**THIS SAAS LICENSE IS OFFERED ONLY IN CONJUNCTION WITH SUPPORT SERVICES. BY CUSTOMER AGREEING TO AND EXECUTING ANY SAAS SUPPORT AGREEMENT, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND REPRESENTS TO HEARTLAND THAT CUSTOMER UNDERSTANDS AND AGREES TO BE BOUND BY THEM.** Terms agreed at time of signing may not be changed by a "click-on" acceptance, and must be agreed by authorized signature on a document presented to the Customer (TIPS Member entity).

Accepted by:



District

This Document has been accepted as minimum terms and conditions by TIPS and ESC Region 8 for use with TIPS Members, when applicable to a purchase from Heartland through TIPS RFP 181105 Cafeteria Point of Sale.

12/7/18

Date



Heartland School Solutions- Jeremy Loch

Vice President Sales & Marketing

12/6/18

Date



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/27/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh & McLennan Agency, LLC 2000 Brookstone Centre Pkwy Suite 118 Columbus GA 31904		<b>CONTACT NAME:</b> Connie Whitmer <b>PHONE (A/C, No, Ext):</b> 706-324-6671 <b>E-MAIL ADDRESS:</b> Connie.Whitmer@MarshMMA.com <b>FAX (A/C, No):</b> 706-576-5607															
<b>INSURED</b> Heartland Payment Systems LLC Global Payments Inc. & it's Subsidiaries Attn: Devery Gauthier Atlanta GA 30326		<b>30GLOBALPAYM</b> <b>INSURER(S) AFFORDING COVERAGE</b> <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : Federal Insurance Company</td> <td>20281</td> </tr> <tr> <td>INSURER B : Great Northern Insurance Company</td> <td>20303</td> </tr> <tr> <td>INSURER C : ACE American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A : Federal Insurance Company	20281	INSURER B : Great Northern Insurance Company	20303	INSURER C : ACE American Insurance Company	22667	INSURER D :		INSURER E :		INSURER F :	
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## COVERAGES

**CERTIFICATE NUMBER:** 1424539068

**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			36048071	4/1/2021	4/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Gen Agg Cap \$ 100,000,000
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Hired Comp <input checked="" type="checkbox"/> Hired Coll			73614277	4/1/2021	4/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired Phy Dmg - ACV \$ 1,000 Deds
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ \$0 Deduct			79894591	4/1/2021	4/1/2022	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 \$
C A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	71750292 71750293	4/1/2021 4/1/2021	4/1/2022 4/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

For Information Purposes Only

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

PETER J. KRAUSE

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