

TIPS ONLINE MARKETPLACE

TERMS AND CONDITIONS OF MEMBERSHIP

The following Terms and Conditions of Membership (“Terms”) create a legal agreement between The Interlocal Purchasing System, a department of Texas Region 8 Education Service Center (“TIPS”), a Texas government entity, and the registering member entity, its owners, agents, subsidiaries, and affiliates (together, “Member”) (individually, “Party”, and collectively the “Parties”) and this agreement shall exclusively govern the terms of membership (“Agreement”) between the Parties.

In consideration of the mutual promises contained herein, the Parties agree as follows.

- I. Agreement.** By submitting an online Membership Form, issuing a purchase through the TIPS platform, or otherwise utilizing the TIPS platform, Member confirms having read (with the assistance of counsel where necessary), understanding, and agreeing to these Terms.
- II. Authority.** You represent and warrant that: (i) you are of legal age to enter into a binding agreement; and (ii) if you are a corporation, governmental organization, or other legal entity, you have the right, power, and authority to enter into this agreement and be bound by its terms.
- III. Membership.** This provision controls membership in the TIPS **Online Marketplace** only. Terms regarding membership in TIPS purchasing cooperative generally are controlled by the Interlocal Agreement or Online Membership Form authorized by both TIPS and the TIPS Member. If a customer proceeds with a TIPS purchase or TIPS Online Marketplace purchase without an underlying TIPS Membership, the customer will be added to TIPS records for bookkeeping purposes only. By agreeing to these terms and receiving Online Marketplace Membership confirmation from TIPS, Member is admitted as a member of the TIPS Online Marketplace. Member agrees that TIPS has solicited, negotiated, facilitated, and adopted “TIPS Vendor Agreements” on behalf of TIPS Members and Members may proceed with online purchases as a third-party beneficiary of such agreements at Member’s sole discretion.
- IV. Vendors.** TIPS Awarded Vendors who hold active TIPS Contracts and meet required criteria may be added to the TIPS Online Marketplace. Vendors and Members may agree to enter into a direct or supplemental agreement, purchase order, online purchase, or other similar purchase document, including its own specific terms, (“Supplemental Purchase Agreement”) which Member may do at its sole discretion. TIPS is not a party to any Supplemental Purchase Agreements entered into between Member and Vendor and any formal or informal Supplemental Purchase Agreement entered into on a TIPS Member Purchase does not negate or override that the purchase was a TIPS Member Purchase and the terms of this Agreement apply between TIPS and Member.
- V. TIPS Member Purchases.** Once a Member indicates to Vendor, whether through the Marketplace, verbally, or in writing, its interest in making a TIPS purchase from Vendor, and Vendor engages in that sale, Member shall be considered a third-party beneficiary under this Agreement and any purchase made shall be a TIPS purchase made through the Marketplace. When a Member issues a sale through the Marketplace it shall not be considered accepted until Vendor provides written confirmation of acceptance. Vendor has the right to refuse to sell to a Member under this agreement if the Member does not meet Vendor’s standards for creditworthiness, if the items or services are unavailable, or if Vendor does not agree with the contract terms of the Member’s underlying purchase order/contract. Member accepts and understands that when a purchase is made through the Online Marketplace, TIPS is not a legal party to the purchase and Member is responsible for identifying fraud, mistakes, or misrepresentations for the specific order prior to issuing. Member agrees that any order issued from Member to Vendor, even when processed through the Online Marketplace, constitutes a legal contract between the Member and Vendor only. A Member that issues an order, even when processed through the Online Marketplace is representing that the Member has carefully reviewed the order for legality, authenticity, and accuracy and TIPS shall not be liable for the same.
- VI. TIPS Member Reporting.** TIPS Member Customers must seek to include the relevant TIPS Contract Name and Number on all quotes and PO’s exchanged with the TIPS Vendor, if any, for a TIPS Marketplace purchase. TIPS Members must confirm that all TIPS Marketplace purchases are recorded with TIPS. Once a TIPS Member Customer decides to proceed with a TIPS Marketplace purchase and it is accepted by the Vendor, the TIPS Member Customer may issue the PO through TIPS by sending it to tipspo@tips-usa.com or by sending it directly to the Vendor and sending a copy to tipspo@tips-usa.com as "Confirmation Only" for recording/audit purposes. Some Vendors are obviously designated on the TIPS website as "Automated Vendors" with clear instructions that the Vendor will self-report and in that circumstance, the TIPS Member Customer has no reporting requirements for the TIPS Marketplace purchase.

- VII. TIPS Pricing Certification.** Vendors may have the ability to upload and update Vendor's Online Marketplace pricing during the life of the Agreement with TIPS authorization. In Vendors' TIPS Contract(s) that it holds, Vendor submitted, agreed to, and received TIPS' approval for specific pricing, discounts, and other pricing terms and incentives which make up Vendor's TIPS Pricing for that TIPS Contract ("TIPS Pricing") within and outside of the TIPS Online Marketplace. Vendors participating in the Online Marketplace have certified that Vendor shall only offer goods and services through the Online Marketplace if those goods and services are approved by TIPS and included in Vendor's TIPS Pricing, and any pricing provided by Vendor for use in the Online Marketplace shall never exceed Vendor's TIPS Contract pricing for any good or service offered through the Online Marketplace. However, TIPS are always welcome to request Vendor's underlying TIPS Contract pricing from TIPS to compare and ensure that they are receiving accurate, discounted TIPS pricing when utilizing the TIPS Online Marketplace. Any listing of goods or services which are not included in Vendor's underlying TIPS pricing or which are sold at a price which exceeds Vendor's underlying TIPS pricing should be reported to TIPS by Member immediately.
- VIII. Administrative Fee.** TIPS is partially funded through Vendor payment of TIPS Administrative Fees, and other payments, to TIPS. TIPS Administrative Fees are typically based on a percentage of gross revenue received by the Vendor from a TIPS sale to a TIPS Member.
- IX. Term.** This Agreement shall continue until either Party terminates this Agreement in accordance with the terms included herein.
- X. Termination.** Either Party may terminate this Agreement, with or without cause, upon written notice of not less than thirty (30) business days (excluding weekends and US government holidays) delivered to the other Party. If at the time of termination, a purchase or purchase order has been initiated between Member and a Vendor which will extend beyond the effective termination of the Agreement, the Terms of this Agreement shall survive and apply to fulfillment or termination of that initiated order.
- XI. Confidentiality.** The obligations under this section shall remain in place during the Term of this Agreement and for three years from the date of termination of this Agreement. "Confidential Information" includes but is not limited to: information of any kind relating to a Vendor's or Party's business, finances, strategies, plans, property, affairs, research, marketing, pricing, technologies, ideas, trade secrets, intellectual property, processes, customers, employees, partners, associates or joint ventures, Vendor Agreements, Vendor pricing, Vendor incentives and promotions, proprietary Vendor information, TIPS Member identities and information, TIPS Vendor identities and information, TIPS Vendor terms and conditions, TIPS Vendor confidential and proprietary information, TIPS terms and conditions, TIPS proprietary information, TIPS and Vendor trade secrets, and any other information about TIPS or Vendor that was obtained by Member through the TIPS Platform. Member must not, and must ensure that its officers, employees and agents do not, without the prior written consent of TIPS: (a) disclose any Confidential Information of the TIPS or Vendor to any third-party including, but not limited to, Vendor or TIPS competitors; or (b) retain, duplicate, or use any Confidential Information of the TIPS or Vendor other than for the purpose of performing its obligations under this Agreement. A party may make disclosures: (a) to those of its employees, officers, auditors, professional or financial advisers and bankers as the party reasonably thinks necessary to give effect to this Agreement but only on a strictly confidential basis; and (b) if required by law, including but not limited to orders by courts of competent jurisdiction or any governing agency controlling public information, after the form and terms of that disclosure have been notified to the other Party and the other Party has had a reasonable opportunity to comment on the form and terms to the extent that the reasonable opportunity does not exceed timelines applicable by law and court order. The obligations in this clause do not apply to any information which the recipient can reasonably demonstrate: (a) is in the public domain through no fault of its own; (b) is already known to the recipient (as evidenced by its written records) at the date of disclosure and was not acquired directly or indirectly from the disclosing party; or (c) is required to be disclosed by law, including but not limited to under a court order, or by any authorized stock exchange or other regulatory body. Upon the termination of this Agreement, Member shall promptly return all Confidential Information disclosed in the form that it was received or promptly destroy such Confidential Information including all copies thereof to the extent permitted by public information and document retention laws. Any Confidential Information not returned or destroyed shall remain subject to this section until returned or destroyed.
- XII. DISCLAIMER.** MEMBER UNDERSTANDS THAT TIPS IS SEEKING TO ACHIEVE COST-EFFICIENT PURCHASING ON BEHALF OF MEMBERS BUT THAT TIPS IS NOT A RESELLER/DEALER OR OTHER AGENT OR DISTRIBUTOR OF TIPS VENDORS. MEMBER UNDERSTANDS AND AGREES THAT IT SHALL BE FULLY RESPONSIBLE FOR TIPS PURCHASES AS IF MADE IN THE OPEN MARKET. TIPS EXPRESSLY DISCLAIMS AND MEMBER EXPRESSLY WAIVES ANY AND ALL EXPRESS OR IMPLIED WARRANTIES REGARDING TIPS, TIPS PLATFORM, VENDORS, TIPS VENDOR AGREEMENTS, ANY SUPPLEMENTAL PURCHASE AGREEMENT BETWEEN MEMBER AND VENDOR, TIPS PURCHASES, AND VENDORS' GOODS AND SERVICES, AND MEMBER SHALL HAVE NO

CLAIM AGAINST TIPS FOR ANY GOODS OR SERVICES PURCHASED FROM VENDORS THROUGH TIPS, INCLUDING BUT NOT LIMITED TO, CLAIMS FOR DELAYED OR DAMAGED PRODUCTS/SERVICES, DEFECTIVE PRODUCTS/SERVICES, PRODUCTS/SERVICES WHICH ARE NOT IN ACCORDANCE WITH THE PURCHASE TERMS OR ARE OTHERWISE NOT SUITABLE FOR INTENDED USE. TIPS SHALL NOT BE LIABLE TO MEMBER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR RELIANCE DAMAGES.

- XIII. Warranties.** EXCEPT AS EXPRESSLY STATED HEREIN, TIPS MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE TIPS MARKETPLACE. TIPS DOES NOT REPRESENT OR WARRANT THAT: (A) THE USE OF THE MARKETPLACE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE MARKETPLACE WILL MEET VENDOR'S REQUIREMENTS OR EXPECTATIONS, (C) ERRORS OR DEFECTS WILL BE CORRECTED, OR (D) THE MARKETPLACE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS EXPRESSLY INDICATED HEREIN, THE MARKETPLACE IS ACCESSD BY VENDOR STRICTLY ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY INDICATED HEREIN, ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESSED, IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY TIPS.
- XIV. Liability.** Member hereby knowingly, expressly releases TIPS, its directors, employees, affiliates, agents, contractors, successors, and assigns and agrees that TIPS shall have no liability for any alleged act or omission of any Vendor or any third-party under this Agreement, under any TIPS Vendor Agreement, or under any Supplemental Purchase Agreement entered into between Vendor and Member.
- XV. Indemnity.** Member agrees to indemnify, defend, and hold harmless TIPS, its directors, employees, affiliates, agents, and contractors, successors, and assigns from and against any and all claims, losses, damages and/or expenses, including, but not limited to damages, judgments, attorneys' fees, expert witness fees, court costs, and costs of settlement arising out of claims related to: Vendor products, Vendor product defects, breach of TIPS Vendor Agreement, claims for delayed or damaged Vendor products/services, defective Vendor products/services, products/services which are not in accordance with the purchase terms or are otherwise not suitable for intended use, and claims arising out of acts, omissions, or breach by Member.
- XVI. Indemnity for Underlying Sales.** Member and Vendor shall be solely responsible for any claims or any disputes arising from the purchase and ordering of goods and services by Member from Vendor as if purchased in the open-market. TIPS shall not be liable for any claims arising out of: violation of a TIPS Vendor Agreement, violation of any Supplemental Purchase Agreement between Vendor and Member, any payment or non-payment for any TIPS purchases, or any alleged defects of goods or services. Payment or non-payment for TIPS purchases between TIPS Member and Vendor and inspections, rejections, or acceptance of such purchases shall be the exclusive obligation of Member/Vendor, and disputes shall be handled in accordance with the terms of the TIPS Vendor Agreement and/or any Supplemental Purchase Agreements entered into between Vendor and Member. Member acknowledges that TIPS is not a dealer or reseller of Vendor's goods and services and shall not be responsible for any claims arising out of alleged insufficiencies or defects in Vendor's goods and services, should any arise.
- XVII. Indemnification and Assumption of Risk.** Member agrees that it is voluntarily placing its data (including but not limited to: Member information, Member documentation, Member correspondence, Member contact information, Member's financial information, and any other Member information, data, or documentation submitted to TIPS or EqualLevel by Member and its agents) ("Member Data") into the Marketplace. In doing so, Member agrees to protect, indemnify, and hold TIPS harmless from and against any and all losses, claims, actions, demands, allegations, suits, judgments, costs and expenses, and all other liability of any nature whatsoever, relating to: (i) Member Data placed in the marketplace; and (ii) any unauthorized, negligent or wrongful use of, or cyber data breach incident and viruses or other corrupting agents involving, Member's data, pricing, and information, computers, or other hardware or software systems, and; (iii) allegations or claims that Member Data infringes on the intellectual property rights of a third-party.
- XVIII. Service and Support.** TIPS does not guarantee that the access to and use of the TIPS platform will be uninterrupted and error free but will use all reasonable efforts to ensure availability and use of the TIPS platform. TIPS will similarly exercise all reasonable efforts to protect Members from inadvertent release of Member information or data but is not liable for technological or cyber failures or attacks.

- XIX. Intellectual Property Rights.** Member hereby represents and warrants that: (i) none of Member's submitted information or documentation is subject to any encumbrance or any order, writ, injunction, citation, award, decree, or other judgment of any kind, and (b) Member has the full and legal right to transfer and publish such information and to transfer, assign, and convey to TIPS such information and; (c) as of and after the date of execution of this Agreement, Member has not infringed upon, interfered with, violated, or misappropriated, or will infringe upon, interfere with, violate, or misappropriate, any intellectual property or other right, title, or interest of any person or entity, and; (d) no claim, demand, suit, action, litigation, investigation, arbitration, administrative hearing, or other proceeding of any nature ("Claim") is pending or is threatened, nor has any Claim been made, which challenges or challenged the legality, validity, enforceability, use or exclusive ownership by Member of any or all information submitted, and; (e) any use or publication of the information submitted herein by TIPS will not infringe upon, interfere or conflict with, violate, or misappropriate any intellectual property or other right, title, or interest of any person or entity. Member agrees to indemnify, defend, and hold harmless TIPS, its directors, employees, affiliates, agents, and contractors, successors, and assigns from and against any and all claims, losses, damages and/or expenses for intellectual property claims from Member or Third-Party arising out of information submitted to TIPS by Member.
- XX. Audit Rights.** Member shall, at their sole expense, maintain appropriate due diligence of all Marketplace purchases. TIPS reserves the right to audit the accounting of TIPS and Marketplace 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 the authority to conduct audits of Member's Marketplace transaction documentation 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. In the event of an audit, the requested materials shall be reasonably provided in the time, format and at the location acceptable to TIPS.
- XXI. Circumvention of the TIPS Marketplace.** Any request for quote, Member communication, or Member purchase initiated through the Online Marketplace shall be completed through the Online Marketplace. Any encouragement or participation by Member in circumventing TIPS or the Marketplace or a TIPS sale being completed in the Marketplace may result in immediate termination of this Agreement for Cause as well as preclusion from future Marketplace access. Member shall report to TIPS any encouragement from TIPS Vendors to circumvent the marketplace immediately.
- XXII. Compliance with the Law.** The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this Agreement.
- XXIII. Entire Agreement.** This Agreement along with the Online Membership Form constitute the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties.
- XXIV. Severability.** If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, then such term(s) or provision(s) shall be deemed restated to reflect the original intention of the Parties as nearly as possible in accordance with applicable law and the remainder of this Agreement, and the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such holding causes the obligations of the Parties hereto to be impossible to perform or shall render the terms of this Agreement to be inconsistent with the intent of the Parties hereto.
- XXV. Waiver.** No waiver of any single breach or multiple breaches of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting regarding any breach of any provision shall be construed to be a waiver of such breach.
- XXVI. Binding Agreement.** This Agreement shall be binding and inure to the benefit of the Parties hereto and their respective heirs, legal successors, and assigns.
- XXVII. Headings.** The paragraph headings contained in this Agreement are included solely for convenience of reference and shall not in any way affect the meaning or interpretation of any of the provisions of this Agreement.
- XXVIII. Notice.** A notice under this Agreement must be in writing and posted or emailed to a Party's service address or personally delivered to the party. A party's service address is any of: (a) in the case of a corporation, its current registered address; or (b) the last business address or email address the party notified as its service address.

- XXIX. Choice of Law and Venue.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas. Any proceeding, claim, action, or alternative dispute resolution arising out of or relating to this Agreement or involving TIPS shall be brought in a State Court of competent jurisdiction in Camp County, Texas, or if Federal Court is legally required, a Federal Court of competent jurisdiction in the Eastern District of Texas, and each of the Parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or and contemplated transaction in any other court. The Parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum.
- XXX. Relationship of the Parties.** Nothing contained in this Agreement shall be construed to make one Party an agent of the other Party nor shall either party have any authority to bind the other in any respect, unless expressly authorized by the other party in writing. The Parties are independent contractors and nothing in this Agreement creates a relationship of employment, trust, agency or partnership between them.
- XXXI. Assignment.** No assignment of this Agreement or of any duty or obligation of performance hereunder, shall be made in whole or in part by a Party hereto without the prior written consent of the other Party.

WHERE YOU SIGN UP FOR THE TIPS ELECTRONICALLY, YOU WILL BE REQUIRED TO ACCEPT THESE TERMS ELECTRONICALLY. BY ELECTRONICALLY SUBMITTING THE FORM, YOU AGREE TO THE TERMS OF THIS AGREEMENT WHICH WILL BIND YOU. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, DO NOT SUBMIT.