

Board Office Use: Legislative File Info.	
File ID Number	20-0439
Introduction Date	6/3/2020
Enactment Number	20-0845
Enactment Date	6/10/2020 If



OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Irene Reynolds, Executive Director, Nutrition Services and Warehouse

Board Meeting Date June 3, 2020

Subject Request for Approval of Resolution No.#1920-2030 - TITAN SCHOOL SOLUTIONS SOFTWARE

Action Requested and Recommendation

Approval by the Board of Education of Nutrition Services Department to purchase TITAN SCHOOL SOLUTIONS SOFTWARE (TITAN) digital education products and services; Resolution No. #1920-2030; the needed technology based software solutions to fully support the meal service programs provided to OUSD students, parents and staff.

Background

(Why do we need these services? Why have you selected this vendor)

The Nutrition Services Department is preparing to launch the new central kitchen located at 2850. West Street, Oakland, CA 94608, where meal service to students will be produced, packaged, and delivered to all Oakland Unified School District school sites. The Nutrition Services Department will need to implement a comprehensive, integrated technology-based software program specifically designed for school nutrition programs to provide data in real-time in order to manage both the central kitchen operations as well as the individual school site operations together to ensure a smooth and seamless process for meal service to Oakland Unified School District students.

Approval by the Board of Education for the Nutrition Services department to become an associate member of the Education Technology Joint Powers Authority (Ed Tech JPA) took place on January 22, 2020. As an associate member of the Ed Tech JPA, the Nutrition Services Department can piggyback on the existing contracts executed by the Ed. Tech JPA for the benefit of all their members without the need for competitive bidding.. TITAN solutions submitted a proposal to Ed. Tech JPA for RFP No 18/19-01, the proposal was approved and awarded on March 15, 2019 during a Special Governing Board meeting of the JPA. The Nutrition Services Department is utilizing the piggyback exemption to competitive bid requirements in order to contract services with Titan.

TITAN provides comprehensive, integrated solutions with real-time information on demand. All modules are in one place, fully integrated for the most efficient and effective program possible. TITAN automates application processing, verification of income, Community Eligibility Provision (CEP) management, reporting, and compliance documentation. TITAN is compatible with Aeries Student Information System

Fiscal Impact

First year 2019-2020: \$62,378.00; Second Year 2020-2021 \$106,678.95

Attachments

- Resolution No: 1920-2030 TITAN SCHOOL SOLUTIONS SOFTWARE
- TITAN SCHOOL SOLUTIONS price proposal
- Education Technology Joint Powers Authority Agenda, Special Board Meeting, Action item approval of Award of RFP No. 18/19-01 Nutrition Management Solution Purchase Agreement between TITAN and OUSD Nutrition Services Addendum to Purchase Agreement between TITAN and OUSD Nutrition Services

Legislative File Info.	
File ID Number:	20-0439
Introduction Date:	3-25-2020
Enactment Number:	20-0845
Enactment Date:	6/10/2020 lf

**RESOLUTION
OF THE
BOARD OF EDUCATION
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
NO. 1920-2030**

TITAN SCHOOL SOLUTIONS SOFTWARE

WHEREAS, the Nutrition Services Department is preparing to launch the new central kitchen located at 2850 West Street, Oakland, CA 94608, where meal service to students will be produced, packaged, and delivered to all Oakland Unified School District school sites;

WHEREAS, the Nutrition Services Department will need to implement a comprehensive, integrated technology-based software program specifically designed for school nutrition programs to provide data in real-time in order to manage both the central kitchen operations as well as the individual school site operations together to ensure a smooth and seamless process for meal service to Oakland Unified School District students;

WHEREAS, TITAN SCHOOL SOLUTIONS submitted a proposal to Education Technology Joint Powers Authority (Ed Tech JPA) for RFP No. 18/19-01;

WHEREAS, the proposal submitted by TITAN SCHOOL SOLUTIONS was approved and awarded by Ed Tech JPA at the March 15, 2019 Special Governing Board Meeting;

WHEREAS, an associate member of the Ed Tech JPA, the Nutrition Services Department will benefit from not having to separately negotiate contract terms, pricing, and data privacy agreements for the purchase of TITAN SCHOOL SOLUTIONS digital education products and services;

WHEREAS, TITAN SCHOOL SOLUTIONS has the following capabilities: Point of Sale, Application Processing, Parent Portal, Inventory Management, Procurement, Production, Menu Planning, Distribution, Catering and Reporting;

WHEREAS, in order to successfully manage the many areas of responsibility which school meal programs are regulated by; ranging from meal application processing and verification of income to recipe development, ingredient control, menu planning, delivery of meals, service of meals to students and reconciliation of meals served, all while remaining in compliance, the Nutrition Services Department needs the most effective school nutrition management software solution

that can be accessed by OUSD staff, school administrators, site staff, central kitchen staff as well as parents who will be able to use the online meal application processing portal giving them access to Free and/or Reduced Price meal benefits as well as be able to monitor student meal consumption and meal account balances.

NOW, THEREFORE, BE IT RESOLVED, the Board of Education supports the Nutrition Services Department's purchase of TITAN SCHOOL SOLUTIONS, the needed technology based software solutions, to fully support the meal service programs provided to OUSD students, parents and staff.

Passed by the following vote:

AYES: Aimee Eng, Jumoke Hinton Hodge, Gary Yee, Roseann Torres, James Harris,
Vice President Shanthi Gonzales and President Jody London

NOES: None

ABSTAINED: None

RECUSE: None

ABSENT: Student Directors Mica Smith-Dahl and Denilson Garibo

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District, held on

6/10/2020

OAKLAND UNIFIED SCHOOL DISTRICT



6/11/2020

Jody London
President, Board of Education



6/11/2020

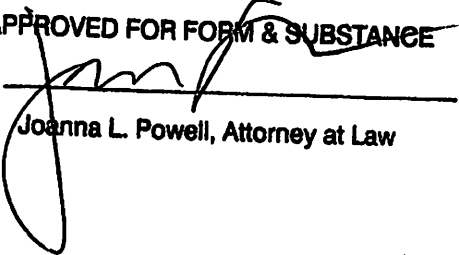
Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT

Office of the General Counsel

APPROVED FOR FORM & SUBSTANCE

By:



Joanna L. Powell, Attorney at Law



MAKING SCHOOLS STRONGER.™

TITAN Edge Proposal

Oakland Unified School District

Quote # 450110

With TITAN, there are no surprises or hidden costs. Our simple, subscription-based model ensures that you will always have the best hardware and state-of-the-art software, complete with immediate, timely updates as needed. And with this, you will know at the beginning of each year EXACTLY what your investment will be for these efficiencies and conveniences.

The quote covers the following modules:

Student Management with Application Processing (83), Point of Service (99), Central Kitchen (1), Inventory (76), Purchasing, Menu Planning w/Nutritional Analysis, Productions Records (83), and our Parent Portal which includes Online Applications, Online Payments, and Online Menus with Nutritional Information (with Menu Planning Only).

Depending on the module, our annual subscription pricing is based on the number of schools, warehouses, and point of service terminals. Purchasing, and Menu Planning w/Nutritional Analysis are priced per district. All TITAN modules have unlimited users.

TITAN's Professional Services are a one-time, fixed rate, which covers both implementation and training. The fixed rate services are performed remotely. If the district would like on-site training, it is billed at \$1,200.00 per day + travel expenses.

Please find your quote on the following pages:



Quote

Titan School Solutions
 19900 MacArthur Blvd.
 Suite 1000
 Irvine, CA 92612

Fax
 1 949 238 6980

Telephone
 1 844 467 4700

Email
 sales@titank12.com

Oakland Unified School District
Irene Reynolds
 Attn: Child Nutrition Dept.
 900 High Street
 Oakland, CA 94601

irene.reynolds@ousd.org
 (510) 434-2250

Quote number 1.4_OUSD
 Quote date 11/14/2019
Valid until 01/14/2020

Quantity	Product	Each	Price
75	Student Management (TSTU100-75) Annual Subscription Fee, Each School (Qty. 1-75)	\$450.00	\$33,750.00
8	Student Management (TSTU100-125) Annual Subscription Fee, Each School (Qty. 76-125)	\$393.75	\$3,150.00
75	Point of Service (TPOS100-75) Annual Subscription Fee, Each Terminal (Qty. 1-75)	\$200.00	\$15,000.00
24	Point of Service (TPOS100-125) Annual Subscription Fee, Each Terminal (Qty. 76-125)	\$175.00	\$4,200.00
1	Central Kitchen (TCEN100) Annual Subscription Fee, Each	\$795.00	\$795.00
75	Inventory (TINV100-75) Annual Subscription Fee, Each Warehouse (Qty. 1-75)	\$450.00	\$33,750.00
1	Inventory (TINV100-125) Annual Subscription Fee, Each Warehouse (Qty. 76-125)	\$393.75	\$393.75
1	Purchasing (TPUR100) Annual Subscription Fee	\$795.00	\$795.00
1	Menu Planning w/Nutritional Analysis (TMP100) Annual Subscription Fee	\$795.00	\$795.00
75	Production Records (TPRO100-75) Annual Subscription Fee, Each Cafeteria (Qty. 1-75)	\$175.00	\$13,125.00
8	Production Records (TPD100-125)	\$153.15	\$1,225.20

	Annual Subscription Fee, Each Cafeteria (Qty. 76-125)		
1	Parent Portal (Online Applications & Online Payments) - Online Applications are included FREE with the Student Management module - there is no cost to the district. - Online Payment Processing Fee is collected from the parent with each transaction - there is no cost to the district. The payment processing fee is 3.95% + .10 (Minimum of \$2.60), per transaction.	\$0.00	\$0.00
1	Waived Annual Subscription Fees Valid November 14, 2019 through June 30, 2020 Upon renewal, the district will be invoiced for the full year's subscription amount \$106,978.95 for the period of 7/1/2020-6/30/2021.		(\$106,978.95)

Annual Subscription Fee **\$0.00**

Quantity	Product	Each	Price
1	Professional Services, Remote (SERV101) Professional Services. Services will be performed remotely according to the agreed upon project plan. Fixed Price	\$18,780.00	\$18,780.00
30	Professional Services, On-site (SERV102) Professional Services. Services will be performed onsite according to the agreed upon project plan. The price covers (1) TITAN Application Consultant, per day. Will be billed as incurred. Note: All charges are exclusive of out of pocket expenses for Professional Services performed. Charges for actual and reasonable out-of-pocket expenses including, but not limited to, travel and lodging expenses will be billed as incurred.	\$1,200.00	\$36,000.00

One Time Services Fee **\$54,780.00**

Quantity	Product	Each	Price
22	12 key Keypad (THW205L) 12 Key programmable USB Keypad w/LED Readout (Left side), 1 Year Warranty	\$246.00	\$5,412.00
5	12 key Keypad (THW205R) 12 Key programmable USB Keypad w/LED Readout (Right side), 1 Year Warranty	\$246.00	\$1,230.00

4	Orbital Scanner (THW208) Orbital USB Barcode Scanner, 1 Year Warranty	\$239.00	\$956.00
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One Time Hardware Fee **\$7,598.00**

1st Year Total (USD) 11/14/2019 - 6/30/2020	\$62,378.00
2nd Year Total (USD) 7/1/2020-6/30/2021	\$106,978.95
Grand Total (USD)	\$169,356.96

Note:

Please note our standard payment terms are Net 30 days. This quote excludes freight, travel expenses*, state, local, and federal taxes. These are due by the Purchaser as applicable.

* All charges are exclusive of out of pocket expenses for Professional Services performed. Charges for actual and reasonable out-of-pocket expenses including, but not limited to, travel and lodging expenses will be billed as incurred.

By accepting this Quote, you agree to TITAN School Solutions Master Subscription Agreement.

You can pay in two ways:

1. Email your company purchase order to orders@titank12.com including your quote number **1.4_OUSD**
2. Print this quote, sign it, fax it to us at 1 949-238-6980, and we'll email you an invoice.

X

Signed: _____ Date: _____
Name (printed): _____ PO number: _____

Quote Prepared by:

Contact: Emmalie Castro, Sales Support Specialist
Telephone: (916) 467-4700 x 714
Email: ecastro@titank12.com

Senior Account Representative: Mike Gorden, Vice President of Sales
Telephone: 559-392-1970
Email: mgorden@titank12.com

Quote Verified by:





**AGENDA
SPECIAL MEETING GOVERNING BOARD
ED TECH JPA**

4:00 P.M. March 15, 2019

Ed Tech JPA will hold a Board meeting on March 15, 2019 at 4:00PM at 3387 Barranca Parkway, Irvine, CA 92606, 33122 Valle Rd, San Juan Capistrano, CA 92675, and 1450 Herndon Ave, Clovis, CA 93611.

The meetings of the Board at which official action is taken shall be public meetings, and no person shall be excluded therefrom.

The agenda will be published at least 24 hours prior to the meeting. Supporting documentation will be provided at the meeting or emailed electronically to members prior to the meeting as it becomes available.

President	Brianne Ford
Vice-President	John Morgan
Secretary	Brianne Ford
Treasurer	Michael Johnston

Board of Directors Founding Members

Irvine Unified Founding Member

Capistrano Unified Founding Member

Clovis Unified Founding Member

Brianne Ford/alternate Michelle Bennett

John Morgan/alternate Stephanie Alvera

Michael Johnston/alternate Susan Rutledge

Other

Francie Heim, Consultant

Mark Williams, Fagen Friedman & Fulfrost LLC

Meg Keaney, Fagen Friedman Fulfrost LLC

Agenda

1. Determination of a quorum and call to order.
2. Approval of minutes of the previous meeting
Minutes of the February meeting will be approved at the regularly scheduled March meeting.
3. Public Comment

Anyone may address the Board on any item that is within the Board's subject matter jurisdiction. However, the Board may not take action on any item not on this agenda except as authorized by Government Code section 54954.2.



**EDUCATION TECHNOLOGY
JOINT POWERS AUTHORITY**

4. Approval of the Agenda

New Business (Action Items)

5. Approve Award of RFP No. 18/19-01 Nutrition Management Solution

Background information:

RFP No. 18/19-01 Nutrition Management Solution RFP was conducted pursuant to Board approval at the January 25, 2019 Board meeting. Three Proposals were received and three met or exceed the minimum qualifications.

Recommendation: Approve the Proposals that met or exceed the minimum qualifications outlined in RFP No. 18/19-01 Nutrition Management Solution Platform: Titan School Solutions, Inc., Cybersoft Technologies, Inc. (PrimeroEdge), Water Walkers Inc (Health-e Pro).

Motion:

Closing Items

12. Presentation of written communications

13. Scheduling of next meeting Thursday, March 28 at 2:00pm at Irvine USD

14. Adjournment.

**ED TECH JPA PURCHASE AGREEMENT: RFP No. 18/19-01 Nutrition Services
Management Platform**

This Purchase Agreement (this "PA") is made as of ~~January 24, 2020~~ (the "Effective Date") by and between ~~the~~ **Oakland Unified School District** ("PARTICIPANT") and Titan School Solutions, Inc. ("VENDOR").

BACKGROUND

A. Education Technology JPA ("ED TECH JPA") is a Joint Powers Authority formed by California public school districts, county offices of education, and community college districts pursuant to California Government Code Sections 8500-8536. ED TECH JPA aggregates purchasing power and expertise for its Associate Members across California.

B. ED TECH JPA establishes its contracts for products and services through the following process:

1. On February 8, 2019 ED TECH JPA issued a Request for Proposal for Nutrition Management Solution Platforms (the "RFP") on behalf of ED TECH JPA members. ED TECH JPA invited qualified vendors to submit pricing products and services in response to the RFP.

2. ED TECH JPA published the RFP on its Website and in a local periodical.

3. ED TECH JPA received one or more responses to the RFP. ED TECH JPA evaluated all responses which complied with the terms of the RFP, using the following criteria: Functionality and Usability, Vendor Support and Ability to Perform, Price, and Technology Requirements.

4. ED TECH JPA selected VENDOR for an award under the RFP for Nutrition Management Solution Platforms (the "Products") and thereafter entered into a Master Agreement (MA) to establish the terms by which Associate Members of the Ed Tech JPA may purchase products from Vendor.

C. A California public entity using the Ed Tech JPA RFP to buy Products is a "Participant" or "Participating Associate Member".

D. PARTICIPANT has completed its own due diligence regarding the suitability of VENDOR and Products for Participant's needs.

E. The parties are entering this PA to establish the terms and conditions of the purchase by Associate Member pursuant to that Master Agreement.

AGREEMENT

Now, therefore, for good and valuable consideration, the parties agree as follows.

1. PARTICIPATION IN MASTER AGREEMENT

This PA is subject to the terms of the RFP and the corresponding MA between ED TECH JPA and VENDOR, which are incorporated herein by this reference. VENDOR and PARTICIPANT agree (a) to the terms and conditions of the RFP and the MA covering the requested Products,

(b) any additions or deletions to Products listed on this PA shall be promptly executed through an amendment to this PA, signed by VENDOR and PARTICIPANT.

VENDOR agrees as follows:

Vendor acknowledges that each PARTICIPANT is responsible for (a) completing their own due diligence regarding the suitability of VENDOR, (b) prior to executing a Purchase Agreement, Associate Members will work with a VENDOR representative to establish an Implementation Plan with the Participating Associate Member, as further described in Section 2.3 of the RFP, and (c) an Associate Member is not bound to a purchase until it has obtained approval from its Board and executed this Purchase Agreement with the VENDOR for the product. VENDOR further acknowledges and agrees (c) by entering into one or more Purchase Agreements with PARTICIPANT, VENDOR has agreed to the delivery terms for Products as established in the Implementation Plan and VENDOR will faithfully carry out timely implementation of the Products with PARTICIPANT. Order details, including an Additional Services, and the parties' Implementation Plan are attached hereto as Exhibit A.

PARTICIPANT agrees as follows:

PARTICIPANT acknowledges and agrees that (a) it has performed its own due diligence in selecting the VENDOR's Product and its suitability to Participant's needs, including using price as a significant factor, (b) VENDOR has provided a suitable Implementation Plan to Participant outlining all necessary dates and Participant needs, and (c) it will pay the costs as quoted by VENDOR in the RFP and the MA.

2. COMPLIANCE WITH APPLICABLE LAW

VENDOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to VENDOR, VENDOR's business, the Products, equipment and personnel engaged in Products covered by this PA or accruing out of the performance of such Products. If VENDOR performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, VENDOR shall bear all costs.

3. DATA PRIVACY

VENDOR agrees that all products and services are fully compliant with all applicable requirements including all state and federal laws. VENDOR has executed the California Student Data Privacy Agreement (CSDPA), attached to the RFP as Appendix E.

4. PERMITS/LICENSES

VENDOR and all VENDOR's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of Products pursuant to this PA.

5. INSURANCE

VENDOR shall insure VENDOR's activities in connection with the Products under this PA and agrees to carry insurance as specified in the RFP to ensure VENDOR's ability to adhere to the indemnification requirements under this PA.

6. EQUIPMENT ADDITIONS/DELETIONS

VENDOR may add or delete equipment introduced or removed from the market by the manufacturer under the following conditions:

- A) Deleted Equipment has been discontinued and is no longer available from the manufacturer;
- B) Added Equipment is a direct replacement for original products listed in the RFP, VENDOR's Proposal, the Master Agreement and/or any Purchase Agreements;
- C) VENDOR has obtained prior written Board approval from Ed Tech JPA;
- D) VENDOR receives an executed Amendment to the Master Agreement;
- E) VENDOR has obtained prior written Board approval from Participating Associate Members; and
- F) VENDOR receives an executed Amendment to the Purchase Agreement.

7. INVOICING FOR SERVICES

The RFP Number and Name shall appear on each purchase order and invoices for all purchases placed under this Purchase Agreement. Unless otherwise agreed upon by both parties in writing, signing a delivery and acceptance certificate constitutes acceptance of the Products and allows VENDOR to invoice for the Products. ED TECH JPA does not guarantee timely payment. The Purchase Agreement is between VENDOR and Participant.

8. CONTRACT MANAGEMENT

- A. The primary VENDOR contract manager for this Purchase Agreement shall be as follows:

NAME: TITAN School Solutions, Inc.
CONTACT: Mike Gordon, Vice President of Sales, and Stephanie Freeman
ADDRESS: 19940 MacArthur Blvd., Suite 1000, Irvine CA 92612
EMAIL: mgorden@titank12.com and sfreeman@titank12.com; sales@titank12.com
PHONE: 916-467-4700 x 704; 559-392-1970 ; 916-467-4700 x 703; 559-259-5579

- B. The primary Participant contract manager for this Purchase Agreement shall be as follows:

NAME: Oakland Unified School District
CONTACT: IRENE REYNOLDS
ADDRESS: 900 HIGH STREET, OAKLAND, CA 94601
EMAIL: IRENE.REYNOLDS@OUSD.ORG
PHONE: (510) 434-3334

- C. The primary Ed Tech JPA contract manager for this Purchase Agreement shall be as follows:

Education Technology JPA
Attn: Michelle Bennett
5050 Barranca Parkway
Irvine, CA 92604
MichelleBennett@usd.org
949-936-5022

- D. Should the contract administrator information change, the changing party will provide written notice to the affected parties with the updated information no later than ten (10) business days after the change.

9. INDEMNIFICATION

VENDOR will defend, indemnify and hold harmless Participating Associate Members and ED TECH JPA and its directors, officers, employees, and agents from and against all damages, costs (including reasonable attorneys' fees), judgments and other expenses arising out of or on account of any third party claim: (i) alleging that the product infringes or misappropriates the proprietary or intellectual property rights of such third party, except to the extent that such infringement results from (A) PARTICIPANT's misuse of the product, (B) modifications to the product, or (C) PARTICIPANT continuing the allegedly infringing activity after VENDOR has provided PARTICIPANT with modifications that would have avoided the alleged infringement; (ii) that results from the negligence or intentional misconduct of VENDOR or its employees or agents; or (iii) that results from any breach of any of the representations, warranties or covenants contained herein by VENDOR. If the product becomes or, in VENDOR's opinion, is reasonably likely to become the subject of any injunction preventing use as contemplated herein for the reasons stated in this Section 14, VENDOR, or its designee, may, at its option, (i) procure for PARTICIPANT the right to continue using the product, (ii) replace or modify the product so that it becomes non-infringing without substantially compromising its functionality, or, if (i) and (ii) are not reasonably available to VENDOR, then (iii) terminate this Agreement as to the infringing product, require the return of the allegedly infringing product and/or refund to PARTICIPANT a portion of the License Fees paid by PARTICIPANT in respect of the product depreciated on a straight-line basis over one (1) year from the Effective Date. VENDOR agrees to notify ED TECH JPA and Participating Associate Member in the event of any claim against VENDOR alleging intellectual property infringement regarding Products and Services listed in the RFP. VENDOR agrees to notify ED TECH JPA of any claims against VENDOR by any Participating Associate Member.

(b) By PARTICIPANT. To the extent permitted under applicable law, PARTICIPANT agrees to defend, indemnify and hold harmless VENDOR and ED TECH JPA and its directors, officers, employees, and agents from and against all damages, costs (including reasonable attorneys' fees), judgments and other expenses arising out of or on account of any third party claim that results from (i) the negligence or intentional misconduct of PARTICIPANT or its employees or agents or (ii) any breach of any of the representations, warranties or covenants contained herein by PARTICIPANT.

(c) **DISCLAIMER OF LIABILITY.** ED TECH JPA does not provide assurance or warranty to VENDOR or PARTICIPANT with respect to issues arising under this PA, including Participant's payments to VENDOR. ED TECH JPA will not represent VENDOR or PARTICIPANT in the resolution of disputes arising under its PA.

10. ATTORNEYS' FEES

If any action at law or in equity is brought to enforce or interpret the provisions of this PA, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which the party may be entitled.

11. SEVERABILITY

In the event that any provision of this PA is held invalid or unenforceable by a court of competent jurisdiction, no other provision of this PA will be affected by such holding, and all of the remaining provisions of this PA will continue in full force and effect.

12. ASSIGNMENT

The obligations of the VENDOR pursuant to this PA shall not be assigned by the VENDOR without prior written consent of Ed Tech JPA and Participating Associate Member.

13. DEFAULTS

In the event that VENDOR defaults in its obligations under this PA; and if such default is not cured within 30 days after notice of the default from ED TECH JPA to VENDOR, then ED TECH JPA may pursue any available remedies against VENDOR, including but not limited to termination of this PA.

14. GOVERNING LAW AND VENUE

THIS PA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS IN THE COUNTY WHERE PARTICIPANT IS LOCATED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS PA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

PROVISIONS REQUIRED BY LAW: VENDOR acknowledges that it has conducted and performed the required research to become aware and knowledgeable of all federal, state and local laws/statutes that are referenced herein, may pertain to and/or govern the procurement activities and transactions covered by this PA. These provisions of law and any clause required by law that is associated with this transaction will be read and enforced as though it were included herein.

15. NOTICES

All notices under this PA must be in writing and will be effective (a) immediately upon delivery in person or by messenger; (b) the next business day after prepaid deposit with a commercial courier or delivery service for next day delivery, (c) upon receipt by facsimile as established by evidence of successful transmission, (d) when emailed to the receiving party at the receiving party's assigned email address with delivery receipt requested, upon electronic confirmation the transmission has been delivered, or (e) five (5) business days after deposit with the US Postal Service, certified mail, return receipt requested, postage prepaid. All notices must be properly addressed to the addresses set forth on the signature page to this PA, or at such other addresses as either party may subsequently designate by notice.

16. COUNTERPARTS

This PA may be signed and delivered in two (2) counterparts, each of which, when so signed and delivered, shall be an original, but such counterparts together shall constitute the one instrument that is the PA, and the PA shall not be binding on any party until all Parties have signed it.

17. AUTHORIZED SIGNATURE

The individual signing this PA warrants that he/she is authorized to do so. The Parties understand and agree that a breach of this warranty shall constitute a breach of the PA and shall entitle the non-breaching party to all appropriate legal and equitable remedies against the breaching party.

18. TERM & TERMINATION

The term of this PA (the "Term") shall commence on the Effective Date and shall expire after a period of ~~One~~ (1) years. The parties understand that PARTICIPANTS ordering Products pursuant to the Master Agreement may extend for multiple years after the Term of the Master Agreement. The expiration or termination of the Master Agreement shall not affect VENDOR's obligation to deliver Products as ordered by PARTICIPANTS pursuant to this PA.

TERMINATION OF CONTRACT

Without limiting any rights or remedies which PARTICIPANT may have in the event of any default by VENDOR, PARTICIPANT shall have the right, upon fifteen (15) days' prior written notice to VENDOR, to terminate this PA at any time and without cause prior to complete delivery. Such termination shall be without any obligation or liability to VENDOR other than payment of charges for the value of work performed, and for necessary expenditures which can be established by VENDOR as having been reasonably incurred prior to the time that notice of termination is given. In no event shall the termination charges exceed the purchase price of the equipment/services. In the event of any termination, PARTICIPANT shall be entitled to all materials, work in process, and completed work included as value of work performed and necessary expenditures in determining the charges referred to above and paid by PARTICIPANT. VENDOR agrees to allow mutual contract termination in whole or in part, in the event that PARTICIPANT does not allocate funding for the continuation of this contract or any portion thereof. In the event of termination due to non-allocation of funds, both parties shall be held without fault and there shall be no financial consequences assessed as a penalty on either party.

19. SURVIVAL

The parties' respective obligations under the following sections of this PA shall survive any termination of this PA: Sections 6 through 12, covering Administrative Fee, Indemnification, Attorneys' Fees, Severability, Defaults, Governing Law, and Notices.

20. EXHIBITS

This PA includes all documents referenced herein, whether attached hereto or otherwise incorporated by reference.

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement as of the Effective Date.

Oakland Unified School District

By: Irene Reynolds
Its: Executive Director
January 24, 2020
Date

Titan School Solutions, Inc.

By: Mike Gorman
Its: Vice President of Sales
1/24/2020
Date

Approved as to form by OUSD Staff Attorney, Joanna Powell, on March 13, 2020.

Joanna J. Powell

Exhibit A

Order Information and Implementation Plan

Exhibit B
Service Level Agreement

SERVICE LEVEL AGREEMENT

1. **Scope.** This Service Level Assurance ("SLA") is incorporated into the Agreement between Titan School Solutions, Inc. and _____ School District, entered into on or about March __, 2019 (the "Agreement") and is entered into by and between Oakland USD School District (the "District") and Titan School Solutions ("Titan"). Capitalized terms not otherwise defined herein will have the meaning given them in the Agreement.

2. **Obligation and Metrics.** Subject to the conditions specified in this SLA, Titan will meet the performance standards and service levels (each a "Performance Level") during the specified periods (each a "Measurement Period") that are set forth below with respect to the Services under the Agreement. "Peak Hours" shall mean between the hours of 6AM and 6PM, Central Standard Time; "Non-Peak Hours" shall mean the remaining hours of the day.

Title	Performance Level		Measurement Period	Review Period
Availability	99.9% Peak Hours 99.9% Non-Peak Hours		Monthly	Quarterly
Support Response Times	Level 1	30 minutes	Each Request	Quarterly
	Level 2	3 hours		
	Level 3	3-6 hours		
	Level 4	6-8 hours		
Support Status Update	Level 1	1 hour	Each Request	Quarterly
	Level 2	Every 2 hours		
	Level 3	Once every other day		
	Level 4	Once each week		

3. **Performance Definitions.** The following define the performance standards stated in Section 2:

- a) **Software and Online Availability.** The applications will be available and operable for access and use by District and its Users for at least the Performance Level for each Measurement Period ("Software and Online Availability"). Titan is a hosted service for teachers, students, parents, caregivers and administrators delivered via the internet. Titan will be available 99.9% of the time. The percentage of uptime ("Availability") is measured on a monthly basis but reported quarterly as the SLA Measurement. Maintenance will be performed during non-peak times. Normal maintenance is generally scheduled for Monday through Friday, 12AM – 2AM Central Time and Sunday mornings from 3:00 AM – 7:00 AM, Central Time and on federal holidays. Titan will have no liability for lack of availability due to: (i) errors in the electronic files provided by the District containing the District Data, or (ii) unauthorized use or misuse by the District or anyone using any of the District passwords, provided that Titan has taken reasonable steps to protect the Titan Services from unauthorized access, intrusion, and disruption and (iii) circumstances beyond its reasonable control due to applicable laws, natural calamities, acts of God, threat of wars, riots, strikes and acts of Government.

- b) **Support Response Times.** For Level 1 and Level 2 issues during support hours as specified in Section 3 of the Agreement, the designated Titan support personnel will communicate to the designated District personnel that such personnel has received District's notice of a request for Support Services within the applicable Performance Measure for the applicable Priority Level for each Measurement Period (each a "Support Response Time"), which Performance Measure is calculated from the time that the request is submitted to Titan using Titan's reasonable reporting procedures. Priority Levels for the Support Response Time and the Support Status Update Performance Measures are as follows:

Title	Definition
Level 1	Any failure that causes Titan to be unavailable to the District (except as designated in Section 4 of this SLA).
Level 2	Any failure that materially hampers the availability to the District of the Titan system (except as designated in Section 4 of this SLA).
Level 3	Any failure occurring more than once within the span of a week that does not conform to the Agreement but does not cause the Titan to be unavailable or materially hamper the availability of the Titan system to the District.
Level 4	Any other Support Services request not specified above.

- c) **Support Status Updates.** During support hours as specified in Section 3 of the Agreement, the designated Titan support personnel will communicate via email to the District personnel, i.e., Child Nutrition Director, the then-current status of a request for Support Services within the applicable Performance Measure for the applicable Priority Level 1 and Level 2 issues for each Measurement Period from the Support Response Time for the request until Titan has adequately remedied the issue or determined that the issue is outside of the scope of the Titan Support Services (each a "Support Status Update").
4. **Performance Level Calculation.** For the "Availability" Performance Level, which is expressed as a percent of time, the Performance Level is calculated by dividing the number of minutes for which the Performance Level is achieved during Peak Hours or Non-Peak Hours (as defined) by the total number of minutes during the Measurement Period and multiplying by 100. Any outage that exists as a result of a network infrastructure failure outside of Titan's physical environment or control will be excluded from calculations of Availability, and not considered downtime for the purposes of this SLA. For all Performance Levels other than the "Availability" Performance Level, each failure to achieve the Performance Level requirement will be an "incident." The following reasons or causes will be excluded from all aspects of the calculation of a Performance Level: (a) normal maintenance conducted by Titan, or if without, provided justification for the emergency maintenance has been provided and acceptable to the District; and (b) events outside of the reasonable control of Titan or its agents, contractors or service providers.
5. **Reporting.** For any service outage or incident during the applicable review period ("Review Period"). District must provide detailed information to Titan. This data includes date and time of incident, type of outage or problem, methods used to communicate problem, and time when normal service was resumed.

6. **Remedies.** If within the defined Review Period, Titan fails to satisfy a Performance Level, the District will have the remedies specified below. If Titan fails to achieve the Performance Level more than three times in a single month, or in any three months during the then-current Initial Term or Renewal Term, except during defined maintenance windows, the District may terminate the Agreement for material breach as provided herein. If the District remedy is a credit, Titan will provide the District a credit against fees due or to become due under the Agreement. If no fees are due or are to become due, Titan will make a payment as specified below, payable within 30 days of receiving notice of a failure to satisfy a Performance Level; provided, however, the total amount of credits for any Review Period will not exceed the total fees or prorated portion thereof for that Review Period. These are the sole and exclusive remedies for Titan's failure to satisfy a Performance Level.

Performance Level Title	Remedy
Services Availability – Peak Hours	6% of the prorated monthly amount of the yearly Fees for the first 0.1% below Performance Level and an additional 6% of the prorated monthly amount of the yearly Fees for each percentage point below Performance Level thereafter.
Support Response Times	1/30 of the Prorated Fees for each Review Period for each 3 instances (as documented by the District) in which the Performance Level at Level 1 or 2 has failed.
Support Status Update	1/30 of the Prorated Fees for each Review Period for each instance in which the Performance Level at Level 1 or 2 has failed, but no more than quarter of the prorated monthly amount of the yearly fees for any one day.
	The District may terminate the Agreement for material breach as provided in the Agreement, and Titan will refund to the District the Fees paid for the then-current Renewal Term or Initial Term, prorated according to the number of days remaining in the then-current Renewal Term or Initial Term.

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(End of Attachment)

**ADDENDUM TO PURCHASE AGREEMENT:
RFP No. 18/19-01 Nutrition Services Management Platform**

This ADDENDUM TO PURCHASE AGREEMENT: RFP No. 18/19-01 Nutrition Services Management Platform ("Addendum") by and between Titan School Solutions, Inc. ("Titan", "TITAN", "Vendor", "Consultant", or "Provider") and Oakland Unified School District on behalf of itself and its affiliated schools ("You", "Customer" or "District"), is entered into on January 24, 2020 (the "Effective Date"), with reference to the facts set forth below. Provider and District agree to amend the terms and conditions of the PURCHASE AGREEMENT: RFP No. 18/19-01 Nutrition Services Management Platform ("Agreement"), upon and subject to the terms and conditions of this Addendum, notwithstanding anything to the contrary in the Agreement. Initial capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

RECITALS

- a. Provider and District entered into the Agreement on 1/24/2020 with a term date ending 1/24/2021 ; and
- b. Provider and District have mutually agreed to amend the Agreement as set forth in this Addendum.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, promises, representations, warranties, and conditions set forth herein, Provider and District hereby agree as follows:

1. The following terms related to the order of precedence are hereby incorporated into the Agreement:

Section 21 ENTIRE AGREEMENT AND ORDER OF PRECEDENCE. This Agreement is the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, Addendum, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, Addendum or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in Vendor's Proposal, an invoice, or in any other documentation, will be incorporated into or form any part of this Agreement, and all such terms or conditions will be void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) any exhibit, schedule, or addendum to this Agreement and (2) the body of this Agreement.
2. Vendor's proposal in response to the RFP is incorporated herein by this reference.
3. Pursuant to paragraph 1, above, the Titan School Solutions Master Subscription Agreement, incorporated by reference in Exhibit A: Quote, does not alter or modify the terms of the Parties agreement and is hereby stricken from the Agreement.
4. The following terms related to the subscription are hereby incorporated into the Agreement:
 - a. Use of the Titan Product.

- i. **Terms of Use.** The parties acknowledge and agree that the terms and conditions contained in this Agreement and the terms of use, which are attached in Exhibit B, will govern Your use of the TITAN Product for the Subscription Term, unless explicitly stated otherwise in a written agreement between the parties.
 - ii. **TITAN Product Features and Components.** TITAN reserves the right to make modifications to the TITAN Product or particular features or components of the TITAN Product, from time to time, at its sole discretion. TITAN will exercise reasonable commercial efforts to notify You of any such material modifications to the TITAN Product, provided however, that TITAN will not have any liability for failure to provide such notice. TITAN agrees that such modifications will not materially degrade the Product.
- b. **Support.** During the Subscription Term, and at no additional charge to you, TITAN shall provide you technical assistance by telephone on use of the Software, the identification of Software problems, and the reporting of Errors. TITAN will respond to phone calls from Support Contacts, identified by You, pursuant to the terms, which are attached in Exhibit C (the "Support Services"). You shall designate in writing to TITAN no more than three (3) technical contacts to request and receive telephone support services from TITAN.
 - c. **Professional Services.** If purchased by you and set forth on an invoice, TITAN will provide services which will enable attendees to use the Software which are periodically held at TITAN's facilities or at other locations as TITAN and you may agree ("Professional Services"). In consideration of payment of the fees associated with the Professional Services set forth on an invoice, you are entitled to receive the number of hours of Professional Services as indicated on the invoice. You shall be solely responsible for all transportation, lodging, meals or any other reasonable expenses incurred by TITAN or your Users attending such Services. If you purchased hardware from TITAN, Professional Services may include installation of hardware as well. In the event You cancel or postpone scheduled Professional Services within 14 days of the agreed upon date, You are responsible for all expenses incurred by TITAN. In the event You cancel or postpone scheduled Professional Services within 3 days of the agreed upon date, You are further responsible for fifty-percent (50%) of the scheduled Professional Services fee. All quoted installation dates, including dates related to terms such as "installation," "completion of training" and "live," if any, are estimates only.

- d. **Your Responsibilities.** You shall: (a) be responsible for all Your Users' compliance with the terms and conditions of this Agreement, (b) be solely responsible for the accuracy, integrity, and legality of Your Data and the means by which it acquires and uses such Your Data, (c) use the TITAN Product only in accordance with the applicable online user guide and applicable laws, rules, regulations (including, without limitation, export, data protection and privacy laws, rules and regulations) and any TITAN Product documentation, (d) use commercially reasonable efforts to prevent unauthorized access to or use of the TITAN Product, and (e) notify TITAN in writing immediately of (i) any unauthorized use of, or access to, the TITAN Product or any User account or password thereof or (ii) any notice or charge of noncompliance with any applicable law, rule or regulation asserted or filed against You in connection with Your use of the TITAN Product. For the avoidance of doubt, User accounts and passwords are specific to individual Users, and under no circumstances may User accounts or passwords be shared among or by different Users; provided, however, that Your administrator(s) may reassign a User account during the Subscription Term, if a former User no longer requires a User account.
- e. **Restrictions.** You shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to the TITAN Product or any modified version or derivative work of the TITAN Product created by or for You, (b) provide the TITAN Product, or any modified version or derivative work of the TITAN Product created by or for You, on a timesharing, service bureau or other similar basis, (c) remove or alter any copyright, trademark or proprietary notice in the TITAN Product, (d) copy any features, functions or graphics of the TITAN Product for any purpose other than what is expressly authorized in this Agreement, (e) modify, remove or disable any portion of the Titan Product, (f) send, store, or authorize a third party to send or store spam, unlawful, infringing, obscene or libelous material, or Malicious Code, (g) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the TITAN Product or Your Data contained therein, (h) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, the TITAN Product, (i) use any Intellectual Property Rights protected by applicable laws and contained in or accessible through the TITAN Product for the purpose of building a competitive product or service or copying its features or user interface, or (j) use the TITAN Product, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without TITAN's prior written consent.
- f. **Third Parties.** You may use third party contractors to assist with the installation, use and modification of the TITAN Product for Your own internal business use, including creation of Modifications on Your behalf. You agree not to disclose any Confidential Information

of TITAN to any contractor or allow any subcontractor to create Modifications unless and until the contractor has agreed in writing to (a) protect the confidentiality of such Confidential Information in the manner required by Section 9 and then only to the extent necessary for the contractor to perform those services subcontracted to it, and (b) assign all such contractor's rights, title and interests (including all Intellectual Property Rights) in such Modifications to You to ensure You can comply with Section 6.a.1. You will be solely responsible for all payments to its contractors and will remain responsible for compliance by its contractors with the terms and conditions of this Agreement.

5. The following terms related to Third-Party Software and Third-Party Modules are hereby incorporated into the Agreement:
- a. Third-Party Software. The TITAN Product utilizes or includes certain Third Party Software. If a Third Party Software provider requires TITAN to remove such software from the TITAN Product due to violation of applicable law or third-party rights, You agree to cooperate with TITAN to ensure its removal from the TITAN Product and Your systems.
 - b. Third-Party Modules. You may use Third-Party Modules to add functionality to the TITAN Product, provided that such use is limited to internal use by You in a manner that does not violate any provisions of Section 4.f. of this Addendum. Any use by You of Third-Party Modules and any exchange of Your Data between You and the Third-Party Module provider are solely between You and the Third-Party Module provider. TITAN does not warrant or support Third-Party Modules.
 - c. Third-Party Privacy Policies. You understand and agree that any of Your Data exchanged with Third-Party Module is governed by that provider's respective privacy policy.
 - d. Third Party APIs. Features that Interoperate with third party services (such as Google) depend on the continuing availability of the API and program for use with the TITAN Product. If a third party ceases to make the API or program available on reasonable terms to TITAN, TITAN may cease providing such third party features without entitling You to any refund, credit, or other compensation. TITAN agrees that such modifications will not materially degrade the Product.
6. The following terms related to Proprietary Rights and Data Protection are hereby incorporated into the Agreement:
- a. Ownership.
 - i. Ownership of TITAN Product and Modifications. Except for Your Personal Data, which remains Your property, TITAN owns all right, title and interest, including all

Intellectual Property Rights, in and to the TITAN Product, any and all Modifications (collectively, the "TITAN Property"). You hereby assign and agree to assign to TITAN all right, title and interest worldwide in the Intellectual Property Rights embodied in any and all Modifications. To the extent any of the rights, title and interest are not assignable by You to TITAN, You grant and agree to grant to TITAN an exclusive, royalty-free, transferable, Irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) under Your Intellectual Property Rights to use, disclose, reproduce, license, sell, offer for sale, distribute, import and otherwise exploit the Modifications in its discretion, without restriction or obligation of any kind or nature. Except as expressly stated otherwise in this Agreement, TITAN retains all of its right, title and ownership interest in and to the TITAN Property, and no other Intellectual Property Rights or license rights are granted by TITAN to You under this Agreement, either expressly or by implication, estoppel or otherwise, including, but not limited to, any rights under any of TITAN'S or its Affiliates patents.

- ii. Trademarks. TITAN's name, logo, trade names and trademarks are owned by TITAN, and no right is granted to You to use any of the foregoing except as expressly permitted herein or by written consent of TITAN.
- iii. Freedom to Operate and Innovate. Nothing in this Section 6 shall inhibit, hamper, encumber or otherwise impede TITAN'S freedom to create Modifications or improve, extend and/or modify any and all TITAN Products.
- iv. Suggestions. You or your Users may, from time to time, provide suggestions, enhancement or feature requests or other feedback to TITAN with respect to the TITAN Property or other TITAN products, services or related documentation (whether or not such is disclosed or delivered by TITAN to You under this Agreement) (collectively, "Feedback"). You agree that all Feedback is and shall be given by You is entirely voluntarily. TITAN shall be free to use, disclose, reproduce, license or otherwise distribute and exploit the Feedback in its discretion, without restriction or obligation of any kind or nature. Feedback, even if designated as confidential by You, shall not create any obligation of confidentiality for TITAN, unless TITAN expressly agrees so in writing.

7. The following terms related to Payment are hereby incorporated into the Agreement:

- a. **Fees and Payment.** You agree to pay all fees specified in the relevant Order Form/Quote attached hereto as Exhibit A. Except as otherwise provided, fees set forth in each Order Form hereunder will be: (a) fixed during the Subscription Term set forth in such Order Form, (b) quoted and payable in United States dollars, and (c) non-cancelable and non-refundable, unless the Subscription is cancelled due to a material breach by TITAN. Fees are due thirty (30) days from the invoice date, unless otherwise noted in an Order Form. You agree to provide TITAN with complete and accurate billing and contact information and to notify TITAN of any changes to such information.
- b. **Additional Licenses.** Additional User Licenses may be added during any given month at the Subscription fee identified in the Proposal and Master Agreement. You understand and agree that You will be charged a pro-rata fee for the initial month in which licenses are added and for each of the monthly periods remaining in the then-current Subscription Term. The Subscription Term for the additional licenses will terminate on the same date as the pre-existing Subscriptions. You will be responsible for submitting a new Order Form to TITAN to request the additional licenses during the Subscription Term. You also understand and agree that the number of Subscription licenses purchased under a specific Order Form cannot be decreased during the relevant Subscription Term set forth on such Order Form.
- c. **Renewal.** All fees required for renewal of a Subscription Term will be reflected in a quotation issued by TITAN in advance of the expiration of the current Subscription Term (each a "Renewal Quote"), and any changes in the number of Licenses for such renewal Subscription Term will be reflected in the Renewal Quote. Fees for any subsequent renewals shall be set at the price identified in the Proposal and Master Agreement.
- d. **Overdue Charges.** Overdue amounts are subject to interest at a rate of one percent (1.0%) per month, or the maximum rate permitted by law, whichever is lower. If any charge owing by You to TITAN is thirty (30) days or more overdue, TITAN may, without limiting its other right and remedies, suspend services until such amounts are paid in full.
- e. **Taxes.** Unless otherwise provided, fees specified in quotes or Order Forms, do not include any Taxes, and You are responsible for payment and reimbursement of all Taxes associated with Your purchases hereunder. Provided that TITAN shall be responsible for taxes on its net income derived from this Agreement.

8. The following terms related to Term and Termination are hereby incorporated into the Agreement:

- a. **Term.** This Agreement commences on the Effective Date and continues for a period set forth in the Purchase Agreement and Order Form (the "Term").

- b. **Termination by You or TITAN.** Either party may terminate this Agreement and any then-current Order Forms prior to the end of a Subscription Term if the other party: (i) materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for thirty (30) days following written notice of the breach or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
 - c. **Effect of Termination.** No refund of payments will be made, unless termination of this Agreement and any then-current Order Forms is a result of a breach by TITAN under Section 8.b., in which case You will be entitled to a refund of the pro rata portion of fees associated with the remainder of the Subscription Term. You understand and agree that upon expiration of the Subscription Term or termination of this Agreement, whichever occurs first, the rights granted under this Agreement and, in connection with any then-current Order Forms, will be immediately revoked and TITAN may immediately deactivate Your account. At TITAN's request, you agree to return any hardware provided to You as part of the TITAN Product, excluding hardware that was purchased by You. In no event shall any termination relieve You of the obligation to pay any fees payable to TITAN for the period prior to the effective date of termination, unless otherwise stated in this Agreement.
 - d. **Surviving Provisions.** Sections 4.e., 6.a., 6.b.i., 6.c., 7, 8.d., 9.a., 10.c., 11., 12., and 13. shall survive termination or expiration of this Agreement.
9. The following terms related to Confidentiality are hereby incorporated into the Agreement:
- a. **Confidentiality.** The parties acknowledge that in the course of performing their obligations under this Agreement, each may receive Confidential Information. Each party covenants and agrees that neither it nor its agents, employees, officers, directors or representatives will disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (a) to those employees, representatives, or contractors of the Receiving Party who require access to the Confidential Information to exercise its rights under this Agreement and who are bound by written agreement, with terms at least as restrictive as these, not to disclose third-party confidential or proprietary information disclosed to such party, or (b) as such disclosure may be required by law or governmental regulation, subject to the Receiving Party providing to the Disclosing Party written notice to allow the Disclosing Party to seek a protective order or otherwise prevent the disclosure. Nothing in this Agreement will prohibit or limit the Receiving Party's use of information: (i) previously known to it without obligation of confidence, (ii) independently developed by or for it without use of or access to the Disclosing Party's Confidential

Information, (iii) acquired by it from a third party that is not under an obligation of confidence with respect to such information, or (iv) that is or becomes publicly available through no breach of this Agreement. The Receiving Party acknowledges the irreparable harm that improper disclosure of Confidential Information may cause; therefore, the Injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section. The Original Code and the structure, sequence and organization of the TITAN Product are Confidential Information of TITAN or its licensors.

- b. **Destruction.** Within five (5) days after a Disclosing Party's request, the Receiving Party shall return or destroy the Disclosing Party's Confidential Information; provided, however, that the Receiving Party shall be entitled to retain archival copies of the Confidential information of the Disclosing Party solely for legal, regulatory or compliance purposes unless otherwise prohibited by law.

10. The following terms related to Warranties, Exclusive Remedies and Disclaimers are hereby incorporated into the Agreement:

- a. **TITAN Warranties.** TITAN warrants that (a) it has the legal power to, and hereby does, enter into this Agreement, (b) the TITAN Product shall perform materially in accordance with the online user guide for the applicable TITAN Product or the user manual accompanying the TITAN Product, and (c) TITAN will use commercially reasonable measures to detect whether the TITAN Product contains any Malicious Code. If the TITAN Product does not conform to the warranty specified in Section 10.a.b. above, You must notify TITAN within thirty (30) days of the breach of warranty, and TITAN agrees to use commercially reasonable efforts to cure the non-conforming portions of the TITAN Product before You pursue any other remedies. TITAN is not responsible for any non-compliance with this warranty resulting from or caused by any (i) Malicious Code present in the Your Data made available to TITAN by You, or (ii) Modifications made by anyone other than TITAN, including by way of example, Modifications made by You or any Authorized Partners. Except for claims related to a data security breach, including a material violation of the CSDPA, for which TITAN will defend, indemnify and hold You and your respective officers, directors, employees and agents, harmless from and against any and all claims, suits, causes of action, liability, loss, costs and damages, including reasonable attorney fees, arising out of or relating to any third party claim arising from breach by Licensor of its obligations contained in this Section, except to the extent resulting from the acts or omissions of You, Your sole and exclusive remedy for a breach of any of warranties contained in this Section 10.a. shall be to terminate the Agreement pursuant to Section 8.b. and, notwithstanding anything to the contrary in Section 7.a., have TITAN refund to You the pro rata unused portion of any pre-paid Subscription fees.

- b. Your Warranties. You warrant that (a) You have all rights in and to Your Data necessary to permit TITAN to exercise its rights to access and use Your Data as permitted by this Agreement, and (b) Your Data or the media on which the Your Data resides does not contain any Malicious Code.

- c. Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED IN SECTION 10.a. AND AS PERMITTED BY APPLICABLE LAW, THE TITAN PRODUCT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. TITAN'S PRODUCT OR SERVICE MAY BE SUBJECT TO LIMITATIONS OR ISSUES INHERENT IN THE USE OF THE INTERNET AND TITAN IS NOT RESPONSIBLE FOR ANY PROBLEMS OR OTHER DAMAGE RESULTING FROM SUCH LIMITATIONS OR ISSUES.

11. The following terms related to the Limitation of Liability are hereby incorporated into the Agreement:

- a. Limitation on All Damages. EXCEPT FOR A BREACH OF SECTIONS 4.b., 4.c., 4.d., 4.e., 4.f. 9a and 9b, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORTS, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE, THE LESSOR OF THE TOTAL AMOUNT PAYABLE TO TITAN UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR GIVING RISE TO THE LIABILITY OR TWENTY FIVE THOUSAND DOLLARS (\$25,000). THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 7.

- b. Disclaimer of Consequential Damages. EXCEPT FOR A BREACH OF SECTIONS 4.b., 4.c., 4.d., 4.e., 4.f. 9a and 9b, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR REVENUE OR FOR ANY INDIRECT, SPECIAL, COVER, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING UNDER THIS AGREEMENT AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

- c. Scope of Limitations on Liability. THE LIMITATIONS SET FORTH IN THIS SECTION 11 SHALL APPLY NOT WITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH CLAIMS ARE BROUGHT (CONTRACT, TORT, INCLUDING NEGLIGENCE OR OTHERWISE).

12. The following terms related to General Terms are hereby incorporated into the Agreement:
- a. Publicity. TITAN may include Your name, in TITAN's customer presentations, website, brochures and other marketing materials and display areas at TITAN's events to represent that You are a TITAN customer. TITAN must obtain Your written permission prior to including Your logos and trademarks in TITAN materials.
 - b. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without the consent of the other party, to its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any attempted assignment in breach of this Section 11.312.b. shall be void.
 - c. Relationship of the Parties. TITAN and You are independent contractors, and nothing in this Agreement or any attachment hereto will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties.
 - d. No Third-Party Beneficiaries. There are no third party beneficiaries to this Agreement.

Force Majeure. Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's reasonable control, and denial of service attacks.

- e. Equitable Relief. Except as otherwise provided, remedies specified herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

13. The following Definitions are hereby incorporated into the Agreement:

- a. "API" means application programming interfaces provided by TITAN as part of the TITAN Product, which set forth rules and specifications that Third Party Modules may utilize to access Your Data in accordance with this Agreement.
- b. "Your Data" means any data, information or material submitted by You, or stored by You in the TITAN Product.
- c. Confidential Information means information that one party (the "Disclosing Party") provides to the other party ("Receiving Party") during the term of this Agreement that is identified in writing at the time of disclosure as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure and Confidential Information includes Personal Data.

- d. **"Intellectual Property Rights"** means any patents and applications thereto, copyrights, trademarks, service marks, trade names, domain name rights, trade secret rights, and all other intellectual property and proprietary rights.
 - e. **"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.
 - f. **"Modifications"** means any work based on or incorporating all or any portion of the TITAN Product, including, without limitation, modifications, enhancements and customizations to the TITAN Product developed by TITAN, You, a third party on either such party's behalf or any combination of such parties.
 - g. **"Order Form"** means a document for purchases of Subscriptions hereunder, including purchase orders, order notifications and order confirmation documents (either in writing or via the Web), that are agreed to by TITAN, or entered into between TITAN and You from time to time. Order Forms are deemed incorporated herein by reference.
 - h. **"Original Code"** means TITAN Product source code.
 - i. **"Personal Data"** means any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.
 - j. **"Software Releases"** has the meaning ascribed to it in Exhibit A of this Agreement.
 - k. **"Subscription"** means Your right to use the TITAN Product for the Subscription Term, per the terms of the Agreement and the related Order Form(s).
 - l. **"Subscription Term"** means the period of time which You may access the applicable TITAN Product as set forth in an Order Form.
 - m. **"TITAN Product"** means any software or hardware that TITAN supplies, licenses or sells to You from time to time during the Term, as set forth in the Order Form, including any software that is downloadable from a third party app store and Modifications.
- "Support Services"** shall mean technical assistance by telephone, email, application, or chat on use of the Software, the identification of Software problems, and the reporting of Errors.
- n. **"Taxes"** means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature.

- o. "Third-Party Modules" means software developed by a third party that You may use to add functionality to the TITAN Product, the use of which software is governed by the applicable terms and conditions specified by such third party.
- p. "Third-Party Software" means online, Web-based applications and offline software products that are developed by third parties, and may Interoperate with the TITAN Product.
- q. "User" means an individual user that You authorize to use the TITAN Product and on whose behalf You pay the licensee fees; provided, that the number of Users shall not exceed the number of licenses that You purchase.
- r. "You or you" means the hospital, college, university, school district, corporation, or other entity or individual who has been Invoiced.

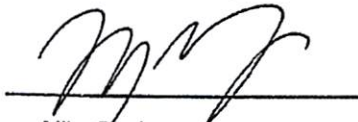
14. Except as otherwise expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect. To the extent there is a conflict between this Addendum and the Agreement, this Addendum shall control.

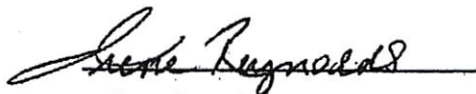
15. This Addendum may be executed in multiple counterparts, each of which shall be deemed an original and, together shall constitute one document.

IN WITNESS WHEREOF, Provider and District have executed this Addendum to Purchase Agreement: RFP No. 18/19-01 Nutrition Services Management Platform as of the Effective Date.

Titan School Solutions, Inc.

Oakland Unified School District


 By: Mike Gorden
 Title: Vice President of Sales
 Date: 1/24/2020


 By: Irene Reynolds
 Title: Executive Director
 Date: 1/24/2020

****Digital Signature May Not Be Accepted***

Approved as to form by OUSD Staff Attorney, Joanna Powell, on March 13, 2020.



Exhibit A

Participating Associate Member Titan Order Form/Quote

Exhibit B
Terms of Use

1. **Service.** Subject to the Terms of Use and the terms of the Agreement, You shall have the right to access, use and modify the TITAN Product during the Subscription Term solely for Your own internal business purposes. The TITAN Product may be accessed through a web browser and/or mobile web client.
2. **Software Releases.** During the Subscription Term, if You have paid the applicable fees and are in compliance with the terms and conditions of the Agreement, TITAN may provide automatic updates to the TITAN Product with

Software Releases. "Software Releases" may be comprised of Maintenance Releases and/or Feature Releases (as defined below).

1. "Maintenance Releases" means an update to the TITAN Product which includes fixes to known defects and does not intentionally introduce any new or modified application behavior.
 2. "Feature Releases" means a software update which includes both fixes to known defects and introduces new or modified application behavior or changes the available features or functionality of the TITAN Product.
3. **Third Party Analytics Tools.** You acknowledge that TITAN may use third party web analytics tools (such as Google Analytics) that serve cookies or similar tracking technologies through the TITAN products and services, on end user devices, to collect Usage Data for the purposes described in Section 6.c. You will take such measures as are necessary to inform Your end users about TITAN's use of such web analytics tools in connection with the TITAN Products and related services. You hereby provide Your consent to TITAN to use cookies or tracking technologies served by those web analytics tools, in a manner that is consistent with industry practice.
 4. **Development.** You agree that You will not, directly or indirectly, conduct any activity that will degrade performance beyond an acceptable level, including but not limited to: (a) conducting automated functionality tests or load tests on the TITAN Product, (b) creating Internet links to the TITAN Product, and/or (c) deploying custom modifications that adversely impact the TITAN infrastructure due to incompatible code, inefficient code or architecture practices. If You do any of the foregoing, TITAN shall have the right to terminate or suspend Your account and access to the Service without any refund or credit until You correct such violation to TITAN's reasonable satisfaction.

5. **Handling of Your Data Post Termination.** Upon written request by You made within ninety (90) days of the effective date of expiration or termination of the Agreement (the "Post-Term Period"), TITAN agrees to make available to You, a copy of Your production environment. Further, during the Post-Term Period and upon Your request, TITAN shall grant the You limited access to the Service for the sole purpose of permitting You to retrieve Your Data, provided that You have paid in full all good faith undisputed amounts owed to TITAN. Upon expiration of the Post-Term Period, TITAN will have no further obligation to maintain for or provide to You any of Your Data and may thereafter, unless legally prohibited, delete all of Your Data in its systems or otherwise in its possession or under its control.

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