

PEPPM 2019 Apple Bid

AWARDED VENDOR AGREEMENT (“Agreement”)

BETWEEN

Central Susquehanna Intermediate Unit, Milton, Pennsylvania (“Agency”)

AND

Apple Inc.

(Bidder's legal name referred to throughout this Agreement as "Awarded Vendor")

For Product Line:

<u>Apple Inc.</u>	<u>Products and Services as defined in the Contract</u>
Manufacturer/Publisher Name	Product Line Description

This Agreement is made and entered into as of the date this Agreement is fully executed by the Awarded Vendor and Agency (the “Effective Date”).

Whereas, Agency issued a Request for Bids for PEPPM 2019 Apple Bid (“RFB”), which RFB is incorporated into this Agreement by reference and made a part hereof;

Whereas, Awarded Vendor submitted a Bid in response to the Agency’s RFB for the above referenced Product Line;

Whereas, the Agency notified Awarded Vendor that it was the lowest responsive and responsible bidder for the above-referenced Product Line; and

Whereas, Awarded Vendor executes this Awarded Vendor Agreement to memorialize its acceptance of the terms and conditions of the Contract, as modified by Awarded Vendor (as hereinafter defined).

Now, therefore in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is expressly acknowledged by both parties, and intending to be legally bound hereby, the parties mutually agree as follows:

1. Awarded Vendor agrees to furnish products and services for the above-referenced Product Line in accordance with the Contract.
2. Awarded Vendor’s legal address is

Apple Inc.
One Apple Park Way
Cupertino, CA 95014

Agency's address is

90 Lawton Lane
Milton, PA 17847

3. The Contract shall commence on January 1, 2019 and end on December 31, 2021. Agency and Awarded Vendor may extend the term of the Contract as set forth in the PEPPM Terms and Conditions.
4. Awarded Vendor agrees to extend its bid prices according to all terms and conditions of the Contract Documents to all LEAs in Pennsylvania that are authorized to purchase the products included in the Awarded Vendor's bid, as modified by Awarded Vendor.
5. To the extent that the Awarded Vendor agreed to extend its bid prices to LEAs in states other than Pennsylvania, and/or to other Eligible Entities in Pennsylvania or other states, then Awarded Vendor agrees to extend its bid prices according to all terms and conditions of the Contract Documents to all such other LEAs and Eligible Entities that are authorized to purchase the products included in the Awarded Vendor's bid as set forth in Awarded Vendor's bid.
6. Awarded Vendor agrees to remit the Transaction Fee to the eCommerce Consultant in accordance with the terms and conditions set forth in the Contract.
7. Unless the context otherwise requires, capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings specified in the RFB or other Contract Documents, as modified by Awarded Vendor.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused their hands and seals to be affixed.

[Remainder of Page Intentionally Left Blank. Signature Pages Follow]

CSIU use only:

**CENTRAL SUSQUEHANNA
INTERMEDIATE UNIT**

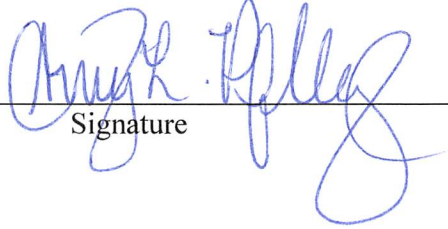
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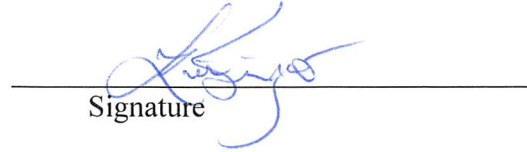
By **Kevin Singer**

Witness

CSIU Executive Director

Print Names Above:


Signature


Signature

Date: November 15, 2018

Date: November 15, 2018

[signatures continued on following page]

Vendor Name (if corporation) _____

Vanessa Boenig
Corporate Secretary (or designee)
Manager IIS Bids & Contract Operations Mgmt

By _____
Corporate President (or designee)

Designee Title (If not Corporate Secretary) _____

Designee Title (If not Corporate President) _____

Print Names Above:

Vanessa Boenig
Signature

(CORPORATE SEAL)

Date: 9-17-2018



By _____

Vendor Name (if unincorporated) _____

Witness _____

By _____
Owner (or designee)

Title _____

Designee Title (If not Owner) _____

Print Names Above:

Signature _____

Signature _____

Date: _____

Date: _____

PEPPM Terms and Conditions Summary

Central Susquehanna Intermediate Unit Request for Bids (“RFB”) PEPPM 2019 Apple Bid – Pennsylvania Electronic Bid #528991

Apple’s Exceptions and Clarifications to the RFB

Words/phrases in **bold** are to be added; those ~~stricken through~~ are to be deleted.

Section: Introduction and Overview – Page 2 – I.4 Bid Scope

Apple Response: Apple accepts this provision with the following modifications:

This is a Request for Bids (RFB) for Apple branded (meaning brands that Apple owns or licenses) technology products and services. Such branded lines of technology products and services are referred to herein, ~~each as a “Product”~~ **Apple Product and Services and defined below in Section II.** ~~And collectively, as “Products.”~~ ~~Products include, but are not limited to, computers, tablets, networking and audio-visual equipment, cloud services, and other products manufactured by Apple or services branded by Apple. The term “Products” or “Product” does not include ancillary services.~~

Section: Bid Document Definitions and Interpretations – Page 3 – II.I Captions

Apple Response: Apple accepts this provision with the following modifications:

The captions appearing at the beginning of each Section or subsection of the Contract ~~Documents~~ are for reference and convenience only and shall be disregarded whenever an interpretation of the Contract ~~Documents~~ is required.

Section: Bid Document Definitions and Interpretations – Page 3 – II.2 Capitalized Terms

Apple Response: Apple accepts this provision with the following modifications:

Unless the context otherwise requires, capitalized terms used but not otherwise defined in the Contract ~~Documents~~ shall have the respective meanings specified in **this Contract.** ~~these Terms and Conditions.~~

Section: Bid Document Definitions and Interpretations – Page 3 – II.3 Use of Pronouns

Apple Response: Apple accepts this provision with the following modification:

For the Contract ~~Documents~~, one gender shall include any other gender, and the singular shall include the plural, and all rights granted and received shall be joint and several, as the case may be.

Section: Bid Document Definitions and Interpretations – Page 3 – II.4 Provisions Required by Law

Apple Response: Apple respectfully takes exception this language and refers Agency to Section XIII.13 Governing Law; Jurisdiction and Venue and Severability of this RFB.

~~Each provision of law and any clause required by law to be in the Contract or Purchase Order will be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon application of either party the Contract or Purchase Order will immediately be physically amended to make such insertion or correction.~~

Section: Bid Document Definitions and Interpretations – Page 4– II.8 Definition of “Agreement”

Apple’s Response: Apple accepts this provision with the following modification:

“Agreement” shall mean the Awarded Vendor Agreement, **as modified by the Parties**, between Agency and the Awarded Vendor.

Section: Bid Document Definitions and Interpretations – Page 4– II.13 Definitions of “Contract Documents”, “Contract” and “Purchase Order”

Apple Response: Apple accepts this provision with the following modifications:

Definitions of ~~“Contract Documents”, “Contract” and “Purchase Order”~~

~~Contract Documents Between Agency and Awarded Vendor. As between the Agency and Awarded Vendor,~~
~~†The “Contract Documents” shall consist of this Request for Bids as modified by Awarded Vendor’s Terms and Conditions Summary, the Agreement and all subsequent written amendments to the Agreement as modified by the Parties, the Apple Professional Services Agreement, and the Apple Master Lease Agreement, its Terms and Conditions, any applicable state-specific terms and conditions, In addition, the Contract shall include all information incorporated into the electronic bid form by Agency as approved by the Awarded Vendor or Bidder, the Bidder’s Awarded Vendor’s responses to Questions, the Bidder’s Awarded Vendor’s PEPPM Bid Quote Sheet(s) as modified, the Bidder’s Awarded Vendor’s pricing spreadsheet as modified, the Bidder’s Awarded Vendor’s PEPPM State Selection Form, the Bidder’s Awarded Vendor’s Ancillary Services Form, the Agreement, all other attachments and exhibits to the Request for Bids, and all addenda to the Request for Bids issued prior to the Bid Opening Date (collectively the “Bid Documents”)., and all subsequent written amendments to the Agreement (e.g. adding state-specific terms and conditions). The Contract Documents form the “Contract” between Agency and the Awarded Vendor during the Contract term and any authorized extensions.~~

In the event of any conflict or inconsistency among the documents listed above the following Order of Precedence (“OOP”) shall govern the Contract:

- (1) The Contract;
- (2) Apple Professional Service Agreement (“PSA”);
- (3) Apple Master Lease Agreement (“MLA”); For lease transactions under this Contract, the Master Lease Agreement and any applicable financing documents will control with respect to the terms and conditions pertaining to the lease;
- (4) The Agreement and all subsequent written amendments to the Agreement as modified by the Parties; and
- (5) The Bid Documents.

There are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind, concerning this Contract, except as contained in this and those documents. Awarded Vendor and Agency acknowledge that the Contract supersedes and extinguishes all previous agreements and representations (whether oral or written), between or on behalf of the Parties with respect to its subject matter. The Contract contains all of Awarded Vendor’s and Agency’s agreements, warranties, understandings, conditions, covenants, promises and representations with respect to its subject matter. Awarded Vendor and Agency acknowledge and agree that they have not relied on any other agreements, warranties, understandings, conditions, covenants, promises or representations in entering into the Contract. Neither Awarded Vendor nor Agency will be liable for any agreements, warranties, understandings, conditions, covenants, promises or representations not expressly stated or referenced in the Contract. Awarded Vendor is deemed to have refused any provisions in purchase orders, invoices or other documents or statements from Agency or Eligible Entities that purport to alter or have the effect of altering any provision of the Contract and such refused provisions will be unenforceable. Awarded Vendor shall negotiate, prior to the Effective Date, an eCommerce Merchant Agreement that is separate and apart from the Contract.

~~Contract Documents Between Awarded Vendor and Eligible Entity. As between an Eligible Entity and an Awarded Vendor, the “Contract Documents” shall include, in addition to the Contract Documents listed above between Agency and Awarded Vendor, the purchase order issued by the Eligible Entity (including any order level terms that are specific to options selected by the Eligible Entity, but excluding any pre-printed terms and conditions on such purchase order that are in conflict with the Contract Documents); the Awarded Vendor’s performance, payment and maintenance bonds (if applicable), Awarded Vendor’s standard customer agreement (if applicable), Awarded Vendor’s professional services agreement (if applicable), Awarded Vendor’s lease purchase agreement and financing documents (if applicable), maintenance service agreement (if applicable), the Prevailing Wage rate determination (if applicable), and any state specific terms and conditions that are part of the Contract Documents, and all subsequent written amendments to the purchase order, and shall form the “Contract” between the LEA and Awarded Vendor, which Contract is referred to in these Terms and Conditions as the “Purchase Order.” “Purchase Order” may also include a mutually agreeable Statement of Work executed between the Eligible Entity and an Awarded Vendor. In the event of any conflict or inconsistency among the foregoing documents the following order of precedence shall govern the contract between an Eligible Entity and an Awarded Vendor:~~

- ~~(1) Awarded Vendor’s Direct Customer Agreement;~~
- ~~(2) Awarded Vendor’s Professional Service Agreement;~~
- ~~(3) Awarded Vendor’s Master Lease Agreement; for lease transactions the Master Lease Agreement and any applicable financing documents will control with respect to the terms and conditions pertaining to the lease;~~
- ~~(4) The rest of the documents comprising such contract.~~

Section: Bid Document Definitions and Interpretations – Page 5– II.15 Definition of “Effective Date”

Apple’s Response: Apple respectfully takes exception to this provision and strikes it in its entirety as Effective Date is defined in Section I.12 of the Contract.

~~The “Effective Date” of a Purchase Order is the date on which the Awarded Vendor receives a Purchase Order that has been executed by the Eligible Entity and has all approvals required by the Eligible Entity, such approvals having been obtained prior to Eligible Entity submitting a Purchase Order to Awarded Vendor.~~

Section: Bid Document Definitions and Interpretations – Page 5 – II.16 Definition of “Eligible Entity”

Apple’s Response: Apple accepts this provision with the following modifications:

“Eligible Entity” or **“Eligible Entities”** means ~~an~~ LEAs or other Eligible Organizations that qualify to be buyers under this Contract. **Unless approved by the Awarded Vendor, Eligible Entities do not include U.S. federal governmental entities.**

Section: Bid Document Definitions and Interpretations – Page 6 – II.23 Definition of “Products” or “Products”

Apple Response: Apple accepts this provision with the following modifications:

Products mean **collectively** Apple branded ~~p~~Products and services **other products that are** sold or licensed by Awarded Vendor **to Eligible Entity for its own use.** ~~The term “Products” or “Product” does not include ancillary services.~~

Section: Bid Document Definitions and Interpretations – Page 6 – II.27 Definition of “Transaction Fee”

Apple’s Response: Apple accepts this provision with the following modifications:

~~"Transaction Fee" is that fee paid by an Awarded Vendor on the net dollar amount of invoiced Products and ancillary services sold under a PEPPM Contract. "Transaction Fee" is more fully defined elsewhere in this Contract the Terms and Conditions.~~

Section: Bid Document Definitions and Interpretations – Page 6 – II.28 Definition of “Apple Product”

Apple’s Response: Apple adds the following definition:

“Apple Product” shall mean Services, CTO Products, hardware and software products manufactured, distributed or licensed under an Apple-owned or licensed brand name that Eligible Entity has paid to acquire or has properly licensed from Apple for its own use, but excluding any third party software and all other third party products.

Section: Bid Document Definitions and Interpretations – Page 6 – II.29 Definition of “Configure-To-Order Product” or “CTO Product”

Apple’s Response: Apple adds the following definition:

“Configure-To-Order Product” or “CTO Product” means Products that Apple modifies from its standard configurations and that are available to Customer only by special order.

Section: Bid Document Definitions and Interpretations – Page 6 – II.30 Definition of “Purchase Order”

Apple’s Response: Apple adds the following definition:

“Purchase Order” is the document (or electronic version thereof) through which an Eligible Entity can purchase Products from the Awarded Vendor. Awarded Vendor will accept Purchase Order(s) provided, however, that the sole purpose of such Purchase Order(s) shall be to provide information needed to complete the order process and any preprinted terms of such Purchase Order(s) shall be of no force or effect. The submission of a Purchase Order to the Awarded Vendor for the Products and/or Services offered in this Contract shall constitute full and binding acceptance of the Contract.

Section: Bid Document Definitions and Interpretations – Page 6 – II.31 Definition of “Services”

Apple’s Response: Apple adds the following definition:

"Services" mean, collectively, the standard, price-listed-services, support and/or training products sold under the Apple brand name.

Section: Bid Document Definitions and Interpretations – Page 6 – II.32 Definition of “Terms and Conditions”

Apple’s Response: Apple adds the following definition:

“Terms and Conditions” means the terms and conditions of the Contract as agreed to by the Parties.

Section: Bid Document Definitions and Interpretations – Page 6 – II.33 Definition of “Apple Confidential Information”

Apple Response: Apple adds the following definition:

Apple Confidential Information” means any and all information in oral or written form that Agency or Eligible Entity knows or has reason to know is confidential information and that is disclosed in connection with this Contract or to which Agency or Eligible Entity may have access in connection with this Contract, including but not limited to financial information and data, personnel information, information regarding strategic

alliances, costs or pricing data, the identities of customers and prospective customers, and any information relating to new product launch, including the release dates and product specifications. Apple Confidential Information shall not include any information that: (i) was rightfully in the Agency's or Eligible Entity's possession prior to disclosure without any obligation to maintain its confidentiality; (ii) was independently developed by Agency or Eligible Entity without the use of or reference to Apple Confidential Information; or (iii) is now, or hereafter becomes, publicly available other than through disclosure by Agency or Eligible Entity in breach of this Contract.

Section: Bid Document Definitions and Interpretations – Page 6 – II.34 Definition of “Agency or Eligible Entity Confidential Information”

Apple Response: Apple adds the following definition:

Agency or Eligible Entity Confidential Information means and is limited to information that is: (i) reduced to a tangible form, (ii) independently developed by Agency or Eligible Entity without the use of or reference to any Apple Confidential Information, and (iii) provided specifically at Apple's request after execution of this Contract and after execution of an acknowledgment signed by an Apple Sales Director that such information shall be treated as Agency or Eligible Entity Confidential Information. Agency or Eligible Entity Confidential Information shall not include any information that: (a) is communicated verbally; (b) was rightfully in Apple's possession prior to disclosure without any obligation to maintain its confidentiality; (c) was independently developed by Apple without the use of Agency or Eligible Entity Confidential Information; (d) is required to verify Agency's or Eligible Entity's compliance with any provisions of this Contract; or (e) is now, or hereafter becomes, publicly available other than through disclosure by Apple in breach of this Contract.

Section: Bid Document Definitions and Interpretations – Page 6 – II.35 Definition of “Limited Warranty”

Apple Response: Apple adds the following definition:

Limited Warranty means Apple's standard limited warranty that is set forth in the documentation that accompanies any Apple Products purchased under this Contract.

Section: Bid Document Definitions and Interpretations – Page 6 – II.36 Definition of “Line of Credit”

Apple's Response: Apple adds the following definition:

Line of Credit means a line of credit established for Eligible Entity by Apple in its sole discretion.

Section: Bid Document Definitions and Interpretations – Page 6 – II.37 Definition of “Party”

Apple's Response: Apple adds the following definition:

Party means either Apple or Agency and “Parties” means both of them.

Section: Legal Authority and Eligible Buying Agencies – Page 7 – III.2 Authority for Bidding and Contracting

Apple's Response: Apple accepts this provision with the following modification:

The PEPPM cooperative purchasing program was originally established in 1982. It is a national cooperative purchasing program administered by the Agency.

The Agency primarily solicits technology bids for Pennsylvania LEAs under Pennsylvania statutes and the authority of the Agency's agreement with the Pennsylvania Department of Education and electronic Letters of Agency provided by each Eligible Entity prior to release of this RFB.

The PEPPM cooperative purchasing program is operated by Agency under Chapter 19, Intergovernmental Relations, of the Pennsylvania Commonwealth Procurement Code, 62 Pa.C.S.

§§ 1901 et. seq., as the same may be amended from time to time (the "Cooperative Procurement Code") and other laws of the Commonwealth of Pennsylvania. The program is operated for those local school districts assigned to the Agency, as well as other organizations eligible to participate under applicable law, whether such organizations reside inside or outside of the Commonwealth of Pennsylvania.

Organizations eligible to participate under the Cooperative Procurement Code include state purchasing agencies, agencies of the United States, political subdivisions, public authorities, tax- exempt nonprofit educational institutions or organizations, tax-exempt nonprofit public health institutions or organizations, tax-exempt nonprofit fire companies, tax-exempt nonprofit rescue companies, tax-exempt nonprofit ambulance companies, and to the extent provided by law, any other entity, including a council of governments or an area government, that expends public funds for the procurement of supplies or services.

The Agency intends that the Contracts awarded under this Request for Bids be made available for use by LEAs and other Eligible Organizations in all fifty (50) U.S. states, including Washington D.C., and Puerto Rico, to the fullest extent permitted by law, as the same may be amended from time to time. Notwithstanding the foregoing, the Contract is limited for use only by Pennsylvania and the states specified by the Awarded Vendor in the PEPPM State Selection form. Use of the Contract may be expanded to other states, upon mutual written agreement of the Parties.

Section: Legal Authority and Eligible Buying Agencies – Page 7 – III.3 Local Educational Agencies

Apple Response: Apple accepts this provision with the following modifications:

Local Educational Agencies means the following tax-exempt, ~~nonprofit institutions and~~ organizations (each an "LEA" and collectively "LEAs"):

- _Public school districts
- _Area vocational technical schools (AVTS units)
- _Intermediate units
- _BOCES
- _State-approved private schools
- _Public libraries
- _Nonpublic schools
- _State-approved charter schools
- _Community colleges
- _Other organizations, **other than non-profit organizations**, defined as "local educational agencies" under applicable law.

At a minimum, an Awarded Vendor must agree to serve LEAs in Pennsylvania. At its option as designated on its State Selection Form, an Awarded Vendor may elect to serve LEAs in other states.

Section: Legal Authority and Eligible Buying Agencies – Page 8 – III.4 Other Eligible Organizations

Apple Response: Apple accepts this provision with the following modifications:

“Eligible Organizations” means the following institutions and organizations, subject to the Awarded Vendor’s approval:

- Tax-exempt, nonprofit colleges, and universities, other than community colleges which fall within the definition of LEAs
- County governments, local municipalities, county/municipal/public authorities, and special districts
- State agencies
- Other political subdivisions
- Other entities, including a council of governments or an area government, which expends public funds for the procurement of supplies or services
- **Other organizations, other than non-profit organizations, institutions or entities as permitted under applicable law.**

Section: Legal Authority and Eligible Buying Agencies – Page 8 – III.5 Eligible Entities

Apple’s Response: Apple respectfully takes exception to this provision and strikes it in its entirety as Eligible Entities are defined in Section II.16 of the Contract.

~~The LEAs and other Eligible Organizations are sometimes collectively referred to in this Request for Bids as, each an “Eligible Entity” and collectively the “Eligible Entities.” Unless approved by the Awarded Vendor, Eligible Entities do not include U.S. federal governmental entities.~~

Section: Legal Authority and Eligible Buying Agencies – Page 9 – III.10 eCommerce Merchant Agreement

Apple Response: Apple accepts this provision with the following modifications:

Awarded Vendors will be bound to the eCommerce Merchant Agreement **as negotiated between Awarded Vendor and eCommerce Consultant**, which is attached to the electronic bid form; provided, however, that Awarded Vendor and eCommerce Consultant may negotiate a different eCommerce Merchant Agreement as long as it is agreed upon prior to the Contract **Effective Date** start date. If the eCommerce Consultant is changed during the course of the Contract, Awarded Vendors ~~must~~ may execute a new eCommerce Merchant Agreement with the new eCommerce eConsultant in accordance with the process set forth [elsewhere](#) in these Terms and Conditions.

Section: Legal Authority and Eligible Buying Agencies – Page 10 – III.11 Agency’s Interest in a Contract Resulting from This RFB

Apple’s Response: Apple respectfully takes exception to this provision, strikes it in its entirety and inserts the following:

~~Notwithstanding its own consumption, to the extent Agency issues this Request for Bids and any resulting Contracts for the use of Eligible Entities, Agency’s interests and liability for said use of the Contracts by Eligible Entities shall be limited to the competitive bidding process performed relating to said Contract and shall not extend to the Products, ancillary services, or warranties of the Awarded Vendor or the intended or unintended effects of the Products and ancillary services procured from it.~~

~~In no event shall Agency be liable to any Awarded Vendor or Eligible Entity for any special, indirect, incidental, exemplary, reliance, consequential, or punitive damages, lost profits, or other business interruption damages whether based on breach of contract, tort (including negligence), product liability or otherwise. Any liability of Agency shall be limited to direct, actual damages only, and in no event shall the Agency be liable for damages in excess of the Transaction Fee it receives on the applicable transaction. Eligible Entities and Awarded Vendors acknowledge that the limitations set forth above are fundamental elements of the PEPPM program and resulting Agreements and the Agency would not provide the PEPPM program or enter into the Agreements absent such limitations.~~

Awarded Vendor's maximum aggregate liability (including any liability for the acts or omissions of Awarded Vendor's employees, agents and sub-contractors) for any and all claims of any kind arising out of or in connection with the Contract, whether in contract, warranty, tort (including negligence), misrepresentation, strict liability, statute, or otherwise, shall not exceed one million dollars (\$1,000,000).

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL AWARDED VENDOR BE LIABLE FOR ANY LOSS OF PROFIT OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT LOSSES (INCLUDING LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, UNAVAILABILITY OR INTERRUPTION IN AVAILABILITY OF APPLE PRODUCTS, OR OTHER ECONOMIC ADVANTAGE) OR FOR PUNITIVE OR EXEMPLARY DAMAGES.

THE PARTIES AGREE THAT THE TERMS OF THE CONTRACT, INCLUDING THOSE CONCERNING WARRANTIES, INDEMNITY AND LIMITATIONS OF LIABILITY, REPRESENT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS CONTRACT. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THE CONTRACT FAILS OF ITS ESSENTIAL PURPOSE. THE REMEDIES SET FORTH IN THIS CONTRACT WILL BE AGENCY'S OR ELIGIBLE ENTITY'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIM MADE AGAINST AWARDED VENDOR.

Section: Legal Authority and Eligible Buying Agencies – Page 10 – III.12 New Laws; Change to Existing Laws

Apple's Response: Apple respectfully takes exception to this provision and deletes it in its entirety as termination right are included in Section XIII.8 in the Contract.

~~If a new law, rule or regulation comes into effect; or there is a change in any existing law, rule or regulation; or there is a change in the interpretation of any applicable law, rule or regulation by any court of law or regulatory body; and such event makes performance by Agency or an Eligible Entity under the Contract or a Purchase Order illegal, impracticable or impossible, the Agency or such Eligible Entity may at its option suspend performance under, or terminate, the Contract or such Purchase Order without further obligation to the Awarded Vendor other than to pay any amounts owed through the date of suspension or termination.~~

Section: PEPPM Fees – Page 11 – IV.4 Transaction Fees

Apple Response: Apple accepts this provision with the following modifications:

Awarded Vendors shall be required to pay a Transaction Fee to the Agency for all purchases **of Apple Products** by **Eligible Entities** made through ~~the awarded this~~ Contracts. This applies to all orders, regardless of the method used to submit the order, the quantity of Apple ~~hardware~~ Products ~~or ancillary services~~, or the dollar amount of the order.

The eCommerce Consultant will collect the Transaction Fee on behalf of Agency.

The Transaction Fee described here is the same as the agreed-upon eCommerce Consultant Marketing Fee contemplated by Section 7 of the Epylon eCommerce Merchant Agreement. The Agency Transaction Fee replaces and supersedes any requirement for higher fees in the eCommerce Merchant Agreement.

Transaction Fees publicly disclosed here will not be charged to or paid by the Eligible Entities themselves but are an Awarded Vendor's cost of doing business. Awarded Vendor shall not include any additional itemized amount corresponding to the Transaction Fees in the bid responses, awarded Contract prices, or any other quote to Eligible Entities.

Failure to pay Transaction Fees on a timely basis will result in suspension or termination of the Awarded Vendor's Contract.

For the purpose of the Contract, the Transaction Fee shall be 1.75% of 'Net Sales,' of Apple Products which means gross sales less returns and cancelled orders within thirty (30) days, shipping and sales and other taxes (excluding taxes based on net income).

The Transaction Fee amounts described in the table below shall be the percentage of "Net Sales," which means gross sales of Products and ancillary services less returns and cancelled orders within 30 days, shipping, and other taxes (excluding taxes based on net income). Transaction Fees will be tiered and progressive according to this schedule:

Net Sales Annually, Per Product Line Transaction Fee Percentage

Up to \$30 million	1.75%
More than \$30 million to \$50 million	1.50%
More than \$50 million to \$100 million	1.25%
More than \$100 million to \$150 million	1.00%
More than \$150 million to \$200 million	0.75%
More than \$200 million	0.50%

For example, an Awarded Vendor with \$45 million in sales of a Product Line would pay 1.75 percent on its first \$30 million on Net Sales, and then a separate 1.5 percent only on those Net Sales exceeding \$30 million in a calendar year. Thresholds reset annually on January 1.

~~Any vendor using this Contract for the purpose of obtaining a separate California Multiple Awards Schedule (CMAS) contract from the State of California is responsible for paying both the CMAS fee and the 1.75 percent Transaction Fee described in this section for all orders submitted through the CMAS program. Public records from CMAS will be used to identify and invoice any vendors using the CMAS program through PEPPM-related Contracts.~~

Section: Bidder Qualifications – Page 13 – V.6 Covenant Against Contingent Fees

Apple’s Response: Apple accepts this provision with the following modifications:

The Awarded Vendor certifies that, no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees. For breach or violation of this certification, the Agency or Eligible Entity, as applicable, shall have the right to terminate the Contract or Purchase Order, as applicable. ~~without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.~~

Section: Bidder Qualifications – Page 14 – V.11 Insurance

Apple’s Response: Apple accepts this provision with the following modifications:

The Awarded Vendor is required to purchase and maintain insurance for the protection of claims for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Awarded Vendor's employees for claims of damages due to injury or destruction of tangible property, including loss of use resulting therefrom, and from claims arising out of the performance of the Contract or Purchase Order or caused by negligent acts for which the Awarded Vendor is legally liable. The Awarded Vendor must maintain throughout the term of the Contract ~~and throughout the term of any outstanding Purchase Orders with an Eligible Entity~~ a minimum of \$1,000,000 per occurrence commercial general liability insurance (basic and umbrella coverage) covering the services and work contemplated by the Contract and Purchase Order.

The Awarded Vendor is required to purchase and maintain throughout the term of the Contract ~~and throughout the term of any outstanding Purchase Orders with an Eligible Entity~~ automobile and truck liability coverage with a minimum combined single limit liability of \$300,000.

If requested by the Agency ~~or an Eligible Entity~~, the Awarded Vendor must provide a certificate of insurance evidencing all required coverage with a provision that notice of cancellation shall be provided in accordance with policy provisions. All required insurance must be written on an occurrence basis and maintained with a carrier authorized to conduct business in the Commonwealth of Pennsylvania or the state in which the Eligible Entity resides, having a minimum "excellent" rating of A.M. Best A-. The Agency ~~and Eligible Entity~~ shall be included as additional insureds as respects insurable liabilities assumed by Awarded Vendor under this Contract on the Commercial General Liability policy of insurance required to be carried by Awarded Vendor under the Contract or Purchase Order.

The Awarded Vendor is required throughout the term of the Contract ~~and through the term of any outstanding Purchase Orders~~ to comply with the Pennsylvania Workmen's Compensation Act of 1951, and any such worker compensation acts from other states in which the Eligible Entity resides, and any supplements or amendments thereto, which may have been or may hereafter be passed.

The Awarded Vendor shall have the option to self-insure so long as Awarded Vendor maintains an audited net worth (Shareholders' Equity) of at least \$100,000,000.00.

Section: Bidder Qualifications – Page 14 – V.12 Definitions Related to Vendor Integrity

Apple's Response: Apple accepts this provision with the following modifications:

For purposes of the Sections numbered Sections V.12 through V.23 only, the following definitions shall apply:

- **"Agency or Eligible Entity Confidential information" as defined in Section II.** ~~means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Agency or Eligible Entity~~
- "Consent" means written permission signed by a duly authorized officer or employee of the Agency or Eligible Entity, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Agency or Eligible Entity shall be deemed to have consented by virtue of execution of the Contract or Purchase Order, as applicable
- "Vendor" means Awarded **Vendor** that has entered into the Contract or a Purchase Order with an Eligible Entity
- "Financial interest" means: a) ownership of more than a five percent interest in any business; or b) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management
- "Gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

Section: Bidder Qualifications – Page 15 – V.13 Highest Standards of Integrity

Apple Response: Apple accepts this provision with the following modifications:

The **Awarded Vendor, Agency, and Eligible Entity** ~~vendor~~ shall maintain the highest standards of integrity in the performance of the Contract and Purchase Order and shall take no action in violation of applicable state or federal laws, regulations.

Section: Bidder Qualifications – Page 15 – V.14 Confidential Information

Apple's Response: Apple accepts this provision with the following modifications:

As set forth in Section V.12, the The Awarded Vendor ~~vendor~~ shall not disclose **any Agency or Eligible Entity** ~~to others~~ ~~any~~ Confidential Information gained by virtue of the Contract or Purchase Order.

Section: Bidder Qualifications – Page 15 – V.15 Pecuniary Benefit

Apple's Response: Apple accepts this provision with the following modification:

The **Awarded** ~~v~~Vendor shall not knowingly, in connection with the Contract or any other agreement with the Agency or the Purchase Order or any other agreement with any Eligible Entity directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Agency or any Eligible Entity.

Section: Bidder Qualifications – Page 15 – V.16 Giving Gratuities

Apple's Response: Apple accepts this provision with the following modification:

The **Awarded** ~~v~~Vendor shall not knowingly, in connection with the Contract, Purchase Order or any other agreement with the Agency or Eligible Entity, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Agency or Eligible Entity.

Section: Bidder Qualifications – Page 15 – V.17 Accepting Gratuities

Apple's Response: Apple accepts this provision with the following modification:

The **Awarded** Vendor shall not accept or agree to accept from, any person, any gratuity in connection with the performance of work under the Contract or a Purchase Order that is prohibited by applicable law.

Section: Bidder Qualifications – Page 16 – V.19 Notification of Violations

Apple's Response: Apple accepts this provision with the following modification:

The **Awarded** ~~v~~Vendor, upon being informed that any violation of these provisions (i.e. Sections V.12 through V.23) has occurred, shall use commercially reasonable efforts to notify the Agency in writing or Eligible Entity in writing.

Section: Bidder Qualifications – Page 16 – V.21 Cooperation with Authorities

Apple's Response: Apple accepts this provision with the following modifications:

Awarded Vendor agrees to maintain, for a period of three (3) years after the transaction invoice date, all purchase orders and invoices directly related to performance under this ~~Agreement~~ **Contract**. The purchase orders and invoices directly related to the performance under this ~~Agreement~~ **Contract** shall be available upon no less than sixty (60) business days prior written notice for review and audit by the Agency no more than once per year.

Subject to any inspector or auditor's signing Awarded Vendor's confidentiality/non-disclosure agreement, Awarded Vendor agrees to cooperate with any audit and to provide reasonable access to relevant materials at the Agency's sole cost and expense. In no event shall Awarded Vendor furnish or be required to furnish any information concerning any of Awarded Vendor's other customers or anything not pertaining specifically to Products and services sold by Awarded Vendor to the Agency under the ~~Agreement~~ **Contract**. Any information, books, records and supporting documents made available in the course of any audits pursuant to this paragraph are the sole and exclusive property of Awarded Vendor and the confidential information of Awarded Vendor and will be maintained in strict confidence by the Agency. Any Auditor General is subject to agreement to Awarded Vendor's standard confidentiality terms upon commencement of such audit.

Section: Bidder Qualifications – Page 16 – V.22 Rights and Remedies in the Event of Violation

Apple's Response: Apple accepts this provision with the following modifications:

In the event ~~Awarded Vendor~~ knowingly violates sections V.12 through V.23, the Agency ~~or Eligible Entity~~ may terminate the Contract or **an Eligible Entity may cancel a** Purchase Order, as applicable. The Agency or Eligible Entity shall provide ~~Awarded Vendor~~ with written notice of the violation and thirty (30) days to cure the violation.

Section: Bidder Qualifications – Page 16 – V.23 Rights of Vendor Employee Rejection

Apple's Response: Apple accepts this provision with the following modifications:

~~LEAs~~ **Eligible Entities** that are school districts, nonpublic schools, charter schools, or public technology schools reserve the right to ~~reject~~ **remove** any person **whom is performing services under the Contract they deem unfit to be permitted on from** school grounds and in proximity to students **for cause**. Upon written notice from the Eligible Entity or Agency, the Awarded Vendor shall have such persons who are performing services pursuant to the ~~Purchase Order~~ **Contract** removed from the site **immediately as soon as reasonably possible after written notice is received**. ~~The Eligible Entity's right to declare such person unfit shall not be limited to the required exclusion of such persons from the provisions of federal and state laws legislated as child protective services.~~

Section: Bidder Qualifications – Page 17 – V.25 Nondiscrimination and Sexual Harassment

Apple Response: Apple accepts this provision with the following modifications:

During the term of the Contract and any Purchase Order, the Awarded Vendor agrees as follows:

- In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any Purchase Order or any subcontract, the Awarded Vendor, shall not by reason of recruiting, hiring, training, or promoting on the basis of race, color, ancestry national origin, religion, creed, age (over 40), mental and physical disability, sex, gender (including pregnancy, childbirth breastfeeding or related medical condition), sexual orientation, gender identity or expression, medical condition, genetic information, marital status, or military or protected Veteran status or any other basis protected by law discriminate against any citizen of the state within which the award is made who is qualified and available to perform the work to which the employment relates.

- The Awarded Vendor shall not in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract or any Purchase Order on account of recruiting, hiring, training, or promoting on the basis of race, color, ancestry national origin, religion, creed, ago (over 40), mental and physical disability, sex, gender (including pregnancy, childbirth breastfeeding or related medical condition), sexual orientation, gender identity or expression, medical condition, genetic information, marital status, or military or protected Veteran status or any other basis protected by law. Awarded Vendor shall require any subcontractor to be compliant with all applicable laws and regulations regarding non-discrimination

- The Awarded Vendor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

- The Awarded Vendor shall not discriminate by reason of recruiting, hiring, training, or promoting on the basis of race, color, ancestry national origin, religion, creed, ago (over 40), mental and physical disability, sex, gender (including pregnancy, childbirth breastfeeding or related medical condition), sexual orientation, gender identity or expression, medical condition, genetic information, marital status, or military or protected Veteran status or any other basis protected by law against any supplier who is qualified to perform the work to which the Contract relates.

- ~~• If the Agency or Eligible Entity have reason to suspect that the Awarded Vendor failed to comply with the Nondiscrimination/Sexual Harassment Clause, the Agency or Eligible Entity may request, and the Awarded Vendor shall promptly provide, applicable information to prove compliance. If the Awarded Vendor or any designated partner does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Agency, Eligible Entity or appropriate departments of state government.~~

- ~~• The Awarded Vendor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract that specifically is undertaken to support the Contract or any Purchase Order so that such provisions will be binding upon each designated partner.~~

- ~~• The Agency or Eligible Entity may cancel or terminate the Contract or Purchase Order, as applicable, and all money due or to become due under the Purchase Order may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the Agency may proceed with debarment or suspension of that Awarded Vendor from the PEPPM program.~~

Section: Product Specifications – Page 19 – VI.6 New Technology and Product Additions

Apple's Response: Apple respectfully takes exception to this provision, strikes it in its entirety and responds with the following:

~~An Awarded Vendor may request to add newly invented Products, newly marketed Products, and other new Products for sale under its contracted Product Line category under the following conditions:~~

- ~~• The new Products fit within the Product Line's brand specifications~~
- ~~• A clear pricing formula was originally bid and is applicable to the new Products~~
- ~~• Substitute or replacement Products are equal to or superior than the original offerings~~
- ~~• No request is made to subvert competitive procurement procedures~~

~~The Agency may reject any requests for additions or replacement in its sole discretion with or without cause.~~

Products that become available after the start of the Contract may be added to the existing Contract. Pricing shall be in accordance with Awarded Vendor's then-current Education pricing. Agency agrees that Awarded Vendor may change Product offerings, discounts, and pricing at any time and without notice to Agency or Eligible Entity.

Section: Product Specifications – Page19 – VI.8 Proof of Supply

Apple's Response: Apple accepts this provision with the following modifications:

Unless Bidder is the manufacturer of the Products, Bidder must offer evidence of access to a legal source of supply of the Products **upon written request from Agency.**

Section: Product Specifications – Page 19 – VI.12 Standard Warranty

Apple Response: Apple accepts this provision with the following modifications:

The sole warranty for **an Apple Product hereunder** shall be the ~~standard~~ **Limited w**Warranty. ~~that is set forth in the documentation that accompanies such Product.~~

~~For the Product Line being bid, a Bidder must attach a manufacturer's warranty statement on the bid form or provide links to the applicable warranty, so that Eligible Entities will understand their warranty rights for the Products offered. The statement must also clarify any discrete responsibilities of the Awarded Vendor versus the manufacturer.~~

~~Awarded Vendors selling computers must maintain certifications that the manufacturers have concerning compatibility and compliance with up-to-date operating system, as well as federal safety and communications guidelines.~~

Except for the Limited Warranty, as set forth herein, all Apple Products are sold "as is" and without additional warranty or support from Awarded Vendor. All Products, other than Apple Products, are sold "as is" and without warranty or support from Awarded Vendor, but may be accompanied by a manufacturer's warranty, as more particularly provided in the warranty documentation that accompanies such Products. Upon Agency's or Eligible Entity's request, Awarded Vendor will provide a copy of the manufacturer's warranty accompanying Products offered by Awarded Vendor under this Contract. Nothing in this Contract shall be construed as obligating Awarded Vendor to provide any warranty-related fulfillment or support for any Products, other than Apple Products.

EXCEPT FOR THE LIMITED WARRANTY, AS SET FORTH HEREIN, AWARDED VENDOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR SERVICES, AND TO THE MAXIMUM EXTENT PROVIDED BY LAW, AWARDED VENDOR HEREBY DISCLAIMS

SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Apple Products are not intended or suitable for use in situations or environments where the failure or time delays of, or errors or inaccuracies in, the content, data or information provided by **Apple** Products could lead to death, personal injury, or severe physical or environmental damage, including without limitation the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support or weapons systems.

Section: Product Specifications – Page 20 – VI.15 Ancillary Services Related to Products

Apple Response: Apple accepts this provision with the following modifications:

As part of their bids, Bidders may offer pricing for ancillary services advantageous or necessary for the planning, use, deployment and maintenance of the Products they sell. Any ancillary services purchased under the Contract ~~may shall also~~ be subject to ~~the Awarded Vendor's direct customer agreement this Contract~~ or a **Awarded Vendor's PSA, as applicable.** ~~professional services agreement.~~

Section: Ordering Procedures and Requirements – Page 21 – VII.2 Display of Contract Pricing

Apple Response: Apple accepts this provision with the following modification:

Awarded Vendors must provide Contract pricing, along with descriptions, keywords and other relevant data on an approved PEPPM template. The information will be loaded into PEPPM's electronic catalog on PEPPM.org, Epylon.com, and affiliated websites. In displaying contracted line items, PEPPM will:

- _Make actual prices blind to non-registered users
- _Display relevant pricing to users with relevant buyer profiles
- _Make line items searchable by keyword, by Product Line, or by category

Notwithstanding the foregoing, pricing shall be in accordance with Awarded Vendor's then-current Education pricing. Agency agrees that Awarded Vendor may change Product offerings, discounts, and pricing at any time and without notice to Agency or Eligible Entity.

Section: Ordering Procedures and Requirements – Page 22 – VII.3 Direct Receipt of Orders

Apple's Response: Apple accepts this provision with the following modifications:

Upon mutual written agreement and subject to additional terms and conditions, the Parties An ~~Awarded Vendor~~ **may ask agree to have Awarded Vendor receive orders directly.** ~~Agency to receive orders directly. Before approval, Awarded Vendors must agree in writing to comply with all PEPPM protocols, including accurate sales reporting. Approvals are at Agency's sole discretion.~~

Section: Ordering Procedures and Requirements – Page 22 – VII.4 Instruments for Orders

Apple's Response: Apple accepts this provision with the following modifications:

Eligible Entity shall place orders for Awarded Vendor's Products with PEPPM pursuant to the Terms and Conditions of the Contract. ~~may order Products from Awarded Vendor by either: (i) ordering at~~

~~an Awarded Vendor Retail Store, (ii) ordering electronically through the online portal managed by Awarded Vendor, (iii) submitting a purchase order to Awarded Vendor, as permitted by Awarded Vendor, or (iv) by any other means communicated by Awarded Vendor. All purchases of Products under this Contract shall be made solely for Eligible Entity's end use.~~

Section: Ordering Procedures and Requirements – Page 22 – VII.6 Electronic Transmissions

Apple's Response: Apple accepts this provision with the following modifications:

Except in cases where companies are authorized to receive orders directly, all Purchase Orders shall be transmitted electronically to Awarded Vendors through the eCommerce software maintained by the eCommerce Consultant. Eligible Entities will either enter their orders directly into this system or the PEPPM Clearinghouse will enter orders on behalf of the Eligible Entities.

Awarded Vendors, upon receipt of a Purchase Order, ~~in their eCommerce inbox,~~ **the Awarded Vendor shall enter into the system of record. Once the Purchase Order has been deemed as valid, an order acknowledgement will be sent to the Eligible Entity.** ~~shall promptly and properly transmit an acknowledgment and order status by using tools provided on the site.~~

To the maximum extent permitted by law, the parties agree to accept an electronic Purchase Order submission and acceptance, executed by an authorized user of the eCommerce system, as representing any necessary ["electronic signature"](#) required by law.

Section: Ordering Procedures and Requirements – Page 22 – VII.9 Term of Purchase Order

Apple's Response: Apple respectfully takes exception to this provision and deletes it in its entirety as Apple's obligation under the Purchase Order ends once the product is shipped from Apple's shipping location as set forth in Section VII.14 in the Contract.

~~Subject to any other provisions stipulated in the document, the Purchase Order shall end on the later of:~~

- ~~-Complete delivery of the awarded Products~~
- ~~-The expiration of any specified warranty and maintenance period~~
- ~~-Payment by the Eligible Entity for the Product(s) received~~
- ~~-The expiration date identified on the Purchase Order~~

Section: Ordering Procedures and Requirements – Page 23 – VII.10 Orders Near a Contract Expiration Date

Apple's Response: Apple respectfully takes exception to this provision and deletes it in its entirety as a Purchase Order submitted to Apple cannot extend beyond the period of the Contract.

~~The fulfillment of a Purchase Order may extend beyond the PEPPM Contract's expiration date as long as the Eligible Entity issues a Purchase Order before the Contract's expiration.~~

~~The expiration date of the Contract term is to be considered the final date to enter into a valid Purchase Order under the Contract.~~

~~As such, all Purchase Orders received by the Awarded Vendor up to and including the expiration date of the Contract term are acceptable and must be shipped in accordance with the delivery time specified in the Contract. If normal delivery time cannot be met, Awarded Vendor must notify Eligible Entity, which has the option to accept or reject the extended delivery time.~~

Apple's Response: Apple respectfully takes exception to this provision, deletes it in its entirety and responds with the following:

~~Eligible Entities will directly pay Awarded Vendors upon receipt of invoice and confirmation that Products have been delivered.~~

~~All invoices are to be sent directly to the Eligible Entity, which will pay invoices within 30 days of invoice date. The Agency will encourage Eligible Entities to arrange for prompt payment where possible and for payments of partial shipments.~~

~~Payment shall not be deemed as acceptance of the Products furnished by the Awarded Vendor. Where the Awarded Vendor is responsible for installation of the Products, acceptance of delivered Products is deemed to occur when the equipment is installed, has successfully completed diagnostic routines and is available for Eligible Entity's use.~~

~~The Awarded Vendor agrees that the Eligible Entity may deduct the amount of any state tax liability not required by law or other unauthorized obligation of the Awarded Vendor or its subsidiaries to the Eligible Entity from any payments due the Awarded Vendor under any Purchase Order with the Eligible Entity, subject to the Eligible Entity promptly providing any tax exemption certificate or other documentation to support the deduction.~~

~~At the discretion of the Awarded Vendor, the Eligible Entity may use a valid purchasing card to pay for the Products at the time of purchase. Any and all fees related to this type of payment are the responsibility of the Awarded Vendor. In no case will the Awarded Vendor increase Contract or invoiced prices to offset purchasing card fees incurred by the Awarded Vendor.~~

Unless Eligible Entity qualifies for credit with Awarded Vendor or except as otherwise approved by Awarded Vendor, Eligible Entity shall pre-pay for all orders placed.

Provided that Eligible Entity qualifies for credit with Awarded Vendor, Eligible Entity shall be invoiced upon shipment of Products or performance of Services (as applicable), and provided Eligible Entity is qualified for credit with Awarded Vendor, payment of such invoice is due no later than thirty (30) days from the invoice date.

Awarded Vendor may in its sole discretion establish a Line of Credit for Eligible Entity. If Awarded Vendor establishes a Line of Credit it will do so to the extent permitted by law and under the following minimum terms and conditions:

Payment terms for all amounts due from Eligible Entity to Awarded Vendor (including payments for Services) will be net thirty (30) days from the date of Awarded Vendor's invoice, except as may otherwise be required by Awarded Vendor in writing. Invoices must be paid in full by direct debit or other electronic payment method agreed between the Awarded Vendor and Eligible Entity in the currency invoiced without deduction, counterclaim or set off (statutory or otherwise) and in clear funds. If a direct debit is returned unpaid, Awarded Vendor shall be entitled to place the Eligible Entity's account on credit hold until payment is received in full.

The Line of Credit will limit the aggregate amount of credit that may be extended at any time to Eligible Entity for amounts owing to Awarded Vendor under this Contract, any other agreement or for any other sales or extensions of credit of any kind by Awarded Vendor to Eligible Entity. The amount of the Line of Credit may be immediately adjusted upwards or downwards at any time as appropriate, at the discretion of Awarded Vendor. In exercising its discretion, Awarded Vendor reserves the right to consider and act upon the following, among other criteria: (i) the profitability and financial well-being

of Eligible Entity; (ii) whether current and accurate financial-and business performance information are provided in a timely fashion by Eligible Entity; (iii) the amount and likely present value of whatever collateral or credit enhancement has been provided; and (iv) whether Awarded Vendor will likely be, or has been required to realize upon and liquidate such collateral or credit enhancement. Eligible Entity acknowledges that Awarded Vendor can reduce, vary or cancel the Line of Credit at any time.

Awarded Vendor may place sales to Eligible Entity on immediate credit hold (i.e., suspend all sales to Eligible Entity) whenever the outstanding balance owed by Eligible Entity and its subsidiaries and/or affiliates to Awarded Vendor would exceed the Line of Credit or whenever Eligible Entity fails to make payment to Awarded Vendor in accordance with established terms.

Without prejudice to its right to terminate this Contract under Section XIII.8, Awarded Vendor reserves the right to withhold shipment and/or to declare all sums immediately due and payable in the event of a breach by Eligible Entity of any of its obligations to Awarded Vendor, including the failure to comply with any credit terms.

Should there at any time be monies owing from Awarded Vendor to Eligible Entity, Awarded Vendor will have the right to setoff such sums and apply them to any sums (whether or not due) owed by Eligible Entity or its affiliates or subsidiaries to Awarded Vendor.

Upon Awarded Vendor's reasonable request, Eligible Entity will provide to Awarded Vendor (or an Awarded Vendor affiliate): (i) audited annual financial statements, including a balance sheet, cash flow and profit and loss statements, as well as auditors' report and notes to financials, if applicable; (ii) financial statements and similar financial information or reports routinely provided to any other vendor, lender or creditor to support extensions of credit, and (iii) such other financial information as may be reasonably requested by Awarded Vendor in a format agreed upon by Awarded Vendor and Eligible Entity. If such information is not provided in a timely manner, Awarded Vendor may suspend all sales to Eligible Entity or exercise any other remedies hereunder until such information is provided to Awarded Vendor.

All applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder shall be paid by Eligible Entity. Proof of tax-exempt status must be on file at Awarded Vendor's Support Center for any order to be treated as a tax-exempt transaction. Awarded Vendor will also charge for any fees due from Eligible Entity by regulation or statute, including, if applicable, fees due under the California Electronic Waste Recycling Act or similar laws in other states. Awarded Vendor reserves the right to change its price lists and Eligible Entity's credit terms at any time. In addition to Awarded Vendor's other rights herein, Awarded Vendor reserves the right, without liability or obligation to Eligible Entity, to suspend deliveries due to a payment default.

Section: Ordering Procedures and Requirements – Page 23 – VII.13 Tax Exemptions

Apple Response: Apple accepts this provision with the following modifications:

No charge will be ~~allowed~~ **applied** for federal, state, or local taxes from which the Eligible Entity is exempt as long as Awarded Vendor has proof of Agency's or Eligible Entity's exempt status on file at Awarded Vendor's Support Center. Notwithstanding the foregoing, Awarded Vendor will also charge for any fees due from Agency and/or Eligible Entity by regulation or statute, including, if applicable, fees due under the California Electronic Waste Recycling Act or similar laws in other states. Awarded Vendor reserves the right to change its price lists and Agency and/or Eligible Entity's credit terms, if applicable, at any time. In addition to Awarded Vendor's other rights herein, Awarded Vendor reserves the right, without liability or obligation to Agency and/or Eligible Entity, to suspend deliveries due to a payment default. ~~Prices shall be net and shall not include the amount of any such tax. Exemption certificates, if required, will be furnished on forms provided by the Awarded Vendor. LEAs are~~

exempt from all sales and excise taxes imposed by the Internal Revenue Service and have accordingly registered with or been recognized by the Internal Revenue Service to make tax exempt purchases.

Section: Ordering Procedures and Requirements – Page 24 – VII.14 Delivery

Apple Response: Apple accepts this provision with the following modifications:

Except for U.S. federal government agencies, title and risk of loss to all Products will pass to Eligible Entity upon shipment from Awarded Vendor's shipping location. For Products shipped pursuant to Awarded Vendor's standard practices ~~in all but the last week of every Awarded Vendor fiscal quarter during the Term, Awarded Vendor will issue credits or replace Products returned due to damage in transit or that are lost in transit.~~ For Products shipped pursuant to Awarded Vendor's standard practices in the last week of every Awarded Vendor fiscal quarter during the Term, Awarded Vendor will not issue credits or replace Products returned due to damage in transit or that are lost in transit. ~~Instead, Awarded Vendor will provide for a policy of insurance under which Eligible Entity may make a claim for any loss.~~ **Awarded Vendor will issue credits or replace Products returned due to damage in transit or that are lost in transit. When Products are not shipped pursuant to Awarded Vendor's standard practices but instead via a carrier selected by Eligible Entity, Awarded Vendor will not issue credits or replace Products returned due to damage in transit or that are lost in transit and Eligible Entity's sole recourse for loss or damage shall be against its own insurer, its selected carrier, and its carrier's insurer. Eligible Entity shall insure Products for their full replacement value for delivery to Eligible Entity until Eligible Entity has paid Awarded Vendor in full for such Products, and shall name Awarded Vendor as a loss payee on the Eligible Entity's policy. For both government and non-government sales, shipping charges for orders shipped under Eligible Entity's instructions will be added to Awarded Vendor's invoice or shipped freight collect, at Awarded Vendor's option.**

For orders picked up by Eligible Entity at the Awarded Vendor Retail Store, title and risk of loss or damage to Products will pass to Eligible Entity upon pick up of the Products from the Awarded Vendor Retail Store. **Title to the Products will pass to Eligible Entity when Awarded Vendor provides notice that the Products are available for pick up from the Apple Retail Store. Eligible Entity shall contact the Apple Retail Store for any issues regarding pick up of the Products.**

For U.S. federal government agencies only, title and risk of loss to all Products will pass to Eligible Entity upon delivery to Eligible Entity's delivery point.

Section: Ordering Procedures and Requirements – Page 24 – VII.15 Inspection and Rejection

Apple's Response: Apple respectfully takes exception to this provision and strikes it in its entirety, as all products shipped as specified on Eligible Entity's Purchase Order are deemed to meet the Eligible Entity's specifications. Apple only permits the return of unopened products due to an Apple shipping or order processing error. However, products that arrive dead-on-arrival (DOA) are subject to Apple's then-current policy for receipt of DOA products.

~~No Products received by the Eligible Entity shall be deemed accepted until the Eligible Entity has had a reasonable opportunity to inspect the Products. The Awarded Vendor and the Eligible Entity agree that a reasonable timeframe to inspect the Products shall not exceed 30 calendar days from date of delivery. Products that have not been rejected during such 30-day period shall be deemed accepted. If a defect or nonconforming item is discovered during the foregoing inspection period, the Eligible Entity will promptly notify the Awarded Vendor of the defect or nonconformance. It shall then become the duty of the Awarded Vendor to arrange for the rejected Products to be removed from the premises or returned without expense to the Eligible Entity within 15 days after notification, or such~~

~~longer time period mutually agreed upon by Awarded Vendor and Eligible Entity. Rejected Products left longer than 15 days or such mutually agreed upon time period will be regarded as abandoned, and the Eligible Entity shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale, which represents the Eligible Entity's costs and expenses in regard to the storage and sale of the Products. Upon notice of rejection, the Awarded Vendor shall promptly replace all such rejected Products with others conforming to the specifications and which are not defective. If the Awarded Vendor fails, neglects or refuses to do so, the Eligible Entity shall then have the right to procure a corresponding quantity of such equivalent Products, and deduct from any monies due or that may thereafter become due to the Awarded Vendor, the difference between the price stated in the Purchase Order and the actual price the Eligible Entity paid to the alternative vendor.~~

~~Notwithstanding the foregoing, where the Awarded Vendor is responsible for installation of the Products, acceptance of delivered Products is deemed to occur when the Products are installed, have successfully completed diagnostic routines and are available for Eligible Entity's use, provided that the deemed acceptance in the foregoing paragraph will control if Eligible Entity requests that such installation not take place during the 30 day period following delivery of the applicable Products. Notwithstanding acceptance, for Products covered by a maintenance service agreement, the Awarded Vendor shall either keep the Products in good working order or Awarded Vendor will replace the Products with a like new or refurbished equivalent or better model conforming to the specifications and which is not defective.~~

Section: Ordering Procedures and Requirements – Page 25 – VII.16 Shipping Errors

Apple Response: Apple accepts this provision with the following modifications:

Awarded Vendor agrees that **its shipping errors directly caused by Awarded Vendor** will be covered at its own expense. Eligible Entities are financially responsible for shipping errors originating from its Purchase Orders or written instructions. No oral shipping instructions should be accepted by either party. Awarded Vendor shall not be held liable for Eligible Entity's refusal to accept delivery of Products specified on a ~~Purchase Order~~ or product substitutions approved by Eligible Entity.

Section: Bid Procedures and Directions – Page 28 – IX.2 Registration

Apple Response: Apple accepts this provision with the following modification:

Vendors interested in bidding must obtain a supplier account at www.Epylon.com if they do not already have one. The entire bidding process will be conducted electronically using Epylon's eBid software. Epylon imposes no fee to register or use its eBid software. **Registration, use of such software and/or electronic submission shall not be construed as acceptance of any terms or conditions provided by Epylon.**

Section: Bid Procedures and Directions – Page 31 – IX.9 Marketing Plan

Apple Response: Apple accepts this provision with the following modifications:

Agency desires that all Awarded Vendors develop a marketing program to promote knowledge of their awarded Contracts. **Notwithstanding the foregoing, the Parties acknowledge and agree that in the interest of impartiality, Awarded Vendor generally refrains from attempts to influence the contracting decisions made by Eligible Entities. Further, the Agency acknowledges and agrees that Awarded Vendor retains the right and authority to request Eligible Entities in any state to utilize other**

purchasing vehicles or contracts available to such Eligible Entities at Awarded Vendor's sole and exclusive discretion. Accordingly, Awarded Vendor has not developed a specific marketing plan for driving PEPPM business. For any marketing program developed by the Agency or Eligible Entity, neither the Agency or Eligible Entity shall use Awarded Vendor's name, logo, trademarks or service marks in any advertising, communications or publications without the Awarded Vendor's prior written consent.

Section: Bid Procedures and Directions – Page 31 – IX.12 Electronic Signature

Apple Response: Apple accepts this provision with the following modifications:

In submitting a bid, the person named as the Bidder's representative on the electronic bid form declares that the use of his/her Username and Password constitute his/her Electronic Signature and that he/she is solely liable for full control and access to the password. Neither the Agency nor eCommerce Consultant has access to the user's password. By submitting the electronic bid form, he/she declares that he/she has the authority to submit the bid to the Agency and to bind his/her company to the Contract, including, without limitation to all terms and conditions **as modified by Awarded Vendor**, final pricing, and written statements submitted to Agency.

Section: Bid Procedures and Directions – Page 32 – IX.19 Use of Submitted Documents

Apple Response: Apple respectfully takes exception to this provision, strikes it in its entirety, and responds with the following:

~~Everything submitted by a Bidder as part of a bid may be part of a public record. Bidders should not attach files or information to their bids that contain trade secrets or non-disclosable information. If documents, files, or information submitted are copyrighted, Bidders, by submitting, give the Agency and Eligible Entities a license to reproduce the material as part of bid documentation with the copyright notice as initially provided. Agency shall have the right to reproduce and publish any and all bid submission information, documents, and files. To the extent allowed by law, it is Agency's policy not to release Bidder's financial information, customer names, or references that, if public, would give an advantage to a competitor or be disadvantageous to a Bidder's business.~~

During the Initial Term or any Renewal Term and for five (5) years thereafter, neither Agency or Eligible Entity will use Awarded Vendor Confidential Information, as set forth in Section V.12 of this Contract, except as required to achieve the objectives of this Contract, or disclose such Awarded Vendor Confidential Information except to employees or contractors who have a need to know. Neither Agency or Eligible Entity will make any disclosure or statement of Awarded Vendor Confidential Information in connection with the Contract or its subject matter without Awarded Vendor's prior, specific written consent. Neither Agency or Eligible Entity shall make any public statement regarding any item of Awarded Vendor's Confidential Information, including but not limited to any matter of business between Agency or Eligible Entity and Awarded Vendor, or the nature of any contractual relations between Awarded Vendor and Agency or Eligible Entity or any third party. Agency or Eligible Entity may disclose Awarded Vendor Confidential Information to the extent required by law, provided that it first makes reasonable efforts to give Awarded Vendor notice of such requirement prior to any such disclosure and takes reasonable steps to obtain protective treatment of the Awarded Vendor Confidential Information.

Section: Uniform Grant Guidance Requirements – Page 35 – XI.1 Federal Rules May Apply to Purchases with Grant Funds

Apple's Response: Apple accepts this provision with the following modifications:

When an Eligible Entity seeks to procure goods and services through an Agency Contract using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200.326 (sometimes referred to as the "Uniform Grant Guidance," "UGG" or new "EDGAR"). All Awarded Vendors must agree to comply with certain requirements which may be applicable to specific purchases using federal grant funds. Eligible Entity has the responsibility to advise Awarded Vendor if an order will utilize funds under a federal grant or contract, in which case Sections XI.1 through XI.13 shall apply. **Such notice shall be provided at the time the Purchase Order is issued.**

Section: Uniform Grant Guidance Requirements – Page 35 – XI.2 Awarded Vendor Violation or Breach of Contract Terms

Apple's Response: Apple accepts this provision with the following modifications:

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils), as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Provisions regarding Awarded Vendor default **and administrative, contractual, or legal remedies** are included in the Contract. ~~Documents.~~ Any Contract award will be subject to such Contract. ~~Documents.~~

Section: Uniform Grant Guidance Requirements – Page 35 – XI.3 Termination for Cause or Convenience

Apple's Response: Apple accepts this provision with the following modifications. See Appendix II to CFR Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and Section XIII.8, as well as Termination for Convenience and Termination for Cause in the Contract.

For any purchase or contract in excess of \$10,000 made using federal funds **must address termination for cause and convenience by the Non-Federal entity including the manner by which it will be affected and the basis for settlement.** ~~the Awarded Vendor agrees that the following term and condition shall apply:~~

~~The Eligible Entity may terminate or cancel any Purchase Order under the Contract at any time, without cause, by providing seven business days advance written notice to the Awarded Vendor. If this Agreement is terminated for convenience in accordance with this paragraph, the Eligible Entity shall only be required to pay Awarded Vendor for goods or services delivered to the Eligible Entity prior to the termination and not otherwise returned in accordance with Awarded Vendor's return policy. If the Eligible Entity has paid the Awarded Vendor for goods or services not yet provided as of the date of termination, the Awarded Vendor shall immediately refund such payment(s).~~

~~The Eligible Entity may terminate or cancel any Purchase Order under the Contract with cause pursuant to Section XIII.7.~~

Section: Uniform Grant Guidance Requirements – Page 35 – XI.4 Equal Employment Opportunity

Apple's Response: Apple respectfully takes exception to this provision and strikes it in its entirety as this provision relates to construction contracts and is therefore not applicable.

~~Except as otherwise provided under 41 CFR Part 60, all Eligible Entity purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. The Awarded Vendor agrees that such provision applies to any Eligible Entity purchase or contract that meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 and the Awarded Vendor agrees that it shall comply with such provision.~~

Section: Uniform Grant Guidance Requirements – Page 36 – XI.5 Right to Inventions Made Under a Contract or Agreement

Apple's Response: Apple respectfully takes exception to this provision and strikes it in its entirety as not applicable. This Contract is exclusively for the purchase of Apple Products and/or Services. Intellectual Property, including without limitation the right to any inventions, is not being assigned under the Contract.

~~If the Eligible Entity's federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. The Awarded Vendor agrees to comply with the above requirements when applicable, but expressly retains as much of the entire right, title, and interest throughout the world to each subject invention as allowed by applicable law.~~

Section: Uniform Grant Guidance Requirements – Page 36 – XI.6 Clean Air Act and Federal Water Pollution Contract Act

Apple Response: Apple accepts this provision with the following modifications:

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). ~~When required, the Awarded Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.~~ **Awarded Vendor agrees to comply with the applicable provision in accordance with and as limited by the Terms and Conditions of this Contract.**

Section: Uniform Grant Guidance Requirements – Page 36 – XI.7 Debarment and Suspension

Apple Response: Apple accepts this provision with the following modifications:

Debarment and Suspension (Executive Orders 12549 and 12689)–A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Awarded Vendor certifies that the Awarded Vendor is not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Awarded Vendor further agrees to immediately notify the Eligible Entity with pending purchases or seeking to purchase from the Awarded Vendor if the Awarded Vendor is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. **Awarded Vendor agrees to comply with the applicable provision in accordance with and as limited by the Terms and Conditions of this Contract.**

Section: Uniform Grant Guidance Requirements – Page 36 – XI.8 Byrd Anti-Lobbying Amendment

Apple Response: Apple accepts this provision with the following modifications. Please see statute reference CFR Part 200 (J):

Byrd Anti-Lobbying Amendment (31 USC 1352)–Bidders who bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. ~~As applicable, Bidders agree to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).~~

Section: Uniform Grant Guidance Requirements – Page 37 – XI.9 By Procurement of Recovered Materials

Apple’s Response: Apple respectfully takes exception to this provision and strikes it in its entirety as it is not applicable. This Contract is exclusively for the purchase of Apple Products and/or Services. To the best of Apple’s knowledge this provision is not applicable, however more information regarding recovered materials can be found at the following link on Apple’s website: <https://www.apple.com/environment/resources/>.

~~For Eligible Entity's purchases utilizing federal funds, the Awarded Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as the district may require to confirm estimates and otherwise comply.~~

~~The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR Part 247 contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.~~

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process;

Section: Uniform Grant Guidance Requirements – Page 37 – XI.10 Profit as a Separate Element of Price

Apple's Response: Apple accepts this provision with the following modifications. See 2 CFR 200.323(b).

The non-Federal entity must ~~For purchases using federal funds in excess of \$150,000, the Eligible Entity may be required to negotiate profit as a separate element of the price~~ **for each contract in which there is no price competition and in all cases where the cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.**

~~See, 2 CFR 200.323(b). When the Eligible Entity makes a reasonable determination that such information is required by applicable law, the Awarded Vendor agrees to provide information and negotiate with the Eligible Entity regarding profit as a separate element of the price for a particular purchase. However, the Awarded Vendor agrees that the total price, including profit, charged by the Awarded Vendor to the Eligible Entity shall not exceed the awarded pricing.~~

Section: Uniform Grant Guidance Requirements – Page 37 – XI.11 Contracting with Historically Under-Utilized Businesses

Apple Response: Apple accepts this provision with the following modifications:

The Awarded Vendor shall take ~~all necessary~~ affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps include:

- ~~• Placing qualified small and minority businesses and women's business enterprises on solicitation lists;~~
- ~~• Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;~~
- ~~• Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit~~

~~maximum participation by small and minority businesses, and women's business enterprises;~~

- ~~• Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;~~
- ~~• Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and~~
- ~~• Requiring any subcontractor, if subcontracts are to be let, to take the affirmative steps listed in the foregoing bulleted items of this Section.~~

Section: Uniform Grant Guidance Requirements – Page 37 – XI.12 General Compliance and Cooperation with Eligible Entity

Apple's Response: Section V.21 is "Cooperation with Authorities" and sets forth Awarded Vendor's obligations concerning audit rights/record retention under the Contract. Apple accepts this provision with the following modification:

In addition to the foregoing specific requirements, the Awarded Vendor agrees, in accepting any Purchase Order or contract from the Eligible Entity, it shall make a good-faith effort to work with the Eligible Entity to provide such information and to satisfy such requirements as may apply to the Eligible Entity's purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements. **Awarded Vendor agrees to comply with the applicable provision in accordance with and as limited by the Terms and Conditions of this Contract subject to Section V.21.**

Section: Post-Award Requirements – Page 38 – XII.1 Audit Requirements

Apple Response: Apple accepts this provision with the following modifications:

Subject to the Section V.21 Cooperation with Authorities and Section II.28 Awarded Vendor Confidential Information, Agency reserves the right to ask Awarded Vendors for proof of correct bid-price posting, quoting, and invoicing. From time to time, Agency will conduct spot checks or hire a third-party accounting firm to statistically sample records to verify the integrity of PEPPM posted pricing and invoiced sales. ~~Therefore, Awarded Vendors are required to:~~

- ~~• Maintain standard business records for at least three years following any sale or payment~~
- ~~• Store underlying cost data for pricing if they have bid under a markup over cost method~~
- ~~• Keep a record of an underlying price list basis if they have bid under a discount from list method~~
- Awarded Vendor will cooperate with PEPPM staff or auditors for any applicable request for records to sample or verify any of their posted pricing or invoiced sales.**

Section: Post-Award Requirements – Page 38 – XII.4 Price Lists

Apple Response: Apple accepts this provision with the following modifications:

Awarded Vendors are required to submit information in a format mutually agreed upon with Agency that allows for obtaining the pricing of Products during the term of the Contract. **Notwithstanding the foregoing, Products that become available after the start of the Contract may be added to the existing Contract. Pricing shall be in accordance with Awarded Vendor's then-current Education pricing. Agency agrees that Awarded Vendor may change Product offerings, discounts, and pricing at any time and without notice to Agency or Eligible Entity.**

Section: Post-Award Requirements – Page 38 – XII.5 Pricing Updates

Apple Response: Apple accepts this provision with the following modifications:

PEPPM pricing is dynamic, in that formulas accepted from Awarded Vendors are based on discounts from a commercially available price list or a markup over cost. Price lists may change frequently at the discretion of the Awarded Vendor. Awarded Vendors are required to send PEPPM updated prices whenever their price basis changes. **Notwithstanding the foregoing, Agency and Eligible Entity agree that Awarded Vendor may change Product offerings, discounts and pricing at any time and without notice to Agency or Eligible Entity. Awarded Vendor's available pricing is based on the Awarded Vendor's then-current Apple Education price list (as available at <https://www.apple.com/education/pricelists/>).**

Section: Post-Award Requirements – Page 38 – XII.6 Special Promotions

Apple Response: Apple accepts this provision with the following modifications:

During the term of the **Contract Agreement**, an Awarded Vendor may offer specials and promotions that may be posted on PEPPM.org upon written approval from **Awarded Vendor Apple**.

Neither party shall use the other's name, logo, trademarks or service marks in any advertising, communications or publications without the other party's prior written consent.

Section: Post-Award Requirements – Page 39 – XII.8 Contract Promotion, Advertising, and Marketing

Apple Response: Apple accepts this provision with the following modifications:

An Awarded Vendor shall not advertise or publish information concerning an award or **the** Contract before an announcement being made by the Agency. However, after the Agency signs and announces **the** new Contracts, an Awarded Vendor may make truthful and accurate marketing statements regarding its ~~Agency~~ awards.

Before an Awarded Vendor issues a press release about its Contracts, the Agency must give prior approval.

~~To Awarded Vendors for the term of its Contract~~, Agency extends **Awarded Vendor** a license to use the PEPPM logo on the **Awarded Vendor's** website and in marketing collateral. Advance permission and review is required. However, the Agency may cause the Awarded Vendor to recall any collateral or any use of the PEPPM logo that is not in conformance with guidelines, untruthful, or inaccurate. **Neither the Agency or Eligible Entity shall use Awarded Vendor's name, logo, trademarks or service marks in any advertising, communications or publications without the Awarded Vendor's prior written consent.**

Section: Post-Award Requirements – Page 39 – XII.11 Training of the Sales Force

Apple's Response: Apple accepts this provision with the following modification:

Awarded Vendor is responsible to inform and train its sales force on the use of ~~its Agency the~~ Contracts for sales under Agency's bid-protection provisions.

Section: Other Terms and Conditions – Page 39 – XIII.1 Entire Agreement

Apple's Response: Apple respectfully takes exception to this provision, strikes it in its entirety, and responds with the following:

~~The Contract will represent the complete agreement between the Agency and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements, except purchase orders issued under prior agreements that have not been fulfilled. Any changes, corrections, or additions to the Contract shall be in writing in the form of an amendment signed by Agency and Awarded Vendor (and the eCommerce Consultant if the eCommerce Consultant is a necessary party). The documents described in Section II.13 above represent the complete agreement between the Eligible Entity and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements, except purchase orders issued under prior agreements that have not been fulfilled. Any changes, corrections, or additions to such agreement shall be in writing in the form of an amendment signed by Eligible Entity and Awarded Vendor.~~

Awarded Vendor and Agency acknowledge that the Contract supersedes and extinguishes all previous agreements and representations (whether oral or written), between or on behalf of the Parties with respect to its subject matter. The Contract contains all of Awarded Vendor's, Agency's, and Eligible Entity's agreements, warranties, understandings, conditions, covenants, promises and representations with respect to its subject matter. Awarded Vendor and Agency acknowledge and agree that they have not relied on any other agreements, warranties, understandings, conditions, covenants, promises or representations in entering into this Contract. Neither Awarded Vendor nor Agency will be liable for any agreements, warranties, understandings, conditions, covenants, promises or representations not expressly stated or referenced in this Contract. Awarded Vendor is deemed to have refused any provisions in Purchase Orders, invoices or other documents or statements from an Eligible Entity that purport to alter or have the effect of altering any provision of the Contract and such refused provisions will be unenforceable.

Section: Other Terms and Conditions – Page 40 – XIII.2 Novation

Apple's Response: Apple respectfully takes exception to this provision, strikes it in its entirety, and responds with the following:

~~If the Awarded Vendor assigns, sells, or transfers substantially all assets or the entire portion of the assets used to perform the Contract, a successor in interest must guarantee to fulfill all obligations under the Contract and offer awarded Products at the same or better pricing determined by the original bid pricing formula. Agency reserves the right to recommend acceptance or rejection of the new party. Confirmation of the acquiring vendor's intent and ability to honor all the obligations under the Contract and to offer awarded Products at the same or better pricing determined by the bid pricing formula will be documented by signing and submitting an Agency Contract Assignment Form. A simple change of the Awarded Vendor's name will not change the contractual obligations of the Awarded Vendor.~~

Neither Party may assign this Contract or any of its rights or duties without the other Party's prior written consent and mutual agreement regarding the terms of any such assignment. Any non-compliant assignment by either Party shall be null and void.

Section: Other Terms and Conditions – Page 40 – XIII.3 Default Related to the Contract

Apple's Response: Apple respectfully takes exception to this provision and strikes it in its entirety as this provision is covered by Section XIII.8 in the Contract.

The Agency may, subject to the provisions of Force Majeure, and in addition to its other rights under the Contract, at law or in equity, declare the Awarded Vendor in default by written notice thereof to the Awarded Vendor, and terminate the whole or any part of the Contract (including, without limitation, for one or more states) for any of the following reasons:

- Failure to deliver the awarded item(s) within the time period specified under a Purchase Order or as otherwise specified
- Improper delivery
- Failure to provide an item which is in conformance with the specifications referenced in the Request for Bids
- Delivery of a defective item, where such defect is not cured subject to VII.15
- Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within 15 days after notification
- Insolvency
- Assignment made for the benefit of creditors
- Failure to protect, to repair, or to make good any damage or injury to property as required by the Contract
- Breach of any provision of the Contract, if such breach is not cured within thirty (30) days of receipt of written notice thereof.
- Failure to adequately perform the services set forth in the Contract and Purchase Orders issued thereunder, if such failure is not cured within thirty (30) days of receipt of written notice thereof.
- Failure to make progress in the performance of the Contract and/or giving Agency reason to believe that Awarded Vendor will not or cannot perform to the requirements of the Contract, if such failure is not cured within thirty (30) days of receipt of written notice thereof.
- Failure to observe any of the Terms and Conditions of the Contract, if such failure is not cured within thirty (30) days of receipt of written notice thereof.
- Failure to pay Transaction Fees
- Failure to follow the established procedure for Purchase Orders, invoices and receipt of funds as stipulated by the Agency and/or Eligible Entity
- Failure to maintain its baseline catalog online
- Failure to update prices
- Nonperformance in sales
- Suspension or Debarment occurring during the term of the Contract
- The Awarded Vendor or awarded product line has been identified by the U.S. Government as posing a national security threat to the integrity of communications networks or the communications supply chain

Section: Other Terms and Conditions – Page 41 – XIII.4 Default Related to the Purchase Order

Apple Response: Apple accepts this provision with the following modifications:

~~Default Related to~~ **Cancellation of** the Purchase Order

The Eligible Entity may, subject to the provisions of Force Majeure, and in addition to its other rights under the Purchase Order, at law or in equity, declare the Awarded Vendor in default by written notice of it to the Awarded Vendor, and ~~terminate~~ **cancel** the whole or any part of a Purchase Order for ~~any of~~ the following reasons:

- Failure to deliver the awarded item(s) within the time period specified on the Purchase Order or as otherwise specified

- Improper delivery
- Failure to provide an item which is in conformance with the specifications referenced in the Request for Bids
- Delivery of a defective item, where such defect is not cured subject to VII.15
- Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within 15 days after notification
- Insolvency
- Assignment made for the benefit of creditors
- Failure to protect, to repair, or to make good any damage or injury to property as required by the Contract
- Breach of any provision of the Purchase Order
- Failure to adequately perform the services set forth in the Purchase Order
- Failure to make progress in the performance of the Purchase Order and/or giving LEA reason to believe that Awarded Vendor will not or cannot perform to the requirements of the Purchase Order
- Failure to observe any of the Terms and Conditions of the Contract or Purchase Order
- Failure to follow the established procedure for Purchase Orders, invoices and receipt of funds as stipulated by the Eligible Entity
- Suspension or Debarment occurring during the term of the Purchase Order
- The Awarded Vendor or awarded product line has been identified by the U.S. Government as posing a national security threat to the integrity of communications networks or the communications supply chain

Non-Appropriation: In the event that the Eligible Entity purchasing from the Awarded Vendor is a state or local agency under laws of the state applicable to such agency, the agency's obligation to make payments during any agency fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the agency shall have the right to cancel the Purchase Order (including any applicable lease). The Awarded Vendor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Purchase Order. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose. To the extent permitted by law, in the event notice is given canceling any Purchase Order from any Eligible Entity resulting from this Contract, the due date of all Eligible Entity's invoices shall be accelerated so that all such invoices become due and payable as of the date of notice of cancellation. Eligible Entity will cease placing new orders for Products from Awarded Vendor on the effective date of cancellation. Notwithstanding anything to the contrary, cancellation of any Purchase Order resulting from this Contract due to non-appropriation shall not terminate or relieve the Eligible Entity of its payment obligations under all Purchase Orders that have been accepted by Awarded Vendor.

Section: Other Terms and Conditions – Page 41 – XIII.5 Remedies

Apple's Response: Apple accepts this provision with the following modifications:

The rights and remedies of the Agency, Eligible Entity ~~or~~ **and** Awarded Vendor provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or under the Contract. ~~or Purchase Order.~~

A party's waiver of any breach by the other party or failure to enforce a remedy will not be considered a waiver of subsequent breaches of the same or of a different kind.

To the extent that an Eligible Entity has an administrative dispute resolution process that is mandated by law, the Awarded Vendor agrees to adhere to such process.

Section: Other Terms and Conditions – Page 42 – XIII.6 Force Majeure

Apple Response: Apple accepts this provision with the following modifications:

Neither party will incur any liability to the other if its performance of any obligation **other than payment obligations** pursuant to the Contract or Purchase Order, as applicable, is prevented or delayed by causes beyond its reasonable control and without the fault or negligence of such party. Causes beyond a party's reasonable control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Awarded Vendor shall notify the Agency regarding obligations pursuant to the Contract or the Eligible Entity regarding obligations pursuant to the Purchase Order **within a commercially reasonable period of time when** ~~orally within five business days and in writing within 10 business days of the date on which the~~ Awarded Vendor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. ~~Such notification shall:~~

- ~~• Describe fully such cause(s) and its effect on performance~~
- ~~• State whether performance under the Contract or Purchase Order, as applicable, is prevented or delayed, and~~
- ~~• If performance is delayed, state a reasonable estimate of the duration of the delay if the nature of the force majeure event does not prevent Awarded Vendor from reasonably making such estimation.~~

~~The Awarded Vendor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce within 10 business days of Agency's or Eligible Entity's written request such supporting documentation as the Agency or Eligible Entity may reasonably request. After receipt of such notification, the Agency or Eligible Entity may elect either to cancel the Contract or Purchase Order, as applicable, or to extend the time for performance as reasonably necessary to compensate for the Awarded Vendor's delay.~~

In the event of a declared emergency by competent governmental authorities, the Eligible Entity by notice to the Awarded Vendor, may ~~suspend all or a portion of the~~ **cancel any** Purchase Order, **delayed by more than thirty (30) days from the scheduled ship date.** ~~and resume activities when the suspension ends, including making any delayed payments resulting from the suspension.~~

Section: Other Terms and Conditions – Page 42 – XIII.7 Termination of a Purchase Order

Apple's Response: Apple respectfully takes exception to this provision and strikes it in its entirety as this provision is covered by Section XIII.4 in the Contract.

The Eligible Entity has the right to terminate a Purchase Order for the following reasons. Termination shall be effective upon written notice to the Awarded Vendor.

• **Termination for Cause:** The Eligible Entity shall have the right to terminate a Purchase Order for Awarded Vendor default upon written notice to the Awarded Vendor unless the Awarded Vendor promptly commences a cure of its default and diligently and completely cures its default within 30 days after receipt of the Eligible Entity's notice of default. Awarded Vendor shall have the right to terminate a Purchase Order for an Eligible Entity's default upon written notice to the Eligible Entity unless the Eligible Entity promptly commences a cure of its default and diligently and completely cures its default within 30 days after receipt of the Awarded Vendor's notice of default.

Non-Appropriation: In the event the Eligible Entity purchasing from the Awarded Vendor is a state or local agency under laws of the state applicable to such Eligible Entity (e.g. Pennsylvania State System of Higher Education (PASSHE) members under Pennsylvania law), the Eligible Entity's obligation to make payments during any agency fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Eligible Entity shall have the right to terminate the Purchase Order. To the extent permitted by law, in the event notice is given terminating any purchase order from any purchasing party resulting from this Contract, the due date of all purchasing party's invoices shall be accelerated so that all such invoices become due and payable as of the date of notice of termination. Purchasing party will cease placing new orders for Products from Apple on the effective date of termination. Notwithstanding anything to the contrary, termination of any purchase order resulting from this Contract due to non-appropriation shall not terminate or relieve the purchasing party of its payment obligations under all purchase orders that have been accepted by Apple.

Section: Other Terms and Conditions – Page 43 – XIII.8 Termination of a Contract

Apple's Response: Apple respectfully takes exception to this provision, strikes it in its entirety, and responds with the following:

~~Agency shall have the right to terminate the Contract for Awarded Vendor default upon written notice to the Awarded Vendor unless the Awarded Vendor promptly commences a cure of its default and diligently and completely cures its default within 30 days after receipt of the Agency's notice. Awarded Vendor shall have the right to terminate the Contract for Agency's default upon written notice to the Agency unless the Agency promptly commences a cure of its default and diligently and completely cures its default within 30 days after receipt of the Awarded Vendor's notice.~~

~~In the event of termination of the Awarded Vendor Contract by Agency, each Purchase Order then in effect shall remain in full force and effect until the end of its scheduled term and shall be governed by the Terms and Conditions of the Contract and Purchase Order as if the Contract were still in effect. No new Purchase Orders shall be entered into after the Effective Date of the termination of the Contract.~~

- 1. Termination for Convenience.** This Contract may be terminated by either Party at any time without cause (i.e., for any or no reason), on thirty (30) days' written notice to the other Party.
- 2. Termination for Cause.** Either party may terminate this Contract upon thirty (30) days prior written notice if the other Party has breached this Contract and has failed to cure such breach within thirty (30) days of the date of such notice.
- 3. Effect of Notice of Termination.** If either Party gives notice of termination of the Contract according to this Section: (i) all unpaid invoices issued by Awarded Vendor will be accelerated and become

immediately due and payable on the effective date of termination; and (ii) Agency will cease placing new orders for Products from Awarded Vendor on the effective date of termination.

Section: Other Terms and Conditions – Page 43 – XIII.9 Assignability and Subcontracting

Apple Response: Apple accepts this provision with the following modifications:

The Contract and Purchase Order shall be binding upon the parties and their respective successors and assigns.

The Awarded Vendor shall **notify the Agency upon request when it not** subcontracts with any person or entity to perform all or ~~substantially all~~ **any part** of the work to be performed under the Contract or a Purchase Order., ~~without notifying the Agency and Eligible Entity, as applicable.~~

~~The use of delivery/removal carriers does not constitute subcontracting. Awarded Vendor may use subcontractors regularly retained by Awarded Vendor in the ordinary course of business to perform cost, freight, and insurance, custom factory integration (CFI), warranty, break/fix, administrative and back office services, provided such subcontractors shall not have access to Eligible Entity's confidential information other than billing and contact information, and Awarded Vendor shall indemnify and hold harmless Agency and Eligible Entity from any claims, penalties, damages, and expenses of any nature (including attorneys' fees and costs) arising out of or relating to such subcontractors.~~

~~Neither~~ ~~the~~ Awarded Vendor, **the Agency, nor Eligible Entity** may ~~not~~ assign, in whole or in part, the Contract or any Purchase Order or its rights, duties, obligations, or responsibilities thereunder without the prior written consent of the **other parties** ~~Agency and Eligible Entity~~, as applicable., ~~which consent shall not be unreasonably withheld, conditioned or delayed.~~

For the purposes of the Contract and Purchase Order, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of **any** ~~a majority~~ ownership interest in the Awarded Vendor provided that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

~~Any assignment consented to by Agency or Eligible Entity shall be evidenced by a written assignment agreement executed by the Awarded Vendor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract or Purchase Order, as applicable, and to assume the duties, obligations, and responsibilities being assigned.~~

~~Unless the Agency or Eligible Entity has consented to an assignment and agreed in writing to release the assignor from liability under the Contract or Purchase Order, no assignment shall release the Awarded Vendor from liability under the Contract or Purchase Order.~~

A change of name by the Awarded Vendor, following which the Awarded Vendor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Awarded Vendor shall **use commercially reasonable efforts** to give the Agency ~~and any Eligible Entities~~ holding outstanding Purchase Orders written notice of any such change of name.

~~Notwithstanding the foregoing, the Awarded Vendor may, without the consent of the Eligible Entity, assign the Contract to a successor entity in connection with a merger, consolidation or dissolution of all or substantially all of Awarded Vendor's assets or business, provided that Awarded Vendor's successor entity assumes in writing all of Awarded Vendor's obligations under this Contract and agrees in writing to be bound by this Contract, assign its rights to payment to be received pursuant to the Purchase Order, provided that the Awarded Vendor provides written notice of such assignment~~

~~to the Eligible Entity together with a written acknowledgment from the assignee that any such payments are subject to all of the Terms and Conditions of the Purchase Order. Further, notwithstanding the foregoing, the Awarded Vendor may, without the consent of Agency or Eligible Entity, assign leases to a third party for the purposes of securitization or factoring.~~

Section: Other Terms and Conditions – Page 44 – XIII.10 Intellectual Property Indemnity

Apple Response: Apple accepts this provision with the following modifications:

Intellectual Property Indemnity Indemnification

Provided that Agency and Eligible Entity (~~collectively, “Indemnities”~~) promptly notify Awarded Vendor in writing, give Awarded Vendor sole control over the defense and all related settlement negotiations (~~provided that no settlement shall require an admission of guilt from Indemnitees or the payment of any amount not indemnified for hereunder~~), and does not compromise or settle any claims then, subject to the terms of this **Section XIII.10** and the exceptions and limitations set forth **below in this Contract, including but not limited to Section XIII.12**, Awarded Vendor will defend, indemnify and hold harmless Indemnities from and against all claims, damages, losses and expenses, including without limitation reasonable attorney’s fees and legal costs, that Indemnities incur as a result of any **proceeding third party claims, demands, or actions brought by a third party against Agency or Eligible Entity to the extent based on a claim that: (i) an Apple Product that Customer has paid to acquire from Awarded Vendor infringes a U.S. patent, copyright, trademark or misappropriates a U.S. trade secret; or (ii) personal injury or tangible property damage suffered by such third party was caused by Awarded Vendor’s gross negligence or willful misconduct during the performance of services. arising out of or resulting from a claim that a Product that Indemnities have paid to acquire from Awarded Vendor infringes a U.S. patent, copyright, trademark or misappropriates a U.S. trade secret (“Claim”)**.

Notwithstanding the foregoing, Awarded Vendor shall not **be liable or responsible for, or obligated to defend any claims or damages arising out of or related to:** ~~have no obligation for a Claim to the extent it is caused by:~~ (a) ~~an unauthorized~~ modification of any **Apple** Product; (b) combination, operation or use of the **Apple** Product with any equipment, data, documentation, items or products ~~with which such Product was not intended to be used~~; (c) use of **Apple** Product in a manner or for a purpose, or in a location, for which it was not intended; (d) import or export of any **Apple** Product in violation of applicable export control requirements, regulations or laws; or (e) use or exportation of any Product(s) into any countries identified on any U.S. Government embargoed countries list; **(f) use of any Apple Product in a manner or for a purpose not authorized under the applicable license terms; (g) any other products; or (h) Agency or Eligible Entity, its employees, agents, affiliates, subsidiaries or subcontractor’s negligent acts or omissions.**

~~Indemnities Agency or Eligible Entity shall promptly notify Awarded Vendor, in writing, of any claim, demand, proceeding or suit of which Agency or Eligible Entity becomes aware which may give rise to a right of defense under this Section (“Claim”).~~ ~~Claim.~~ Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Awarded Vendor within thirty (30) days of Agency’s or Eligible Entity’s first learning of such proceeding. Notice must be in writing and include an offer to tender the defense of the Claim to Awarded Vendor. Awarded Vendor, if it accepts such tender, may take over sole control of the defense of the Claim. That control includes the right to take any and all actions deemed appropriate by Awarded Vendor in its sole discretion to resolve the Claim by settlement or compromise. ~~must be in writing and include an offer to tender the defense of the Claim to Awarded Vendor. Awarded Vendor, if it accepts such tender, may take over sole control of the defense of the Claim (provided that no settlement shall require an admission of guilt from Indemnitees or the~~

~~payment of any amount not indemnified for hereunder).~~ Upon Awarded Vendor's acceptance of tender, ~~Indemnities Agency or Eligible Entity~~ **reasonably will** cooperate with Awarded Vendor with respect to such defense and settlement ~~provided Awarded Vendor shall pay for all Indemnitees' out of pocket costs.~~ If a Claim is settled and to the extent permitted by law, ~~neither~~ **no** party will publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

In the event of a Claim, Awarded Vendor may at its sole option and expense (but shall not be obligated to): (i) procure for ~~Eligible Entity Indemnities~~ **Eligible Entity** the right to continue use of the applicable **Apple** Product(s); (ii) replace the applicable **Apple** Product(s) with Products ~~with materially the same functionality;~~ (iii) modify the applicable **Apple** Product(s) ~~so that they become non-infringing, without material loss of functionality;~~ or (iv) refund the amount paid by ~~Eligible Entity Indemnities~~ **Eligible Entity** to Awarded Vendor for the applicable **Apple** Product, less depreciation ~~on a straight line basis over a period of five years.~~ **THE FOREGOING ELIGIBLE ENTITY'S CONSTITUTES INDEMNITIES' SOLE AND EXCLUSIVE REMEDY AND AWARDED VENDOR'S ENTIRE LIABILITY FOR ANY CLAIMS ARISING OUT OF THIS SECTION.**

Section: Other Terms and Conditions – Page 45 – XIII.11 Indemnification

Apple's Response: Apple respectfully takes exception to this provision and strikes it in its entirety as this provision is covered by Section XIII.10 in the Contract.

~~To the fullest extent allowed by law, the Awarded Vendor shall indemnify and hold harmless the Agency and Eligible Entity from and against all claims, damages, losses and expenses, including without limitation reasonable attorney's fees and legal costs that Agency or Eligible Entity incur as a result of any third-party claims, demands, or actions arising out of or resulting from the Awarded Vendor's actual or alleged negligence, willful misconduct, or breach of the Contract or a Purchase Order.~~

~~This includes, without limitation, claims, damages, losses or expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, caused in whole or in part by acts or omissions or negligence of the Awarded Vendor, anyone directly employed by them, or anyone for whose actions they are held to be legally liable.~~

~~The indemnification obligations under the Contract and Purchase Order shall not be limited by amount or type of damages, compensation, or benefits payable by or for the Awarded Vendor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.~~

~~Further, nothing in these indemnification provisions are intended to waive or extinguish the immunity protections of Agency or Eligible Entity, its agents or employees as set forth in Pennsylvania's Political Subdivision Torts Claims Act or other similar state or federal laws or constitutional provisions. Awarded Vendor's indemnity obligations shall be in addition to any insurance requirements under the Contract or Purchase Order. The obligations shall survive the expiration or earlier termination of the Contract or Purchase Order.~~

Section: Other Terms and Conditions – Page 46 – XIII.12 Limits of Awarded Vendor Liability

Apple's Response: Apple respectfully takes exception to this provision, strikes it in its entirety, and responds with the following:

~~The Awarded Vendor's liability to Agency under the Contract shall be limited to the greater of \$3,000,000 or two times the total amount ordered by all Eligible Entities from Awarded Vendor during the 12-month period preceding the date that the dispute first arose. The Awarded Vendor's liability to any Eligible Entity under all Purchase Orders shall be limited to the greater of \$500,000 or two times the total amount ordered by such Eligible Entity from Awarded Vendor during the 12-month period preceding the date that the dispute first arose.~~

~~Unless stated otherwise in this Section, this limitation will apply regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not apply, however, to damages for bodily injury (including death) or damage to real property or tangible personal property for which the Awarded Vendor is legally liable. Nor will the limitation apply to the Awarded Vendor's intellectual property indemnity—subject, however, to the disclaimer of any consequential damages and other related categories of damages as set forth elsewhere in this Section. In no event shall Awarded Vendor, Agency or any Eligible Entity be liable for any special, indirect, incidental, exemplary, reliance, consequential or punitive damages, or loss of profits or revenue, whether based on breach of Contract, tort (including negligence), product liability or otherwise.~~

Awarded Vendor's maximum aggregate liability (including any liability for the acts or omissions of Awarded Vendor's employees, agents and sub-contractors) for any and all claims of any kind arising out of or in connection with the Contract, whether in contract, warranty, tort (including negligence), misrepresentation, strict liability, statute, or otherwise, shall not exceed one million dollars (\$1,000,000).

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL AWARDED VENDOR BE LIABLE FOR ANY LOSS OF PROFIT OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT LOSSES (INCLUDING LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, UNAVAILABILITY OR INTERRUPTION IN AVAILABILITY OF APPLE PRODUCTS, OR OTHER ECONOMIC ADVANTAGE) OR FOR PUNITIVE OR EXEMPLARY DAMAGES.

THE PARTIES AGREE THAT THE TERMS OF THE CONTRACT, INCLUDING THOSE CONCERNING WARRANTIES, INDEMNITY AND LIMITATIONS OF LIABILITY, REPRESENT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS CONTRACT. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THE CONTRACT FAILS OF ITS ESSENTIAL PURPOSE. THE REMEDIES SET FORTH IN THIS CONTRACT WILL BE AGENCY'S OR ELIGIBLE ENTITY'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIM MADE AGAINST AWARDED VENDOR.

Section: Other Terms and Conditions – Page 46 – XIII.13 Governing Law; Jurisdiction and Venue, and Severability

Apple's Response: Apple respectfully takes exception to this provision, strikes it in its entirety, and responds with the following:

~~The Contract between the Agency and the Awarded Vendor will be governed and construed in the courts with the laws of the Commonwealth of Pennsylvania without giving effect to its conflict-of-laws' provisions. Claimants submit to the exclusive jurisdiction of the courts of the state of Pennsylvania and any United States courts located within Agency's jurisdiction for purposes of any and all litigation arising out of or relating to this Contract or the use of the PEPPM website, more particularly, the Court of Common Pleas of Union County or the United States District Court for the Middle District of Pennsylvania. Claimants waive any objections to the forum of Pennsylvania for lack of venue, *forum non-conveniens*, or any other jurisdictional ground.~~

When claims, disputes, or other matters arise between an Eligible Entity and an Awarded Vendor, the agreement or Purchase Order shall be governed, construed, and enforced in the courts and under the laws of the state, district, or territory in which the Eligible Entity is located. Again, claimants waive any objections to the forum of the respective Eligible Entity for lack of venue, *forum non conveniens*, or any other jurisdictional ground.

~~Should any term of the Contract or Purchase Order be rendered unlawful by a court of competent jurisdiction or any legislative act, then the parties shall give effect to the balance of the Contract or Purchase Order to the extent possible. If such invalidity shall be caused by the length of any period of time set forth in any part of the Contract or Purchase Order, such period of time shall be considered to be reduced or increased, as necessary, to a period which would cure such invalidity.~~

With regard to the relationship between Agency and Awarded Vendor and any claims, disputes or other matters arising out of said relationship, the Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law provisions).

With regard to the relationship between an Eligible Entity and the Awarded Vendor and any claims, disputes or other matters arising out of said relationship, all Eligible Entity's Purchase Orders shall be governed by and interpreted and enforced in accordance with the laws of the respective state (without regard to any conflict of law provisions) of the Eligible Entity.

Section: Other Terms and Conditions – Page 46 – XIII.14 Right of Eligible Entities

Apple's Response: Apple respectfully takes exception to this provision, strikes it in its entirety, and responds with the following:

~~The rights and remedies of the Agency and Eligible Entities provided in these Terms and Conditions shall not be exclusive and are in addition to any other rights and remedies provided by law, at equity, under the Contract and any Purchase Order.~~

In preparing responses, Bidders should understand that the rights and remedies of the Agency, Eligible Entities and Awarded Vendor provided above shall not be exclusive and are in addition to any other rights and remedies provided by applicable law, at equity, under the Contract.

Section: Other Terms and Conditions – Page 46 – XIII.15 Legal Notices

Apple Response: Apple accepts this provision with the following modifications:

Legal-Notices

All Any notices under this Contract must be in writing and will be deemed given upon the earlier of actual receipt or ten (10) days after being sent by courier, return receipt requested, to the addresses provided by Awarded Vendor and Agency. explicitly or implicitly required by the Contract or Purchase Order shall be delivered by certified mail or other commercial carrier offering proof of delivery to the parties at the address referred to in the Awarded Vendor Agreement or Purchase Order. Unless proven to the contrary by the recipient, notice shall be considered received no more than two business days after its postmark by the postal service or proof of delivery by a commercial carrier.

Section: Other Terms and Conditions – Page 47 – XIII.16 Binding Nature and Survival

Apple Response: Apple accepts this provision with the following modifications:

The Contract and each Purchase Order shall be binding on and inure to the benefit of the respective parties thereto and their respective successors and assigns. It is understood and agreed, whether or not specifically provided herein, any provision of the Contract or Purchase Order, which by its nature and effect is required to be observed, kept, or performed after the expiration or termination of the Contract or Purchase Order shall survive the expiration or termination of the Contract or Purchase Order. **Additionally, all defined terms and the following sections of the Contract shall survive expiration or any termination of the Contract: VII.12 (Payment); V.14 (Confidentiality); XIII.19 (Representations and Warranties); XIII.10 (Indemnity); XIII.12 (Limitation of Liability); XIII.8 (Effect of Notice of Termination) and XIII.16 (Survival).**

Section: Other Terms and Conditions – Page 47 – XIII.17 eCommerce Consultant Contract Termination

Apple Response: Apple accepts this provision with the following modifications:

If the contract between Agency and the eCommerce Consultant is terminated by either Agency or the eCommerce Consultant, the Agency may either engage a new eCommerce Consultant to provide an eCommerce system, or the Agency may provide its own eCommerce system. The Agency will notify the Awarded Vendors and Eligible Entities of any change in the eCommerce Consultant and eCommerce system, including, without limitation, any new fax numbers, website addresses, email addresses, changes in eCommerce system software, and changes in any eCommerce processes and procedures.

The Agency will endeavor to provide Awarded Vendors and Eligible Entities with adequate notice of any change in the eCommerce Consultant and eCommerce system to ensure a smooth transition. Awarded Vendors and Eligible Entities will need to use the new eCommerce Consultant and eCommerce system in order to have continued access to Agency Contracts and PEPPM bid protection.

Awarded Vendors will need to execute new eCommerce Merchant Agreements and Nondisclosure Agreements (if applicable) with the new eCommerce Consultant (whether a third party or Agency), provided such agreements are reasonably acceptable to Awarded Vendor. The Awarded Vendor shall have twenty (20) work days after receipt of the new agreements to sign and return the agreements in order to continue their Agency Contracts. If the Awarded Vendor does not sign and return the agreements within the twenty (20)-day time period, the Agency may terminate the Awarded Vendor's Agency Contract upon at least ten (10) days' prior written notice. **Awarded Vendor retains the right to immediately terminate the Contract if in its sole discretion it determines that the terms of any eCommerce Merchant Agreement or other agreement with the selected eCommerce Consultant are unacceptable.**

There will be no increase in the Transaction Fee as a result in the change in the eCommerce Consultant (whether a third party or Agency). If Agency establishes a contract with another eCommerce Consultant or develops its own eCommerce system for publishing Contract information, receiving and processing orders and collecting Transaction Fees, Agency reserves the right to collect the original Transaction Fee.

Section: Other Terms and Conditions – XIII.19 Representations and Warranties

Apple's Response: Apple adds the following provision:

Agency or Eligible Entity represents and warrants that: (i) Agency has the right to enter into this Contract and perform its obligations hereunder; (ii) the terms of this Contract do not violate and will not cause a breach of the terms of any other agreement to which Agency is a party or by which it is

bound; and (iii) all Products purchased will be for Eligible Entity's own use in its facilities in the United States and will not be purchased for resale to any other entity or individual.

Section: Other Terms and Conditions – XIII.20 Software

Apple's Response: Apple adds the following provision:

Agency and Eligible Entity acknowledges that Products often contain not only hardware but also software, including but not limited to, operating systems and applications. Such software may be included in ROMs or other semiconductor chips embedded in hardware, or it may be contained separately on disks or on other media. Such software is proprietary, is copyrighted, and may also contain valuable trade secrets and is protected by patents. Eligible Entity, as an end user, is licensed to use any software contained in such Products, subject to the terms of the license accompanying the Products, if any, and the applicable patent, trademark, copyright, and other intellectual property, federal and state laws of the United States.

Section: Other Terms and Conditions – XIII.21 Restrictions

Apple's Response: Apple adds the following provision:

Unless Eligible Entity has obtained Awarded Vendor's prior written consent, Eligible Entity, in addition to any obligations or restrictions set forth in any license, which may accompany a Product, shall not copy the software. Eligible Entity shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof or otherwise change any of the software or its form.

Section: Other Terms and Conditions – XIII.22 Support

Apple's Response: Apple adds the following provision:

Awarded Vendor will provide post-sales support for Apple Products as described in the documentation accompanying such Apple Products. Apple will not provide support for any Products other than unmodified Apple Products.

Section: Other Terms and Conditions – XIII.23 Shipment

Apple's Response: Apple adds the following provision:

Prices include standard freight and insurance using an Awarded Vendor-selected carrier. Awarded Vendor does not guarantee that Products will be available at all times during the Initial Term. Awarded Vendor reserves the right to accept or decline any order, in whole or in part. Awarded Vendor may cancel any accepted order prior to shipment, if in its sole discretion, Awarded Vendor determines that it has insufficient inventory to fulfill such order. Awarded Vendor may make partial shipments of Eligible Entity's orders and will not be liable for any failure to ship complete orders. Eligible Entity will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries. Awarded Vendor will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Eligible Entity.

Section: Other Terms and Conditions – XIII.24 Protected Health Information

Apple's Response: Apple adds the following provision:

Eligible Entity shall not use the Apple Products, iCloud Storage APIs and iCloud service, or any component or function thereof, (i) to create, receive, maintain or transmit protected health information (as defined at 45 C.F.R § 160.103) or (ii) in any manner that would make Awarded Vendor or any other third-party distributor, supplier or provider of those technologies a business associate, as defined under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”) at 45 C.F.R. § 160.103, of the Eligible Entity or any third party. Eligible Entity agrees to be solely responsible for complying with any reporting requirements under law or contract arising from Eligible Entity’s breach of this Section and to reimburse Awarded Vendor for any losses incurred by Awarded Vendor relating to those reporting obligations.