PEPPM 2019 Product Line Bid

AWARDED VENDOR AGREEMENT ("Agreement")

BETWEEN

Central Susquehanna Intermediate Unit, Milton, Pennsylvania ("Agency")

AND

Mythics, Inc.

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

For Product Line:

Oracle America, Inc.   Relational database management systems, servers and storage products

Manufacturer/Publisher Name   Product Line Description (as per PEPPM Product Line Bid List)

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 Product Line 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 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

    Mythics, Inc.

    4525 Main Street, Suite 1500

    Virginia Beach, VA 23462

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.

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.

8. Exceptions and Additional Terms. All Vendor exceptions and additional terms and conditions submitted with Vendor's bid shall apply to this agreement.

    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]

CENTRAL SUSQUEHANNA
INTERMEDIATE UNIT

Amy Pfleegor

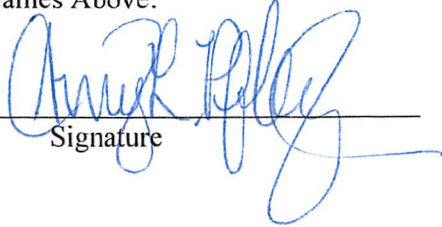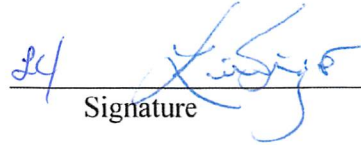By Kevin Singer

Witness

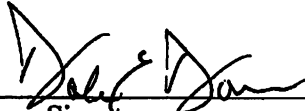CSIU Executive Director

Print Names Above:

Signature

Signature

Date: November 15, 2018

Date: November 15, 2018

[signatures continued on following page]

Vendor Name (if corporation)   Mythics, Inc.

Dale E. Darr   By Richard Welborn
_____   _____
Corporate Secretary (or designee)   Corporate President (or designee)

Vice President, Contracts   Vice President, Finance
_____   _____
Designee Title (If not Corporate Secretary)   Designee Title (If not Corporate President)

Print Names Above:

_____   _____
Signature   Signature

(CORPORATE SEAL)

Date: 9/11/2018   Date: 9/11/2018

Vendor Name (if unincorporated)   _____

_____   By _____
Witness   Owner (or designee)

_____   _____
Title   Designee Title (If not Owner)

Print Names Above:

_____   _____
Signature   Signature

Date: _____   Date: _____

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PEPPM 2019 Product Line Bid
Central Susquehanna Intermediate Unit, Milton, Pennsylvania

REQUEST FOR MODIFICATIONS/ADDITION TO PEPPM TERMS AND CONDITIONS

Mythics, Inc. wishes to take exception to several provisions in PEPPM' 2019 Product Line Request for Bids. In the subsequent paragraphs Mythics has delineated the specific clauses in the solicitation's terms and conditions it wishes to take exception.

ADDITIONAL CONTRACT TERMS AND CONDITIONS

Page 4, II.3 Definitions of "Contract Documents", "Contract" and "Purchase Order"

"This contract is pursuant to the then-current version of the Mythics License and Services Agreement HWSW version (MLSA HWSW), Mythics' Cloud Services Agreement (MCSA) and/or any other applicable Oracle/Mythics End User License Agreement as provided for review and approval by PEPPM. In the event of any conflict between the PEPPM terms and conditions and the then-current version of the MLSA HWSW and/or any applicable Oracle/Mythics End User License Agreements, the latter shall prevail.

"In the event of a change to the distribution agreement between Mythics and Oracle, changes to the license definitions and rules and/or changes to the Global Price Lists, Mythics may submit such changes as Oracle requires under Oracle's distribution agreement in writing to PEPPM for review. PEPPM shall have thirty (30) days to accept or reject those changes. In the event PEPPM accepts the new terms and conditions, PEPPM shall notify Mythics in writing of such acceptance and the parties will execute an amendment to the Contract to incorporate such changes. If PEPPM rejects the proposed changes or fails to respond to Mythics' request within thirty (30) days of receiving notice from Mythics, Mythics may terminate this Contract."

EXCEPTIONS:

1. Mythics requests modifications to the definition of **"Local Educational Agencies (LEAs)" on page 8, III.4** and remove the following entities from the list (please see below).

   ### III.3 Local Educational Agencies (LEAs)

   "Local Educational Agencies (LEAs)" 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~~
- **Government sponsored** Public libraries
- ~~Nonpublic schools~~
- ~~State-approved charter schools~~
- ~~Community colleges~~
- Other organizations defined as "local educational agencies" under applicable law.

III.4 Other Eligible Organizations

"Eligible Organizations" means the following institutions and organizations whether residing inside or outside of the Commonwealth of Pennsylvania, subject to the Awarded Vendor's approval:

- ~~Tax-exempt, nonprofit colleges, and universities, other than community colleges which fall within the definition of LEAs~~
- ~~Other tax-exempt, nonprofit educational institutions or organizations which do not fall within the definition of LEAs~~
- County governments, local municipalities, county/municipal/public authorities, and special districts
- State agencies
- Other political subdivisions
- ~~Other tax-exempt, nonprofit public health institutions or organizations~~
- ~~Other tax-exempt, nonprofit fire companies, rescue companies, or ambulance companies~~
- Other entities, including a council of governments or an area government, which expends public funds for the procurement of supplies, services, or construction
- Other **public** organizations, institutions or entities permitted under applicable law to avail themselves of Agency Contracts

Rationale: Mythics has been approved to serve to state agencies, political subdivisions, public schools, public colleges and public universities. Oracle has excluded private schools, colleges, universities and not for profits from procuring products and services through the contract without express approval from Oracle.

2. **Page 17, V.22 Rights and Remedies in the Event of Violation**

Oracle has the exclusive remedies which are delineated with the applicable end user agreement.

Eligible Entity shall promptly notify Mythics of any breach during the specified period and remedies are available under Section E. Warranties, Disclaimers and Exclusive Remedies of the then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement as provided for review and approval by PEPPM.

3. Page 20 VI.7 Replacement Parts

Oracle's standard warranty of the then-current version of the MLSA, and/or any other applicable Oracle/Mythics End User License Agreement as provided for review and approval by PEPPM.

4. Page 21, VI.12 Standard Warranty

The then-current version of the then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement shall control as provided for review and approval by PEPPM.

5. Page 21, VI.13 On Site Warranty Service

The then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement shall control as provided for review and approval by PEPPM.

6. Page 24 VI.17 Returned Goods Policy

Oracle does not have a Returned Good Policy but provides remedies due to breach of warranty as outlined in the then-current version of the MLSA. Mythics takes exception to this language in favor of Section E. Warranties, Disclaimers and Exclusive Remedies of the then-current version of the MLSA.

7. Page 30, VII.15 Inspection and Rejection

Eligible Entity shall promptly notify Mythics of any breach of warranty during the specified period and remedies are available under *Section E. Warranties, Disclaimers and Exclusive Remedies* of the then-current version of the MLSA in addition to any other applicable Oracle/Mythics End User License Agreement. The applicable End User License Agreement shall control as provided for review and approval by PEPPM.

8. Page 51, XIII.3 Default Related to the Contract

Rights for default of contracts are delineated in the applicable end user agreement. The then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement shall control as provided for review and approval by PEPPM.

9. Page 52, XIII.4 Default Related to the Purchase Order

Rights for default of contracts or Purchase Orders are delineated in the applicable end user agreement. The then-current version version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement shall control as provided for review and approval by PEPPM.

10. Page 53, XIII. 5 Remedies

Oracle has the exclusive remedies which are delineated with the applicable end user agreement. Eligible Entity shall promptly notify Mythics of any breach of warranty during the specified period and remedies are available under Section E. Warranties, Disclaimers and Exclusive Remedies of the then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement. The applicable End User License Agreement shall control as provided for review and approval by PEPPM.

11. Page 53, XIII.6 Force Majeure

The then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement shall control as provided for review and approval by PEPPM.

12. Page 54, XIII.7 Termination of Purchase Order

Termination for Cause:

The then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement shall control as provided for review and approval by PEPPM.

13. Page 56, XIII.10 Intellectual Property Indemnity

The then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement shall control as provided for review and approval by PEPPM.

14. Page 57, XIII.11 Indemnification

The then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement shall control as provided for review and approval by PEPPM.

15. Page 5,7 XIII.12 Limits of Awarded Vendor Liability

The then-current version of the MLSA, MCSA and/or any other applicable Oracle/Mythics End User License Agreement shall control as provided for review and approval by PEPPM.