



AMENDMENT II

(September 28, 2026)

CENTRAL SUSQUEHANNA INTERMEDIATE UNIT

Request for Bids

PEPPM 2027 Apple Bid – Pennsylvania
Electronic Bid # 551302

Bid Due Date: Thursday, ~~October 8~~ October 29, 2026, 3:00 p.m. Eastern Time

Request for Bids #551302, titled “PEPPM 2027 Apple Bid – Pennsylvania” is hereby amended. The changes to the Terms and Conditions are set forth below.

I.7 Bid Due Date

All bids must be received electronically by **3:00 p.m. Eastern Time, Thursday, ~~October 8~~ October 29, 2026** (the “Bid Due Date”).

The Agency may extend the Bid Due Date and time at any time in advance of the Bid Due Date by issuing an addendum to this Request for Bids.

I.8 Bid Opening

Bids will be opened and publicly read at **3:00 p.m. Eastern Time, Thursday, ~~October 8~~ October 29, 2026** (the “Bid Opening Date”), at CSIU offices, 90 Lawton Lane, Milton, Pennsylvania, 17847; however, in the event of an emergency, or, in the Agency’s discretion, in the interest of public health and safety, and as permitted by applicable law, the Agency may instead broadcast the opening of bids via teleconference or video conference.

II.7 Definition of “Apple Product”

“Apple Product” shall mean Services, CTO (Configure-to-Order) 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 Awarded Vendor for its own use, but excluding any third-party software and all other third-party products. ~~If relevant to a successful Bidder, Apple’s standard definitions for Products and Services from the ADCA shall apply.~~

II.11 Definition of “Contract”

The “Contract” consists of this RFB as modified pursuant to the Exceptions process by the Parties, 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. In addition, the Contract shall include all information incorporated into the electronic bid form by Agency as approved by Awarded Vendor, the Awarded Vendor's responses to Questions, the Awarded Vendor's PEPPM Bid Quote Sheet(s) as modified, the Awarded Vendor's pricing spreadsheet as modified, the Awarded Vendor's PEPPM State Selection Form, the Awarded Vendor's Ancillary Services Form, all other attachments and exhibits to the Request for Bids, and all addenda to the RFB issued prior to the Bid Opening Date (collectively, the "Bid Documents"). The Contract will be formed when the Agreement is executed by the Agency.

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. The Apple Professional Service Agreement ("PSA")
3. The 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
5. The Bid Documents

There are no other terms, obligations, covenants, representations, statements, or conditions, oral or otherwise, of any kind, concerning this RFB, except as contained in these 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 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 this RFB.

~~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. In no event may any terms of the eCommerce Merchant Agreement conflict with or negate the terms of the Contract.

II.20 Definition of "Product" or "Products"

"Products" means, collectively, Apple Products and other products that are sold or licensed by Awarded Vendor to Eligible Entity for its own use. ~~If relevant to a successful Bidder, Apple's standard definitions for Products and Services from Apple's Direct Customer Agreement ("ADCA") shall apply.~~

II.24 Definition of "Services"

"Services" means, collectively, the standard, price-listed-services, support, and/or training products sold under the Apple brand name. ~~If relevant to a successful Bidder, Apple's standard definitions for Products and Services from the ADCA shall apply.~~

II.27 Definition of "Apple Confidential Information"

"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 RFB [or Contract](#) or to which Agency or Eligible Entity may have access in connection with the 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.

II.28 Definition of "Agency or Eligible Entity Confidential Information"

"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 the Agreement 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 RFB [or Contract](#); or (e) is now, or hereafter becomes, publicly available other than through disclosure by Apple in breach of this RFB or the [AgreementContract](#).

II.29 Definition of "Limited Warranty"

"Limited Warranty" means Apple's standard limited warranty that is set forth in the documentation that accompanies any Apple Products purchased under this [RFBContract](#).

V.1 Declaration of Non-Collusion

Assuring that prices are arrived at independently and without collusion is so crucial that this RFB requires the Bidder to affirmatively and truthfully answer "Yes" to the non-collusion questions in the Question Section. Otherwise, the bid may not be submitted to Agency.

By submitting this bid, the person named on the electronic bid form declares that he or she has authority to offer the prices bid and acknowledges and agrees that to the best of such person's knowledge:

- The price(s) and amount of the bid have been arrived at independently and without consultation, communication, or agreement with any other contractor, Bidder, or potential Bidder [on the Price\(s\) or the amount of the bid](#)
- Neither the prices nor the amount of the bid, and neither the approximate prices nor the approximate amount of the bid have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening with the intent and for the purpose of collusion
- No attempt has been made or will be made to induce any firm or person to refrain from bidding on this RFB, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of a complementary bid
- The bid of Bidder is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid

- Bidder is not currently under investigation by any governmental agency, and has not in the last three years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract except as set forth in a separate attachment to your bid; and
- The representations above are material and important. They will be relied on by the Agency in awarding the Contract(s) for which this bid is submitted

V.12 Confidential Information

Awarded Vendor will not use Agency or Eligible Entity Confidential Information except as required to perform its obligations under this Agreement, nor disclose such Agency or Eligible Entity Confidential Information except to employees, agents or contractors who have a need to know or as required by law. Except as otherwise stated herein, Awarded Vendor will not make any disclosure or statement of such information without the Agency's or Eligible Entity's prior written consent or as required by law.~~The Awarded Vendor shall not disclose any Agency or Eligible Entity Confidential Information gained by virtue of this RFB, the Agreement or any Purchase Order.~~

V.18 Cooperation with Authorities

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 the Agreement. The Purchase Orders and invoices directly related to such performance 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~~ Purchase Orders, invoices, and other supporting documents 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 under the Agreement.

Any information, books, records and supporting documents made available during 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 is subject to agreement to Awarded Vendor's standard confidentiality terms upon commencement of such audit.

V.19 Rights and Remedies in the Event of Violation

In the event Awarded Vendor knowingly violates Sections V.10 through V.19, the Agency may terminate the Agreement, or an Eligible Entity may cancel a Purchase Order prior to shipment, 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

V.21 Nondiscrimination

The provisions of the Pennsylvania Human Relations Act (43 P.S. §§ 951–963) and the regulations thereunder, including, without limitation, §49.101 16 Pa. Code Chapter 49, as the same may be amended from time to time, are hereby incorporated by reference as if fully set forth herein. The Awarded Vendor shall comply with such provisions during the term of the Contract and any Purchase Order. In addition, when providing Products or Ancillary Services to an Eligible Entity located outside of the Commonwealth of Pennsylvania, the Awarded Vendor shall comply with any applicable

nondiscrimination requirements under the laws and regulations of the state in which such Eligible Entity is located, as the same may be amended from time to time.

~~If the Agency or Eligible Entity has reason to suspect that the Awarded Vendor violated the provisions of this Nondiscrimination Clause, the Agency or Eligible Entity may request, and the Awarded Vendor shall promptly provide applicable information to demonstrate compliance.~~

~~The Awarded Vendor shall include the provisions of this Nondiscrimination 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 and all money due or to become due under the Purchase Order may be forfeited for violating the terms of this Nondiscrimination Clause. In addition, the Agency may proceed with debarment or suspension of that Awarded Vendor from the PEPPM program.~~

Notwithstanding the foregoing, nothing in this Nondiscrimination Clause shall be construed to require any party to take any action that would violate applicable federal law or result in loss of federal funding or a Federal award. In the event of a conflict between any provision of this Nondiscrimination Clause and applicable federal law or Federal award, the conflicting provision shall be reformed to the minimum extent necessary to comply with such federal law or Federal award while preserving the parties' intent to comply with applicable state nondiscrimination requirements to the fullest extent permitted by law. Any such reformation shall not affect the validity or enforceability of the remaining provisions of this Nondiscrimination Clause.

V.22 Fair Labor Standards Act

By submitting a bid, the Bidder certifies that it properly classifies employees in a manner consistent with the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8 (FLSA), and that if awarded a contract, Awarded Vendor shall continue to classify employees in a manner consistent with the FLSA. An Awarded Vendor must inform the Agency if it is found or determined to be classifying employees in a manner inconsistent with the FLSA. All notices must be in writing and received by the Agency within ~~15 days of said finding/determination~~ a commercially reasonable timeframe.

V.23 References and Past Performance

A Bidder must be responsible and capable of executing all duties to be covered under the Contract.

To evaluate a Bidder's qualifications to perform under the Contract, Agency will require the submission of three signed reference forms. Also, the Agency will consider performance of Bidder on previously awarded PEPPM contracts and Bidder's past conformance to bid terms and conditions as modified by the Parties, including submission of pricing updates, submission of ordering instructions, customer service and payment of fees.

VI.1 Product Line Sought

This RFB seeks formula pricing for Products provided by reliable national manufacturers and service providers for Apple-branded products and services. The brand of Product Line named—and its corresponding description—is the specification for the desired Products manufactured or offered under the Apple brand. ~~No known equivalent brand exists~~

The requested Apple Product Line category is listed on a table within the electronic bid form. For convenience, the specified Product Line is also listed within a bid announcement on the website at www.PEPPM.org/bids.

VI.9 Ancillary Services Related to Products

As part of their bid submission, 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 shall be subject to ~~this Contract, any ancillary services schedule offered as part of the bid submission or an~~ a mutually agreed upon and executed Statement of Work or Awarded Vendor's Professional Services Agreement as may be applicable.

VI.10 Returned Goods Policy

An Awarded Vendor must have a policy regarding how they handle the return of goods from Eligible Entities. Evidence of the policy must be provided on the electronic bid form, either by attachment or a reference to a particular document. ~~Bidders must have a policy regarding how they handle the return of goods from Eligible Entities. A document describing the policy must be attached alongside each Product Line being bid.~~

VI.11 Hazardous Materials

To the extent applicable, Awarded Vendor will comply with ~~Act 159 of October 4, 1984, the law known as~~ the Pennsylvania Worker and Community Right-to-Know Act (35 P.S. § 7301 et seq.), ~~as well as any and its implementing~~ regulations ~~pursuant to~~ (4 Pa. Code § 301.1 et. Seq.) as well as the federal Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR § 1910.1200) and applicable state plan equivalents regarding the labeling of hazardous chemicals and the provision of Safety Data Sheets (SDS) for Products sold under the PEPPM program and any similar act in other states where they sell Products under the PEPPM program. ~~The Act focuses on labeling of hazardous materials and chemicals, labeling, and material safety data sheets.~~

VI.12 Export Restrictions and Statement of Compliance

This Contract is subject to all laws, regulations, orders or other limitations on the export and reexport of commodities, technical data and software. Eligible Entity agrees that it will not export, re-export, resell or transfer any export-controlled commodity, technical data or software: (i) in violation of such limitations imposed by the United States or any other appropriate national government authority; (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses and approvals, at Eligible Entity's sole cost and expense; (iii) to any country or national or resident of a country to which trade is embargoed by the United States, or any other relevant national authority; (iv) to any person or firm on any relevant government agency restricted party lists, (examples: United Nations Sanctions list, United States Denial Lists, Office of Foreign Assets Control Specially Designated Nationals List, etc.); or (v) for use in, or to an entity that might engage in, any sensitive nuclear, chemical or biological weapons, or missile technology end-uses unless authorized by the United States Government, and any other relevant government agency by regulation or specific license. ~~PEPPM Contracts may involve Products, software, and technical data that are governed by the provisions of the U.S. Export Administration Regulations ("EAR") and all other applicable U.S. export control laws and regulations.~~

~~Awarded Vendor and Eligible Entity shall comply with all U.S. export laws and all other applicable U.S. export control laws and regulations, as amended from time to time, including, but not limited to, § 736 (General Prohibitions), § 742 (Control Policy), § 744 (End-user and End-use Based), § 746 (Embargoes and Other Special Controls), and § 774 (Commerce Control List) of the EAR, as they pertain to export or re-export. Each Eligible Entity certifies that, unless authorized by U.S. laws and regulations (either by specific regulation or written authorization from the U.S. Government), it shall not export or re-export~~

~~the Products, software, technical data purchased under an Agency Contract from the Awarded Vendor, or the direct Product thereof in violation of applicable U.S. export control laws and regulations.~~

~~Each Eligible Entity acknowledges that:~~

~~It is unlawful to export or re-export (without written U.S. Government authorization) Awarded Vendor's Products, technology, or software if they know that they will be used:~~

- ~~○ In the design, development, production, or use of missiles in or by a country listed in Country Group D:4~~
- ~~○ In the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3~~
- ~~○ In the design, development, production, stockpiling, or use of nuclear weapons in or by a country listed in Country Group D:2 (Supplement No. 1 to EAR § 740); and~~

~~Export or re-export of Awarded Vendor's technology, software, source codes, or direct Products thereof to a country or national thereof listed in Country Group D:1 or E:2 may be prohibited, unless authorized by U.S. regulations (§ 740 of the EAR) or written authorization from the U.S. Government.~~

~~The provisions of this Section shall survive the term and termination of the Contract and Purchase Order.~~

VIII.16 Firm Offer Time Period

After the public opening, bids will be evaluated. The Agency will conduct this process as quickly as possible so that award recommendations can be formulated. Bidder's bid, including responses to the RFB, bid formulas, discount formulas, and pricing shall be valid and irrevocable for ninety (90) days after the [Bid Due Date, unless there is updated pricing on Eligible Entity's Apple ecommerce store. It is the Eligible Entity's responsibility to check their Apple ecommerce store for current pricing.](#)

X.1 Federal Rules May Apply to Purchases with Grant Funds

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, ~~rules~~, and requirements may apply in addition to those under state ~~and local~~ 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 (commonly referred to as the "Uniform Guidance" and anticipated to be commonly referred to as "Uniform Grants Regulation" if the Proposed Rule takes effect). ~~Awarded Vendor must agree to comply with those requirements applicable to specific purchases by Eligible Entities using federal grant or contract funds.~~ Eligible Entity must advise Awarded Vendor if an order will utilize funds under a federal grant or contract, in which case Sections X.1 through X.21 shall apply. On May 29, 2026, the Office of Management and Budget, joined by federal award-making agencies, published a proposed rule in the Federal Register (91 Fed. Reg. 32,198) (the "Proposed Rule") that, if finalized, would revise certain provisions of the Uniform Guidance. If finalized, the Proposed Rule would take effect on October 1, 2026. The provisions of Article XI of these Terms and Conditions include the Proposed Rule revisions which are anticipated to take effect on October 1, 2026.

X.3 Termination for Cause or Convenience

[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. See Sections XIII.3 and XIII.7.](#) ~~For any purchase or contract of more than \$10,000 made using federal funds, the Awarded Vendor agrees that the following terms and conditions shall apply:~~

~~The Eligible Entity may terminate or cancel any Purchase Order under the Contract at any time, without cause, by providing seven (7) 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 before 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).~~

X.4 Equal Employment Opportunity

~~At time of award, Agency and Awarded Vendor agree that the Contract does not constitute a "federally assisted construction Contract" under 41 CFR Part 60-1.3. Eligible Entity agrees that it shall not order any Products or Services under the Contract in such a manner which would result in the Contract or Purchase Order constituting a "federally assisted construction Contract" under 41 CFR Part 60-1.3. 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.~~

X.5 Davis-Bacon Act

~~At the time of award, Agency and Awarded Vendor agree that the Contract is not a construction contract subject to the Davis-Bacon Act (40 USC 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction") (collectively, "Davis-Bacon Act"). Eligible Entity agrees that it shall not order any Products or Services under the Contract in such a manner which would result in the Contract or Purchase Order becoming subject to the Davis-Bacon Act. When required by federal program legislation, the Awarded Vendor agrees that, for all Eligible Entity prime construction Contracts/purchases more than \$2,000, the Awarded Vendor shall comply with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the Awarded Vendor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Awarded Vendor shall pay wages not less than once a week.~~

~~Current Prevailing Wage determinations issued by the Department of Labor are available at <http://www.dol.gov>.~~

~~The Awarded Vendor agrees that, for any purchase to which this requirement applies, the award of the purchase to the Awarded Vendor is conditioned upon the Awarded Vendor's acceptance of the wage determination. The Awarded Vendor further agrees that it shall also comply with the Copeland "Anti-~~

Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

X.6 Contract Work Hours and Safety Standards Act

At the time of award, Agency and Awarded Vendor agree that the Contract is not a public works contract subject to 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) (the “Hours and Safety Act”). Eligible Entity agrees that it shall not order any Products or Services under the Contract in such a manner which would result in the Contract or Purchase Order becoming subject to the Hours and Safety Act. ~~Where applicable, for all Eligible Entity Contracts or purchases more than \$100,000 that involve the employment of mechanics or laborers, the Awarded Vendor agrees to comply with 40 U.S.C. § 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, the Awarded Vendor must compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 apply to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or Contracts for transportation or transmission of intelligence.~~

X.9 Debarment and Suspension

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, and 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 of 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. ~~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, and parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.~~

X.12 Profit as a Separate Element of Price Reserved

~~For purchases using federal funds in excess of the simplified acquisition threshold (currently \$350,000), the Eligible Entity may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.324(b). When the Eligible Entity makes a reasonable determination that such information is required by 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.~~

X.13 Bonding Requirements

~~At the time of award, Agency and Awarded Vendor agree that the Contract is not a construction contract which would require bid security, performance bonds or payment bonds pursuant to 2 CFR. § 326. Eligible Entity agrees that it shall not order any Products or Services under the Contract in such a manner which would result in the Contract or Purchase Order becoming subject to 2 CFR. § 326. Pursuant to 2 CFR § 200, the Agency requires applicable bid security, performance, and payment bonds on construction projects. As such, for construction or facility improvement Contracts or subcontracts exceeding the simplified acquisition threshold currently set at \$250,000, the federal awarding agency or pass through entity may accept the bonding policy and requirements of the Eligible Entity, provided that the federal awarding agency or pass through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:~~

~~A bid guarantee from each Bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Bidder will, upon acceptance of the bid, execute such contractual documents as required within the time specified.~~

~~A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.~~

~~A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.~~

X.14 Not-To-Exceed Price

~~All Awarded Vendor Professional Services will be subject to a mutually agreed upon and executed Statement of Work. If requested by the Eligible Entity, on any Contract based on time and materials, the Awarded Vendor shall set a ceiling price that the Awarded Vendor exceeds at its own risk pursuant to 2 CFR § 200.318(j).~~

X.19 E-Verify

The Awarded Vendor is required to comply with the Department of Homeland Security's E-Verify program (“EVP”) to confirm the employment eligibility of all employees and contractors hired in or performing work in the United States under a Federal award ~~2 CFR 200.303(f)~~ for purchases involving Federal awards. By submitting a Bid, Bidder verifies its participation in the EVP for purchases involving Federal awards, and affirms that, to the best of Bidder’s knowledge, all employees hired by Bidder in connection with purchases involving Federal awards are authorized to work in the United States. Prior to award of a Contract or Purchase Order by an Eligible Entity to the Awarded Vendor for a particular purchase, the

Awarded Vendor shall verify its participation in the EVP, and affirm that, to the best of the Awarded Vendor's knowledge, all employees hired by the Awarded Vendor are authorized to work in the United States. The ~~Awarded Vendor's subcontractors shall provide to the Eligible Entity, and the~~ Awarded Vendor shall ~~cause its subcontractors to~~ provide to the Eligible Entity, any documentation requested by the Eligible Entity to demonstrate participation in and compliance with the EVP prior to commencing work under the Eligible Entity's Contract or Purchase Order.

X.21 General Compliance and Cooperation with Eligible Entity

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 ~~and Contract cost and price analyses required under the Uniform Guidance.~~ Awarded Vendor agrees to comply with the applicable provisions in accordance with and as limited by the Terms and Conditions of this Contract subject to Section V.18.

~~For example, the Eligible Entity must perform a cost or price analysis in connection with every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold, currently \$350,000. Such a cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price without looking at the individual cost elements. Thus, the Awarded Vendor agrees to make a good faith effort to work with the Eligible Entity to complete such a cost or price analysis to comply with the law.~~

Upon written request from the Eligible Entity, the Awarded Vendor shall, within ~~ten (10)~~ fifteen (15) business days (or such shorter period as may be required by the federal awarding agency or pass-through entity), provide such compliance documentation, certifications, records, or other information as the Eligible Entity may reasonably require to demonstrate the Awarded Vendor's compliance with the requirements of this Article XI or other applicable federal requirements. ~~Such documentation may include, without limitation, payroll records, subcontractor certifications, conflict of interest disclosures, certifications regarding debarment or suspension status, and any records required to be maintained under the Uniform Guidance or the terms of the Eligible Entity's federal award.~~ If the Eligible Entity, a federal awarding agency, pass-through entity, or auditor identifies an instance of noncompliance by the Awarded Vendor with any requirement of this Article XI or other applicable federal law, regulation, or award term, the Awarded Vendor shall, within ~~ten (10)~~ five (5) business days of receiving written notice of such noncompliance (or such shorter period as the circumstances may require), (i) take prompt corrective action to cure the noncompliance, (ii) provide the Eligible Entity with a written corrective action plan describing the steps taken or to be taken to cure the noncompliance and prevent future occurrences, and (iii) provide such additional documentation as the Eligible Entity may reasonably request to verify that corrective action has been completed.

~~Without limiting the indemnification obligations set forth elsewhere in the Contract, the Awarded Vendor shall indemnify and hold harmless the Agency and the Eligible Entity from and against any and all disallowed costs, repayment obligations, funding clawbacks, grant or contract suspensions, terminations, debarment, penalties, fines, interest, audit costs, investigative costs, and reasonable attorneys' fees and legal expenses arising out of or resulting from the Awarded Vendor's failure to comply with the requirements of this Article XI or any other applicable federal law, regulation, executive~~

~~order, or federal award term that applies to the Eligible Entity's purchase from the Awarded Vendor. This indemnification obligation shall survive the expiration or earlier termination of the Contract or any Purchase Order.~~

XI.3 Price Lists

Awarded Vendor is required to submit price-list spreadsheets, as prescribed in ~~an~~ a mutually agreed upon Agency template. Data presented should include line items for both physical Products and intangible Products. The Agency will provide specific directions in an email notice to newly Awarded Vendor.

Submitted data will be transferred by Agency to electronic catalogs on www.PEPPM.org and other eCommerce systems. The data will showcase bid-protected Products to Eligible Entities to foster purchases.

Products that become available after the start of the existing Contract may be added to the Contract. Pricing shall be in accordance with the Awarded Vendor's then applicable price list, and in conformance with the price list, price basis, and pricing formula as bid by Awarded Vendor. Awarded Vendor may change Product offerings, discounts, and pricing at any time without notice to the Agency or Eligible Entities in the ordinary course of the Awarded Vendor's management of such designated list, so long as the changes are the result of market dynamics and consistent with the price list, price basis, and pricing formula as bid by the Awarded Vendor.

~~Awarded Vendor's spreadsheet contents must be written so buyers can easily find and identify Products under Contract. Data that includes abbreviations or lacks keyword descriptions will be disadvantaged compared to other competitors' items covered by another PEPPM Contract.~~

~~Agency and its eCommerce Consultant reserve the right to use a third-party content provider to describe or expand upon Product descriptions provided by an Awarded Vendor.~~

XI.4 Pricing Updates

PEPPM pricing is dynamic, in that formulas accepted from Awarded Vendor are based on discounts from a commercially available price list or a Markup-over-Cost. Therefore, prices may change frequently. Awarded Vendor is required to send PEPPM updated prices whenever their price basis changes. PEPPM will accept updated price lists as often as once per week.

~~Awarded Vendor must either provide PEPPM a "valid through" date for posting or certify every five weeks by email that its prices are current.~~

XI.5 Leasing Information

Awarded Vendor may allow Eligible Entities to enter into rental, lease, or lease purchase agreements, pursuant to Awarded Vendor's Master Lease Purchase Agreement. ~~provided that such agreements comply with the Agency's state statutes and State Department of Education policies, rules, and regulations, and any state-specific laws and regulations applicable to Eligible Entities in other states. Awarded Vendor agrees that leases will comply with the Uniform Commercial Code for the state in which the Eligible Entity is located.~~

~~Agency will not collect lease payments or be involved in the terms and conditions of the lease.~~

~~Awarded Vendor must indicate in its terms and conditions if the shipping costs for the return of leased or rented equipment are the responsibility of the Eligible Entity, and what that cost will be. No sale or~~

~~assignment of a lease contract to a third party will be made without first informing Agency and the Eligible Entity of the sale or assignment. If an Awarded Vendor sells or assigns a lease contract to a third party, the cost of the return must not be greater than the cost of return to the original Awarded Vendor.~~

~~Awarded Vendor providing lease or rental opportunities must submit a file detailing lease arrangements available to Eligible Entities. PEPPM will post the information on the PEPPM website. (Awarded Vendor shall be required to provide such information electronically such as Microsoft Word or Adobe PDF document.) If the Awarded Vendor changes their terms and conditions during the term of the Agency Contract, the new document must be filed with PEPPM for archiving and posting.~~

Lease or rental proposals to Eligible Entities under the Contract must clearly demonstrate that the base price of the equipment and services in the lease or rental proposal was derived using the PEPPM bid-discounted-pricing or better. ~~The Eligible Entity shall submit a copy of all leasing documents, any associated PEPPM quotes and any other Awarded Vendor required document(s) with a Purchase Order or letter of intent to lease provided on school or agency letterhead and signed.~~

~~Awarded Vendor may use a state procurement agency approved lease agreement terms and conditions or may substitute its own leasing terms and conditions with the approval of the Eligible Entity.~~

Any financing arrangements (including lease purchasing arrangements) will be made directly between the Eligible Entity and the Awarded Vendor or applicable lender. ~~Financing arrangements may be subject to additional laws, rules, regulations, terms and conditions not described in this document and are subject to separate negotiation with each Eligible Entity interested in such an arrangement. Each Eligible Entity should seek its own legal advice before entering into a financing arrangement. All financing arrangements are between the Eligible Entity and the Awarded Vendor or the lender only, and Agency will not be involved in any way.~~

XI.8 Contract Extension

Agency reserves the right to extend any bid award beyond the Contract Term, for a period of up to one year. The extension of any awarded bid will be optional upon the agreement of the Agency and the Awarded Vendor.

The Agency reserves the right to offer month-by-month extensions until a new Contract is awarded. These month-by-month extensions of the Contract will be optional upon the agreement of the Agency and the Awarded Vendor.

~~Agency requires a Contract extension fee of \$200 USD for a one-year extension per Product Line. The Contract extension fee may be prorated by Agency for any extensions less than one year.~~

XII.1 An Overview of the Ordering Process

To put the following provisions into context, Agency provides this simplified overview of the PEPPM order review and submission process:

- Awarded Vendor submits their Contract pricing to PEPPM on a mutually agreed upon template
- PEPPM converts pricing into a hosted electronic catalog on PEPPM.org
- Eligible Entities shop on PEPPM or Epylon websites, create shopping lists, and may communicate directly with Awarded Vendor regarding Product information and to get quotations
- Eligible Entities address their Purchase Orders to Awarded Vendor, itemizing desired Products and pricing

- ~~Eligible Entities forward their Purchase Orders to the PEPPM Clearinghouse for review, archiving, and electronic transmission to appropriate vendors~~
- [Eligible Entities place orders directly through the online portal managed by Awarded Vendor or another ordering method identified in the posted Ordering Instructions.](#)
- Awarded Vendor will process orders as directed on the Purchase Order
- Awarded Vendor invoices Eligible Entities at Contract pricing or below
- Eligible Entities pay Awarded Vendor directly
- [Awarded Vendor provides Agency with monthly reports of sales made under the Contract, as described in Section XII.6.](#)

XII.2 Display of Contract Pricing

Awarded Vendor 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 pricing only if relevant to a buyer's geography and profile
- [Make line items searchable by keyword, by Product Line, or by category](#)

[Awarded Vendor may change Product offerings, discounts, and pricing at any time without notice to the Agency or Eligible Entities in the ordinary course of the Awarded Vendor's management of such designated list, so long as the changes are the result of market dynamics and consistent with the price list, price basis, and pricing formula as bid by the Awarded Vendor.](#)

XII.4 Instruments for Orders

Eligible Entity 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 and not for resale. In the event Eligible Entity submits orders via an online portal managed by Awarded Vendor, Eligible Entity agrees to Awarded Vendor's Terms of Use and Privacy Policy located on such online portal. Furthermore, purchases through an online portal may also be subject to an Online Sales Policy. In the event of any inconsistency between this Agreement and the Online Sales Policy, this Agreement will govern.

XII.5 Submission of ~~Purchase Orders~~

[Eligible Entities may place orders directly with Awarded Vendor through the online portal managed by Awarded Vendor or another ordering method identified in the posted Ordering Instructions. Eligible Entities are not required to submit orders under this Contract to the PEPPM Clearinghouse. Awarded Vendor shall identify purchases made under this Contract in its order records, regardless of the ordering method used.](#)

~~Unless instructed differently, Eligible Entities must send their Purchase Orders to the PEPPM Clearinghouse, which will review and archive orders, and then transmit Purchase Orders to the company designated on the Purchase Order. An Eligible Entity may scan all relevant documents and transmit the Purchase Order by email to Orders@PEPPM.org.~~

~~Posted ordering instructions will inform Eligible Entities of any alternative order process in cases where Awarded Vendor has been given written permission from Agency to receive orders directly.~~

XII.6 Electronic ~~Transmissions~~Orders and Monthly Sales Reports

~~Except in cases where companies are authorized to receive orders directly, all Purchase Orders shall be transmitted electronically to Awarded Vendor 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.~~

Upon delivery of a Purchase Order, the Awarded Vendor is expected to enter into the system of record to accept the order. Once the Purchase Order has been deemed as valid, an order acknowledgment will be sent to the Eligible Entity. [Awarded Vendor provides Agency with monthly reports of sales made under the Contract.](#)

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.

XII.9 Payments

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.7](#), 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.~~

XII.10 Tax Exemptions

No charge will be allowed for federal, state, or local taxes from which the Eligible Entity is exempt. Prices shall be net and shall not include any such tax. Exemption certificates, if required, will be furnished on forms provided by the Eligible Entity. LEAs are exempt from all sales and excise taxes imposed by the Internal Revenue Service and have registered with or been recognized by the Internal Revenue Service to make tax-exempt purchases.

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.

XII.11 Delivery

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, 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 from 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 Awarded Vendor Retail Store. Eligible Entity shall contact the Awarded Vendor 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.

XIII.1 Entire Agreement

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. ~~The Agreement represents the complete contract between the Agency and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Agreement 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 Purchase Order represents the complete agreement between the Eligible Entity and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Purchase Order shall be in writing in the form of an amendment signed by Eligible Entity and Awarded Vendor~~

XIII.3 Cancellation of the Purchase Order ~~Due to Default~~

~~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 cancel the whole or any part of a Purchase Order for the following reasons:~~

Eligible Entity may cancel a Purchase Order prior to shipment from Apple's shipping location upon advance notice to Awarded Vendor. Fees may be associated with cancellation of a Purchase Order. [After shipment, Awarded Vendor's Returned Goods Policy will apply.](#)

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 cancelling 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~~[for goods shipped or services rendered](#) by Awarded Vendor.

XIII.5 Force Majeure

Neither party to the Contract or a Purchase Order will incur any liability to the other if its performance of any obligation 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 orally within ~~five (5) business days and in writing within ten (10) business days of the date on which~~[a commercially reasonable time from when](#) 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 an 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 ten (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 receiving 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 Purchase Order, and resume activities when the suspension ends, including making any delayed payments resulting from the suspension.

XIII.6 Intervening Governmental Action

(a) Pricing Adjustments. The Parties acknowledge that the Awarded Vendor may adjust its applicable education price list from time to time, including in response to tariffs or other trade restrictions imposed on Products or their component parts. Any such adjustment shall be applied consistently with the bid discount formula in effect under this Contract. For the avoidance of doubt, the Awarded Vendor's bid discount formula shall remain in effect regardless of any tariff or trade restriction.

(b) Transparency. If the Awarded Vendor adjusts its education price list in response to tariffs or trade restrictions, Awarded Vendor shall, upon written request from the Agency, provide reasonable documentation identifying the tariff or trade restriction, the Products affected, and the general basis for the price adjustment. Awarded Vendor shall not be required to disclose proprietary cost information, but shall provide sufficient information for the Agency to verify that the adjustment is attributable to an actual tariff or trade restriction applicable to the Products sold under this Contract.

(c) Reversion. If a tariff or trade restriction that resulted in an increase to the Awarded Vendor's education price list is subsequently reduced, eliminated, or declared invalid by a court of competent jurisdiction or governmental authority, the Awarded Vendor shall adjust its education price list to reflect such reduction or elimination within a commercially reasonable time. Eligible Entities that placed Purchase Orders during the period in which the tariff or trade restriction was in effect shall have no right to a retroactive refund or credit for amounts paid prior to such adjustment, except to the extent that a court of competent jurisdiction or governmental authority orders retroactive relief that directly reduces the cost borne by Awarded Vendor on those previously completed transactions.

(d) Performance Obligation. The imposition of tariffs or other trade restrictions shall not constitute a force majeure event under Section XIII.5 and shall not excuse the Awarded Vendor's obligation to timely deliver Products ordered under the Contract or any Purchase Order. Awarded Vendor is expected to continue to accept and fulfill Purchase Orders in accordance with the terms of the Contract notwithstanding any tariff or trade restriction.

~~The prices for the products offered by the Awarded Vendor shall remain fixed as may be required by the terms and conditions of this RFB, except if the Awarded Vendor incurs significant cost increases due to tariffs or other trade restrictions on its products or their component parts.~~

~~In such case, the Awarded Vendor may request an emergency price increase by providing written notice to Agency within 30 days of the impact on the Awarded Vendor of the actual implementation of the applicable tariff or trade restriction. The notice must include documentation supporting the request and the relationship and impact that the implementation had upon the cost of the products for which an increase is sought. Such written notice shall include the affected product or products, the amount of the tariff or other trade restrictions, the country imposing the tariff or other trade restrictions, the date the tariff or other trade restrictions was enacted and became effective, whether the bid price included any tariff or other trade restrictions which has since been eliminated, the portion of the tariff or other~~

~~trade restrictions the awarded vendor seeks to pass on to the Eligible Entities, a detailed and transparent cost breakdown of the product price (e.g. manufacturer's base price, any tariffs, Awarded Vendor's discount or mark-up, etc.), and such other information reasonably requested by the Agency such that the Agency can evaluate if the Awarded Vendor's request is fair and reasonable. Any price increase shall not exceed 25 percent of the original contract price for the affected products, unless the tariffs or trade restrictions would cause the Awarded Vendor to sell below its cost, in which case Agency will entertain approving a contract price that preserves vendor's previous bid price profit margin. Any increase in the product price due to the imposition of a new tariff or other trade restrictions shall only apply to products ordered by Eligible Entities on or after the date the new tariff or other trade restriction was enacted and only to the extent the manufacturer or importer is seeking to pass on the tariff or other trade restrictions to the Awarded Vendor and by extension to the Eligible Entities.~~

~~The Agency shall review the request and justification. If the request is agreed upon, Agency or its agents shall notify the Awarded Vendor, in writing, that the request has been granted either in full, or in part, or denied. In no event shall the Awarded Vendor increase its prices until it is notified by Agency in writing that its emergency request for price increases has been approved. If tariffs or trade restrictions are removed, Agency may cause contract prices to revert to the original bid price. The Agency does not consider the imposition of tariffs or other trade restrictions to be a force majeure event which would excuse Awarded Vendor's performance under the contract. Awarded vendor is expected to timely deliver ordered products.~~

XIII.7 Termination of Contract

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.

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.

Effect of Notice of Termination. If either Party gives a notice of termination of the Contract according to this section Awarded Vendor will cease accepting new orders for Products from Eligible Entities on the effective date of termination. ~~In addition to the other rights of termination expressly set forth in this RFB, the Agency shall have the right to terminate the Contract, in whole or in part, without penalty, for Agency's convenience upon thirty (30) days written notice to the Awarded Vendor, and upon receipt of said notice, the parties shall have no further obligations to each other (except for those obligations that expressly survive the termination of this Contract).~~

~~At any time, the Agency reserves the right to review the Awarded Vendor's performance of Contract responsibilities with the possibility of cancellation of the whole or any part of this Contract due to failure by the Awarded Vendor to carry out any obligation, term or condition. The Agency may, but is not obligated to, follow the following procedure:~~

~~Step 1: Issue a warning Letter of Concern outlining the violations and length of time to correct the problems~~

~~Step 2: Issue a Letter of Intent to Cancel the Contract, if the problems are not resolved by a given date~~

~~Step 3: Issue a letter to cancel the Contract~~

~~Upon receipt of the written Letter of Concern, the Awarded Vendor shall have ten (10) business days to provide a satisfactory response to Agency detailing how Awarded Vendor intends to address Agency's concerns. Failure on the part of the Awarded Vendor to address adequately all issues of concern may result in Contract cancellation.~~

~~If termination of the Awarded Vendor Contract by the Agency occurs, 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.~~

XII.14 eCommerce Consultant Contract Termination

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 Vendor 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 Vendor and Eligible Entities with adequate notice of any change in the eCommerce Consultant and eCommerce system to ensure a smooth transition. Awarded Vendor 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 Vendor 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) workdays 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. [Notwithstanding the foregoing, Eligible Entities will fulfill their payment obligations to Awarded Vendor for goods shipped and services rendered, for Purchase Orders submitted by Eligible Entities and acknowledged by Awarded Vendor prior to termination.](#)

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.

XIII.20 Protected Health Information

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 CFR § 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 CFR. § 160.103, of the Eligible Entity or any third party. Agency or Eligible Entity agrees to be solely responsible for complying with any reporting requirements under law or contract arising from Agency’s or Eligible Entity’s breach of this ~~section~~[Section](#) and to reimburse Awarded Vendor for any losses incurred by Awarded Vendor relating to those reporting obligations.