



CENTRAL SUSQUEHANNA INTERMEDIATE UNIT

Request for Bids

PEPPM 2023 Apple Bid – Pennsylvania

Electronic Bid # 535802

Bid Due Date: Tuesday, November 29, 2022, 3:00 p.m. Eastern Time

PEPPM, a national cooperative purchasing program administered by the Central Susquehanna Intermediate Unit (“Agency”), seeks bids for technology products manufactured by Apple Inc. (“Apple”) and Apple-branded services.

I Introduction and Overview

I.1 Bid Title

PEPPM 2023 Apple Bid – Pennsylvania

I.2 Electronic Bid Number

The applicable electronic bid form is numbered 535802.

I.3 Organization of Terms and Conditions

- I. [Introduction and Overview](#)
- II. [Bid Document Definitions and Interpretations](#)
- III. [Legal Authorities and Eligible Buying Agencies](#)
- IV. [PEPPM Fees](#)
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- X. [Bid Evaluation and Award Process](#)
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I.4 Bid Scope

This is a Request for Bids (RFB) for Apple-branded technology products and services. Such branded lines of technology products and services are referred to herein, as Apple Products and defined below in [Section II](#). If relevant to a successful Bidder, Apple’s standard definitions for Products and Services from Apple’s Direct Customer Agreement (ADCA) shall apply.

I.5 Bidding Agency

Central Susquehanna Intermediate Unit (CSIU), #16
90 Lawton Lane
Milton, Pennsylvania 17847
Phone: (570) 523-1155
Fax: (570) 522-0577

I.6 The Cooperative

PEPPM has a proven record of serving school districts and other public agencies across all the United States with cooperative purchasing contracts competitively bid under the high standards expected for public-sector procurement. The PEPPM cooperative purchasing program helps schools and other public agencies drive down the cost of acquisition and derive the best value for their technology investments.

I.7 Bid Due Date

All bids must be received electronically by **3 p.m. EDT, Tuesday, November 29, 2022** (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 p.m. EDT, Tuesday, November 29, 2022** (the “Bid Opening Date”), at CSIU offices, 90 Lawton Lane, Milton, Pennsylvania, 17847.

I.9 Prebid Meetings

No prebid meeting will be held for this RFB.

I.10 Other Important Dates

Requests for Equivalent Due Date	October 21, 2022
Response for Equivalent Amendment	October 31, 2022
Consideration of Exceptions Due Date	November 4, 2022
Response to Exceptions Amendment	November 14, 2022
Submission of Questions Due Date	November 22, 2022
Tentative Board Award Date	December 21, 2022

I.11 Advertising and Legal Notice of the Request for Bids

The Agency’s minimum legal advertising requirements are met with legal notices in two newspapers of general circulation in the area where the Agency is located, such as, the *Harrisburg Patriot News*, the *Sunbury Daily Item*, and the Milton Standard Journal. To encourage wide Bidder participation, the Agency also advertises this RFB in other national and regional newspapers across the United States.

I.12 Contract Term

The Initial Term of the awarded Contract shall be for three (3) years (“Initial Term”), beginning January 1, 2023 (“Effective Date”), and continuing until December 31, 2025, unless terminated, cancelled, or extended as set forth in the Contract.

The Contract may be renewed for an additional one- (1) year period (the “Renewal Term”), upon mutual written agreement of the Parties. Such mutual written agreement shall take the form of an amendment to the Contract. The Initial Term and the Renewal Term are referred to as the “Term.” At the end of the Renewal Term, Agency reserves the right to offer month-by-month extensions until a new agreement is awarded. These month-by-month extensions will be optional and executed upon mutual written agreement of the Parties.

II Bid Document Definitions and Interpretations [Return to Top](#)

II.1 Captions

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

II.2 Capitalized Terms

Unless the context otherwise requires, capitalized terms used but not otherwise defined in the Contract shall have the respective meanings specified in this Contract.

II.3 Use of Pronouns

For the Contract 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.

II.4 Non-Exclusive Contract

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the Agency and Eligible Entities. Agency and Eligible Entities reserve the right to obtain equal or similar Products from another source.

II.5 Definition of “Agency”

“Agency” shall mean the Central Susquehanna Intermediate Unit (CSIU).

II.6 Definition of “Agreement”

“Agreement” shall mean the Awarded Vendor Agreement, as may be modified by the Parties (Agency and the Awarded Vendor).

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 Apple’s Direct Customer Agreement (ADCA) shall apply.

II.8 Definition of “Awarded Vendor”

"Awarded Vendor" is the Bidder declared by the Agency to be the lowest, responsive, responsible Bidder to whom the Agency's Board of Directors has awarded a Contract.

II.9 Definition of “Bidder”

“Bidder” is any firm, company, individual, business, partnership, joint venture, or other entity which has completed and submitted a response to this RFB.

II.10 Definition of “Clarification”

“Clarification” means communication with a Bidder for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the Bidder’s response to the RFB. It is achieved by explanation or substantiation, either in response to an inquiry by the Agency or as initiated by the Bidder. Clarification does not give the Bidder an opportunity to revise or modify its bid, except to the extent that correction of apparent clerical mistakes results in a revision.

II.11 Definition of “Contract”

The "Contract" shall consist of this Request for Bids as Clarified by the Parties, the Agreement and all subsequent written amendments to the Agreement as modified by the Parties, the Apple Professional Services Agreement, and any 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 Request for Bids issued prior to the Bid Opening Date (collectively, the “Bid Documents”).

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 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.

II.12 Definition of “Cooperative Procurement Code”

The term "Cooperative Procurement Code" shall have the meaning outlined in [Section III.2](#) of these Terms and Conditions.

II.13 Definition of “Eligible Entity”

“Eligible Entity” or “Eligible Entities” means LEAs or other Eligible Organizations that qualify to be buyers under this 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.

II.14 Definition of “eCommerce Consultant”

The "eCommerce Consultant" is a private purchasing services company engaged by Agency to help facilitate the bid process and provide a multitude of services including bid document development, consulting, eCommerce, marketing, order management, and accounting services. The eCommerce Consultant may change during the course of the Contract.

II.15 Definition of “eCommerce Merchant Agreement”

The term "eCommerce Merchant Agreement" is the document attached to the electronic bid form governing the eCommerce Consultant's services and software integral to the PEPPM program.

II.16 Definition of “Epylon”

“Epylon” shall mean Epylon Corporation, the current eCommerce Consultant with an address of 630 San Ramon Valley Boulevard, Suite 210, Danville, California, 94526.

II.17 Definition of “LEA”

“Local Educational Agency” or "[LEA](#)" is defined [elsewhere](#) in this Contract.

II.18 Definition of “Non-Responsive Bid”

A “Non-Responsive Bid” is any bid that does not reasonably and substantially conform to the mandatory or essential terms, conditions or specified requirements for this RFB. Bids determined to be non-responsive will not be considered for an award.

II.19 Definition of “PEPPM”

“PEPPM” (pronounced *PEP-um*) is a national cooperative purchasing program specializing in technology-related products administered by the Agency.

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.21 Definition of “Purchase Order”

“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.

II.22 Definition of “Responsible Bidder”

A “Responsible Bidder” is a vendor that has submitted a responsive bid and one that possesses the capability and qualifications to perform the Contract requirements in all respects fully, plus the financial strength, integrity, and reliability to assure good-faith performance. Agency must determine a Bidder to be responsible before awarding a Contract to Bidder.

II.23 Definition of “Responsive Bid”

A “Responsive Bid” is a bid which reasonably and substantially conforms to the mandatory or essential terms, conditions, and specified requirements for this RFB. Bids must be responsive to receive award consideration.

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 Apple’s Direct Customer Agreement (ADCA) shall apply.

II.25 Definition of “Transaction Fee”

“Transaction Fee” is more fully defined [elsewhere](#) in the Terms and Conditions.

II.26 Definition of “Terms and Conditions”

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

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 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.

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 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.

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 Contract.

II.30 Definition of “Line of Credit”

“Line of Credit” means a line of credit established for Eligible Entity by Apple or Awarded Vendor in its sole discretion.

II.31 Definition of “Party”

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

III Legal Authorities and Eligible Buying Agencies [Return to Top](#)

III.1 Agency History

The Agency is a political subdivision of the Commonwealth of Pennsylvania created as an educational services agency. The Agency is an intermediate unit established by and existing under Article IX-A of the Pennsylvania Public School Code of 1949, as amended, 24 P.S. §§ 9-901-A et. seq. Its principal place of business is in the Borough of Milton, Northumberland County, Pennsylvania, and has a mailing address of 90 Lawton Lane, Milton, PA 17847. The Pennsylvania Legislature created intermediate units under Act 102 of 1970, Section 901-A of the Pennsylvania Public School Code of 1949, to provide services to public school districts. There are 29 intermediate units, each serving an assigned number of local school districts. Intermediate units began operation on July 1, 1971.

Intermediate units are governed by boards of directors whose membership comes from representatives from their local school districts’ boards of directors. Act 102 provides that intermediate unit services include curriculum development and instructional improvement, research and planning, instructional materials, continuing professional education, pupil personnel, management services, and state and federal agency liaison, as well as contracting for specialized services, and consolidating and letting combined bids for bulk purchases. However, intermediate units are not restricted from providing additional services requested by their local school districts.

Intermediate Units provide quality education services and save taxpayers money by delivering cooperative services that cost each local school district less than had they been produced independently. Intermediate units, unlike public school districts, are not empowered to levy taxes. Revenue comes from a variety of sources; state general operating and capital subsidies, state and federal grants, and fees for services provided to other local education agencies, local governments, and individuals.

III.2 Authority for Bidding and Contracting

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 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.

III.3 Local Educational Agencies

Local Educational Agencies means the following tax-exempt, 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 nonprofit 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.

III.4 Other Eligible Organizations

“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 nonprofit organizations, institutions or entities as permitted under applicable law.

III.5 Extending Contract Awards to Other States

Although this Request for Bids is tailored for all LEAs in Pennsylvania, the Agency intends to allow for “piggybacking” on Agency Contracts by Eligible Entities residing inside or outside of the Commonwealth of Pennsylvania that wish to participate.

In addition to Pennsylvania LEAs, the Agency will make its contracts available to other Eligible Entities residing inside or outside of the Commonwealth of Pennsylvania if they meet the following conditions:

- The Agency Contract meets the Eligible Entity's bidding requirements and is judged to be a good value
- The Awarded Vendor is willing to extend its PEPPM bid prices and Contract terms to the Eligible Entity
- The order is processed according to PEPPM ordering procedures

III.6 Extending Contract Award to LEAs in States Other Than Pennsylvania

Bidders must define their intention whether to sell to LEAs in states other than Pennsylvania, and whether to sell to other Eligible Organizations in Pennsylvania and other states by following PEPPM's [bid submission instructions](#). Awarded Vendors may amend their intentions from time to time during the term of their Contract by mutual agreement with the Agency.

III.7 Intergovernmental Agreement

By purchasing Products under a PEPPM Contract or entering into a Purchase Order with an Awarded Vendor under a PEPPM Contract, the Eligible Entity attests, affirms, acknowledges and agrees that:

- It is an organization eligible to participate in the PEPPM Contract under the Cooperative Procurement Code
- It is bound by all of the Terms and Conditions of the PEPPM Contract applicable to the Eligible Entity including, without limitation, these Terms and Conditions, state-specific terms and conditions, and applicable law, as Clarified by Awarded Vendor's bid response
- Under no circumstances shall any other Eligible Entity or the Agency be responsible for payments on account of said Eligible Entity's purchases, it being the intent that any such purchases shall constitute the separate agreement of Eligible Entity with the particular Awarded Vendor
- Agency may disclose non-specific aggregate Eligible Entity information (such as the geographic spread of participants and number and types of participants) to third parties

The Agency and Eligible Entity intend that Eligible Entity's purchase of Products under a PEPPM Contract or entry into a Purchase Order with an Awarded Vendor, hereby bound by these Terms and Conditions as Clarified by Awarded Vendor's bid response, constitutes the necessary intergovernmental agreement between the Eligible Entity and Agency to satisfy the Cooperative Procurement Code requirements and any requirements for an interlocal agreement under the applicable procurement code of the Eligible Entity's state. No additional agreement is required. If, however, the Eligible Entity requests that the Agency execute a separate interlocal agreement, Agency will do so, provided such interlocal agreement is in form and substance acceptable to Agency.

III.8 Compliance with Laws and Specific Terms and Conditions

Awarded Vendor shall comply with any and all laws, whether local, state, federal or otherwise, applicable to it in its provision of any of the Products or Ancillary Services to be provided under the Contract. It shall be the Awarded Vendor's responsibility to determine the applicability and requirements of any such laws and abide by them.

Other state-specific terms and conditions may be determined after the bid is awarded and added to the Contract via an amendment to the Awarded Vendor Agreement agreed upon by the Awarded Vendor and Agency.

III.9 eCommerce Merchant Agreement

Awarded Vendors will be bound to the eCommerce Merchant Agreement as separately and currently in force or negotiated separately between Awarded Vendor and eCommerce Consultant. If the eCommerce Consultant is changed during the course of the Contract, Awarded Vendors may execute a new eCommerce Merchant Agreement with the new eCommerce Consultant in accordance with the process set forth [elsewhere](#) in these Terms and Conditions

III.10 Applicability of E-Rate Provisions

Provisions related to E-rate in these Terms and Conditions are not applicable to an Awarded Vendor if no E-rate Form 470 has been filed in conjunction with the publication of the RFB.

For this RFB, no form 470 has been filed.

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IV.1 PEPPM Bid Evaluation Fee

The Agency requires a non-refundable payment in the amount of \$100 from each Bidder to partially cover the cost of receiving and evaluating bids.

IV.2 PEPPM Bid Award Fee

Following the award of bids by the Agency's Board of Directors, the Agency will charge a successful Bidder who becomes an Awarded Vendor \$300 as a bid award fee.

IV.3 Payment of Bid Evaluation and Bid Award Fees

Bid evaluation and bid award fees will be collected online by credit card or by electronic debiting of a checking account. A Bidder may use a credit card, corporate debit card, or checking account information for an Automated Clearinghouse (ACH) transfer of funds, with payment being made in United State Dollars (USD). No paper checks or cryptocurrency will be accepted. Bid evaluation fees will be collected at the time of bid opening. The Agency will collect bid award fees after board approval of Contract awards. The Bidders must provide payment information at the time of bid submission, or else their bids may be deemed non-responsive.

IV.4 Transaction Fees

Awarded Vendors shall be required to pay a Transaction Fee, in USD, to the Agency for all purchases by Eligible Entities made through this Contract. This applies to all orders, regardless of the method used to submit the order, the quantity of Apple Products, 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 percent of 'Net Sales,' of Apple-branded 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).

IV.5 Cost of Bid Preparation

The Agency will not reimburse Bidders for the cost of developing, presenting, or providing any response to this Request for Bids.

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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
- 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.2 Suspension or Debarment

By submitting a bid, the Bidder certifies that, within the past five (5) years, none of its officers or executive directors have been under suspension, debarment or otherwise lawfully precluded from participating in any public-sector procurement activity.

At any time after Bidder's submission and during the term of any Contracts or Purchase Orders, Agency and Eligible Entities may inquire whether any Bidder or Awarded Vendor has been suspended or debarred in any of the states that Awarded Vendor is providing Products or Services under the terms of the Contract.

V.3 Overdue Tax Liabilities and Other Delinquent Obligations

The Bidder certifies that to the best of its knowledge, it does not know of any overdue tax liabilities of Bidder or other delinquent obligations owed to Agency, including, but not limited to, unpaid Transaction Fees.

V.4 Notice of Any Changes

An Awarded Vendor must inform the Agency if it changes its address or become delinquent in taxes. Also, the Awarded Vendor must tell the Agency if Awarded Vendor is suspended in any state where the

Awarded Vendor does business under the Contract. All notices must be in writing and received by the Agency within a commercially reasonable period of time after the change, delinquency, suspension, or debarment. Awarded Vendor may provide notice to Agency by email to the email address provided by the Agency.

V.5 Americans With Disabilities Act

Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, the Awarded Vendor agrees that it shall not cause any individual with a disability to be excluded from participation in the Contract or Purchase Order or from activities provided for under the Contract or Purchase Order on the basis of the disability. As a condition of accepting any Contract or Purchase Order, the Awarded Vendor agrees to comply all applicable regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities relevant to the Contract or Purchase Order.

V.6 Covenant Against Contingent Fees

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.

V.7 Bidder Profiling

By answering the questions in the Question Section, Bidders must give satisfactory evidence that they:

- Maintain a corporate headquarters location
- Have a legal source of supply to furnish the Products offered
- Will provide customer sales support and service to all LEAs and applicable Eligible Entities
- Have current relationships with LEAs for verification of customer satisfaction
- Can demonstrate an active sales network
- Will serve all selected LEAs and applicable Eligible Entities

V.8 Historically Underutilized Businesses (HUBs)

To identify businesses owned by minorities, women or disabled veterans, the Agency requests any minority-owned, women-owned, or disabled-veteran-owned business to identify their status as such so that it can be made known to interested Eligible Entities. A HUB may identify itself in its answer to a HUB question in the Question Section.

V.9 Insurance

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 through 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.

V.10 Definitions Related to Vendor Integrity

For purposes of the Sections V.10 through V.19 only, the following definitions shall apply:

- "Agency or Eligible Entity Confidential information" as defined in [Section II](#)
- "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 (5) 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

V.11 Highest Standards of Integrity

The Awarded Vendor, Agency and Eligible Entity 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.

V.12 Confidential Information

As set forth in Section V.10, the Awarded Vendor shall not disclose any Agency or Eligible Entity any Confidential Information gained by virtue of the Contract or Purchase Order.

V.13 Pecuniary Benefit

The Awarded 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.

V.14 Giving Gratuities

The Awarded 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 unless permitted by applicable laws and policies.

V.15 Accepting Gratuities

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.

V.16 Notification of Violations

The Awarded Vendor, upon being informed that any violation of these provisions (*i.e.*, Sections V.10 through V.19) has occurred, shall use commercially reasonable efforts to notify the Agency in writing or Eligible Entity in writing.

V.17 Certification of Non-Violation

The Awarded Vendor, by execution of the Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that it has not knowingly violated any of these provisions (*i.e.*, Sections V.10 through V.19).

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 this Contract. The Purchase Orders and invoices directly related to the performance under this 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 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.

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 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.

V.20 Separation of Employer Responsibilities

It is understood that the Awarded Vendor, in performing services and providing Products pursuant to the Contract or any Purchase Order, is acting as an independent contractor and is not an agent, servant, partner, nor employee of Agency or Eligible Entity. The Awarded Vendor has control over the services and Products it delivers under the Contract and any Purchase Order and shall be solely responsible for its own federal, state and local income taxes, salary, social security payments, and any and all other payments incurred by the Awarded Vendor in the performance of the Contract and any Purchase Order, as well as adhere to all necessary legal requirements governing employment. None of the benefits provided by Agency or Eligible Entities to their own employees, including but not limited to retirement benefits, workers' compensation insurance, disability insurance, medical insurance, and unemployment insurance, are available from them to the Awarded Vendor and/or any and all of the Awarded Vendor's agents, servants, and employees. The Awarded Vendor has no authority under the Contract or any Purchase Order to assume or create any such obligation or responsibility, expressed or implied, on the behalf or in the name of Agency or Eligible Entities, or to bind Agency or Eligible Entities in any way whatsoever.

V.21 Nondiscrimination and Sexual Harassment

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, 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. 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, 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 against any supplier who is qualified to perform the work to which the Contract relates.

V.22 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, including submission of pricing updates, submission of ordering instructions, customer service and payment of fees.

VI Product Specifications [Return to Top](#)

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.

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.2 New Product Provisions

Awarded Vendor may change Product offerings at any time and without notice to Eligible Entity.

Products offered by a Bidder and those sold by an Awarded Vendor must be new and may not be refurbished.

Any serialized Products and licenses must feature new and unique serial numbers, unaltered from the manufacturing source.

Agency accepts that some manufacturers may use some recycled, incidental components meeting like-new standards.

Awarded Vendors must ensure that all Products sold contain the components parts and features meeting commercial standards for the awarded Product Line. All components inside a Product must be manufacturer approved, unless otherwise noted, and subject to the full manufacturer's warranty.

Also, an Awarded Vendor must make sure that any Products offered or sold in response to this RFB are the same models indicated by their external label and source of manufacture.

VI.3 Installation and Service

Products shall be installed and/or provided in accordance with the manufacturer's instructions and in accordance with the schedule mutually agreed upon between Awarded Vendor, Agency, and/or Eligible Entity.

VI.4 New Technology and Product Additions

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 applicable price list. Agency agrees that Awarded Vendor may change Product offerings, discounts, and base pricing at any time and without notice to Agency or Eligible Entity.

VI.5 Proof of Supply

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.

VI.6 Liens

All Products offered and sold shall be free of all liens.

VI.7 Licenses

Awarded Vendor shall maintain all federal, state, and local licenses, certifications, bonds, and permits applicable and required for operations in Pennsylvania and in all other states in which Awarded Vendor chooses to do business under the Contract.

VI.8 Standard Warranty

The sole warranty for an Apple Product purchased hereunder shall be the Limited Warranty. Except for the Limited Warranty, 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 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, 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 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.

VI.9 Ancillary Services Related to Products

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 shall be subject to this Contract, any ancillary services schedule offered as part of the bid or an 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.

VI.11 Hazardous Materials

To the extent applicable, Awarded Vendors will comply with Act 159 of October 4, 1984, the law known as the Worker and Community Right-to-Know Act, as well as any regulations pursuant to 4 Pa. Code § 301.1 et. Seq. 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 Compliance

This Contract is subject to all laws, regulations, orders, or other limitations on the export and re-export 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.

VII Ordering Procedures and Requirements [Return to Top](#)

VII.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 Vendors submit 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 Vendors, itemizing desired Products and pricing
- Eligible Entities forward their Purchase Orders to the PEPPM Clearinghouse for review, archiving, and electronic transmission to appropriate vendors
- Awarded Vendors will process orders as directed on the Purchase Order
- Awarded Vendors invoice Eligible Entities at Contract pricing or below
- Eligible Entities pay Awarded Vendors directly

VII.2 Display of Contract Pricing

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, Epsilon.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

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

VII.3 Direct Receipt of Orders

Upon mutual written agreement and subject to additional terms and conditions, the Parties may agree to have Awarded Vendor receive orders directly.

VII.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.

VII.5 Submission of Purchase Orders

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 or it may send the Purchase Order and all its attachments by fax to (800) 636-3779.

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

VII.6 Electronic Transmissions

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.

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.

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.

VII.7 Awarded Vendor Is an Independent Contractor

In performing its obligations under a Purchase Order, the Awarded Vendor will act as an independent contractor and not as an employee or agent of the Agency or any Eligible Entity.

VII.8 Invoice Requirements

The Awarded Vendor shall be required to furnish Products at or below the pricing in the Contract. Unless otherwise specified, the Awarded Vendor shall send an itemized invoice to the ‘Bill-To’ address on the Purchase Order after the item(s) are shipped. The invoice should include only amounts due under the Purchase Order. The Purchase Order number shall be prominently noted on all invoices. 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.

VII.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.6](#), 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.

VII.10 Tax Exemptions

No charge will be 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.

VII.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.

VII.12 Shipping Errors

Awarded Vendor agrees that 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 any 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.

VIII Pricing Specifications [Return to Top](#)

VIII.1 Pricing Methodology

This RFB requires responsive bid pricing to be offered by way of pricing formulas. These formulas form the foundation of a bid. The pricing formulas must be calculated against a price basis (also called "base price") to show final effective prices. The final effective prices, correctly calculated, will form the data for evaluation and comparison to competing bids.

VIII.2 Pricing Formulas

A Bidder may opt to use one of two discount formulas:

- Percent discounts off of a published and identifiable price list or a commercially available catalog
- Markup percentages over the documentable wholesale cost of Products (this option is not available to Bidders who are manufacturers)

VIII.3 Identification of the Price Basis

The price basis is the foundation for discount formulas. Bidders must identify their price basis on the Quote Sheet Tab of the official PEPPM Pricing Template.

If bidding by the discount-from-list method, the Bidder must describe the published list or commercially available catalog—along with its last published date—from which discounts will be calculated. Some examples of an acceptable price basis include Manufacturer’s Suggested Retail Price (MSRP), retail web catalogs, paper catalogs, and manufacturer’s national education pricing.

Likewise, if bidding by the markup-over cost method, a non-manufacturer Bidder must describe the type of documentation that will substantiate the basis for markups. Some examples include wholesaler catalogs or websites, gold-level pricing schedules from manufacturers, paid invoices, pricing contracts, and manufacturer pricing formulas.

VIII.4 Variable Percentage Formulas

Bidders may offer varying formula percentages within the Product Line category. However, the Bidder must correlate a specific formula percentage alongside a well-described category of Products within the Product Line.

As a theoretical example, a single Bidder may bid 10 percent off list for tablets, 15 percent off list for monitors, 30 percent off list for laptops, and 22 percent off list for extended maintenance agreements.

The Quote Sheet Tab of the PEPPM Pricing Template has space for 30 different subcategories of percentage formulas. If that space is insufficient, a Bidder may add an additional spreadsheet to the bid form or combine descriptions on one line where percentages are equal.

VIII.5 Effective Bid Pricing for Evaluation

Bidders must apply their pricing formula to actual Products within the respective Product Line category, creating final effective bid prices that evaluators will use to determine the lowest bid.

For Products within a Product Line category, a Bidder must either enter or cut and paste information for each Product into an approved PEPPM template to include:

- True Manufacturer Stock Keeping Unit (SKU)
- Manufacturer Name
- Product Name
- Product Description
- Unit of Measure
- Basis Price for the Product
- Percentage discount or markup over cost

The spreadsheet will automatically calculate the final effective bid price from cells containing the price basis and the percentage formula.

Therefore, if bidding by discount off list, a Bidder would enter a negative percentage (e.g., -.10.5%) because the formula is subtracting from a list price.

Alternatively, if bidding markup over cost, a Bidder would enter a positive percentage figure (e.g., 10.5%) because the formula is adding to a cost basis.

If the Bidder's discount or markup is zero, the value "0.0%" would be entered in the appropriate discount or markup column.

VIII.6 PEPPM Pricing Template

The official PEPPM Pricing Template is the Microsoft Excel workbook that Bidders must use to submit their pricing formulas and calculate effective bid pricing. The template contains two working spreadsheets, the Quote Sheet Tab, and the Bid Response Tab.

The template can be downloaded from the electronic bid form. It is located under the instructions in the section titled "Requested Product Lines." The spreadsheet must not be modified, copied, or unlocked. Otherwise, Bidders run the risk that their spreadsheet will not load correctly when they submit their bids.

VIII.7 Importance of Final Effective Price

It is the Bidder's responsibility to look at the final, calculated, effective prices on the Bid Response Tab spreadsheet to see that they are calculated correctly. These are the official bid prices. If they are not correct, then either the price basis or the percent entered is incorrect because the spreadsheet automatically calculates the accurate effective prices based on Bidder's entries.

VIII.8 Importance of Correct Manufacturer SKUs

When adding Product information to the Bid Response Tab on the PEPPM Pricing Template, Bidders must enter the correct and accurate manufacturer SKU for each Product.

The first phase of the evaluation process uses a manufacturer SKU number, after stripping away hyphens, spaces, and leading zeros, to compare pricing between competing companies.

Any Bidder-created identifiers that change a manufacturer's SKU must be removed before submission. Bidders must make their best efforts to match their "Manufacturer SKUs" to the manufacturer's published SKUs including or excluding identifier characters for such things as government or education pricing, country of use, color, or other manufacturer Product identifiers. Bidder should note that these requirements are for their PEPPM Bid-Price Submission Templates submitted at the time of the bid.

Irregularities in listing the manufacturer's SKU numbers in a Bidder's bid proposal may result in a bid being determined non-responsive.

VIII.9 New Product Pricing

The Bidder's quoted pricing formulas will also apply in the future to any new Products created, invented, introduced, and made available through PEPPM during the Contract period. New Products and associated supplies to be added must be priced according to the original bid discount or markup pricing structure.

If a new Product or Product group does not fit into one of its formula categories, an Awarded Vendor may appeal to Agency in writing for consideration to include the new Products on Contract. The written request must include an explanation of the circumstances that prevent the new Products from logically falling into an existing category of formula pricing.

The Agency reserves the right to reject any and all requests for additional Products to be added to an Awarded Vendor's Contract Product list and corresponding price structure. No consideration will be given for requests that circumvent competitive bidding requirements.

VIII.10 Pricing for Bundles

Awarded Vendors may submit price lists for posting that provide for bundles that include third-party products related to the branded Apple Products under Contract.

VIII.11 Errors on the Bid Response Tab

If a Bidder makes an error by expressing percentage formulas on the Bid Response Tab that are not described on the Quote Sheet, its bid may be non-responsive. Likewise, a bid may be non-responsive if a Bidder neglects to list Products on the Bid Response Tab for which a percentage formula is described on the Quote Sheet.

VIII.12 Large-Volume Purchase and Voluntary Price Reductions

An Awarded Vendor, upon request from an Eligible Entity, may offer a voluntary price reduction or a quotation for a large-volume discount from the listed PEPPM bid price. Such price decreases are discretionary on the part of the Awarded Vendor who is under no obligation to give the same or similar discount to another Eligible Entity.

IX Bid Procedures and Directions [Return to Top](#)

IX.1 Help on Submitting a Responsive Bid

To assist Bidders in submitting responsive bids, PEPPM provides directions, access to help files, a bid checklist, and contacts for technical support in filling out the electronic bid form.

Bidders must examine the entire bid package, then seek Clarification of any item or requirement that may not be clear. They must check all their responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after the due date and time.

The following sections provide an overview of bid procedures, requirements, and directions leading to a responsive bid.

IX.2 Registration

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.

IX.3 Delivery of the PEPPM Bid Form

Bid forms will be sent automatically to all those vendors who have accounts and have indicated an interest in receiving technology bids on the Epylon system. Newly registered vendors will find the bid form shortly after their account application has been approved. If vendors reviewing their inbox do not see the PEPPM bid form, there are three possible reasons:

- Another employee under the company's account has accepted the bid form on behalf of the company. Only one bid form may be active for any given company, but any employee can forward the bid form to another company representative. Contact Epylon Customer Service to see if another company employee has opened the bid form

- The company has not categorized itself as a technology-related supplier. Contact Epylon Customer Service to be added as a “technology supplier.” Then the bid form will be promptly forwarded to the company’s inbox
- The company has divided its employees into geographic territories, and the bid has been directed to employees designated for Pennsylvania

For assistance in finding the bid form, Bidders should contact Customer Service at (888) 211-7438 or at Service@Epylon.com.

IX.4 Prebid Meetings

A Prebid meeting will be held at times and locations described [here](#). Bidders interested in participating must register at www.PEPPM.org/bids to reserve a spot. The session will provide a high-level view of contracting policies for vendors and an overview of procedures for filling out the bid forms.

IX.5 Bidders’ Questions

Bidders who have bid questions about the bid or its Terms and Conditions may submit them to BidQuestions@PEPPM.org no later than 4 p.m. EDT on the [Questions Due Date](#). Bidders are advised to look on PEPPM.org for frequently asked questions.

Bidders who have questions or trouble using the bidding software may contact Epylon Customer Service any time at (888) 211-7438 or Service@Epylon.com. Be advised, that Customer Service operators work on Pacific time and wait times grow longer as the bid deadline approaches. Customer service will not answer policy questions about the bid or its Terms and Conditions.

IX.6 Exceptions to Terms and Conditions

Any proposed exception from the requirements indicated in this Request for Bids or from the Terms and Conditions must be stated in writing and submitted by email by the [Exceptions Due Date](#) to BidQuestions@PEPPM.org.

Any exceptions accepted by the Agency will be incorporated into a bid addendum to be published in the electronic bid documents within 10 days of the Exceptions Due Date. To ensure a fair and equal bidding process, any addendum will apply to all Bidders and all bids for the Apple Product Line.

Following the award of a Contract to an Awarded Vendor, Agency reserves the right to amend the Terms and Conditions of this Request for Bids with the mutual consent of the Awarded Vendor solely to make non-material changes, correct errors, or craft minor adjustments that would not have had any material effect on any potential bid prior to awards.

IX.7 An Overview of the Bid Form

Completing a bid requires opening an electronic bid form starting from an inbox on the Epylon eCommerce system. Users may work on their bids at any time and save their work as they progress. There are four major components to the bid:

- Answers to Questions: If a question is tagged as required, a response must be provided, or the user will get an error message when saving their work. Some questions accept answers with file attachments

- Uploading Attachments to the Product Line: After checking the box to indicate its intention to bid the Apple Product Line, the Bidder must attach several files alongside that particular product line description.
- Payment Information: Bidders may choose to pay Bid Evaluation Fees and prospective Bid Award Fees by credit card or by checking account information.
- *Completion of the Pricing Template:* The template is a spreadsheet with three tabs. Bid discount formulas must be entered on the Quote Sheet Tab. Data for calculating bid formulas into effective prices are entered on the Bid Response Tab. More information on filling out the form is located in the [Pricing Specification Section](#).

IX.8 Required Attachments

Some questions prompt Bidders to upload file attachments to the bid form. Attachments must be attached to one of three places on the electronic bid form.

1. Attachments that go alongside the name of the Product Line being bid are:
 - Returned Goods Policy
 - Statement of Warranties
 - Proof-of-Supply Letter (if applicable)
 - Ancillary Services Form or Equivalent
 - State Selection Form
 - Signed Awarded Vendor Agreement
 - PEPPM Pricing Template
2. Attachments that go alongside a required question are:
 - Reference Forms (containing at least three references)
 - Any optional files to expand upon an answer to a question
 - Leasing information (optional)
3. Attachments that can be uploaded to the Additional Response Information Section are:
 - Any optional files to provide the Agency more information

IX.9 Marketing Plan

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 may generally refrain 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 may not have developed a specific marketing plan for driving PEPPM business under this RFB. 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 or approved license.

IX.10 Submission

When Bidders complete their bids, clicking on the Continue button at the bottom of the page enables the Bidders to make one last review of their work before submission. When satisfied, Bidders must

click the Submit button to send the bid electronically to the Agency. Once successfully transmitted, the bid will display as "Sent" in the user's inbox.

IX.11 Electronic Signature

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 Clarified by Bidder, final pricing and written statements submitted to Agency.

IX.12 Status of Submitted Bids

After Bidder clicks the Submit button all answers and submissions are locked, encrypted, sealed, and sent to the Agency inbox. The Agency cannot open them until the Bid Opening Date. However, Bidders can access their own submissions to print out a complete and accurate record of their responses precisely as seen by the Agency when the bids can legally be opened.

IX.13 Withdrawal

A bid must be complete and final prior to a Bidder clicking the Submit button and sending it to the Agency. In the event a Bidder wishes to withdraw a bid, a Bidder can open their submitted electronic form, scroll to the bottom of the page, and click the Retract Response Button before the Bid Opening Date.

After the bid has been opened, it may not be withdrawn, and the Bidder must supply the awarded Products and Ancillary Services, if applicable, at the bid price and in accordance with the Contract.

IX.14 Receipt and Opening of Bids

Electronically sealed bids must be received by the [Bid Due Date](#). Bids will be electronically unsealed and publicly read at the Bid Opening Date and Time. Opening and public reading will consist of PEPPM staff clicking to open the submitted bids in front of any interested members of the public and staff in a public setting.

The Agency reserves the right to reject any or all bids not prepared in accordance with these or the following instructions or to waive any such informalities.

IX.15 Late Bids

The Agency will not consider late bids.

IX.16 Length of Time the Bidder's Offer Is Good For

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 Opening Date](#).

IX.17 Protests

Protests shall be filed with the Agency and shall be resolved following applicable law. A protest must be in writing and must be filed with the Agency. A protest of solicitation must be received at the Agency

before the [Bid Opening Date](#). A protest of a proposed award or of an actual award must be filed within 10 days after the protester knows or should have known the basis of the objection.

A protest must include:

- The name, address, and telephone number of the protester
- The original signature of the protester or its representative
- Identification of the solicitation
- A detailed statement of the legal and factual grounds of protest, including copies of any relevant documents; and the form of relief requested

IX.18 Use of Submitted Documents

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 II.28](#) 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 Apple, or the nature of any contractual relations between Apple 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.

IX.19 State Selection Form

Awarded Vendors are obliged to serve all LEAs in Pennsylvania.

Alongside the Product Line listed on the electronic bid form, a Bidder must attach a State Selection Form, indicating – in addition to Pennsylvania LEAs – which, if any, of the following Eligible Entities, by state, that it will sell to:

- LEAs
- Universities and other higher education agencies
- Local government, municipalities, and other non-education Eligible Entities

X Bid Evaluation and Award Process [Return to Top](#)

X.1 Qualification for Evaluation

Following applicable Pennsylvania state law and accepted standards for competitive, sealed bidding, the Agency will make awards to the lowest, responsive, responsible Bidder.

X.2 Creation of Contracts

Evaluated bids that are recommended for award do not become formal Contracts until the Agency's Board of Directors makes the awards and an authorized representative signs the Contract.

X.3 Bid Evaluation Process

Bids received on time will be evaluated. A high-level overview of the evaluation process is as follows:

- Bids will be evaluated to determine if the Bidder is responsive and that all required attachments and documents are present
- Bidder's responses to questions will be examined to ensure the Bidder is responsible and capable of providing Products to LEAs and other Eligible Organizations under the Contract
- Pricing will be compared to competing bids for the same Product Line to rank pricing from lowest to highest
- A low-price Bidder will be identified
- Lowest, responsive bids from responsible Bidders will be recommended for an award

X.4 Rejection of Bids

The Agency reserves the right to accept or reject any or all bids, or any part thereof or items therein and to waive informalities and/or technicalities, as it deems best to protect its interests. Without limiting the foregoing, the Agency may reject:

- Late bids
- Bids that are not responsive
- Bids from Bidders deemed not responsible
- Bids in which quoted prices are higher than street prices or are unreasonable compared to other contracts

X.5 Ambiguities

If a bid is responsive but contains ambiguities the Agency may engage in Clarification. Bidders should submit any requested supplementary information promptly. Failure to respond is grounds for rejection of the bid.

X.6 Evaluation of Responsiveness

Submissions by Bidders must pass a test for responsiveness before the bids will move on to be evaluated for price. The following factors will be evaluated for responsiveness:

Factors related to a vendor's bid as whole:

- The bid was received on time
- Banking information for the processing of bids and award fees was present, and funds were properly processed
- Bid Terms and Conditions were accepted
- Reference forms for the Bidder were attached from at least three different agencies

Factors related to the Product Line category being bid:

- Products offered were for the Products specified
- A signed Awarded Vendor Agreement was attached alongside the Product Line being bid
- A returned goods policy for the Product Line was attached
- A statement of warranties for the Product Line was attached, and if no explicit manufacturer warranty is offered, the attachment informed about the absence of any warranty offering

- A dated, proof-of-supply document was attached alongside the Product Line, or the Bidder gave evidence that it was the manufacturer of the Product Line being bid (if applicable)
- A State Selection Form was attached alongside the Product Line being bid
- Quote sheets for the Product Line indicated pricing formulas and a price basis
- All pricing formulas were represented and correctly applied on the Bid Response Tab of the pricing template
- Manufacturer SKU numbers were present, accurate, and representative of the Product Line being bid so that effective prices could be compared to those of competing Bidders
- The Bidder attached an ancillary service form spreadsheet alongside the Product Line being bid or stated in an answer to questions that it was not providing any Ancillary Services

X.7 Evaluation of Responsibility

Bidders must pass a test for responsibility before its bids will move on to be evaluated for price. The following factors will be evaluated for Bidder responsibility:

- Provided evidence of a permanent place of business
- Is not insolvent or currently involved in bankruptcy
- Has no known overdue tax liabilities
- Owes no overdue PEPPM Transaction Fees
- Certifies it has not colluded in submitting its bid or developing pricing
- Is not under suspension or debarment
- Maintains sales representatives or a sales network of resellers, as described on the bid form
- Has provided positive references from buying agencies or has past PEPPM experience
- Has given evidence of previous sales in the public sector
- Deploys system of customer support and service to all chosen Eligible Entities as described on the bid form
- Complied with any previous or existing PEPPM contracts

X.8 Evaluation of Pricing

Effective pricing from competing, responsive and responsible Bidders will be compared to identify the low-cost Bidder. Awards will be made to the lowest, responsive, responsible Bidder. In the event of tie bids, the winning Bidder will be decided by the flip of a coin, or another method of chance selected by Agency.

X.9 Non-Material Deviations

In evaluating bids, the Agency may waive Bidders' minor errors or non-material deviations where no competitive advantage is obtained, and the information submitted by a Bidder can lead to a fair award decision among competing bids.

XI Uniform Guidance Requirements [Return to Top](#)

XI.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, 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 (sometimes referred to as the “Uniform Guidance,” “UG” or new “EDGAR”), and Elementary and Secondary School Emergency Relief Fund (sometimes referred to as “ESSER I” or “ESSER II” funds). All Awarded Vendors must agree to comply with certain requirements which may apply to specific purchases using federal grant funds. Applicability of requirements shall be made in Awarded Vendor’s sole discretion. Eligible Entity must advise Awarded Vendor if an order will utilize funds under a federal grant or contract, in which case Sections XI.1 through XI.17 shall apply. Such notice shall be provided at the time the Purchase Order is initiated.

XI.2 Awarded Vendor Violation or Breach of Contract Terms

Contracts for more than the simplified acquisition threshold currently set at \$250,000, 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 where contractors violate or breach Contract terms, and provide for such sanctions and penalties as appropriate. Provisions regarding Awarded Vendor default are included in the Contract. Any Contract award will be subject to such provisions.

XI.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.6](#).

XI.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.

XI.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.

XI.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.

XI.7 Rights to Inventions Made Under a Contract or Agreement

At the time of award, Agency and Awarded Vendor agree that 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,” are not applicable to the Contract. The 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.

XI.8 Clean Air Act and Federal Water Pollution Contract Act

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 more than \$150,000 must contain a provision that requires the non-federal award to comply with all 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). Awarded Vendor agrees to comply with the applicable provision in accordance with and as limited by the Terms and Conditions of this Contract.

XI.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 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.

XI.10 Byrd Anti-Lobbying Amendment

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).

XI.11 Procurement of Recovered Materials

At the time of award, to the best of Agency's and Awarded Vendor's knowledge, Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act does not apply to this Contract. The Contract is exclusively for the purchase of Apple Products and/or Services.

XI.12 Profit as a Separate Element of Price

For purchases using federal funds more than \$250,000, 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.

XI.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.

XI.14 Not-To-Exceed Price

All Awarded Vendor Professional Services will be subject to a mutually agreed upon and executed Statement of Work.

XI.15 Contracting with Historically Underutilized Businesses

The Awarded Vendor shall take affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Bidder's are encouraged to upload their Supplier Diversity plan for the Contract to their bid form.

XI.16 Equivalent Products

Comparable (Alternate) Products: Where the specification states a named Product followed by "or equal," an alternate or comparable Product may be bid; however, the burden is on the Bidder to provide evidence that a proposed alternate meets or exceeds the Agency specified named Product and its attributes and that it provides an equal or better warranty. If comparable Product(s) are proposed in the bid, the Bidder must provide a detailed comparison for each to include a list of all the significant qualities of the Product named in the Specification and those of the proposed alternate Product(s). Significant qualities include attributes such as performance, weight, size, durability, visual effect and specific features and requirements indicated. The Agency reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named Product in the specification.

Substitutions for Cause: An Awarded Vendor may only propose substitutions pursuant to a Purchase Order submitted by a purchasing Eligible Entity in the event of unavailability of Product, regulatory changes, or unavailability of required warranty terms. The Awarded Vendor must notify both the Agency and the purchasing Eligible Entity of all substitutions for cause with full documentation at least thirty

(30) working days before the commencement of work. All documentation must demonstrate that the proposed substitution is equal to or better than the specified Product on all physical and in-service attributes and warranty provisions and can be implemented by subcontractors as necessary without disruption to the project. The purchasing Eligible Entity must approve all substitutions. The Eligible Entity reserves the right to reject proposed alternate products if it does not consider them equal to or better than the named Product in the specification.

Substitutions for Convenience: Bidders may not propose substitutions for convenience.

XI.17 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.

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.18](#).

XII Post-Award Requirements [Return to Top](#)

XII.1 Audit Requirements

Subject to the [Section V.18 Cooperation with Authorities](#) and [Section II.27 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.

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.

XII.2 Contact and Ordering Instructions

PEPPM will send Awarded Vendors an email with instructions on how to complete a standard template for Buyer Ordering Instructions. Awarded Vendors must fill out and return the document in Microsoft Word format. The instructions will give Eligible Entities advice on how to fill out their Purchase Orders, and whom to contact.

Awarded Vendor shall work with Agency to provide contact information and ordering instructions to Eligible Entities upon award.

XII.3 Price Lists

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 applicable price list.

Agency agrees that Awarded Vendor may change Product offerings, discounts, and pricing at any time and without notice to Agency or Eligible Entity.

XII.4 Pricing Updates

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.

Specials and Promotions

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

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.

Awarded Vendor's available pricing is based on the Awarded Vendor's then-current Education Price List for Apple Products.

XII.5 Leasing Information

Awarded Vendor may allow Eligible Entities to enter into rental, lease, or lease purchase agreements pursuant to Awarded Vendor's standard master lease agreement.

Lease or rental proposals to Eligible Entities 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.

Any financing arrangements (including lease purchasing arrangements) will be made directly between an Eligible Entity and the Awarded Vendor or applicable lender, and Agency will not be involved in any way. If offering a lease plan, a Bidder must describe the plan in an attachment to the bid form.

XII.6 Contract Promotion, Advertising, and Marketing

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 Contract, an Awarded Vendor may make truthful and accurate marketing statements regarding its award.

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

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 are required. 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.

XII.7 Training of the Sales Force

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

XIII Other Terms and Conditions [Return to Top](#)

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.

XIII.2 Novation

Agency may not assign this Agreement or any of its rights or duties without Awarded Vendor's prior written consent. Any non-compliant assignment by Agency shall be null and void. Awarded Vendor may assign this Agreement, in whole or in part, in Awarded Vendor's sole and absolute discretion, to any affiliate of or successor in interest to Awarded Vendor, without the consent of Agency.

XIII.3 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 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.

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 by Awarded Vendor.

XIII.4 Remedies

The rights and remedies of the Agency, Eligible Entity, 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.

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

XIII.5 Force Majeure

No 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 Awarded Vendor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance.

In the event of a declared emergency by competent governmental authorities, the Eligible Entity by notice to the Awarded Vendor, may cancel any Purchase Order delayed by more than thirty (30) days from the scheduled ship date.

XIII.6 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: (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.

XIII.7 Indemnification

Provided that Agency or Eligible Entity promptly notifies Awarded Vendor in writing, gives Awarded Vendor sole control over the defense and all related settlement negotiations, and does not compromise or settle any claims then, subject to the terms of this paragraph and the exceptions and limitations set forth below, including but not limited to [Section XIII.8](#), Awarded Vendor will defend any proceeding or action brought by a third party against Agency or Eligible Entity to the extent based on a claim that: (i) an Apple Product that Agency or Eligible Entity 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.

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: (a) modification of any Apple Product; (b) combination, operation or use of the Apple Product with any other equipment, data, documentation, items or products; (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; (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.

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"). 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. Upon Awarded Vendor's acceptance of tender, Agency or Eligible Entity will cooperate with Awarded Vendor with respect to such defense and settlement. If a Claim is settled and to the extent permitted by law, 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 (but shall not be obligated to): (i) procure for Agency or Eligible Entity the right to continue use of the applicable Apple Product(s); (ii) replace the applicable Apple Product(s); (iii) modify the applicable Apple Product(s); or (iv) refund the amount paid by Agency or Eligible Entity to Awarded Vendor for the applicable Apple Product, less depreciation. THE FOREGOING CONSTITUTES AGENCY AND ELIGIBLE ENTITY'S SOLE AND EXCLUSIVE REMEDY AND AWARDED VENDOR'S ENTIRE LIABILITY FOR ANY CLAIMS ARISING OUT OF THIS SECTION.

XIII.8 Limits of Liability

Awarded Vendor's maximum aggregate liability (including any liability for the acts or omissions of Awarded Vendor's employees, agents and subcontractors) 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 CLAIM MADE AGAINST AWARDED VENDOR.

XIII.9 Governing Law; Jurisdiction and Venue, and Severability

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.

XIII.10 Notices

Any notice 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.

XIII.11 Binding Nature and Survival

The Contract 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, which by its nature and effect is required to be observed, kept, or performed after the expiration or termination of the Contract shall survive the expiration or termination of the Contract. Additionally, all defined terms and the following sections of the Contract shall survive expiration or any termination of the Contract: [VII.9 \(Payments\)](#); [IX.18 \(Use of Submitted Documents\)](#); [XIII.13 \(Representations and Warranties\)](#); [XIII.7 \(Indemnity\)](#); [XIII.8 \(Limits of Liability\)](#); [XIII.6 \(Termination of Contract\)](#); and [XIII.11 \(Binding Nature and Survival\)](#).

XIII.12 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 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) 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.

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.13 Representations and Warranties

Agency or Eligible Entity represents and warrants that: 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.

XIII.14 Software

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.

XIII.15 Restrictions

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.

XIII.16 Support

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.

XIII.17 Shipment

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.

XIII.18 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 and to reimburse Awarded Vendor for any losses incurred by Awarded Vendor relating to those reporting obligations.

XIII.19 Copyright

This RFB, its Terms and Conditions, the electronic bid form, and all attachments are copyrighted by Agency and the Epylon Corporation, 2022 (©2022, CSIU & Epylon).

[END]