

Product Line Specifications	Description
Audio Visual Products	Audio and Video conferencing equipment, audio production and recording, cameras, camcorders, displays, monitors, etc.
General Hardware and Software	Computers, software, peripherals, cables, supplies, etc.
End of Life Computer Systems and Parts	End of life computer systems and parts
Refurbished Computer Systems and Parts	Computer systems and parts that have been previously used and re-conditioned for sale with warranty
Remanufactured Laser Toner and Ink Cartridges	Laser toner and ink cartridges

Text

I. Bid Overview

I.1. Bid Title

PEPPM 2010 Catalog Bid - Pennsylvania

I.2. Organization of Bid Terms and Conditions

The Terms and Conditions for this bid are organized as follows:

- I. Bid Overview
- II. Definitions
- III. Fees
- IV. Bidder Qualifications
- V. Bid Specifications
- VI. Ordering Procedures and Requirements
- VII. Bid Pricing Specifications
- VIII. Bid Procedures and Directions
- IX. Bid Evaluation and Award Process
- X. Post Award Requirements
- XI. Other Terms and Conditions

I.3. Bid Scope

This is a Request for Bids for technology products within specific categories typically sold through online and paper based catalogs. Agency envisions making several awards in a variety of designated catalog categories. Catalog categories are:

- Audio Visual
- End of Life Computer Systems and Parts
- General Hardware and Software
- Refurbished Computer Systems and Parts
- Remanufactured Laser Toner and Ink Cartridges

Catalog category awards will allow for the same product line(s) to be listed in more than one catalog. Agency reserves the right to restrict certain product lines from a catalog due to excessive price differences, conflict with specific product line awards, limited service capabilities or any other conditions that are not in the buyer's best interest.

This contract is not exclusive and the Agency reserves the right to conduct future competitive bids for the same or similar products that may be allowed for within this catalog bid.

Note: Awarded Vendors must maintain a PEPPM-specific online catalog on their own web site.

- A. Catalog must minimally display awarded items and PEPPM prices
- B. www.peppm.org must be able to link to web site and web site must provide a link back to www.peppm.org
- C. Punchout from epylon.com is preferred but not required
- D. eOrder from epylon.com is available but not required
- E. Web site can allow for online ordering directly from awarded vendor only if vendor site and procedures can be established that meet strict requirements defined by PEPPM
- F. Web site needs to allow for shopping cart development and PEPPM quote printing capabilities

- G. PEPPM quote must state “As per PEPPM YYYY Catalog Bid” (YYYY represents the contract year the quote is issued.)
- H. All orders must be submitted via PEPPM’s 800 number including a PEPPM identified quote unless vendor has been approved to receive orders directly

Vendors submitting bids for the PEPPM 2010 Catalog Bid must currently have or be able to develop and implement an online catalog “store front” according to PEPPM specifications before awarded contract becomes effective.

Each bidder must provide an Excel spreadsheet containing a list of manufacturer product lines being bid within their catalog. This file must be attached to the Catalog Category being bid and must exactly match the manufacturer product lines listed in the Bid Quote sheet and the Bid Response tab. All bid pricing listed in the Bid Response tab must be priced out according to the Bid Quote sheet discount structure.

If using discount from list bid pricing, vendor must provide a snapshot file of the published catalog price list used as the basis for their bid discount to PEPPM for bid price verification on a monthly basis. If using mark-up over cost bid pricing, vendor must submit all cost information the first of every month to PEPPM for bid price verification.

I.4. AGENCY Issuing Request for Bid

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

I.5. Bid Due Date

The deadline for the receipt of bids is 3:00 pm Eastern Time, Monday, October 19, 2009. Any bid submitted after 3:00 p.m. will be marked late by the electronic bidding system.

I.6. Bid Opening Date

The opening date will be Tuesday, October 20, 2009, at 10:00 am Eastern Time. Bid Opening will consist of opening the electronic bid form with a computer and projector in a public setting at 90 Lawton Lane, Milton, Pennsylvania.

I.7. Contract Term

Awards and agreements resulting from this Request for Bids shall become effective on January 1, 2010 and terminate on December 31, 2012.

The AGENCY reserves the right to conduct a review of the Awarded Vendor’s performance of contract responsibilities with the possibility of termination due to non-compliance with the PEPPM Terms and Conditions.

The AGENCY reserves the right to extend the bid award beyond December 31, 2012 for a period up to one year. The extension of this bid will be optional upon the mutual agreement of the AGENCY and the Awarded Vendor.

I.8. Electronic Bidding Process

Bids from Bidders are being solicited electronically and bids must be returned electronically through the Epylon bidding system. Bid Terms and Conditions can be viewed at no cost and does not require registration with Epylon. All Bidders must register with Epylon to access the system for the purpose of submitting a bid. There is no cost for registering or using the Epylon bidding system. Any legitimate company or Bidder may have access to the system for the purpose of bidding. The bidding process involves answering questions, selecting which catalog categories to bid, adding necessary explanatory attachments in electronic form, filling out an approved template for pricing and quotes, then attaching and identifying the template as being your official prices.

As enumerated in these Terms and Conditions, some documents need to be submitted physically on paper and returned to the PEPPM office before the bid due date, 3:00 pm Eastern Time, Monday, October 19, 2009. These include the following original signed documents:

- The Non-Collusion Affidavit
- The PEPPM Bid Quote Sheet
- The CSIU and Awarded Vendor Agreement
- The PEPPM 2010 State Selection Form
- PEPPM Ancillary Services Form (Must include if services are offered)
- Checks for bid or award fees (if not using a credit card)

I.9. Selling in Other States

Although PEPPM is specifically bidding for Pennsylvania and California schools and agencies, it is PEPPM's intent to allow for "piggybacking" by entities in other states. It is PEPPM's plan to make these contracts available to any school or agency that meets the following conditions:

- The entity is an eligible PEPPM buyer as defined in Section I.10. of this bid's Terms and Conditions
- The PEPPM contracts meet the buyer's bidding requirements and are judged to be a good value
- The Awarded Vendor is willing to extend its PEPPM bid prices and contract terms to schools and agencies in the buyer's state
- The order is processed according to PEPPM ordering procedures

Bidders interested in selling to schools and agencies in states with piggybacking provisions or permissible procurement statutes using PEPPM awarded contracts should "check" the appropriate area of the Question Section and list all intended states using the PEPPM State Selection Form. Select Awarded Vendors' contracts based on best pricing may be made available to schools and agencies in those states. A signed and dated PEPPM 2010 State Selection form must be submitted with the other required paper documents by the bid due date, 3:00 pm Eastern Time, Monday, October 19, 2009.

The states listed by the Awarded Vendor in the bid response may be amended during the term of the contract by mutual agreement between the Awarded Vendor and AGENCY. All PEPPM

Terms and Conditions shall apply.

Each Bidder must adhere to PEPPM's Terms and Conditions for all transactions through the program regardless of buyer's state. Please be advised that any of the Bidder listed states may have further language or conditions listed with this bid that clarifies the ability of schools and agencies to piggyback other state contracts like PEPPM. These Terms and Conditions specific to a state are listed in the Exhibit Section and pertain only to the individual states listed. The "state specific" Terms and Conditions must be adhered to in addition to the PEPPM standard bid Terms and Conditions.

When state-specific Terms and Conditions differ from the PEPPM Terms and Conditions, the "state specific" Terms and Conditions shall prevail. The absence of any "state specific" Terms and Conditions should not be construed as tacit approval by the state for purchases through the PEPPM program.

Adherence to other "state specific" Terms and Conditions listed only applies if a Bidder has agreed to extend its PEPPM contract to schools and agencies in that specific state.

I.10. Legal Authority and Eligible Buying Agencies

This bid is solicited for Pennsylvania buyers under Pennsylvania statutes and the authority of the CSIU's agreement with the Commonwealth of Pennsylvania, Department of Education (PDE) known as the PEPPM Program. Eligible Pennsylvania purchasers collectively known as LEAs will include:

- public school districts
- area vocational technical schools (AVTS units)
- intermediate units
- state approved private schools
- public libraries
- nonpublic schools
- state approved charter schools
- community colleges
- any new public school districts, AVTS units, intermediate units, approved private schools, non-public schools, public libraries, charter schools, community colleges, and other local government agencies created during the contract term
- colleges and universities with the Awarded Vendor's approval and where permissible by statute or regulation
- county governments, local municipalities, related county/municipal authorities, and special districts with the Awarded Vendor's approval and where permissible by statute or regulation
- state agencies not otherwise prohibited with the Awarded Vendor's approval and where permissible by statute or regulation and
- other non-profit organizations

I.11. Sales Volume

The AGENCY does not guarantee any quantity or dollar volume of purchases; however, the

issuance of simultaneous invitations for bids with other states is intended to provide the greatest potential volume of sales across the largest number of eligible purchasers.

The AGENCY anticipates considerable activity resulting from this solicitation; however, no commitment of any kind is made concerning quantities actually to be acquired. The AGENCY does not guarantee contract usage; usage depends on the actual needs of the LEAs and marketing by the Awarded Vendor.

I.12. Extension of Contracts to Other Eligible Buyers

Although PEPPM is bidding primarily on behalf of K-14 schools and agencies as described above, it is the program's intent to extend, where feasible, the bid protections and price discounts to four year colleges and universities, state and county governments, local municipalities, related county/municipal authorities, and other non-profit organizations not otherwise prohibited.

PEPPM in no way wants to compromise best pricing offered to school districts and education institutions. However, if state law allows, and if the Bidder is willing to sell the awarded items at the same educationally bid discounted prices in accordance with the contractual terms and conditions, they may do so.

Please respond "Yes" to the appropriate area in the Question Section of the bid form if you agree to extend your bid pricing to state and county governments, local municipalities, related county/municipal authorities, and other non-profit organizations not otherwise prohibited. Respond "No" if you do not agree.

Similarly, you may Respond "Yes" to the appropriate area in the Question Section of the bid form if you agree to extend your bid pricing to four year colleges and universities. Respond "No" if you do not agree.

Notwithstanding the foregoing, Awarded Vendor shall bear responsibility for all purchase orders entered into pursuant to the Agreement and is responsible for monitoring whether it is in compliance with this Agreement, state statutes and regulations.

I.13. An Overview of PEPPM Online Services and the Epylon System

A. An Awarded Vendor will be required to have an online catalog site linked from www.peppm.org. PEPPM linked catalog sites are intended to be an Internet based environment for maintaining PEPPM price lists for each vendor's awarded catalog of products. This site needs to be accessible for online look-up, shopping cart development and real time PEPPM quote production.

B. This environment must be developed and maintained by the vendor on a vendor hosted site which is accessible over the Internet. Access to the site must include links from the www.peppm.org site and from the catalog site back to www.peppm.org. These sites must be labeled clearly as a PEPPM specific site without links to other vendor products and prices.

C. All price list information must be available to an online search engine that allows the user to search for particular items using key words, product types, manufacturer and publisher names.

D. All eligible PEPPM users with Internet access should be able to access PEPPM online catalog sites and use their browser to view the catalog of products and prices online.. The

Awarded Vendor's catalog site must be capable of creating a shopping cart and affiliated PEPPM quote that can be printed out.

E. Eligible buyers will fax orders to PEPPM, which will process those orders and transmit them to the Awarded Vendor either by digital fax or through the Epylon eCommerce system.

F. A punchout relationship with the PEPPM eCommerce site at www.epylon.com is recommended but not required.

G. All Awarded Vendors will be required to agree to the Epylon's standard Terms and Conditions for use of the Epylon system. Epylon's standard Terms and Conditions of use are posted on the Epylon.com website at www.epylon.com/terms.html. For ease of reference, the Epylon Terms and Conditions are also set forth as an attachment to Section VI.30 of this bid form (which shall be referred to as the "Epylon Merchant Agreement").

II. Definitions

Sections II.1. through II.11. deal with descriptions of the program and the definition of terms.

II.1. Program Name & Description

A nationally affiliated group of agencies coordinated by The Central Susquehanna Intermediate Unit of Milton, Pennsylvania, aka CSIU, is seeking simultaneous bids on technology products typically sold through online and paper based catalogs, e.g. shrink-wrapped educational and administrative software, equipment, cables, supplies, etc. as outlined in this bid packet. The program is called "PEPPM" (pronounced *PEP-um*), a 27-year-old technology bidding and purchasing program for education agencies. CSIU in Pennsylvania and the Kern County Superintendent of Schools in California are issuing separate but nearly identical bids having the same bidding period and same bidding dates. A Bidder must respond separately to each bid for each respective jurisdiction in which it wants to be considered. The two agencies each seek bids in their respective jurisdictions, and each will individually award bids in its respective state, based on its own applicable statutes. However, the agencies come together nationally for the purpose of aggregating their demand for product, exercising their buying power, marketing the contracts and managing the resulting contracts. In so doing, they are coordinating the bidding process with each other, and will centrally coordinate the evaluation of bid responses. Awards will be made separately and independently. The Pennsylvania bid is the one you are now reading and is named the PEPPM 2010 Catalog Bid, Pennsylvania. The Kern County bid for California is contained in another bid form named PEPPM 2010 Catalog Bid, California.

II.2. Electronic Signature

In submitting this bid, the person named as the Bidder's representative on the electronic bid form declares the understanding 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 Central Susquehanna Intermediate Unit (CSIU) nor Epylon have access to the User's password. By submitting this form, he/she declares that he/she has the authority to submit this bid to the AGENCY and to bind his/her company to the Terms and Conditions, final pricing, statements and all commitments submitted to CSIU.

II.3. AGENCY and PEPPM

The Central Susquehanna Intermediate Unit (CSIU) shall be referred to as the "AGENCY" throughout the Terms and Conditions of this document and bid form. "PEPPM" is a technology bidding and purchasing program administered by the CSIU.

II.4. AGENCY as Bidding Agent

The AGENCY is acting as bidding agent/contracting officer on behalf of all of the eligible buyers and buying agencies.

<p>II.5. Bidder “Bidder” is that firm, company, individual, business, partnership, joint venture, corporation or other bidding entity which has completed the response to the Request for Bid.</p>
<p>II.6. LEA All of the eligible buyers and buying agencies under this bid and resulting contracts will be referred to as “LEA” or “LEAs” (local education agencies) throughout this document for the purpose of readability. In an instance where the Bidder has indicated that prices may be extended to other local governments, counties, municipalities, higher education institutions and special districts, the term “LEA” shall also apply to those entities.</p>
<p>II.7. Awarded Vendor Awarded Vendor is the Bidder whose bid response is considered to be the best value from a responsive and responsible Bidder and has been approved by the AGENCY’s Board of Directors.</p>
<p>II.8. Entire Agreement Together, this Request for Bid, its Terms and Conditions, all information incorporated into the bid form by AGENCY or Bidder, the Bidder responses to Questions, the Bidder’s Quote Sheet(s), the Bidder’s pricing spreadsheet, all attachments and all references to statutes and policies, and the CSIU and Awarded Vendor Agreement constitutes the Entire Agreement and will govern the AGENCY and Awarded Vendor during the contract term January 01, 2010 to December 31, 2012, and during any authorized extensions.</p>
<p>II.9. Epylon Corporation The Epylon Corporation, “EPYLON,” is a private purchasing services company and has been engaged by AGENCY to help facilitate the bid process and provide a multitude of services including bid development, consulting, e-commerce, marketing, order management, and accounting services. Epylon is an integral service partner in the PEPPM 2010 Catalog Bid and is named numerous times in this bid document.</p>
<p>II.10. Clarification As used in this solicitation, “clarification” means communication with a Bidder for the sole purpose of eliminating minor irregularities, informalities or apparent clerical mistakes in the bid. It is achieved by explanation or substantiation, either in response to an inquiry by the AGENCY or as initiated by the Bidder. Unlike “Discussion,” clarification does not give the Bidder an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision. Clarification does not give the Bidder an opportunity to revise or modify its bid.</p>
<p>II.11. Discussions “Discussions” occur, when oral or written communications between AGENCY and the Bidder are conducted for the purpose of minor clarifications involving information essential for determining the acceptability of proposal. AGENCY will not help a Bidder bring its proposal up to the level of other proposals through discussions. AGENCY will not disclose technical information pertaining to a competing proposal. AGENCY will neither indicate to a Bidder a cost nor price that it must meet to obtain further consideration, nor will it provide any information about other Bidders’ proposals or prices. AGENCY is willing to discuss with a Bidder, having a proposal in the competitive range, any weaknesses, excesses, or deficiencies in its proposal. After initial receipt of proposals, AGENCY reserves the right to conduct discussions with the responsible Bidders who submit responsive proposals.</p>

III. PEPPM Fees

Sections III.1. through III.5. deal with the fees to be paid by the Bidder or Awarded Vendor.

III.1. PEPPM Bid Evaluation Fee

The CSIU as the coordinating AGENCY for the PEPPM 2010 Catalog Bid requires a non-refundable payment in the amount of \$200 from each Bidder FOR EACH CATALOG CATEGORY BEING BID to cover the cost of receiving and evaluating the bid. This is a total of \$200 regardless of how many states you choose to bid. One \$200 payment covers your submission to one or more states for each catalog category bid.

III.2. PEPPM Bid Award Fee

If you are the successful Bidder, you will be charged a \$400 PEPPM Bid Award Fee FOR EACH CATALOG CATEGORY YOU ARE AWARDED. This fee is considered an award fee and will be used by CSIU/PEPPM to do initial load and maintenance activities and to continue its growth in service to PEPPM Awarded Vendors and Buyers.

III.3. Payment of Bid and Award Fees

Bid Fees and Award Fees will be collected separately. There are two ways to pay Bid Fees and Award Fees. One is by using a credit card. The other is by mailing a check to PEPPM before the due date of the bid. PEPPM prefers that Bidders use credit cards, but allows Bidders to invoke an option to mail checks. Proper procedures for using either of the options are explained in the Directions Section VIII.14 and VIII.15.

III.4. Transaction Fees

Awarded Vendors shall be required to pay a transaction fee ("Transaction Fee") for all purchases by entities made through the awarded contracts. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order. Epylon will collect the Transaction Fee on behalf of AGENCY. By submitting a bid, an Awarded Vendor agrees to Epylon's Terms and Conditions for Awarded Vendors in the Epylon Merchant Agreement, which is found in Section VI.30, and will be bound to the Epylon Merchant Agreement as a part of the Terms and Conditions of the CSIU and Awarded Vendor Agreement between the Awarded Vendor and AGENCY. The Transaction Fee in this Section III.4 is the agreed upon Epylon Marketing Fee contemplated by Section 7 of the Epylon Merchant Agreement. For the purpose of the Pennsylvania PEPPM 2010 Catalog Bid contracts awarded using this document, the Transaction Fee shall be 1.75 percent of "Net Sales," which means gross sales less returns and cancelled orders within 30 days, shipping and sales and other taxes (excluding taxes based on net income). This PEPPM transaction fee of 1.75% replaces and supersedes any requirement for higher fees in the standard Epylon Merchant Agreement. Transaction Fees will not be charged to or paid by the buyers themselves. Awarded Vendor shall not include any additional amount corresponding to the Transaction Fees in the bid responses or awarded contract prices.

III.5. Cost of Bid Preparation

The AGENCY will not reimburse the cost of developing, presenting or providing any response to this solicitation.

IV. Bidder Qualifications

Sections IV.1. through IV.12. have to do with the qualifications of Bidders. Evaluation of Bidder's response to questions related to this Section will help determine who is both a responsible and responsive Bidder.

IV.1. Separate Declaration of Non-Collusion

Assuring that prices are arrived at independently and without collusion is so important that this bid requires the Bidder to separately attest under the penalty of perjury that no collusion has taken place.

The Bidder must affirmatively answer Yes to the appropriate area in the Question Section or else the bid may not be submitted to AGENCY.

In addition, the Bidder must also submit an original, notarized Non-Collusion Affidavit signed by the person in the company who was responsible for the final decision on what prices were submitted as part of this bid.

IV.2. Declaration of Non-Collusion

By submitting this bid, the person named on the bid form declares that he or she has authority to submit the prices of this bid and that:

- (1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder.
- (2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this 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.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- (4) The bid of my firm 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.
- (5) Neither he/she, the company, nor any of the company's affiliates, subsidiaries, officers, directors and employees are currently under investigation by any governmental agency and have not in the last four 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.
- (6) All representations are material and important, and will be relied on by the Central Susquehanna Intermediate Unit in awarding the contract(s) for which this bid is submitted.
- (7) Any misstatement is and shall be treated as fraudulent concealment from the Central Susquehanna Intermediate Unit of the true facts relating to the submission of bids for this contract.

IV.3. Suspension or Debarment

The Bidder certifies, for itself and all its designated partners, that neither the Bidder, nor any suppliers are under suspension, debarment or otherwise lawfully precluded from participating in any public procurement activity by the LEA or any governmental entity, instrumentality, or authority and, if the Bidder cannot so certify, then it agrees to submit a written explanation as an attachment to this bid form of why such certification cannot be made before proceeding to perform under any Purchase Order issued. Each eligible LEA reserves the right to cancel any Purchase Order without liability if the Bidder cannot so certify and the AGENCY or LEA is not satisfied with the explanation.

IV.4. Overdue Tax Liabilities and Other Agency or LEA Obligations

The Bidder certifies by submission of this bid that it has no overdue tax liabilities or other

Agency or LEA obligations including but not limited to unpaid PEPPM transaction fees from previous contracts.

IV.5. Ongoing Responsibility and Notice of Any Change

The Awarded Vendor’s obligations pursuant to all paragraphs in Sections IV and VI are ongoing from and after the effective date of the CSIU and Awarded Vendor Agreement and any Purchase Order issued through the termination date thereof. Accordingly, the Awarded Vendor shall have an obligation to inform the AGENCY or LEA if, at any time during the term of the CSIU and Awarded Vendor Agreement or any Purchase Order, it, changes its company name, changes its place of business, becomes delinquent in the payment of taxes, or other AGENCY or LEA obligations including but not limited to payment of PEPPM transaction fees, or if it or any of its designated partners are suspended or debarred by the AGENCY or LEA, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension, debarment or delinquency, or change. The Awarded Vendor’s status regarding any or all of its PEPPM awarded contracts may be affected by these changes.

IV.6. Cause for Default

The failure of the Awarded Vendor to notify the AGENCY or LEA of its suspension or debarment by any AGENCY or LEA, any other state, or the federal government shall constitute an event of default of the Agreement and/or Purchase Order.

IV.7. Americans With Disabilities Act

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Awarded Vendor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in the Purchase Order or from activities provided for under the Purchase Order on the basis of the disability. As a condition of accepting this contract, the Awarded Vendor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities relevant to this Agreement.

IV.8. Hold Harmless Regarding ADA

The Awarded Vendor shall be responsible for and agrees to indemnify and hold harmless the AGENCY/LEA from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against any participating state as a result of the Awarded Vendor’s failure to comply with the provisions of Section IV.7. above.

IV.9. Covenant Against Contingent Fees

The Awarded Vendor warrants that, no person or selling agency has been employed or retained to solicit or secure the Purchase Order upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Awarded Vendor for the purpose of securing business. For breach or violation of this warranty, the LEA shall have the right to terminate the Purchase Order without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

IV.10. Requirement to Define Partnerships

Bidders must define any and all partnerships they are planning to use in support of this bid. All partnerships can be defined and explained by attaching a document to the appropriate catalog category in the bid form. Additional partnerships that may occur after a PEPPM bid award

must be approved by PEPPM. Include any partnerships that relate to the use of any third parties providing analysis, design, installation, training, and maintenance or support services.

IV. 11. Bidder Profiling

By answering the questions in the Question Section, Bidders must give satisfactory evidence: A) that they maintain permanent places of business, B) that they have the capability to satisfactorily and expeditiously furnish the items offered, C) that the firm will provide satisfactory customer sales support and service to all LEAs, D) that they have current relationships with LEAs for verification of customer satisfaction and E) that they can demonstrate an active network or other acceptable method of service and support that will serve all LEAs.

IV.12. Historically Under-Utilized Businesses (HUBs)

For the purpose of identifying 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 LEAs.

Points will be awarded to Bidders that are identified as a HUB in the bid evaluation process. A HUB may identify itself in its answer to the appropriate area in the Question Section.

V. Bid Specifications

Sections V.1. through V.16. deal with bid specifications for products.

V.1. Types of Products Sought

This catalog bid seeks bids on technology products typically sold through online and paper based catalogs (e.g. shrink wrapped educational and administrative software, equipment, cables, supplies, etc).

V.2. New Products

For all catalog categories except Refurbished Computer Systems and Parts and Remanufactured Laser Toner and Ink Cartridges, AGENCY is seeking NEW technology related products manufactured by reputable manufacturers. The products offered must be considered new by the manufacturer having new serial numbers and be made with new components meeting all manufacturer specifications (realizing that some manufacturers may recycle incidental components.) AGENCY is also seeking high quality refurbished computer systems and parts that may have been previously used or owned in its Refurbished Computer Systems and Parts catalog category. The refurbished products offered must be refurbished with components meeting all original manufacturer specifications.

V. 3. Serial Numbers

Any equipment offered must have original serial numbers. Any hardware product lines within your catalog bid must be for equipment on which the original manufacturer's serial number has not been altered in any way.

V.4. Manufacturer Standard Equipment

Bidder must ensure that all units offered in their bid proposal, have all manufacturer standard equipment (e.g. units sold under the XYZ, Inc. label must have all XYZ, Inc. standard equipment and features). Unless otherwise noted in this bid, it is understood and agreed that any item offered or shipped in response to this bid is the same model indicated by its external label and source of manufacture. All components inside the system must be manufacturer approved unless otherwise noted, and therefore eligible for full manufacturer's warranty for all catalog categories requested in this bid with the exception of the Refurbished Computer Systems and Parts catalog category. Refurbished computer systems submitted in response to

the Refurbished Computer Systems and Parts catalog category must have a minimum three year warranty.

V.5. Replacement Parts

Awarded Vendors must, upon request, provide replacement parts, (either functional equivalent or a newer version of the same part which performs the same function and is replaceable/interchangeable with the part being replaced), directly or through the manufacturer or a manufacturers' representative, to the LEA and/or the LEA's designed maintenance service provider. Replacement parts must be made available for at least two (2) years after the warranty expiration.

V.6. Proof of Supply

Bidder must provide information verifying their ability to access and deliver bid products from specified product lines at or below the bid pricing for that product line in the category awarded. (Please include a statement as to how you obtain supply of product for the catalog category you are bidding. Include this statement as an attachment to the catalog category you are bidding.

V.7. Liens

All materials and services shall be free of all liens.

V.8. Licenses

Awarded Vendors shall maintain current status of all federal, state and local licenses, bonds, and permits required for the operation of the business conducted by the Awarded Vendor.

V.9. Necessary Supplies

Bidders are encouraged to include bid pricing on all related/necessary branded supplies utilized with any equipment being bid within your catalog bid.

V.10. Standard Warranty

The Bidder warrants that all items furnished by the Bidder, its agents and designated partners shall be free and clear of any defects in material and workmanship and shall conform to the published specifications for such product and Bidder's representations regarding the functions and uses for which each product is marketed. Bidders bidding on personal computers **must** provide standard manufacturer's warranty of **at least one (1) year (on-site for desktop and server systems.)** If the standard manufacturer warranty is longer than one year, no deduction to that standard manufacturer warranty will be allowed. Other items must carry the standard warranty. Warranty policy information, including additional costs for extended parts and labor coverage, must be addressed in the bid response and clearly defined for all submitted price lists. The Awarded Vendor shall repair and/or replace any defective item with an item of equivalent or superior quality without any additional cost to any LEA.

V.11. Onsite Warranty Service

Bidders bidding on personal computers and servers must have the capability, either directly or through the manufacturer or a manufacturer's representative, or other third-party partner to perform onsite warranty service (defined as the standard warranty provided by the manufacturer for the period of time indicated in the contract.) Awarded Vendors must perform warranty services at the LEAs site of the equipment in need of such service when requested by the using LEA. LEAs are responsible for payment of onsite warranty services which do not fall within the scope of the manufacturer's standard warranty. Manufacturer's "depot service only" products are excluded from this requirement.

V.12. Installation

Catalog products that require professional installation – if offered by the Awarded Vendor and desired by the LEA, shall be installed within four (4) weeks of product delivery, unless

LEA asks that installation be delayed. Catalog products shall be installed in accordance with the manufacturers' instructions.

V.13. Direct Relationships with Service Providers

For Bidders including services associated with products within their catalog, service locations may be a branch or satellite office of the personal computer Bidder or manufacturer service and support facilities, or facilities of some other third-party whose relationship the Bidder will maintain to provide the services required within the scope of PEPPM. The contract may be terminated for default if, at any point during the term of the contract, the Bidder fails to maintain these relationships. These relationships may, but are not required to infer ownership and/or franchise relationships, only that an ongoing affirmative business relationship exists. PEPPM reserves the right to inquire into the extent of these business relationships maintained, and listed herein, by the Bidder up to the extent that the confidentiality is not compromised. The Bidder is ultimately responsible for the satisfactory and timely completion of all service requirements and activities, and is under a duty to monitor all service performances of the service providers.

V.14. Certifications Related to Personal Computer Lines

It is the AGENCY's intention that at no time will an LEA be "surprised" by a computer's inability to function on a network, run popular software products or in any other way not perform as expected, intended, or is customary to anticipate. Bidders who include personal computer lines within their catalog bid must maintain the various certifications that the manufacturers have concerning compatibility and compliance with computer and network operating systems and federal safety and communications guidelines. These certifications should include, but not be limited to:

- Novell Certification
- Microsoft Certifications
- Underwriters Laboratories Certification
- Federal Communications Commission Certification

V.15. Services Related to Products

In preparing responses, Bidders should understand that they will not be specifically required to install, demonstrate or train school personnel in the use of purchased equipment, except where a dealer is required to provide such services at no additional cost as part of its contractual arrangement with its supplier or manufacturer.

However, if a Bidder can provide ancillary services related to any product lines submitted within their catalog bid, the Bidder should respond "Yes" to the appropriate question in the Question Section of the bid form and attach the PEPPM Ancillary Services Form. In the form, the Bidder should describe what ancillary services are available, how they will be provided and what PEPPM discount(s)/prices will be applied.

Note: Each Bidder offering services under the contract must complete, sign and date the Ancillary Services form at the time of the bid for those services to be considered as part of the award.

Bidder may submit more than one Ancillary Services Form for product lines that may have different services, terms of delivery and/or discount/prices.

Bidder should specify what product lines are covered by the services listed in a particular Ancillary Services Form.

Following are examples of ancillary services that may be submitted that apply to product lines included within your catalog bid:

- Installation
- Image loading
- Training
- Help desk support
- Engineering
- Analysis and design
- Maintenance
- Asset tag service
- Hard drive removal and retention by the buyer
- Travel

If an Awarded Vendor has chosen to offer services in conjunction with the bid awarded contract items it provides to the LEA, the Awarded Vendor and the LEA shall negotiate the specifics of the services to be provided at a PEPPM price.

The price lists provided by the Awarded Vendor must allow the AGENCY and LEA to easily identify bid submitted and approved services and costs. Bidders are advised to not lower per unit product purchase prices and offer above-market service prices. AGENCY staff will review the availability and reasonableness of services and prices to help determine an award.

Note: It is imperative that the award be made to a Bidder who demonstrates evidence that they can provide reasonable and acceptable service to all agencies within each state bid for products that require installation, ongoing maintenance or other necessary services.

Available services and the presence of discounted prices for those services will be a factor in the evaluation of bids.

V.16. Returned Goods Policy

Bidders must have a policy regarding how they handle the return of goods from LEAs. A document describing the policy must be attached alongside the name of each catalog category being bid.

Note: Return Goods Policy will be a factor in the evaluation of bids.

VI. Ordering Procedures and Requirements

Sections VI.1. through VI.30. relate to ordering, the process of handling purchase orders, delivery of merchandise, payments, the role of Epsilon etc.

VI.1. Overview of Standard Purchase Order Terms and Conditions

If an award is made to a Bidder, such Awarded Vendor may receive a Purchase Order to furnish the awarded catalog item(s) in accordance with these Standard Purchase Order Terms and Conditions:

- 1) Any LEA (a buyer as defined in the Section II.6) may issue purchase orders against this agreement. These constitute the Awarded Vendor's authority to make delivery. All purchase

orders received by the Awarded Vendor up to and including the expiration date of the agreement are acceptable and must be shipped in accordance with the delivery time specified in the agreement. If normal delivery time cannot be met, Awarded Vendor must notify LEA. LEA has the option to accept or reject extended delivery time.

2) As stated in Section III.4, Awarded Vendors shall be required to pay the Transaction Fee for all purchases by entities made through the awarded contracts. This applies to all orders, regardless of the method used to submit the order, or the quantity or dollar amount of the order.

Purchase Orders may be issued through Epylon Awarded Vendor accounts at www.epylon.com or through fax equipment to the following fax number: 800-636-3779. Purchase orders via Epylon Awarded Vendor accounts will arrive in the Epylon Order inbox, accessed at www.epylon.com through a previously established login with a user name and password. Receipt of the electronic or fax transmission of the purchase order shall constitute receipt of an order. Orders received by the Awarded Vendor after 4:00 p.m. (prevailing local time of the Awarded Vendor) will be considered received the following business day.

3) Upon receipt of an order in the Epylon Purchase Order inbox, the Awarded Vendor shall promptly and properly transmit an acknowledgement in return by filling out any additional order information and clicking "submit." Failing to acknowledge orders gives LEAs the impression that their order has been received by the Vendor, but that the PO has not been accepted.

4) For orders entered into the Epylon eCommerce system specifically by the Buyer, the parties agree that no hand-written signature shall be required in order for the purchase order to be legally enforceable. To the maximum extent permitted by law, the parties hereby agree to accept an order submission or acceptance by a properly authorized user of the Epylon system as any necessary "signature" that may be required by law. Any purchase order or acknowledgement, which has been issued by a properly authorized Epylon user shall be deemed for all purposes to have been "signed" and to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business. Neither party shall disclose to any unauthorized person the "signatures" of the other party.

5) For orders entered into the Epylon eCommerce system specifically by the Buyer, the parties agree that no writing shall be required in order to make the order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine purchase order or acknowledgement issued through Epylon under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine purchase order or acknowledgment issued through Epylon, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of genuine purchase orders or acknowledgments under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement shall be deemed to be genuine for all purposes if: (a) it was received from the

Epylon Purchase Order inbox and (b) it is transmitted to the location designated for such documents in the procedure agreed to by the parties.

6) Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include retransmission of any such document if necessary.

7) Awarded Vendors who receive a Purchase Order directly from LEAs (e.g. directly by fax, mail, or in person), where the Purchase Order is marked as relating to the PEPPM bid and has not first been submitted to the PEPPM purchase order clearinghouse or through the Epylon system, are required to send such Purchase Order to PEPPM for archiving and entry into AGENCY's database for bid protection and verification.

VI.2. Term of Purchase Order

The term of the Purchase Order shall commence on the date that the Awarded Vendor receives a Purchase Order executed by the LEA and all approvals required by LEA contracting procedures have been obtained (the "Effective Date"). The Purchase Order shall, subject to the other provisions of the Purchase Order, end on the later of: a) complete delivery and acceptance of the awarded item(s); b) the expiration of any specified warranty and maintenance period; c) payment by the LEA for the item(s) received; or d) the Expiration Date identified in the Contract.

The Awarded Vendor shall not start the performance under the Purchase Order prior to the Effective Date and the LEA shall not be liable to pay the Awarded Vendor for any service or work performed or expenses incurred before the Effective Date. No LEA employee has the authority to verbally direct the shipment of any item(s) or the commencement of any work under the Purchase Order.

VI.3. Ordering, Invoicing and Payment

LEAs will order the items, receive the items from the Awarded Vendor and directly pay the Awarded Vendor upon receipt of invoices.

All invoices are to be sent directly to the purchasing LEA. LEAs will normally pay invoices within thirty (30) days of receipt of order, or in compliance with their board policy on bill payment. The AGENCY will encourage LEAs to arrange for prompt payment where possible and for payments of partial shipments.

VI.4. Independent Contractor/Awarded Vendor

In performing its obligations under the Purchase Order, the Contractor/Awarded Vendor will act as an Independent Contractor/Awarded Vendor and not as an employee or agent of the AGENCY or any LEA.

VI.5. Compliance with Law

Vendor shall comply with any and all laws, whether local, state, federal or otherwise, applicable to any of the services and/or products to be provided in relation to this contract. It shall be the vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them. Vendor shall hold Agency harmless for any default or breach of vendor in this regard.

A. Pennsylvania Prevailing Wage Rates

Projects where the **total estimated cost is greater than \$25,000**, paid for in whole or in part out of funds of a public body, except for maintenance work or work performed under a rehabilitation program or manpower training program must specify "Prevailing Wages." Further information on implementation of the act, definition of maintenance work and prevailing wage rates may be requested from the Pennsylvania Department of Labor and Industry (800-932-0665 or 717-787-4763). When applicable, use Davis-Bacon wage rates for federally assisted projects. This regulation and the general Pennsylvania prevailing minimum wage rates, (Act 442 of 1961, P.L. 987, amended), as determined by the Secretary of Labor and Industry, which shall be paid for each craft or classification of all workers needed to perform the contract during the anticipated term therefore in the locality in which public work is performed, are made part of this specification.

1. The general prevailing minimum wage rates including contributions for employee benefits as shall have been determined by the Secretary of Labor and Industry (hereinafter "Secretary"), which must be paid to the workmen, employed in the performance of the Contract.
2. The Contractor shall pay no less than the wage rates as determined in the decision of the Secretary and shall comply with the conditions of the Pennsylvania Prevailing Wage Act approved August 15, 1961 (Act No. 442), as amended August 9, 1963 (Act No. 342), and the Regulations issued pursuant thereto, to assure the full and proper payment of said rates.
3. These Contract provisions shall apply to all work performed on the Contract by the Contractor and to all work performed on the contract by all subcontractors.
4. The Contractor shall insert in each of his subcontracts all of the stipulations contained in these required provisions.
5. No workmen may be employed on the Work except in accordance with the classifications set forth in the decision of the Secretary. In the event that additional or different classifications are necessary the procedure set forth in the Regulations shall be followed.
6. All workmen employed or working on the Work shall be paid unconditionally, regardless of whether any contractual relationship exists or the contractual relationship which may be alleged to exist between any contractor, subcontractor and workmen, not less than once a week without deductions or rebate, on any account, either directly or indirectly, except authorized deductions, the full amount due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in this Contract, the Act or the Regulations shall prohibit the payment of more than the general prevailing minimum wage rates as determined by the Secretary to the workmen on the Work.
7. The Contractor and each subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of any changes thereof, in a prominent and easily accessible place or places at the site of the work and at such place or places used by them to pay workmen their wages. The posted notice of wage rates must contain the following information:
 - a. Name of project.
 - b. Name of public body of which it is constructed.

- c. The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
 - d. The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.
 - e. A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the Contractor and/or subcontractor are not complying with the Act or the Regulations in any manner whatsoever, they may file a protest with the Secretary within three (3) months of the date of the occurrence, objecting to the payment to the Contractor to the extent of the amount or amounts due or to become due to them as wages for work performed on the Project. Any workmen paid less than the rate specified in the Contract shall have a civil right of action for the difference between the wage paid and wages stipulated in the Contract, which right of action must be exercised within six (6) months from the occurrence of the event creating such right.
8. The Contractor and all subcontractors, shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage paid (including employee benefits) to each workman employed by him in connection with the Work and such record must include any deductions from each workman. The record shall be preserved for two (2) years from the date of payment and shall open at all reasonable hours to the inspection of the Owner and to the Secretary or his duly authorized representative.
 9. Apprentices shall be limited to such numbers as shall be in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with the provisions of the Apprenticeship and Training Act approved July 14, 1961 (Act No. 304) and the Rules and Regulation issued pursuant thereto shall be employed on the Work. Any workmen using the tools of a craft that does not qualify as an apprentice within the provisions of this submission shall be paid the rate predetermined for journeyman in that particular craft and/or classification.
 10. Wages shall be paid without any deductions except authorized deductions. Employers not party to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workman.
 11. Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act and the Regulations, regardless of the average hourly earnings resulting there from.
 12. Each Contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the Work on the Contract with Owner, under oath, and in form satisfactory to the Secretary, certifying that all workmen have been paid wages in strict conformity with the provisions of the Contract as prescribed by the Regulations, or if any wages remain unpaid, to the amount of wages due and owing to each workman respectively.
 13. The provision of the Act and the Regulations are incorporated by reference in the Contract.

VI.6. Environmental Provisions

In performing its obligations under the Purchase Order, the Awarded Vendor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

VI.7. Compensation/Invoices

The Awarded Vendor shall be required to furnish the awarded item(s) at or below the price(s) quoted in the Contract. The Awarded Vendor shall be compensated only for item(s) which are delivered and accepted by the LEA.

Unless otherwise specified, the Awarded Vendor shall send an itemized invoice to the “Bill To” address on the Purchase Order promptly after the item(s) are delivered. The invoice should include only amounts due under the agreement. The Purchase Order number shall be prominently noted on all invoices.

VI.8. Payment

The LEA shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Purchase Order; or (b) thirty (30) days after a proper invoice actually is received at the “Bill To” address, and the Purchase Order items invoiced are received and accepted by the LEA. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the purchase order and the items actually received.

Payment should not be construed by the Awarded Vendor as acceptance of the items furnished by the Awarded Vendor. The LEA reserves the right to conduct further testing and inspection after payment, but within a reasonable time after delivery, and to reject the item(s) if such post payment testing or inspection discloses a defect or a failure to meet specifications.

The Awarded Vendor agrees that the LEA may deduct the amount of any state tax liability not required by law or other unauthorized obligation of the Awarded Vendor or its subsidiaries to the LEA from any payments due the Awarded Vendor under any contract with the LEA.

At the discretion of the Awarded Vendor, the LEA may use a LEA purchasing card to pay for the items purchased under the Purchase Order. The LEA(s) purchasing card is similar to a credit card in that there will be a small fee which the Awarded Vendor will be required to pay and the Awarded Vendor will receive payment directly from the card issuer rather than the LEA. Any and all fees related to this type of payment are the responsibility of the Awarded Vendor. In no case will the LEA(s) allow increases in prices to offset credit card fees paid by the Awarded Vendor or any other charges incurred by the Awarded Vendor, unless specifically stated in the terms of the Purchase Order.

VI.9. Taxes

No charge will be allowed for federal, state, or local taxes from which the LEA is exempt. Prices shall be net and shall not include the amount of any such tax. Exemption certificates, if required, will be furnished on forms provided by the Awarded Vendor.

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

VI.10. Delivery

All item(s) shall be delivered F.O.B. Destination. The Bidder agrees to bear the risk of loss, injury, or destruction of the items ordered prior to receipt of the items by the LEA. Such loss, injury, or destruction shall not release the Awarded Vendor from any contractual obligations. Except as otherwise provided in Section VI.13 all items must be delivered within the time period specified on the Purchase Order. In addition to any other remedies, the Purchase Order is subject to termination for failure to deliver as specified. Items ordered through this bid award should be delivered within thirty (30) days of receipt of Purchase Orders. If that is not possible, LEA must be notified in writing (or by telephone) of the delay and an estimated delivery date. Delivery will be required to be made to the receiving platform or place designated on each purchase order. Direct delivery to buildings must be placed at a point in the building as directed at the place of delivery. Weight, color, count, measure, etc., will be determined at the point of delivery. The Awarded Vendor will be required to furnish proof of delivery upon request from any LEA. All materials and supplies must be securely packed in uniform containers, adequately marked as to contents, purchase order number, and delivered without damage or breakage such units, as are specified.

Any system configuration ordered shall be delivered as a complete system. It will be the responsibility of the Awarded Vendor to stage the equipment delivery so that all components are delivered as a single unit at the same time.

Awarded Vendors receiving Purchase Orders with delivery requirements that cannot be met, have the right to refuse the order. The Awarded Vendor must return the Purchase Order with an explanation of why it was refused within (5) business days of receiving the purchase order from the LEA.

VI.11. Shipping Errors

Awarded Vendor agrees that shipping errors will be at the expense of the Awarded Vendor. For example, if an Awarded Vendor ships a product to an LEA that was not ordered, it is the responsibility of the Awarded Vendor to pay for return mail or shipment, at the convenience of the LEA.

VI.12. Inspection and Rejection

No item(s) received by the LEA shall be deemed accepted until the LEA has had a reasonable opportunity to inspect the item(s). The Awarded Vendor and the LEA agree that a reasonable timeframe to inspect the item(s) shall not exceed thirty (30) calendar days from date of delivery. Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. When a defect or nonconforming item(s) is discovered, the LEA will promptly notify the Awarded Vendor of the defect or nonconformance. It shall thereupon become the duty of the Awarded Vendor to remove rejected item(s) from the premises without expense to the LEA within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the LEA shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale, which represents the LEA's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Awarded Vendor shall immediately replace all such rejected item(s) with others

conforming to the specifications and which are not defective. If the Awarded Vendor fails, neglects or refuses to do so, the LEA shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter become due to the Awarded Vendor, the difference between the price stated in the Contract and the actual cost thereof to the LEA.

VI.13. Default

- A. The AGENCY (LEA) may, subject to the provisions of Section VI.14, Force Majeure, and in addition to its other rights under the Agreement (Purchase Order), declare the Awarded Vendor in default by written notice thereof to the Awarded Vendor, and terminate (as provided in Section VI.15, Termination Provisions) the whole or any part of the Agreement for its state's LEAs (Purchase Order) for any of the following reasons:
- 1) Failure to deliver the awarded item(s) within the time period specified on the Agreement (Purchase Order) or as otherwise specified;
 - 2) Improper delivery;
 - 3) Failure to provide an item(s) which is in conformance with the specifications referenced in the invitation for Bids;
 - 4) Delivery of a defective item;
 - 5) Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
 - 6) Insolvency or bankruptcy;
 - 7) Assignment made for the benefit of creditors;
 - 8) Failure to protect, to repair, or to make good any damage or injury to property;
 - 9) Breach of any provision of the Agreement (Purchase Order).
 - 10) Failure to maintain its baseline catalog online;
 - 11) Failure to update prices as per Section X.7.;
 - 12) Non-performance in sales as per Section X.2.;
 - 13) Suspension or Debarment occurring during the term of the contract (See Section IV.3 Suspension or Debarment)
- B. In the event that the AGENCY or LEA terminates the Agreement (Purchase Order) in whole or in part as provided in Subparagraph a. above, the LEA may procure, upon such terms and in such manner as it determines, any items similar or identical to the items so terminated.
- C. If the Purchase Order is terminated as provided in Subparagraph a. above, the LEA, in addition to any other rights provided in this paragraph, may require the Awarded Vendor to transfer title and deliver immediately to the LEA in the manner and to the extent directed by the Issuing Office, any partially manufactured or delivered items as the Awarded Vendor has specifically produced or specifically acquired for the performance of the Purchase Order as has been terminated. Except as provided below, payment for any partially manufactured or delivered items accepted by the LEA shall be in an amount

agreed upon by the Awarded Vendor and LEA. The LEA may withhold from amounts otherwise due the Awarded Vendor for any partially manufactured or delivered items, such sum as the LEA reasonably determines to be necessary to protect the LEA against loss.

- D. The rights and remedies of the AGENCY (LEA) provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement (Purchase Order).
- E. The AGENCY's (LEA) failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the AGENCY or LEA of its rights and remedies in regard to the event of default or any succeeding event of default.
- F. Following exhaustion of the Awarded Vendor's administrative remedies as set forth in Section VI.16 (Assignability and Subcontracting), the Awarded Vendor's exclusive remedy shall be to seek damages in the Board of Claims or other appropriate adjudicating body in AGENCY's respective state.

VI.14. Force Majeure

Neither party will incur any liability to the other if its performance of any obligation pursuant to the Agreement or Purchase Order is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's 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 (LEA) orally within five (5) business days and in writing within ten (10) business days of the date on which the Awarded Vendor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Agreement (Purchase Order) is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay, if the nature of the force majeure event does not prevent Awarded Vendor from reasonably making such estimation. The Awarded Vendor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce within ten (10) business days of LEAs written request such supporting documentation as the AGENCY (LEA) may reasonably request. After receipt of such notification, the LEA may elect either to cancel the Purchase Order or to extend the time for performance as reasonably necessary to compensate for the Awarded Vendor's delay.

In the event of a declared emergency by competent governmental authorities, the LEA by notice to the Awarded Vendor, may suspend all or a portion of the Purchase Order.

VI.15. Termination Provisions

The LEA has the right to terminate the Purchase Order for the following reason. Termination shall be effective upon written notice to the Awarded Vendor.

A. Termination for Cause: The LEA shall have the right to terminate the Purchase Order for Awarded Vendor default under Section VI.13, Default, upon written notice to the Awarded Vendor. Notwithstanding any termination for cause, the Awarded Vendor shall be paid for work satisfactorily completed prior to the effective date of the termination.

A. Non-Appropriation: In the event that the party purchasing from the Awarded Vendor or a designated reseller is a state agency under Pennsylvania law (e.g. SSHE members), agency 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 terminate the contract. 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 this contract. 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.

VI.16. Assignability and Subcontracting

A. The agreement shall be binding upon the parties and their respective successors and assigns.

B. The Awarded Vendor shall not subcontract with any person or entity to perform all or any part of the work to be performed under the agreement without the prior written consent of the LEA.

C. The Awarded Vendor may not assign, in whole or in part, the Purchase Order or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the LEA.

D. Notwithstanding the foregoing, the Awarded Vendor may, without the consent of the LEA, assign its rights to payment to be received pursuant to the Purchase Order, provided that the Awarded Vendor provides written notice of such assignment to the LEA together with a written acknowledgement from the assignee that any such payments are subject to all of the Terms and Conditions of the Purchase Order.

E. For the purposes of the Purchase Order, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Awarded Vendor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

F. Any assignment consented to by PEPPM shall be evidenced by a written assignment agreement executed by the Awarded Vendor and its assignee in which the assignee agrees to be legally bound by all of the Terms and Conditions of the Awarded Vendor Agreement and to assume the duties, obligations, and responsibilities being assigned.

G. A change of name by the Awarded Vendor, following which the Awarded Vendor’s federal identification number remains unchanged, shall not be considered to be an assignment

hereunder. The Awarded Vendor shall give the AGENCY and any LEAs holding outstanding purchase orders written notice of any such change of name.

VI.17. Nondiscrimination/Sexual Harassment Clause

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

A. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Purchase Order or any subcontract, the Awarded Vendor, designated partner or any person acting on behalf of the Awarded Vendor or designated partner shall not by reason of gender, race, creed, or color 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.

B. Neither the Awarded Vendor nor any designated partner nor any person on their behalf shall 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 Purchase Order on account of gender, race, creed, or color.

C. The Awarded Vendor and any designated partners 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.

D. The Awarded Vendor shall not discriminate by reason of gender, race, creed, or color against any designated partner or supplier who is qualified to perform the work to which the contract relates.

E. The Awarded Vendor and each designated partner shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the AGENCY and LEA and appropriate departments of state government for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Awarded Vendor or any designated partner does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the AGENCY or appropriate departments of state government.

F. The Awarded Vendor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract that specifically is undertaken to support this Agreement so that such provisions will be binding upon each designated partner.

G. The LEA may cancel or terminate the Purchase Order and all money due or to become due under the Purchase Order may be forfeited for a violation of the Terms and Conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the AGENCY may proceed with debarment or suspension of that Awarded Vendor from the PEPPM program.

VI.18. Hazardous Substances

The Awarded Vendor shall provide information to the LEA about the identity and hazards of hazardous substances supplied or used by the Awarded Vendor in the performance of the Purchase Order. The Awarded Vendor must comply with Act 159 of October 5, 1984, known as

the “Worker and Community Right to Know Act” (the “Act”) and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1 et seq.

A. Labeling. The Awarded Vendor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Awarded Vendor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):

- 1) Hazardous substances:
 - a) The chemical name or common name,
 - b) A hazard warning, and
 - c) The name, address, and telephone number of the manufacturer.
- 2) Hazardous mixtures:
 - a) The common name, but if none exists, then the trade name,
 - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
 - d) A hazard warning, and
 - e) The name, address, and telephone number of the manufacturer.
- 3) Single chemicals:
 - a) The chemical name or the common name,
 - b) A hazard warning, if appropriate, and
 - c) The name, address, and telephone number of the manufacturer.
- 4) Chemical Mixtures:
 - a) The common name, but if none exists, then the trade name,
 - b) A hazard warning, if appropriate,
 - c) The name, address, and telephone number of the manufacturer, and
 - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

-- NFPA 704, Identification of the Fire Hazards of Materials.

-- National Paint and Coatings Association: Hazardous Materials Identification System.

-- American Society for Testing and Materials, Safety Alert Pictorial Chart.

-- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

B. **Material Safety Data Sheet.** The Awarded Vendor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The LEA must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Awarded Vendor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The Awarded Vendor shall also notify the LEA when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the LEA at the time of shipment.

VI.19. Vendor Integrity Provisions

A. For purposes of the following Sections numbered VI.20 through VI.29 only, the following definitions shall apply:

1) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the AGENCY or LEA.

2) **Consent** means written permission signed by a duly authorized officer or employee of the AGENCY or LEA, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the AGENCY or LEA shall be deemed to have consented by virtue of execution of this agreement.

3) **Vendor** means Awarded Vendor or Authorized Reseller who may be an individual or entity that has entered into a Purchase Order with an LEA, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.

4) **Financial interest** means: a) Ownership of more than a five percent interest in any business; or b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

5) **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.

VI.20. Highest Standards of Integrity

The Vendor shall maintain the highest standards of integrity in the performance of the Purchase Order and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the AGENCY or any LEA.

VI.21. Confidential Information

The Vendor shall not disclose to others any confidential information gained by virtue of the

Purchase Order.
<p>VI.22. Pecuniary Benefit</p> <p>The Vendor shall not, in connection with this or any other agreement with the AGENCY or any LEA 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 LEA.</p>
<p>VI.23. Giving Gratuities</p> <p>The Vendor shall not, in connection with this or any other agreement with the AGENCY or LEA, 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 any LEA.</p>
<p>VI.24. Accepting Gratuities</p> <p>Except with the consent of the AGENCY or LEA, neither the Vendor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the agreement except as provided therein.</p>
<p>VI.25. Supplemental Financial Interests</p> <p>Except with the consent of the AGENCY or LEA, the Vendor shall not have a financial interest in any other Vendor, designated partner, or supplier providing services, labor, or material on this project.</p>
<p>VI.26. Notification of Violations</p> <p>The Vendor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the AGENCY or LEA in writing.</p>
<p>VI.27. Certification of Non-Violation</p> <p>The Vendor, by execution of the Purchase Order and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.</p>
<p>VI.28. Cooperation with Authorities</p> <p>The Vendor, upon the inquiry or request of the appropriate state official of any participating state or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant to the Vendor's integrity or responsibility, as those terms are defined by relevant statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Vendor's business or financial records, documents or files of any type or form which refers to or concerns the Purchase Order. Such information shall be retained by the Vendor for a period of three years beyond the termination of the Purchase Order unless otherwise provided by law.</p>
<p>VI.29. Rights and Remedies in the Event of Violation</p> <p>For violation of any of the above provisions, the AGENCY or LEA may terminate this and any other agreement with the Vendor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another vendor to complete performance hereunder, and debar and suspend the Vendor from doing business with the AGENCY or LEA. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the AGENCY or LEA may have under law, statute, regulation, or otherwise.</p>

VI.30. Epylon Terms and Conditions

Awarded Vendors will be bound to the Epylon Merchant Agreement, which is attached.

VII. Bid Pricing Specifications

Sections VII.1. through VII.21. provide bid pricing specifications for each catalog category bid.

VII.1. PEPPM 2010 Catalog eBid Product Line Template

For each catalog category bid submission, you must attach a corresponding pricing spreadsheet. Only the PEPPM 2010 Catalog eBid Product Line Template in Microsoft Excel format may be used. It may be downloaded once from the bid Section indicating which catalog category is being bid. It may be duplicated as many times as needed for each catalog category you are bidding or if the number of SKUs exceeds the spreadsheet limit.

There are two tabs in the spreadsheet to be completed. One is called the Official Quote Sheet and contains the PEPPM Bid Quote Sheet, and the other is called Bid Response and contains the PEPPM eBid Price Submission Template, which calculates your final effective bid price for SKUs being offered as part of the bid. A third tab called Instructions contains instructions for completing the other two tabs. Fill out a separate Template for every catalog category you are bidding. You must fill out the white columns in the Bid Response tab with information including Manufacturer's SKU Number, Bidder's SKU Number, Product Name, Product Description, list price or cost price, and percent discount or markup. The spreadsheet will automatically calculate the effective bid price based on the percent of discount or markup you place in column J of the spreadsheet.

A representative list of SKUs from a cross section of product types for each manufacturer's product line you are bidding must be provided. Product lines that do not have sufficient SKUs listed may not be awarded. Additional directions are included in the Instructions tab of the PEPPM Bid Price Submission Template.

An Excel spreadsheet containing a list of manufacturer product lines being bid must be attached to the Catalog Category being bid and must exactly match the manufacturer product lines listed in the Bid Quote sheet and the Bid Response tab. All bid pricing listed in the Bid Response tab must be priced according to the Bid Quote sheet discount structure.

VII.2. PEPPM Bid Price Submission Template for Evaluation Only

Please note that the price list used in the PEPPM Bid Price Submission Template is for bid comparison purposes only. PEPPM will NOT post your markup over cost or discount amounts from this Template.

VII.3. Method of Pricing

This bid is seeking specifically PEPPM educationally discounted prices for the entire list of offered products. AGENCY is asking Bidders to place bids as a specified discount percent off of a Vendor's currently published catalog price or markup percent over the applicable cost. The AGENCY and its CPA firm will need access to published online catalog price data or vendor cost data to ensure bid compliance during the contract period. If bidding a discount percent off of a currently published catalog and if this catalog is no longer published, the PEPPM Catalog Bid Award will be terminated.

VII.4. Identify Mark-up Over Cost or Online Published List Price Basis

The price list basis, that is, the price list from which the markup or the discount is to be calculated, must be clearly identified on the Quote Sheet tab of the PEPPM Bid Price Submission Template for each catalog category being bid. Mark-up over cost or a percent discount from an online published list is acceptable.

If a discount from an online catalog price list is bid, the specific online catalog price list to be used for determining PEPPM bid pricing must be identified on the Quote Sheet tab of the PEPPM Bid Price Submission Template. PEPPM, auditors and buyers will use your online catalog price list as a basis for verifying the published PEPPM pricing meets the bid discounts for the bid evaluation and throughout the term of the contract.

VII.5. Expressing the Percent of Discount or Markup

In column J on the Bid Response tab of the bid template, you must take care to correctly enter the percent of discount or markup in the proper form. This is necessary because the way you enter your discount affects the final calculated bid price.

If you are bidding Discount From List, the percent should be entered as a NEGATIVE NUMBER, because you are subtracting a percent from your list price.

If you are bidding Markup Over Cost, you should enter the percent as a POSITIVE NUMBER because you are adding a percentage to your costs.

If the percent of discount or markup is zero, enter 0.00,

VII.6. Importance of Final Price

It is the Bidder's responsibility to look at the final prices in column I of the spreadsheet to see that they are calculated correctly. These are your official bid prices. If they are not correct, then the percent you entered is incorrect, because the spreadsheet automatically calculates the correct prices based on your entries.

Prices in column I will be a basis for evaluation for bid awards.

Any inconsistencies in expressing your percent of discount or markup may result in your bid being unresponsive or subject to a reduction in score.

VII.7. Importance of Manufacturer's SKUs

It is important that you correctly record the manufacturer's SKU number for each product you submit as part of the catalog bid. The first phase of the evaluation process uses manufacturer SKU number, after stripping away hyphens, spaces and leading zeros, to compare pricing between competing companies. Irregularities in listing the manufacturer's SKU number may result in a reduction of your overall bid evaluation score or rejection of your entire bid.

VII.8. Extent of Product Lines Offered

Product lines and prices listed, along with your response in the Question Section will be used to establish both the extent of a vendor's catalog and the corresponding educationally discounted pricing. Bidders must use their best judgment on which and how many product lines to submit for a particular bid catalog category. The bid evaluation may be affected by the number of product lines available from a particular Bidder over another.

Bidders of more than one catalog category must put the price list files of each catalog category bid on a separate template and upload it as an attachment to the corresponding catalog category being bid.

VII.9. Sort Order and Clear Delineation

Price lists must be clearly defined and sorted by Manufacturer and the Manufacturer SKU Number in ascending order.

VII.10. Inclusive Pricing.

All prices quoted must be FOB Destination, with freight prepaid and included in the unit price. AGENCY and LEAs will not consider any proposal with escalator clauses, unbalanced or irregular features, or other provisions not in accordance with the specifications or bid sheets.

VII.11. Variable Discounts Within a Catalog Category

This bid allows you to define varying degrees of discounts or mark-ups over cost for individual manufacturers within a catalog. For example, the product line XYZ, may have a 10 percent discount, whereas product line ABC may have a 30 percent discount. Discounts must be clearly defined and can be defined for the entire range of products from a single manufacturer.

Variable discount or markup over cost within a single manufacturer's products will be accepted as long as the markups or discounts are made according to well defined grouping of products within all of the manufacturers submitted for award. For Example, all submitted manufacturers products are allocated to one or more submitted groupings with markups as follows: Grp1 @ 20% markup, Grp2 @ 12% markup, Grp3 @ 22% markup,... Grp10 @ 15% markup. That means that all of a manufacturer's products must be allocated to one or more of the bid groupings with no more than the bid markup for each grouping. Variable discounts within a manufacturer's products must operate the same with no less than the bid discount for each grouping. All products submitted must fit into one of the groupings defined.

If variable discount levels or markup over cost are submitted by product line, the manufacturers must be listed with the discount or markup in the white boxes of the quote sheet tab on the PEPPM Bid Submission template. If variable discount levels or markup over costs are submitted by groupings within a product line, the well defined groupings must be listed with the discount or markup in the white boxes of the quote sheet tab on the PEPPM Bid Submission Template. The spreadsheet must be attached to the corresponding catalog category being bid. If there are not enough spaces to enumerate the different discounts/markup over costs for each product line, you must attach a separate spreadsheet alongside the catalog category you are bidding.

VII. 12. New Product and Product Line Pricing

New products introduced by a manufacturer and offered by the Awarded Vendor within the catalog during the term of the contract may be added to the catalog without AGENCY approval as long as they are priced according to the bid discount or markup originally submitted with the bid for that particular manufacturer's product line.

Bidders using variable discounts or markups in well defined pricing subgroups for a specific manufacturer product line within a catalog category should be aware that if a new product does not fit into one of their bid defined pricing subgroups with a same or greater discount or same or smaller markup, it will not be allowed as a bid protected product line under their catalog category contract.

Additional manufacturer or publisher product lines that become available during the term of the contract and that fall within the description of the catalog category awarded may be added to the published PEPPM catalog WITH APPROVAL from the AGENCY. The discount applied shall be equal to or greater than the percent of discount or the markup applied shall be equal to or less than the percent of markup originally bid for the awarded category.

Note: If Awarded Vendor chooses to bid variable discounts or variable markup over costs across manufacturers within their awarded category, new product lines cannot be added during the term of the contract. e.g. Epson discounted at 10%, Proxima at 15%, Sharp at 8%, etc. does not tell us what the discount would be for ABC Widgets if they become available later.

If Awarded Vendor chooses to bid variable discounts or variable markup over costs according to subgroups within manufacturers, new product lines can be added during the term of the contract as long as the manufacturers' products fit within the well defined subgroups submitted at the specific discount percent or higher or specific markup percent or lower. e.g. Laptops discounted at 5%, desktops at 4%, servers at 7%, etc. defines how XYZ Computers' products should be discounted if they become available later.

No products may be added to avoid competitive procurement procedures.

All PRODUCT LINES added to the catalog after the bid award must be submitted to and approved by the AGENCY. The AGENCY may reject any additions, without cause.

Pricing for new products offered at lower discounts or higher markups than was originally bid will not be permitted.

VII.13. Unacceptable Pricing

MARGIN OVER COST pricing method IS NOT acceptable.

VII.14. Allowances for Freight

If bidding markup over cost, the allowance for freight is to be built-in to either the cost of the product or the markup percent.

If bidding discount from list, the allowance for freight is to be built-in to the list price of the product or the discount percent.

Freight charges should never be identified separately. Bidders must reflect a shipping allowance into the cost, markup, list or discount as noted. This means that in all cases the markup percent times the cost should equal the markup amount and the discount percent times the list price should equal the discount amount.

Adding the markup amount to cost or subtracting the discount amount from list should equal the final PEPPM price.

VII.15. Minimum Order

The minimum order qualifying for F.O.B. delivered price via Awarded Vendor's standard shipping method shall be \$500.00 to the same shipping address. Orders for less than this

amount to the same address may be accepted by the Awarded Vendor to ship prepaid with actual shipping charges added to invoice as a separate item. Shipping prices added must be actual documented costs of shipping. Awarded Vendor may charge for expedited shipping if requested by the LEA. Vendor must define Basic Standard Shipping and Non-Standard Shipping such as: Overnight, 2nd day and other shipping methods and costs in their posted ordering instructions.

VII.16. Large Volume Purchase and Voluntary Price Reductions

In lieu of a separate competitive bidding procedure such as a traditional invitation to bid or RFP, the AGENCY reserves the right for LEAs to request Awarded Vendor voluntary price reductions from PEPPM agreement pricing. In the event the voluntary volume price reduction procedure is selected by the LEA, the LEA reserves the right to contact PEPPM Awarded Vendors to determine if a voluntary or volume price reduction would be available based upon the specific quantities and configurations required. The LEA shall obtain a written quotation from the PEPPM Awarded Vendor indicating the volume or voluntary discount pricing and stating that it is an “As per PEPPM YYYY” bid price quote. (YYYY represents the contract year the quote is issued.)

A. AGENCY reserves the right to research, conduct and execute electronic reverse auctions under the PEPPM CSIU and Awarded Vendor Agreement with interested and/or selected PEPPM Awarded Vendors in conformance with appropriate statutes.

B. In the event, one vendor is the sole Bidder on a particular catalog category, AGENCY and LEA reserve the right to seek voluntary discounts from the amount of discount bid before or after an award is made.

VII.17. Deviations

Any deviations from the directions contained in the Instructions tab in the PEPPM 2010 Catalog eBid Product Line Template must be so noted and attached to the official “Quotation Sheets” provided. Product and price lists reflecting the bid price structure must include any and all discounts and deductions from state and federal taxes from which the LEAs are exempt.

VII.18. Price Adjustments

Awarded Vendors must agree to appropriately adjust prices to correspond with manufacturer changes during the contract period should a change from the manufacturer occur in a specific product line. (Awarded Vendors must supply proof of such pass-through price changes upon request.) Such price changes, along with any new product and/or promotion announcements, will be considered an ongoing part of the contract. However, the quoted percent mark-up over cost or discount off of list must remain the same as originally quoted as part of the bid submission.

Note: Awarded Vendor not only must comply with the pricing method originally submitted with their bid but also must make sure that the online catalog posted PEPPM pricing is market competitive. If at any time throughout the term of the contract the AGENCY determines that the online catalog posted PEPPM pricing by the Awarded Vendor is not compliant with the bid price structure or is found not competitive with general street pricing, the catalog category award may be terminated if not corrected.

Specific quotations to LEAs may be provided according to Section VII.16 (Large Volume

Purchase Voluntary Price Reductions) of the PEPPM 2010 Catalog Bid Terms and Conditions. All quotes for PEPPM purchases should have the “as per PEPPM YYYY” (YYYY represents the contract year the quote is issued.) notification to assure that the Awarded Vendor is pricing at or below PEPPM bid price structure.

After the award and throughout the term of the contract, vendor must submit to PEPPM monthly published catalog list pricing to be used as a benchmark for bid price verification.

VII.19. Most-Favored-Nation

Bidder represents that it will use reasonable commercial efforts to ensure that the prices charged to any LEA under this Agreement do not and will not exceed final prices to other similar governmental or education customers in each respective state in which AGENCY is located for the same or substantially similar items or services for comparable quantities under similar terms and conditions.

VII.20. Bid Effective Period

AGENCY requires that a bid response to this solicitation be valid and irrevocable for one-hundred twenty days (120) after opening time and date. Bidder warrants that the bid price structure quoted in their response will be firm for acceptance for a period of not less than one hundred twenty (120) days from the bid opening date.

VII. 21. PEPPM Online Store Front

Vendor must develop and implement an online catalog “store front” according to PEPPM specifications before awarded contract becomes effective. The store front must continue to exist and meet PEPPM’s specifications throughout the term of the contract. If the Vendor terminates its online catalog, or does not maintain PEPPM required specifications, its PEPPM Award will be terminated.

VIII. Bid Procedures and Directions

Sections VIII.1. through VIII.15. provide directions necessary for submitting a complete, responsive and responsible bid.

VIII.1. Responsible Review

Prospective Bidders are bound, not only by the general Terms and Conditions of this bid, but also the directions, specifications, references, and attachments included on the bid form. It is the responsibility of all Bidders to examine the entire bid package, to seek clarification of any item or requirement that may not be clear, and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after due time and date.

VIII.2. Questions and Clarifications

Technical questions on how to fill out the bid form, upload or download attachments or maintain your Epylon account can be directed to the Epylon customer service line at (888) 211-7438. Or questions can be e-mailed to customerservice@epylon.com.

Questions about the PEPPM program or bid, policy and/or an interpretation of the bid may be directed to:

Jim Randecker (570) 523-1155 x2115 or jrandecker@csiu.org

Dave Manney (570) 523-1155 x2174 or dmanney@peppm.org

It is the Bidder’s responsibility to check www.peppm.org before submitting the bid to learn of any clarifications or interpretations related to the bid documents.

VIII.3. Ability to Follow Directions

The Bidders' ability to follow the bid preparation instructions set forth in this solicitation will also be considered to be an indicator of the Bidders' ability to follow instructions should they receive an award as a result of this solicitation. Any contract between the AGENCY and an Awarded Vendor requires the delivery of information and data. The quality of organization and writing reflected in the proposal will be considered to be an indication of the quality of organization and writing which would be prevalent if a contract was awarded. As a result, the bid will be evaluated as a sample of data submission. Subjective judgment on the part of the AGENCY evaluators is implicit in this process.

VIII.4. Receipt and Opening of Bids

Electronically sealed proposals for the furnishing, delivering, and installing, where called for, of the services, materials, implements and supplies, as required by the AGENCY for the PEPPM 2010 Catalog Bid, are due at 3:00 pm Eastern Time, Monday, October 19, 2009. Bids will be electronically unsealed and opened at 10:00 am Eastern Time on Tuesday, October 20, 2009.

Any requested paper-based, ancillary materials, documents with original signatures or fees due for any and all bid(s) for product line(s) must be submitted in a sealed package and submitted to:

**Ms. Cheryl Robol
Central Susquehanna Intermediate Unit
90 Lawton Lane
Milton, PA 17847-9756
ATTN: PEPPM 2010 Catalog Bid**

by 3:00 pm Eastern Time, Monday, October 19, 2009.

When bidding multiple catalog categories, documents for each bid proposal for a catalog category shall be self-contained in an envelope, notebook or other container and submitted in one or more packages. The catalog category container shall be endorsed on the face with the name of the firm or corporation making such proposal and the title of the catalog category (ies) for which the proposal(s) is/are being made.

Bids shall be opened at the time and place as designated. The name of each Bidder shall be publicly read and recorded in the presence of witnesses.

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 informality.

VIII.5. Withdrawal of Bids

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 bid, scroll to the bottom of the page and click the Retract Response Button prior to the bid opening date.

After the bid has been opened, it may not be withdrawn, and the Bidder must supply awarded products at the bid price and in accordance with the Terms and Conditions.

VIII.6. Prudence and Forethought in Submission

Although the deadline for bids is 3:00 pm Eastern Time, Monday, October 19, 2009, it is in the best interests of Bidders to submit their bids well enough in advance to avoid any hindrances out of the control of the Bidder, Epylon or AGENCY. Such hindrances could include delayed mail, delayed delivery trucks, extremely heavy Internet traffic, phone line disruption, busy circuits, unexpected computer outages or weather-related obstacles. AGENCY assumes no responsibility for hindrances out of its control and admonishes Bidders to submit early to avoid any possibility their bids may be late.

VIII.7. Time for Receiving Bids

Electronic bids received prior to the time of opening will be electronically sealed and securely kept unopened. No responsibility will be attached to the AGENCY or its representatives for the premature opening of any paper-based ancillary materials or fees not properly addressed and identified as related to the bid.

VIII.8. Errors in Bids.

Bidders, and their authorized representatives, are expected to fully inform themselves as to the conditions, requirements, and specifications for submitting bids. The bidding system helps ensure one last thorough examination of the bid by requiring Bidders to review their bids one final time before clicking the Submit button. Bidders are advised to print/save a copy of all bid terms and conditions as well as all bid information submitted as part of the bid.

VIII.9. Public Record

All bids submitted to this PEPPM invitation shall become the property of the AGENCY and will become a matter of public record, available for review, subsequent to the award notification. Bids may be viewed at the AGENCY by appointment.

VIII.10. Protests

Protests shall be filed with the AGENCY, and shall be resolved, in accordance with appropriate state statutes. 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 solicitation opening date. A protest of a proposed award or of an award must be filed within ten days after the protester knows or should have known the basis of the protest.

A protest must include:

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

VIII.11. Validity of Proposal/Bid

It is understood and agreed that the Bidder's bid proposal shall be valid and held open for a period of one hundred twenty (120) days from bid opening date.

This date, February 18, 2010, must be the date listed on the bid form indicating how long your bid will be good for. If you list a different date, you must explain your specific objections in the Questions Section or your date will be ignored and these Terms and Conditions will apply.

VIII.12. Exceptions to Terms and Conditions

Any Bidder's exception to the Terms and Conditions may disqualify the bid from consideration at the sole discretion of the AGENCY. Compliance with Terms and Conditions is a factor in the bid evaluation. Conformance to the Terms and Conditions in the solicitation is worth ten points in the bid evaluation process. Any inability to comply with the conditions and specifications as

outlined in this bid must be clearly stated in the answer to the appropriate area in the Question Section. In addition, the specific objections must be stated in your response to the appropriate area in the question section or stated in a document and attached to the bid form.

VIII. 13. Clarity in Response

Responses should be direct, concise, complete, and unambiguous.

VIII.14. Payment of Bid Fees

The CSIU as the coordinating AGENCY for the PEPPM Bid requires a non-refundable payment in the amount of \$200 from each Bidder FOR EACH CATALOG CATEGORY BEING BID to cover the cost of reviewing bids and initial processing of the bid award. One payment covers your submission to one or more states for each catalog category bid.

To pay this fee by credit card, answer the appropriate questions in the Questions Section. Your credit card will be debited \$200 for each catalog category you check-mark as being bid

To pay this fee by check, multiply the number of catalog categories being bid times \$200 and make the check out for that amount payable to CSIU/PEPPM. Include check in a sealed envelope with any other required paper-based bid materials for any catalog category (ies) being bid. The amount of the check should cover the Bid Fee only. Prospective Award Fees must be on a separate check.

The check(s) must be received prior to the bid due date. Mail each check with paper-based bid documents according to directions provided in Section VIII.4.

If any credit card is declined or any check not honored by the bank, PEPPM reserves the right to disqualify a bid or to take such action necessary to collect all fees due as a result of the submission of the bid and any subsequent awards.

VIII.15. Payment of Award Fees

For every catalog category you or your company is awarded, a \$400 award fee is charged to cover the cost of setting up your account, and creating links between PEPPM.ORG and Awarded Vendors site. This fee may be paid by credit card, and your card will only be charged if you are a successful Bidder and only \$400 per catalog category awarded.

To use a credit card for the payment of these fees, answer the appropriate questions in the Questions Section. If you cannot use a credit card, you may send an individual \$400 check per catalog category being bid made out to CSIU/PEPPM in a sealed envelope with any other required paper-based bid materials for each product line being bid.

If you are not the winning Bidder for every catalog category you bid, the award fee check for each unsuccessful bid will be returned to you.

The amount of the check you send PEPPM should cover the Award Fee only. The Bid Fee must be on a separate check. Each Award Fee for each catalog category MUST be a separate check.

The check(s) must be received prior to the bid due date. Mail each check with paper-based bid documents according to directions provided in Section VIII.4.

IX. Bid Evaluation and Award Process

Sections IX.1. through IX.8. relate to the evaluation procedures of the bid and determination of awards.

IX.1. Award or Rejection of Bids.

PEPPM contracts will be awarded to only responsive and responsible Bidders providing best values. Awarded Vendors must agree to comply with all bid provisions, provide bid prices that are reasonable and are to the interest of the AGENCY and its eligible buyers to accept them (as determined by the results of the scoring process identified in Section IX.5 below.) The AGENCY reserves the right to accept or reject any or all bids.

IX.2. Non-Responsive Bid

Any bid that is not submitted before the bid deadline or does not conform to the mandatory or essential terms, conditions and/or specified requirements for this solicitation may be considered non-responsive.

IX.3. Bid Negotiations

Where there is no competition that would result in a better contract, negotiation may be conducted until a detailed and competitive agreement is reached.

IX.4. Qualification for Evaluation

In accordance with accepted standards of competitive sealed bid awards as set forth in the Procurement Code of the state of the AGENCY, competitive sealed bid awards will be made to only responsive and responsible Bidders providing best values. To qualify for evaluation, a bid must have been submitted on time, and materially satisfy all mandatory requirements identified in this document. To be considered responsive, a bid must reasonably and substantially conform to all the Terms and Conditions in the solicitation. Deviations or exceptions stipulated in Bidder response, while possibly necessary in the view of the Bidder, may result in disqualification. Language to the effect that the Bidder does not consider this solicitation to be part of a contractual obligation will result in that Bidder's bid being disqualified.

Note: Any deviation from requirements indicated herein must be stated on an attachment or described in one of the answers to Questions. Otherwise, it will be considered that bids are in strict compliance with all requirements, and any successful Bidder will be held responsible.

IX.5. Scoring Basis

The award of all bids will be made to competing Bidders deemed most capable of serving the LEAs determined through review and evaluation of the submitted bid materials and research performed by PEPPM and AGENCY representatives concerning Bidder capability.

The evaluation criteria and points for this solicitation are as follows:

- 1) Conformance to the Terms and Conditions in the solicitation – 10 points
- 2) Submission of required payments, information and forms (bid completeness) – 10 points
- 3) Bidder supply source – 5 points
- 4) Bidder service capabilities and pricing – 5 points
- 5) Bid prices – 80 points
- 6) Bidder's qualifications – 10 points
- 7) Past performance – 10 points
- 8) Marketing plan – 5 points
- 9) HUBs - 5 points

- 10) Number of manufacturer product lines submitted with bid - 5 points
- 11.) Return goods policy – 5 points

(Total points possible – 150)

Bidders should note that price represents over 50% of their final score.

IX.6. Past Performance Information (PPI)

PPI is relevant information regarding a Bidder’s actions under previously awarded contracts with schools, local, state, or federal agencies. It includes the Bidder’s record of conforming to specifications and to standards of good workmanship; the Bidder’s history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the Bidder’s businesslike concern for the interests of the customer. Particular attention will be given to any unpaid PEPPM invoices covering the past three years. These payments are part of your past performance regarding the PEPPM program and your contractual obligations. Where no past performance information is available, the reports of references will be used to gauge past performance.

IX.7. Timeline for Awards

It is the intent that awards will be made in a timely fashion to become effective January 01, 2010.

IX.8. Multiple Awards

The AGENCY may make multiple awards for each catalog category if it determines that it is advantageous to and best serves the interests of the LEAs, taking into consideration the evaluation factors as set forth above. When multiple awards occur in a catalog category, they may or may not include some of the same product lines. In these cases, it is up to the buyer to verify which Awarded Vendor is offering the best PEPPM price.

X. Post Award Requirements

Sections X.1. through X.12. relate to requirements of both parties after award decisions are made and through the duration of the contract term.

X.1. Requests for Documents; Audit Provisions

A. Awarded Vendors shall cooperate with AGENCY’s or its designated agent’s reasonable requests for information and documentation relating to Purchase Orders under these Terms and Conditions.

B. The Awarded Vendor agrees to maintain records throughout the term of the contract which will support the prices charged and costs incurred for the Purchase Order in accordance with the bid price structure and provide those records to PEPPM or its representatives upon reasonable request.

Note: If a Bidder utilized the “Discount From List Price” method, the Bidder is responsible for maintaining records of the monthly List Price utilized in calculation of the PEPPM discounted pricing that was provided to PEPPM for posting. If a Bidder utilized the “Markup Over Cost” method, the Bidder is responsible for maintaining records of the monthly cost data utilized in the calculation of their PEPPM pricing that was provided to PEPPM for posting.

C. The Awarded Vendor shall preserve books, documents, and records that relate to price data

for the Purchase Order for a period of three (3) years from date of final payment. Awarded Vendor will cooperate in good faith with reasonable requests for copies of PEPPM related purchase orders and/or invoices, resulting contract documents, delivery/purchase orders, invoices or correspondence directly relating to any resulting agreement.

X.2. Non-Performance

The Awarded Vendor agrees that its presence on PEPPM is not a guarantee of any sales to LEAs. Bidder agrees to market its products to LEAs to generate sales. The Awarded Vendor is expected to achieve a minimum of \$5,000 of PEPPM sales per quarter for each awarded catalog category. Failure to achieve that level may result in the termination of the Awarded Vendor's contract for that catalog category at the end of any three-month period.

Failure to comply with any requirements of the contract by the Awarded Vendor, which cannot be rectified within 30 days of written notification by PEPPM, may result in the termination of the Awarded Vendor's contract for the catalog category and removal from the PEPPM program.

X.3. Leasing Information

Awarded Vendors must submit a file detailing lease arrangements available to LEAs where applicable. While lease arrangements are not part of the bid award criteria, PEPPM will post the information via PEPPM Online. (Awarded Vendor shall be required to provide such information electronically in a Microsoft Word document.) If the Awarded Vendor makes changes to their Terms and Conditions during the term of the contract, the new document must be filed with PEPPM for archiving and posting.

If the Awarded Vendor can provide leasing arrangements to an LEA and the LEA is interested in leasing equipment from the Awarded Vendor for the awarded product line(s), the Awarded Vendor must provide the following support to the LEA in making sure that the correct paperwork and order process is followed:

- The equipment base price of the lease was derived from using PEPPM discounted prices
- The Awarded Vendor shall provide a PEPPM Quote to the LEA showing that the base price for the leased equipment is at or below the posted PEPPM price

The LEA shall submit a copy of all leasing documents, any associated PEPPM quotes and any other Awarded Vendor required document(s) with a Purchase Order.

Awarded Vendor may utilize a state procurement agency approved lease agreement Terms and Conditions or may substitute its own leasing Terms and Conditions with the approval of the buyer.

X.4. Employee Purchase Plans

In preparing responses, Bidders should understand that after a notice of award, each winning Bidder will be requested to submit a file describing their employee purchase program (if one exists) including product and price information. PEPPM will post information for such programs on its website. (Awarded Vendor will be required to provide that information electronically in a Microsoft Word document).

X.5. Vendor Contacts and Ordering Instructions

Bidders should understand that FOLLOWING the award of catalog bids, all Awarded Vendors

must provide specific “Vendor Contacts and Ordering Instructions” which contain information that describes the ordering procedures participating LEAs must follow when submitting purchase orders. That information must contain the ordering address (es), contact person(s), phone number, fax number, e-mail address, etc., return policy, PEPPM’s fax number for receipt of purchase orders and the link to www.epylon.com for eCommerce ordering. The contact information must be provided for Awarded Vendors. This information needs to be submitted in electronic format (Microsoft Word for Windows or Mac) utilizing the prescribed Vendor Contacts and Ordering Instruction Template by all Awarded Vendors for each catalog category awarded in each state.

In addition to your unique instructions, ordering instructions to the LEAs must also contain the following language: "All purchase orders must be faxed to (800) 636-3779 or submitted through www.epylon.com to guarantee bid protection."

A template will be provided to assist Awarded Vendors in preparing the Vendor Contacts and Order Instructions document.

Post award, your Vendor Contacts and Ordering Instructions document must be provided in Microsoft Word format using the required Vendor Contacts and Ordering Instruction Template form no later than December 15, 2009 and must be emailed to Michelle Kipple at mkipple@peppm.org. This file must be clearly identified/labeled by including the title, “Vendor Contacts and Ordering Instructions,” Awarded Vendor name, catalog category bid, and date.

X.6. Online Catalog Website - Up, Ready, and Functional

In preparing responses, Bidders should understand that following the award of catalog bids, all Awarded Vendors will be required to submit to PEPPM a URL link to a functioning, online catalog to be posted on the PEPPM pages along with the Vendor Contacts and Ordering Instructions Template for publication no later than December 15, 2009. The CSIU will post the URL link and Ordering Instructions for LEA access via the PEPPM Online Internet service and the Epylon eCommerce system.

X.7. Online Catalog Updates

Awarded Vendors must maintain current PEPPM discounted pricing for their online catalog. Failure to maintain current information and pricing may result in the suspension of the processing of orders until conditions of the bid are met. Continued negligence in maintaining current product information and pricing may result in termination of the PEPPM award. Pricing can change throughout the term of the contract so long as the prices are within the bid structure that was originally submitted on the quote sheet.

- Vendor Contacts and Ordering Instructions need to be submitted on the required Template in Microsoft Word format (all in one file)
- Online Catalog Pricing needs to be updated within the required timeline
- If using discount from list, vendor must provide a snapshot file of the published catalog price list used as the basis for their bid discount to PEPPM for bid price verification on a monthly basis
- If using markup over cost, vendor must provide a snapshot file of the costs used as the basis for their bid pricing to PEPPM for bid price verification on the first of

<p>each month during the contract term.</p>
<p>X.8. Specials and Promotions In preparing responses, Bidders should understand that Awarded Vendors may submit specials and promotions files for PEPPM Online posting: --Start and stop date of Promotion must be included within the promotion itself --Format needs to be either Microsoft Word or Adobe PDF -- Information should be submitted as one file per product line</p>
<p>X.9. Banner Advertising In preparing responses, Bidders should understand that Awarded Vendors may be able to submit banner advertising for PEPPM Online. Such submissions need to adhere to the following requirements: -- File size not to exceed 12Kb per image -- Image size not to exceed 450 pixels x 70 pixels -- Maximum of five banner images per product line -- Exact specification will be worked out on an individual basis</p>
<p>X.10. Catalog Functionality Awarded Vendors have the option of using a cXML punch-out solution, whereby buyers log on to Epylon and are sent to the Awarded Vendor's own proprietary web site, with Epylon's shopping cart functionality ("Retriever/PunchOut").</p> <p>The Awarded Vendor choosing Retriever/PunchOut must be able to configure its own proprietary web site to Epylon Retriever/PunchOut, according to Epylon's format and specifications, as contained in Epylon Retriever cXML specification document. These specifications may be obtained from Epylon upon the signing Epylon's standard Non-Disclosure Agreement.</p>
<p>X.11. Audit and Inspection Rights The AGENCY and its CPA firm will need access to cost/published list price data to ensure bid compliance during the contract period. The AGENCY reserves the right to audit the Awarded Vendor for compliance with the published/quoted bid data. Awarded Vendors will be required to routinely submit data for bid compliance upon request.</p>
<p>X.12. Participation in Training and Responding to eQuotes Vendors who receive an award for one or more catalog categories will be expected to have representative staff participate in either an in-person or on-line training session on how to use Epylon's Public View software. Awarded Vendors are expected to respond in a timely manner to eQuote requests submitted to them through Public View.</p>
<p>XI. Other Terms and Conditions Sections XI.1. through XI.14. relate to miscellaneous legal provisions that are part of the bid and resulting CSIU and Awarded Vendor Agreement.</p>
<p>XI.1. E-Commerce Partner Contract Termination In the unlikely event that the contract between CSIU and its e-commerce partner, Epylon, is terminated by either CSIU or Epylon, the CSIU reserves the right to invoke a "Prorated Fixed Fee" in lieu of the "Transaction Fee" as originally outlined in Section III.4 above and Item 2 of the CSIU and Awarded Vendor Agreement. The intent of this provision is to provide for continuation of the PEPPM program in the event of the termination of the CSIU/PEPPM and Epylon contract for any reason.</p> <p>This option will become effective at the discretion of PEPPM upon the termination of the CSIU/PEPPM and Epylon contract if deemed necessary to continue PEPPM contracts and</p>

services to both Awarded Vendors and LEAs. It will remain in force for the remaining term of this agreement. Awarded Vendors will have the option of continuing their PEPPM contract under these terms.

The following is a detailed listing of amended Terms and Conditions that will be implemented and executed if termination of the CSIU/PEPPM and Epylon contract occurs and the “Prorated Fixed Fee” system is invoked. This Section also includes the formula on how the “Prorated Fixed Fee” will be calculated for each Awarded PEPPM Vendor.

1. The Transaction Fee for all purchase orders after the termination date WILL NO LONGER BE IN EFFECT.
2. Each Awarded Vendor will be assessed and invoiced a “Prorated Fixed Fee” of \$2400 per year for each year of the contract and extension year (if extended).
3. Purchase orders will no longer be faxed to PEPPM. All purchase orders will be submitted directly to the Awarded Vendor by the LEA.
4. Awarded Vendor will be required to submit a report of all sales twice per year for each of the remaining years of the contract.
5. PEPPM will promptly notify all LEAs of this change in procedure should this provision be activated.

XI.2. Bid Document Ownership Rights

The AGENCY or any LEA shall have the authority to reproduce, distribute (within the AGENCY or LEA only), and use any submitted report, data, or material, provided that the AGENCY or any LEA agrees to reproduce the copyright notice and any other legend of ownership on any copies thereof any software or modifications and any associated documentation that is designed or developed and delivered to the AGENCY or LEA as part of the performance of the bid is subject to any licenses which accompany such items or as agreed to by Awarded Vendor and the AGENCY or any LEA. This bid document and all attachments are copyrighted by PEPPM, Epylon and each respective state AGENCY.

XI.3. Patent, Copyright, and Trademark Indemnity

The Bidder warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of the items or the process provided or used in the performance of the Purchase Order which is covered by a patent, copyright, or trademark registration or b) any copyrighted matter in any report document or other material provided to the AGENCY or LEA under the Purchase Order. The Awarded Vendor shall defend any suit or proceeding brought against the AGENCY or any LEA on account of any alleged patent, copyright or trademark infringement in the United States of the item(s) provided or used in the performance of the agreement. This is upon condition that the AGENCY or any LEA shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the AGENCY or any LEA may participate in or choose to conduct and at its own expense, the defense of any such action. If information and assistance are furnished by the AGENCY or any

LEA at the Awarded Vendor's written request, it shall be at the Awarded Vendor's expense, but the responsibility for such expense shall be only that within the Awarded Vendor's written authorization.

The Awarded Vendor shall pay all damages, costs, and expenses, including attorney's fees that the Awarded Vendor or the AGENCY or any LEA may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any item(s) provided or used in the performance of the Purchase Order that a court finally awards. If any of the item(s) provided by the Awarded Vendor are held in such suit or proceeding to constitute infringement and the use is enjoined, the Awarded Vendor shall, at its own expense and at its option, either procure the right to continue use of such infringement item(s), replace them with non-infringement equal performance item(s) or modify them so that they are no longer infringing. If the Awarded Vendor is unable to do any of the preceding, the Awarded Vendor agrees to remove all the equipment or software which is obtained contemporaneously with the infringing item(s), or, at the option of the AGENCY or LEA, only those items of equipment or software which are held to be infringing, and to pay the AGENCY/LEA: 1) any amounts paid by the AGENCY or any LEA towards the item(s) of the product, less straight line depreciation; 2) any license fee paid by the AGENCY or any LEA for the use of any software, less a reasonable amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Awarded Vendor under this Section continue without time limit. No costs or expenses shall be incurred for the account of the Awarded Vendor without its written consent.

XI.4. Assignment of Antitrust Claims

The Awarded Vendor and the AGENCY or LEA recognize that in actual economic practice, overcharges by the Awarded Vendor's suppliers under this contract and resulting from violations of state or federal antitrust laws are in fact borne by the AGENCY or any LEA. As part of the consideration for the award of the Purchase Order, and intending to be legally bound, the Awarded Vendor assigns to the AGENCY or any LEA all right, title and interest in and to any claims the Awarded Vendor now has, or may acquire, under state or federal antitrust laws relating to the item(s) which are the subject of the Purchase Order, to the extent the AGENCY or LEA was actually harmed.

XI.5. Indemnification

Each party shall hold the other harmless from any liability, including court costs and expenses of litigation, by reason of claims arising out of this Agreement, except to the extent resulting from the acts or failures to act of the indemnified party.

In the event that the party purchasing from the Awarded Vendor is a state agency under Pennsylvania law (e.g. SSHE members), then the provisions of this Indemnification Section shall not apply.

XI.6. Applicable Law

The Agreement and all applicable LEA 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 laws provisions) and the decisions of the respective state's courts. The Awarded Vendor consents to the jurisdiction of any court of the respective state and any federal courts in those states, waiving any claim or defense that such forum is not convenient or proper. The Awarded

Vendor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by the respective state's law.

XI.7. Amendments

The Agreement will represent the complete Agreement between the parties, superceding any other prior or contemporaneous written or oral Agreements. Any changes, corrections, or additions to the Agreement shall be in writing in the form of a supplemental agreement signed by all necessary parties and setting forth therein the proposed change.

XI.8. Severability

Should any term of the agreement be rendered unlawful by a court of competent jurisdiction or any legislative act, then the parties shall give effect to the balance of the agreement to the extent possible.

XI.9. Limits of Vendor Liability

The Awarded Vendor's liability to AGENCY or any LEA under the agreement shall be limited to the lesser of three million dollars (\$3,000,000) or the total price for the products, software and/or services as shown on the purchase order. This limitation will apply, except as otherwise stated in this clause, regardless of the form of action, whether in contract or in tort including negligence. This limitation does not, however, apply to damages for bodily injury or damage to real property or tangible personal property for which the Awarded Vendor is legally liable, nor will the limitation apply to the Awarded Vendor's indemnity of the AGENCY or any LEA for patent, copyright or trademark infringement.

XI.10. Procurement Code

The Procurement Code in the state which the LEA resides and to the extent they exist, the Procurement Rules in the state which the LEA and the LEA Procurement Rules are a part of this document as if fully set forth herein.

XI.11. Legal Remedies

All claims and controversies shall be subject to the State Procurement Code in which the LEA resides.

XI.12. Provisions Required by Law

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

XI.13. Rights of LEAs

In preparing responses, Bidders should understand that the rights and remedies of the LEA provided above shall not be exclusive and are in addition to any other rights and remedies provided by law and under the contract.

XI.14. Copyright

These Terms and Conditions are copyrighted by CSIU and the Epylon Corporation, September 14, 2009