CalSave
Education + Government Purchasing

MONTEREY COUNTY OFFICE OF EDUCATION (MCOE)

Request for Bids (“RFB”)

Technology Buyback Services

Electronic Bid #550862
Bid Due Date: Wednesday, June 24, 2026, at 3 p.m. PDT

Terms and Conditions

I Introduction and Overview

I.1 Bid Title

“Technology Buyback Services”

I.2 Electronic Bid Number

The applicable electronic Bid form is numbered 550862

I.3 Bidding Agency

Superintendent of Schools
Monterey County Office of Education
901 Blanco Circle
P.O. Box 8081
Salinas, California 93912-0851

I.4 Bid Scope

The Monterey County Office of Education is seeking a qualified, experienced contractor who possesses the necessary resources and capabilities to develop a trade-in and buyback program for participating agencies to maximize the revenue of retired technology assets such as laptops, desktops, Chromebooks, tablets, and other similar or related technology devices. The right to use this Contract will be made available to all public-school districts, K-12 private schools, charter schools, colleges, universities, municipalities, and other public agencies as allowed by law.

I.5 Organization of Terms and Conditions

Section and paragraph headings, hyperlinks, and sidebar annotations are provided only for description, ease of use, reference, and emphasis.

I.6 The CalSave Cooperative

The Monterey County Office of Education ("MCOE") is issuing this Bid in cooperation with the CalSave program, the purchasing cooperative founded by MCOE and currently administered by the Epylon Corporation ("Epylon"). MCOE and CalSave offer all education agencies in California and other eligible buying agencies the use of MCOE contracts as may be allowed by California law.

I.7 Bid Due Date

All Bids must be received electronically by 3 p.m. PDT, Wednesday, June 24, 2026 (the "Bid Due Date").

MCOE may extend the Bid Due Date and time at any time in advance of the Bid Due Date by issuing an addendum to this RFB and notification in the Notes Section of the electronic Bid request.

I.8 Bid Opening

Bids will be opened and publicly read at 3 p.m. PDT, Wednesday, June 24, 2026 (the "Bid Opening Date"), at 630 San Ramon Valley Boulevard, Suite 210, Danville, California 94526. If public gatherings are prohibited or unreasonable due to any declared emergency, pandemic, or disruption, a public online opening will be held by way of video-conferencing software. Information on any such change in venue and any necessary online credentials will be posted in the Notes Section of the electronic Bid.

I.9 Pre-Bid Meeting

No pre-Bid meeting will be held for this RFB.

I.10 Bid Contact

Suzanne Barchi
suzbarchi@epylon.com

I.11 Other Important Dates

- Questions — June 16, 2026
- Exceptions Due Date — June 9, 2026
- Tentative Award Date — July 15, 2026
- Contract Start Date — July 15, 2026

I.12 Advertising and Legal Notice of the RFB

The Agency's legal advertising requirements are met with legal notices in the Salinas *Californian, a* newspaper of general circulation in Monterey County where the Agency is located.

I.13 Contract Term

The initial term of the awarded Contracts shall begin on July 15, 2026, and continue until July 14, 2029, unless terminated, cancelled, or extended.

II Bid Document Definitions and Interpretations [Return to Top]

II.1 Captions

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

II.2 Capitalized Terms

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

II.3 Use of Pronouns

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

II.4 Provisions Required by Law

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

II.5 Non-Exclusive Contract

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

II.6 Definition of "Agency"

"Agency" shall mean the Monterey County Office of Education, administered under the authority of the publicly elected Superintendent of Schools, and construed to include herself and her officers, employees, and agents.

II.7 Definition of "Agreement"

"Agreement" shall mean the Awarded Vendor Agreement between Agency and the Awarded Vendor.

II.8 Definition of "Awarded Vendor"

"Awarded Vendor" is the Bidder declared by the Agency to be the company providing the highest projected overall value to Eligible Entities based upon the evaluation criteria established under this RFB. An Awarded Vendor may also be called "Contractor."

II.9 Definition of "Bidder"

"Bidder" is any firm, company, individual, business, partnership, joint venture, or other entity that has opened a Bid form to respond or completed and submitted a response to this RFB.

II.10 Definition of "CalSave"

CalSave is a California cooperative purchasing program specializing in the development and administration of purchasing contracts awarded by the Monterey County Superintendent of Schools.

II.11 Definition of "Clarification"

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

II.12 Definition of a" Commercially Available Base Price"

A "Commercially Available Base Price" or a "clearly identified and commercially reasonable, verifiable market valuation methodology" is construed to mean a price list that has widespread availability and distribution, as opposed to a custom or one-off list. A key component of a Commercially Available Base Price is that its base pricing applies to a wide audience and cannot be easily changed or manipulated to raise or lower the Bid formula prices for a single customer.

II.13 Definitions of "Contract Documents," and "Contract"

Contract Documents Between Agency and Awarded Vendor. As between the Agency and Awarded Vendor, the "Contract Documents" consist of this RFB, its Terms and Conditions, any applicable state-specific terms and conditions, all information incorporated into the electronic Bid form by Agency or Bidder, the Bidder's responses to Questions, the Bidder's CalSave Bid Quote Sheet(s), the Bidder's pricing spreadsheet, any Bidder's Services Forms, any Vendor quotations, the Agreement, all other attachments and exhibits to the RFB Bids, all addenda to the RFB issued before the Bid Opening Date, and all subsequent written amendments to the Agreement (e.g. adding state-specific terms and conditions). The Contract Documents form the "Contract" between Agency and the Awarded Vendor. The Contract will include any mutually agreeable Statement of Work executed between the Eligible Entity and an Awarded Vendor.

Contract Documents Between Awarded Vendor and Eligible Entity. As between an Eligible Entity and an Awarded Vendor, the "Contract Documents" consist of this RFB, its Terms and Conditions, any applicable state-specific terms and conditions, all information incorporated into the electronic Bid form by Agency or Bidder, the Bidder's responses to Questions, the Bidder's CalSave Bid Quote Sheet(s), the Bidder's pricing spreadsheet, any Bidder's Services Forms, any Vendor quotations, the Agreement, all other attachments and exhibits to the RFB Bids, all addenda to the RFB issued before the Bid Opening Date, and all subsequent written amendments to the Agreement (e.g. adding state-specific terms and conditions). The Contract Documents form the "Contract" between Agency and the Awarded Vendor. The Contract will include any mutually agreeable Statement of Work executed between the Eligible Entity and an Awarded Vendor.

II.14 Definition of "Cooperative Procurement Code"

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

II.15 **Definition of "Effective Date"**

The "Effective Date" of a Buyback Agreement is the date on which the Awarded Vendor receives a signed Agreement from the Eligible Entity based on the Vendor's Quotation accepted by the Eligible Entity.

II.16 **Definition of "Eligible Entity"**

"Eligible Entity" means an LEA or other Eligible Organizations that qualify to sell surplus personal property. Several Sections provide a detailed description of "Eligible Entities" starting here.

II.17 **Definition of "eCommerce Consultant"**

The "eCommerce Consultant" is a private purchasing services company engaged by Agency to help facilitate the Bid process and provide a multitude of procurement services, including Bid development, consulting, eCommerce, marketing, order management, and accounting services.

II.18 **Definition of "eCommerce Merchant Agreement"**

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

II.19 **Definition of "Epylon"**

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

II.20 **Definition of "Grading Standards"**

"Grading Standards" are the guidelines assessing the quality and condition of surplus technology being purchased from an Eligible Entity. This RFB's grading standards are listed in Section VI.5. If submitting an RFB that deviates from Section VI.5, a Bidder must provide an attachment for its standards and describe how they differ from Section VI.5.

II.21 **Definition of "ISO 14001:2026"**

"ISO 14001:2026" means the International Organization for Standardization ("ISO") environmental management system standard designated as ISO 14001, including the 2026 edition, and any successor revision or replacement standard adopted during the term of the Contract.

ISO 14001 establishes internationally recognized requirements for an organization's environmental management system ("EMS"), including policies, procedures, operational controls, monitoring practices, corrective actions, continuous improvement measures, and management oversight intended to minimize environmental impacts.

II.22 **Definition of "LEA"**

The term "Local Educational Agency" is defined clearly starting in Section III.3 and includes Eligible Entities.

II.23 **Definition of "Non-Responsive Bid"**

Any Bid that does not reasonably and substantially conform to the mandatory or essential terms, conditions, or specified requirements for this solicitation shall be considered" Non-Responsive." Bids determined to be Non-Responsive will not be considered for an award.

II.24 Definition of "Product"

"Product" is a term for those items, devices, and technologies deemed surplus by Eligible Entities and purchased by the Awarded Vendor.

II.25 Definition of "Responsible Bidder"

A "Responsible Bidder" is a vendor that has submitted a Responsive Bid and that possesses the capability and qualifications to perform the Contract's disposal and refurbishment requirements, plus one who has the financial strength, integrity, and reliability to assure good-faith performance. Agency must determine a Bidder to be a Responsible Bidder before awarding it a Contract.

II.26 Definition of "R2v3"

"R2v3" means the current version of the Responsible Recycling ("R2") Standard for electronics re-use, refurbishment, recovery, recycling, and data destruction developed and administered by SERI, including any successor standard or updated revision adopted during the term of the Contract.

II.27 Definition of "Responsive Bid"

A 'Responsive Bid" is a Bid that reasonably and substantially conforms to the mandatory or essential terms, conditions, and specified requirements of this RFB. A Bid must be a Responsive Bid to receive award consideration.

II.28 Definition of "Transaction Fee"

"Transaction Fee" is that fee paid by an Awarded Vendor on the net dollar amount of buyback payments made to an Eligible Entity and any ancillary services sold under an Agency Contract. "Transaction Fee" is more fully defined elsewhere in these Terms and Conditions.

III Legal Authority and Eligible Agencies [Return to Top]

III.1 Agency Role in California

Agency is governed by an elected county Superintendent of Schools, an office established by Article IX of the California Constitution. The current office holder is Deneen Guss, empowered with the authority to award and enter into contracts.

III.2 Authority for Bidding, Contracting, and Cooperative Use of Buyback Contracts

Exercising powers under Article IX of the California Constitution, the Monterey County Superintendent of Schools, governing and administering the MCOE, solicits Bids under her Constitutional authority and applicable California statutes.

California Education Code Section 17545 states that "the governing board of any school district may sell for cash any personal property belonging to the district if the property is not required for school purposes, or if it should be disposed of for the purpose of replacement, or if it is unsatisfactory or not suitable for school use."

Section 17545(b) expressly allows other agencies to piggyback on an MCOE Bid, saying, "The governing board may choose to conduct any sale of personal property authorized under this section by means of a public Bid conducted by employees of the Eligible Entity or other public agencies, or by contract with a private auction firm."

Agency also claims bidding authority for surplus sales and use of its cooperative surplus Contracts under the California Public Contract Code, the Education Code, and the Government Code for other public agencies to use Contracts arising out of this RFB under the authority of Government Code 6502 by mutually exercising powers common to the parties, whether in California or outside the state.

Therefore, the Agency intends that the Contracts awarded under this RFB be made available for use by LEAs and other Eligible Organizations in all 50 U.S. states, Washington D.C., Puerto Rico, and other territories to the fullest extent permitted by law, as may be amended from time to time.

III.3 Governing Law and Venue

The laws of the State of California govern and prevail in the interpretation and administration of the Contract. California-specific Terms and Conditions prevail over any General Terms and Conditions. Any provision of law and clause required by law to be included in the Contract shall be deemed to be included herein, and the Contract shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction.

The venue for any litigation arising out of or related to the Contract shall be with either the Superior Court in and for the County of Monterey, State of California or the Federal District Court for the Northern District of California, San Jose Division.

III.4 Local Educational Agencies (LEAs)

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

- Public school districts
- Regional Occupational Programs
- Intermediate units and county offices of education
- BOCES in states outside of California
- State-approved private schools
- Public libraries
- Nonpublic schools
- Charter schools
- Community colleges
- Other organizations defined as "LEAs" under applicable law

At a minimum, an Awarded Vendor must agree to serve all LEAs in California. At its option, an Awarded Vendor may elect to serve LEAs in other states.

III.5 Other Eligible Organizations

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

- Tax-exempt, nonprofit colleges, and universities, other than community colleges which fall within the definition of LEAs
- Other tax-exempt, nonprofit educational institutions or organizations which do not fall within the definition of LEAs
- County governments, local municipalities, county/municipal/public authorities, and special districts
- State agencies
- Other political subdivisions
- Other tax-exempt, nonprofit organizations associated with the business of LEAs

- Other tax-exempt, nonprofit fire companies, rescue companies, or ambulance companies
- Other entities, including a council of governments or an area government, which expends public funds for the procurement of supplies, services, or construction
- Public utility districts, transit authorities, port authorities, elected sheriffs, and county fairs
- Other organizations, institutions, or entities permitted under applicable law to avail themselves of Agency Contracts

III.6 Eligible Entities

The LEAs and other Eligible Organizations are sometimes collectively referred to in this RFB as, each an "Eligible Entity" or "LEA" and collectively the "Eligible Entities." Unless approved by the Awarded Vendor, Eligible Entities do not include U.S. federal governmental entities.

III.7 Extending Contract Awards to Other States

Although this RFB is tailored for all Eligible Entities in California, the Agency intends to allow for use of Agency Contracts by Eligible Entities residing inside or outside of the state of California that wish to participate.

In addition to California Eligible Entities, the Agency will make its Contracts available to other Eligible Entities residing inside or outside of the state of California when:

- The Agency Contract meets the Eligible Entity's surplus bidding requirements and is judged to be in the Eligible Entity's best interest
- The Awarded Vendor is willing to extend its CalSave buyback prices and Contract terms to the Eligible Entity
- The order is processed according to CalSave buyback procedures or approved deviations

III.8 Exercise of Common Powers

By buying technology devices under an Agency Contract or entering into a contract with an Awarded Vendor under an umbrella Agency Contract, an Eligible Entity outside of California or an Eligible Agency inside of California buying under the authority of Government Code 6500 and 6502, attests, acknowledges, and agrees that:

- It is an Eligible Organization with authorized procurement powers or surplus property disposal powers itself
- It is bound by all of the Terms and Conditions of this RFB, and the Contract applicable to the Eligible Entity including, without limitation, these Terms and Conditions, state-specific terms and conditions, and applicable law
- No other Eligible Entity nor the Agency shall be responsible for obligations on account of another Eligible Entity's transactions, it being the intent that any such disposal arrangements shall constitute the separate Agreement of the Eligible Entity with the particular Awarded Vendor
- Agency may disclose non-specific aggregate Eligible Entity information (such as the geographic spread of participants and number and types of participants) to third parties
- The Agency and Eligible Entity intend that through an Eligible Entity's disposal of property under a Contract with an Awarded Vendor are bound by these Terms and Conditions, and this constitutes the necessary intergovernmental agreement between the Eligible Entity and Agency to satisfy the Cooperative Procurement Code requirements and any requirements for an interlocal agreement under the applicable procurement or surplus property code of the Eligible Entity's state. No additional agreement is required except where additional

agreements are required by applicable law (if, an Eligible Entity requests that the Agency execute a separate interlocal agreement, Agency will do so, provided such interlocal agreement is in form and substance acceptable to Agency)

III.9 Compliance with Laws and Specific Terms and Conditions

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

Eligible Entities in states outside of California may have further requirements or conditions listed with this Bid that clarify the ability of LEAs or other Eligible Entities to piggyback other state or cooperative procurement Contracts like Agency's. State-specific terms and conditions may be listed in an addendum to this RFB and pertain only to the individual states listed. The inclusion or absence of any state-specific terms and conditions should not be construed as tacit approval by the state for purchases through the CalSave cooperative purchasing program. Adherence to the state-specific terms and conditions listed only applies if a Bidder extends its Agency Contract to LEAs (and other Eligible Entities, if applicable) in that specific state.

Other state-specific terms and conditions may be determined after the Bid is awarded and added to the Contract via an amendment to the Awarded Vendor Agreement agreed upon by the Awarded Vendor and Agency, or added to an LEA's or other Eligible Entity's Purchase Order via an amendment agreed upon by the Awarded Vendor and LEA. The Awarded Vendor's agreement to either of the foregoing amendments shall not be unreasonably withheld, conditioned, or delayed.

III.10 eCommerce Merchant Agreement

Awarded Vendors will be bound to the eCommerce Merchant Agreement, which is attached to the electronic Bid. Also See Section IV. 2

III.11 Agency's Interest in a Contract Resulting from This RFB

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

In no event shall Agency be liable to any Awarded Vendor or Eligible Entity for any special, indirect, incidental, exemplary, reliance, consequential, or punitive damages, lost profits, or other business interruption damages whether based on breach of Contract, tort (including negligence), Product liability or otherwise. Any liability of Agency shall be limited to direct, actual damages only, and in no event shall the Agency be liable for damages over the Transaction Fee it receives on the applicable transaction. Eligible Entities and Awarded Vendors acknowledge that the limitations set forth above are fundamental elements of the CalSave program and resulting Agreements and the Agency would not provide the CalSave program nor enter into the Agreements absent such limitations.

III.12 New Laws; Change to Existing Laws

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

IV CalSave Fees [Return to Top]

IV.1 No Bidding or Award Fees

There are no Bid fees, evaluation fees, or other costs related to a company bidding in response to this RFB.

IV.2 Transaction Fees

Awarded Vendors shall be required to pay a Transaction Fee for all transactions by Eligible Entities made through the awarded Contracts. This applies to all orders, regardless of the method used to submit the order, the quantity of Products and services, or the dollar amount of the order.

The Transaction Fee amounts shall be two percent (2%) upon the final total amount inuring to a participating agency of any buyback transaction. The eCommerce Consultant will collect the Transaction Fee from the Awarded Vendor based on its quarterly reports.

The Transaction Fee described here is the same as the agreed-upon eCommerce Consultant Marketing Fee contemplated by Section 7 of the Epylon eCommerce Merchant Agreement. The Agency Transaction Fee stated here in Section IV.2 replaces and supersedes any requirement for higher fees in the eCommerce Merchant Agreement.

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

Failure to pay Transaction Fees on a timely basis will result in suspension or termination of the Awarded Vendor’s Contract whether sales were processed directly by the Awarded Vendor or its Authorized Resellers.

IV.3 Reporting

On a CalSave approved template, an Awarded Vendor shall provide CalSave with a report thirty days following the close of a calendar quarter documenting all purchase payments it has made to Eligible Entities, inclusive of the names of participating entities, their locations, and the detail of payments made to each entity. CalSave reserves the right to audit, sample, or make inquiries to test the accuracy of all reports.

IV.4 Fees in Nonconforming Jurisdictions

Notwithstanding Section IV.2, no Transaction Fee is authorized to be collected or charged to Awarded Vendors for disposal buybacks within any jurisdiction where prohibited by law or local government policy. Instead, any Eligible Entity using this Contract where Section IV.2 fees are not permitted shall be required to pay directly a 2 percent service fee for use of the Contract, imposed by Agency for its services in awarding and managing the Contract.

IV.5 Cost of Bid Preparation

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

V Bidder Qualifications [Return to Top]

V.1 Industry Compliances

Bidder must demonstrate compliance with Data Security and Media Sanitization Standards. Therefore, in answers to Questions, a Bidder, at a minimum, must give evidence its business and any subcontractors are compliant with standards set under ISO 14001:2026 and R2v3.

V.2 Preponderance of Work & Subcontracting

To be responsive, a Bidder must directly manage and control the primary operational responsibilities under the Contract and may not function solely as a passive broker.

If using subcontractors, Awarded Vendor must disclose, upon request of Agency, use of material subcontractors, downstream processors, recyclers, or refurbishment partners utilized under the Contract.

V.3 Declaration of Non-Collusion

Assuring that prices are submitted independently and without collusion is so crucial that this RFB requires the Bidder to affirmatively and truthfully answer "Yes" to the non-collusion questions in the Question Section. Otherwise, the Bid will be deemed Non-Responsive.

Do not confuse your *yes* or *no* answer. Answer YES, if you DID NOT collude. Answer NO, if you are not in compliance with the bulleted statements below.

By submitting this Bid, the person named on the electronic Bid form declares that he or she has the authority to offer the Bid prices and acknowledges and agrees that:

- The price(s) and amount of the Bid offer have been arrived at independently and without consultation, communication, or agreement with any other contractor, Bidder, or potential Bidder
- Neither the prices nor the amount of the Bid, and neither the approximate prices nor the approximate amount of the Bid have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before Bid opening
- 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 or lower than this Bid, or to submit any intentionally noncompetitive Bid or other form of a complementary Bid
- The Bid 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
- Neither Bidder nor its affiliates, subsidiaries, officers, directors, or employees are currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract except as set forth in a separate attachment to your Bid

The representations above are material and important. They will be relied upon by the Agency in awarding the Contract(s) arising from this RFB. Any misstatement or failure to disclose is and shall be treated as fraudulent concealment from the Agency of the true facts relating to the submission of Bids for this Contract.

V.4 **Suspension or Debarment**

By submitting a Bid, the Bidder certifies for itself and all its Authorized Resellers that, within the past five years, they have not been under suspension, debarment, or otherwise lawfully precluded from participating in any public-sector procurement activity.

At any time after Bidder's submission and during the term of any Contracts, Agency and Eligible Entities may inquire whether any Bidder, Awarded Vendor, or Authorized Reseller has been suspended or debarred or is otherwise lawfully precluded from participating in any public- sector procurement activity.

V.5 **Overdue Tax Liabilities and Other Delinquent Obligations**

By submission of its Bid, Bidder certifies that it does not know of any overdue tax liabilities of the Bidder or other delinquent obligations owed to Agency, including, but not limited to, unpaid Transaction Fees or other fees from previous contracts. If the Bidder knows of possible delinquencies, then an explanation is required in the Question Section of the electronic Bid form.

V.6 **Notice of Any Changes**

An Awarded Vendor must inform the Agency if it changes its address or becomes delinquent in taxes. Also, the Awarded Vendor must tell the Agency if another government agency suspends or debars one of its contracts. All notices must be in writing and received by the Agency within 15 days of the change, delinquency, suspension, or debarment.

V.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 agrees that it shall not cause any individual with a disability to be excluded from participation in the Contract or from activities provided for under the Contract on the basis of the disability. As a condition of accepting any 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 apply to all benefits, services, programs, and activities relevant to the Contract.

V.8 **Covenant Against Contingent Fees**

The Awarded Vendor warrants that, no person or selling/buying agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide Authorized Resellers maintained by the Awarded Vendor for the purpose of securing business. For breach or violation of this warranty, the Agency or Eligible Entity, as applicable, shall have the right to terminate the Contract, as applicable, without liability, or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

V.9 **Comprehensive Source of Responsibility**

Agency desires a "Comprehensive Source of Responsibility" vendor, meaning the Awarded Vendor will take primary responsibility for the buyback of the broadest scope of Products across the largest possible geographic area, and to the largest possible cross-section of Eligible Entities. Bidders with service only to a sub-set of California may be deemed Non-Responsive.

V.10 **Manufacturer Brands and Products for Buyback**

All electronic devices of any type from any manufacturer are subject to buyback under this RFB, this includes, but is not limited to, laptops, Chromebooks, handheld devices, cell phones, blackberries, tablets, iMacs, and MacBooks. At a minimum, a Bidder must be able to purchase both Apple Products and Chromebooks.

V.11 Bidder Profiling

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

- Maintain permanent places of business
- Have legal monetary resources to buyback relevant Products
- Maintain headquarters and primary processing facilities in California
- Maintain current R2v3 certification applicable to the primary processing facilities utilized under the Contract
- Have demonstrated experience in servicing statewide technology buyback contracts
- Are capable of purchasing substantially all common categories of surplus technology devices generated by Eligible Entities
- Will provide customer sales support and service to all Eligible Entities and applicable Eligible Entities
- Have current relationships with LEAs or other customers for verification of customer satisfaction
- Can demonstrate an active purchase and sales network
- Can serve all California LEAs and, at Awarded Vendor's own option, other Eligible Entities they are authorized to sell to

V.12 Historically Under-Utilized Businesses (HUBs)

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

V.13 Insurance Requirements

Awarded Vendor shall maintain insurance or equivalent self-insured risk protection sufficient to cover liabilities arising from its operations under the Contract, including but not limited to bodily injury, property damage, vehicle operations, employee activities, loading and transportation operations, environmental conditions, data-security incidents, privacy breaches, and contractual indemnification obligations.

Such coverage may be provided through one or more insurance policies, combined coverage forms, umbrella coverage, self-insurance programs, captive insurance arrangements, or other commercially reasonable risk-financing mechanisms customarily maintained by firms engaged in technology asset disposition, electronics recycling, logistics, refurbishment, or related operations.

Awarded Vendor shall maintain not less than One Million Dollars ($1,000,000) in combined liability protection per occurrence applicable to operations performed under the Contract.

The Agency reserves the right to determine whether the form and scope of coverage maintained by the Awarded Vendor are commercially reasonable and sufficient for the activities performed under the Contract.

Coverage shall remain in effect throughout the term of the Contract and any period during which Awarded Vendor possesses, transports, stores, refurbishes, processes, recycles, destroys, or resells equipment obtained from an Eligible Entity.

Upon request, Awarded Vendor shall provide evidence of coverage upon request by Agency or an Eligible Entity.

Awarded Vendor shall promptly notify Agency of any material cancellation, lapse, reduction, suspension, or exhaustion of required coverage.

Failure to maintain commercially reasonable coverage consistent with this Section may constitute grounds for suspension, termination, or non-renewal of the Contract.

V.14 Definitions Related to Vendor Integrity

For purposes of the Sections numbered Sections V.15 through V.27 only, the following definitions shall apply:

- "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 Eligible Entity
- "Consent" means written permission signed by a duly authorized officer or employee of the Agency or Eligible Entity, provided that where the material facts have been disclosed, in writing, by prequalification, Bid, proposal, or contractual terms, the Agency or Eligible Entity shall be deemed to have consented by virtue of execution of the Contract, as applicable
- "Vendor" means Awarded Vendor who may be an individual or entity that has entered into the Contract with an Eligible Entity, including directors, officers, partners, managers, key employees, and owners of more than a five percent interest
- "Financial interest" means a) ownership of more than a five percent interest in any business, or b) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management
- "Gratuity" means any payment of more than the nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind

V.15 Highest Standards of Integrity

The Vendor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Agency or any Eligible Entity.

V.16 Confidential Information

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

V.17 Pecuniary Benefit

The Vendor shall not, in connection with the Contract nor any other agreement with the Agency nor the Purchase Order nor any other agreement with any Eligible Entity directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Agency or any Eligible Entity.

V.18 Giving Gratuities

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

V.19 Accepting Gratuities

Except with the consent of the Agency or Eligible Entity, neither the Vendor nor anyone in privity with the Vendor 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 Contract or a Purchase Order except as provided therein.

V.20 Supplemental Financial Interests

Except with the consent of the Agency or Eligible Entity, the Vendor shall not have a financial interest in any other vendor, designated partner, or supplier providing services, labor, or material on a project under a Contract.

V.21 Notification of Violations

The Vendor, upon being informed that any violation of these provisions (i.e., V.15 through V.27) has occurred or may occur, shall immediately notify the Agency or Eligible Entity in writing.

V.22 Certification of Non-Violation

The Vendor, by execution of the Agreement and by the submission of any payment to an Eligible Entity pursuant thereto, certifies and represents that it has not violated any of these provisions (i.e., Sections V.15 through V.27).

V.23 Cooperation with Authorities

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 relevant to the vendor's integrity or responsibility, as those terms are defined by relevant statutes or regulations. 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 must be disclosed under applicable law and refers to or concerns the Contract. Such information shall be retained by the vendor for a period of three years beyond the termination of the Contract unless a longer period is otherwise provided by law.

V.24 Rights and Remedies in the Event of Violation

For violation of any of the above provisions (i.e. Sections V.15 through V.27) the Agency or Eligible Entity may terminate the Contract and any other agreement with the Vendor, claim 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 Eligible Entity, provided that before any termination action under this Section, vendor shall be provided with written notice of the violation and 30 days to cure the violation. These rights and remedies are cumulative, and the use or non-use 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 Eligible Entity may have under law, statute, regulation, or otherwise.

V.25 Right of Vendor Employee Rejection

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

V.26 **Separation of Employer Responsibilities**

It is understood that the Awarded Vendor, in performing services and buying Products under the Contract is acting as an independent contractor and is not an agent, servant, partner, or employee of Agency or Eligible Entity. The Awarded Vendor has control over the services and Products it buys or purchases under the Contract and shall be solely responsible for its own federal, state, and local income taxes, salary, social security payments, and any and all other payments incurred by the Awarded Vendor in the performance of the Contract as well as adhere to all necessary legal requirements governing employment. None of the benefits provided by Agency or Eligible Entities to their own employees, including but not limited to retirement benefits, workers' compensation insurance, disability insurance, medical insurance, and unemployment insurance, are available from them to the Awarded Vendor and/or any and all of the Awarded Vendor's agents, servants, and employees. The Awarded Vendor has no authority under the Contract to assume or create any such obligation or responsibility, expressed or implied, on behalf or in the name of Agency or Eligible Entities, or to bind Agency or Eligible Entities in any way whatsoever.

V.27 **Nondiscrimination and Sexual Harassment**

During the term of the Contract, the Awarded Vendor agrees as follows:

- In the hiring of any employees for the purchase of surplus Product, performance of work, or any other activity required under the Contract or any 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 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 by reason of gender, race, creed, or color.
- 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 Contract or any Purchase Order on account of gender, race, creed, or color.
- 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.
- 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.
- If the Agency or Eligible Entity has reason to suspect that the Awarded Vendor failed to comply with the Nondiscrimination/Sexual Harassment Clause, the Agency or Eligible Entity may request, and the Awarded Vendor shall promptly provide, applicable information to prove compliance. If the Awarded Vendor or any designated partner does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Agency, Eligible Entity, or appropriate departments of state government.
- The Awarded Vendor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract that specifically is undertaken to support the Contract so that such provisions will be binding upon each designated partner.
- The Agency or Eligible Entity may cancel or terminate the Contract, as applicable, and all

devices revoked 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 CalSave program.

V.28 References and Past Performance

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

To evaluate a Bidder's qualifications to perform under the Contract, Agency will require the submission of three signed reference forms. Also, the Agency will consider the performance of Bidder on previously awarded CalSave or Agency contracts and Bidder's past conformance to Bid terms and conditions, including submission of pricing updates, submission of Ordering Instructions, customer service, and payment of fees.

VI Buyback Product Specifications [Return to Top]

VI.1 Buyback Products to be Sold

This RFB seeks Bids from vendors that wish to participate in buybacks of technological equipment from Eligible Entities, typically LEA's, or other educational institutions, such as colleges and universities. The Products available for buyback shall include a wide range of technology Products, including laptops, desktops, tablets, interactive flat panels, and handheld devices, such as cell phones, iPads, personal digital assistants, and portable media players.

VI.2 Apple Products and Chromebooks Must be Included

While a participating LEA may offer diverse brands of its surplus technology devices for sale, a responsive Bidder and Contractor must be able to quote on and accept surplus Apple Products and Chromebooks, these categories being inclusive among other technology Products that can be purchased.

VI.3 Products with Negative Value, No Re-Use Value, or Refurbishment Value

Under this RFB, an Awarded Vendor may procure or accept technology devices that have no subsequent commercial value. In addition to digital devices, such useless Products could include CRT monitors, broken printers, e-waste, and batteries. In such cases, Bidder shall specify as part of its offer.

- A scrap value to be paid by the Awarded Vendor by the pound for waste Products or dismantlement for parts
- Any potential cost to the Eligible Entity for disposal of waste or dismantlement

VI.4 Inaccessible devices

Should a device with potential for refurbishment not be accessible due to the absence of usernames and passwords or other unforeseen circumstances, such devices may be categorized for part-dismantling, scrap, or waste.

Awarded Vendor must ensure that any waste or scrap turned over by an Eligible Entity is disposed of in accordance with all local, state, and federal rules.

VI.5 Data Security and Media Sanitization Standards

Because technology devices subject to this Contract may contain confidential, protected, sensitive, or personally identifiable information, Awarded Vendor shall implement and maintain commercially reasonable administrative, technical, physical, and operational safeguards designed to protect all data-bearing devices and media received from Eligible Entities.

Awarded Vendor shall comply with all applicable federal, state, and local laws relating to confidential information, student records, privacy protection, and data security, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), applicable California student privacy laws, California Education Code provisions governing pupil records, California data breach notification laws, and other applicable confidentiality or privacy statutes.

Awarded Vendor shall not knowingly export hazardous electronic waste in violation of applicable law and shall ensure downstream recyclers comply with all applicable environmental regulations.

Awarded Vendor shall maintain and enforce documented chain-of-custody procedures governing the handling, transportation, storage, processing, refurbishment, destruction, resale, recycling, and disposal of all data-bearing devices.

At a minimum, Awarded Vendor shall:

- Maintain secure facilities and controlled access areas
- Maintain inventory tracking and serialized device accountability procedures
- Implement employee access controls and supervision
- Conduct commercially reasonable personnel background screening
- Prevent unauthorized downloading, copying, transfer, retention, disclosure, or misuse of data
- Protect devices during transportation and storage
- Maintain incident response procedures
- Ensure that downstream processors, subcontractors, recyclers, and related vendors comply with equivalent data-security obligations.

All data sanitization, media wiping, destruction, or overwriting activities shall conform to the current published version existing at the time services are performed, including:

- Applicable R2v3 requirements, or
- NIST Special Publication 800-88 Revision 1, Guidelines for Media Sanitization, or any successor standard

Data-bearing devices determined unsuitable for refurbishment or resale shall be physically destroyed, shredded, degaussed, or otherwise rendered permanently unreadable in accordance with commercially reasonable industry standards.

Awarded Vendor shall provide certificates of data sanitization and/or destruction upon request by Agency or an Eligible Entity.

Awarded Vendor shall remain fully responsible for all acts and omissions of its employees, subcontractors, downstream processors, recyclers, refurbishment facilities, transportation providers, and related service providers.

Awarded Vendor shall immediately notify the affected Eligible Entity and Agency of any actual or suspected data breach, unauthorized disclosure, security incident, theft, loss of devices, or compromise involving Eligible Entity equipment or information.

Such notice shall be provided as soon as reasonably practicable, but no later than two business days after discovery.

Awarded Vendor's obligations relating to data security, confidentiality, privacy protection, environmental compliance, and media sanitization, shall survive pickup, transfer of title, expiration of the Contract termination of the Contract, and final payment.

Failure to comply with this Section may constitute a material breach of the Contract and may result in suspension, termination, debarment, indemnification obligations, or other remedies available under law or Contract.

VI.6 Product Grading

An Awarded Vendor shall use a documented and consistently applied grading methodology for cosmetic and functional condition of all devices. Bidder must provide a document describing its grading standards if different than the standards listed below. Grading criteria shall meet the following minimum standards or higher and be provided to the Eligible Entity prior to disposal:

Grade A (Like New/Excellent)

Cosmetics: Pristine condition. Little to no signs of prior use. No scratches, dents, or screen defects (e.g., dead pixels). *Functionality:* 100% functional. Often includes original packaging or minimal wear.

Grade B (Very Good/Average)

Cosmetics: Fully functional but exhibits minor, visible wear and tear. Can include light surface scratches on the casing, slight scuffs, or shiny keys on a keyboard. *Functionality:* Operates perfectly. Represents the most common balance of price and performance for bulk hardware.

Grade C (Good/Fair)

Cosmetics: Significant cosmetic blemishes. May include noticeable dents, deep scratches, missing plastic pieces (e.g., rubber feet), or screen imperfections. *Functionality:* Fully operational. Usually stripped of accessories and heavily discounted.

Grade D (As-Is, Non-Working / Parts Only)

Cosmetics: Heavy wear. *Functionality:* Non-functioning, requires repair, or missing vital internal components. Typically sold as a lot strictly for donor parts.

Waste (Unusable)

Obsolete, non-working, and non-recyclable Products to be discarded under ISO 14001 standards.

VII Buyback Procedures [Return to Top]

VII.1 An Overview of the Surplus Process

Agency provides this simplified overview of the surplus and disposal process:

- The governing board or authority of the Eligible Entity has on record a resolution or policy regarding surplus property or is subject under a jurisdiction with such policies.
- Eligible Entities provide a detailed inventory list to the Awarded Vendor (Contractor) for a quote on surplus property.
- An Eligible Entity may estimate a quality-grade estimation for each of its listed items, subject to revision or later confirmation by the Contractor.
- Alternatively, and possibly for a fee, the Contractor may be invited to visit and inventory the surplus devices itself, providing an initial grade for surplus devices – all leading to a price

Quotation.

- Following the inventory process, the Contractor provides a Quotation, estimating the buyback value of the devices and any cost of transport.
- If acceptable, the Eligible Entity signs the Contractor's Standard Service Agreement authorizing the disposal of property to the contractor. The Agreement must not conflict with MCOE Contract Terms and Conditions.
- Any supplemental service agreement, work order, or operational document utilized by the Awarded Vendor shall be subordinate to these Terms and Conditions, and any conflicting term shall be void and unenforceable unless expressly approved in writing by Agency.
- The Contractor transports the surplus devices to its processing facility for grading, tracking, assessment, refurbishment, and, in some cases, recycling and disposal.
- Title and risk of loss transfer -- upon completion of loading and presentation of the pickup inventory manifest -- to the Awarded Vendor prior to departure from the site.
- Title and risk of loss transfer only for devices accepted by the Awarded Vendor and identified on the pickup inventory manifest.
- A report on the status of refurbishment or disposal for all the inventoried devices is provided to the Eligible Entity, and the agency is paid on the basis of the Contractor's report.
- Unless agreed to in advance, work is generally completed within thirty calendar days, followed immediately by a report to the Eligible Entity.
- Vendor payment is due within thirty calendar days of the delivery of the final report.

VII.2 Quotation Terms and Quotations Near a Contract Expiration Date

Any Quotation issued by the Awarded Vendor shall be valid for at least ten business days if stipulated on the Contractor's Quotation, the quote may remain valid for longer, but for no more than thirty calendar days.

Any Quotation issued before the expiration date of this Contract shall also be valid after the Contract expiration date for ten business days. If stipulated on the Contractor's Quotation, the quote may remain valid longer, but for no more than thirty calendar days.

Subsequent agreements, buybacks, and associated work based on a late-term Quotation may be performed after the Contract expiration date.

VII.3 Report and Payments

Awarded Vendor shall complete processing and provide the final reconciliation report within thirty (30) calendar days following transfer of title unless otherwise agreed in writing.

Payment shall be remitted to the Eligible Entity within thirty (30) calendar days following issuance of the final reconciliation report.

VIII Pricing Specifications [Return to Top]

VIII.1 Bid Pricing Methodology

This RFB requires the Bidder's responsive buyback pricing to be offered by way of a pricing formula. This formula forms the foundation of a Bid. <u>The pricing formula must be calculated against a price basis to show final effective prices.</u> The final effective prices, correctly calculated, will form the foundation for evaluation and comparison to competing Bids.

VIII.2 **Pricing Formulas**

Bidders must use the following formula methodology when making their offers:

- Identify the name of a Market Price Basis (see VIII.3) that will be effective the same day as the Bid Deadline.
- Offer a formula to create an effective Bid price by multiplying a percent — lower, equal to or more than — against the Commercially Available Base Pricing by Quality Grade.
- Enter mark-up or mark-down percentages from the Market Price Basis into the Quote Sheet Tab of the CalSave Pricing Template. Percentages can be variable by type of Products to be purchased.
- For the market basket of Products listed on the Bid Response Tab, apply the appropriate percentage and base price to each individual Product. The spreadsheet will automatically calculate your Bid offer for each item.

VIII.3 **Market-Based Pricing Basis Methodology**

Proposers shall submit pricing based upon a clearly identified and commercially reasonable, verifiable market valuation methodology for used and surplus technology equipment (“Market Basis”).

The Market Basis may consist of a:

- Recognized wholesale market exchange
- Established secondary-market pricing index
- Published resale schedule
- Documented broker exchange
- Auction market averages
- Commercially reasonable, verifiable pricing platform
- Another objectively verifiable methodology regularly used within the technology refurbishment, resale, or IT asset disposition industry.

Proposers shall provide an attachment to their bid that fully describes the Market Basis utilized, including the:

- Name of the exchange, index, platform, schedule, list, or methodology
- Frequency with which pricing is updated
- Geographic market represented
- Categories of equipment covered
- Grading assumptions utilized
- Category of pricing basis, e.g., wholesale, broker, auction, refurbisher, retail values, and any deductions, adjustments, or processing assumptions incorporated into the pricing methodology

Proposers shall then state, on the Quote Sheet, the percentage premium, percentage discount, fixed adjustment, or other pricing factor that shall be applied to the proposer’s stated Market Price Basis in determining buyback pricing payable to the Eligible Entity.

Examples:

- “105% of Exchange A wholesale market value for Grade C Products”
- “Market Index B less 8% for Grade A Products”
- “92% of average trailing 30-day broker exchange value for Grade B Products”

The Agency shall evaluate proposals based upon the final effective price after applying the resulting market-adjusted value offered to Agency.

The specific Market Basis selected by the proposer itself shall not be scored preferentially or disadvantageously during proposal evaluation, provided Agency determines the methodology to be commercially reasonable and verifiable and incapable of Awarded Vendor manipulation.

Upon award, the successful proposer's identified Market Basis and adjustment factor shall remain fixed and binding for the duration of the Contract term and any exercised renewal periods unless otherwise approved in writing by the Eligible Entity.

The Awarded Vendor shall not substitute, replace, redefine, materially modify, or selectively apply an alternative Market Basis during the Contract term without prior written approval of Agency.

All valuations provided during the Contract term shall be supported by contemporaneous market documentation sufficient for the Eligible Entity to verify compliance with the approved pricing methodology.

Agency reserves the right to audit pricing calculations, grading determinations, market references, and supporting valuation data at any time during the Contract term.

Awarded Vendor shall apply the approved Market Basis consistently across all chosen categories of equipment and shall not selectively utilize alternative pricing references, alternate exchanges, modified grading assumptions, or isolated market transactions in a manner that materially disadvantages an Eligible Entity.

The Market Basis may not consist solely of proprietary internal pricing not independently verifiable by Agency or Eligible Entities.

VIII.4 **Fluctuations in the Market Price Basis**

Agency acknowledges that the market value of used and surplus technology equipment is subject to frequent and unpredictable fluctuations arising from factors outside the control of Agency, an Eligible Entity, and Awarded Vendor, including but not limited to:

- New Product releases
- Manufacturer discontinuations
- Supply chain conditions
- Secondary-market demand
- Commodity pricing
- Technological obsolescence
- Changes in refurbishment costs
- Changes to condition and grading standards
- Inventory surpluses
- Global resale market conditions
- Changes in applicable environmental or export regulations

Accordingly, Agency understands and agrees that the effective buyback price payable for equipment may increase or decrease over time as market conditions change.

For this reason, pricing under this Agreement shall be governed by the Awarded Vendor's awarded Market Basis and adjustment methodology as approved by the Eligible Entity at the time of Contract award.

Awarded Vendor shall apply the approved Market Basis consistently and uniformly throughout the term of the Agreement and shall not arbitrarily alter, replace, manipulate, or selectively reinterpret the Market Basis or adjustment factor for the purpose of reducing compensation payable to the Eligible Entity.

Any adjustment in quoted pricing shall be attributable solely to documented changes in the underlying market conditions reflected by the approved Market Basis and not to discretionary actions of the Awarded Vendor.

Upon request, Awarded Vendor shall provide commercially reasonable documentation supporting the market values used in determining quoted pricing.

VIII.5 Variable Percentage Formulas

The percentage premium, percentage discount, fixed adjustment, or other pricing factors offered may vary for distinct categories of Products it will buy back from Eligible Entities. For example, a factor for Chromebooks may be different from the factor applied to Apple tablets.

However, the Bidder must correlate the specific formula percentage alongside a well-described category of Products on the Quote Sheet so there is no ambiguity to which types of Products a formula applies.

As a theoretical example, a single Bidder may Bid ten percent plus the base price for a tablet category, a five percent subtraction from the base price for a cell phone category, and a zero percent change to the base price for an Apple iPad category.

The examples above illustrate the variety of formulas that can be created. Bidders should not infer that the percentages listed above are representative of any suggested Bid offers or any Bid history. Bidders are in competition.

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

Once the percentages are offered and submitted as part of the formal bid, they may not be changed during the course of the Contract, though the Market Price Basis may fluctuate.

VIII.6 Inventory Submission, Device Grading, Final Grading Determinations, and Reconciliation Procedures

In order to obtain a quote from the Awarded Vendor under this Agreement, the participating Eligible Entity may provide the Awarded Vendor with an inventory list identifying the devices proposed for sale or transfer. The inventory shall include, to the extent reasonably available:

- Manufacturer
- Model
- Serial number or asset tag number
- Device type
- Quantity
- Estimated device quality grade or condition classification

The Eligible Entity's estimated grading shall utilize the grading methodology published under the Contract or another commercially reasonable grading approach disclosed to the Awarded Vendor.

In lieu of providing its own inventory and grading assessment, the Eligible Entity may request that the Awarded Vendor conduct an onsite inventory and grading assessment of the devices. In such event, the Awarded Vendor shall prepare and provide to the Eligible Entity an itemized inventory and estimated grading report upon which the quote shall be based.

The Awarded Vendor may charge an Eligible Entity a fee for onsite inventory and grading services only if such fee or pricing deduction methodology was disclosed in the Awarded Vendor's Bid response.

Compensation to the Awarded Vendor for onsite inventory and grading services shall be limited to:

- A further percentage deduction against a bid price identified in the Awarded Vendor's awarded proposal
- A fixed fee for service identified in the Awarded Vendor's awarded proposal

No additional inventory, inspection, auditing, grading, handling, or assessment charges shall be imposed unless specifically authorized in writing by the Eligible Entity.

The parties acknowledge that accurate grading of used technology equipment requires specialized technical expertise, diagnostic testing, refurbishment analysis, component verification, and secondary-market experience that may not be fully available during preliminary visual inspection or initial inventory review conducted at Eligible Entity sites.

Accordingly, preliminary grading conducted prior to refurbishment, testing, or processing may differ from the final condition assessment determined during refurbishment, testing, data destruction, resale preparation, or recycling processing activities.

Final grading determinations made by the Awarded Vendor during refurbishment, testing, processing, or resale preparation shall generally be presumed commercially reasonable and controlling for purposes of final pricing reconciliation under this Agreement, provided such determinations are made:

- In good faith
- In accordance with the grading methodology established under a Contractor-Eligible Entity Agreement
- Using commercially reasonable industry practices
- With appropriate documentation

The Eligible Entity acknowledges that latent defects, undisclosed damage, battery degradation, missing components, activation locks, data corruption, hardware failure, liquid damage, failed diagnostics, excessive wear, prior repair conditions, or other conditions not reasonably identifiable during preliminary inspection may justify grading downgrades during processing.

Notwithstanding the foregoing, the Awarded Vendor shall not intentionally, systematically, arbitrarily, or unreasonably downgrade devices for the purpose of improperly reducing compensation payable to the Eligible Entity.

All post-processing grading adjustments shall:

- Be commercially reasonable
- Conform to the grading methodology established under the Agreement
- Be documented at the individual device level or other mutually agreed reporting level
- Identify the reason for the upgrade or downgrade
- Be reflected in the final reconciliation report provided to the Eligible Entity

The Awarded Vendor shall maintain commercially reasonable records supporting grading determinations and adjustments, which may include:

- Diagnostic testing records
- Refurbishment findings
- Photographs
- Serial number tracking records
- Component verification reports
- Battery health data
- Activation lock reports
- Other commercially reasonable supporting documentation.

If the Awarded Vendor performed the initial inventory and grading assessment used to prepare the quote, the Awarded Vendor shall bear the financial risk associated with ordinary grading estimation variance. In such cases, total downward grading adjustments affecting compensation payable to the Eligible Entity shall not exceed fifteen percent (15%) of the accepted devices, excluding latent defects, activation locks, missing components, undisclosed damage, data-lock conditions, or material inaccuracies in the Eligible Entity's provided inventory.

Any financial impact associated with grading variances within such fifteen percent (15%) threshold shall be absorbed by the Awarded Vendor and shall not reduce compensation otherwise payable to the Eligible Entity under the accepted quote.

If the Eligible Entity prepared the initial inventory and grading assessment used to obtain the quote, subsequent grading upgrades or downgrades identified during refurbishment or processing may be reflected in the final reconciliation in favor of or against the Awarded Vendor, provided such adjustments are documented in accordance with this Section.

After consultation with the Awarded Vendor, an Eligible Entity has the right to request

- Supporting documentation regarding grading changes
- Receive reports identifying upgraded or downgraded devices
- Inspect affected devices, photographs, testing records, or refurbishment findings

To avoid unnecessary operational delays and administrative disputes, isolated grading disagreements affecting immaterial dollar amounts shall not constitute grounds for rejection of an otherwise substantially complete final reconciliation report.

If the Eligible Entity reasonably believes that a pattern of unsupported, inconsistent, arbitrary, or bad-faith downgrading exists, the Eligible Entity may submit written notice identifying the specific devices or grading practices in dispute.

Upon receipt of such notice, the Awarded Vendor shall cooperate in good faith to review the disputed items and provide supporting documentation reasonably necessary to explain the grading determinations.

If the review demonstrates a material pattern of unsupported, inconsistent, commercially unreasonable, or bad-faith downgrades adverse to the Eligible Entity, the Eligible Entity may require corrective adjustment of affected pricing and may pursue any contractual remedies otherwise available under its Agreement.

For purposes of this Section, a "material pattern" shall mean repeated or systematic grading determinations substantially deviating from the approved grading methodology or commercially reasonable industry practices, and not isolated or incidental grading differences arising from ordinary refurbishment or diagnostic findings.

Awarded Vendor shall maintain records supporting grading determinations and reconciliation adjustments for a minimum period of three (3) years following final reconciliation.

Nothing herein limits the Eligible Entity's rights in the event of fraud, gross negligence, bad-faith grading, data falsification, or material breach of the Agreement.

VIII.7 Directions for Entering the Correct Percentage on the Bid Response Tab

The spreadsheet will automatically calculate the final effective Bid price from cells containing the market Price Basis and the percentage formula.

Therefore, if bidding lower than the price basis a Bidder would enter a negative percentage (*e.g.,* -.10.5%) because the formula subtracts from a list price.

Alternatively, if bidding higher than the base price, a Bidder would enter a positive percentage figure (*e.g.,* 10.5%) because the formula is adding to a cost basis.

If the Bidder's percentage factor is zero, the value "0.0%" would be entered in the appropriate discount or mark-up column.

Column I indicates the final effective price the Bidder is willing to pay an Eligible Entity on the day of the Bid Deadline.

VIII.8 VIII.5 CalSave Pricing Template

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

The template can be downloaded from the electronic Bid form. It is located in the column titled Attachment in the same row as the name of the Requested Product Line "Buyback Technology Services." The spreadsheet must not be modified, copied, or unlocked. Otherwise, Bidders run the risk that their spreadsheet will not load correctly when they submit their Bids.

VIII.9 Importance of Final Effective Price

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

VIII.10 Errors on the Bid Response Tab

If a Bidder makes a material error by expressing percentage formulas on the Bid Response Tab that are not described on the Quote Sheet, its Bid may be Non-Responsive. Likewise, a Bid may be non-responsive if a Bidder neglects to list Products on the Bid Response Tab for which a percentage formula is described on the Quote Sheet. CalSave and Agency reserve the right to correct or calculate responses on the Bid Response Tab based on A Bidder's offered discounts on the Quote Sheet and offered base pricing.

VIII.11 Final Device Grading Determinations, Dispute Resolutions, and Remittance

The parties acknowledge that accurate grading of used technology equipment requires specialized technical expertise, diagnostic testing, refurbishment analysis, component verification, and secondary-market experience that may not be fully available during preliminary visual inspection or initial inventory review conducted at Eligible Entity sites.

Accordingly, the Awarded Vendor's final grading determinations made during refurbishment, testing, processing, or resale preparation shall generally be presumed to be commercially reasonable and controlling for purposes of final pricing reconciliation under this Agreement, provided such determinations are made:

- In good faith
- In accordance with the grading methodology established under the Agreement
- Using commercially reasonable industry practices
- With appropriate documentation

The Eligible Entity acknowledges that latent defects, undisclosed damage, battery degradation, missing components, activation locks, data corruption, hardware failure, liquid damage, failed diagnostics, excessive wear, prior repair conditions, or other conditions not reasonably identifiable during preliminary inspection may justify downgrades during processing.

Notwithstanding the foregoing, the Awarded Vendor shall not intentionally, systematically, arbitrarily, or unreasonably downgrade devices for the purpose of improperly reducing compensation payable to the Eligible Entity.

The Awarded Vendor shall maintain commercially reasonable records supporting grading adjustments, which may include:

- Diagnostic testing records
- Refurbishment findings
- Photographs
- Serial number tracking records
- Component verification reports
- Battery health data
- Activation lock reports
- Other commercially reasonable supporting documentation

An Eligible Entity may request reasonable supporting documentation regarding downgraded devices for the limited purpose of confirming compliance with the approved grading methodology and pricing procedures established under the Agreement.

To avoid unnecessary operational delays and administrative disputes, isolated grading disagreements affecting immaterial dollar amounts shall not constitute grounds for rejection of a final reconciliation statement.

If the Eligible Entity reasonably believes that a pattern of improper or bad-faith downgrading exists, the Eligible Entity may submit a written notice identifying the specific devices or grading practices in dispute.

Upon receipt of such notice, the Awarded Vendor shall cooperate in good faith to review the disputed items and provide supporting documentation reasonably necessary to explain the grading determinations.

If the review demonstrates a material pattern of unsupported, inconsistent, or commercially unreasonable downgrades adverse to the Eligible Entity, the Eligible Entity may require corrective adjustment of affected pricing or may pursue any a return of its devices at its own cost.

For purposes of this section, a "material pattern" shall mean repeated or systematic grading determinations that substantially deviate from the approved grading methodology or commercially reasonable industry practices, and not isolated or incidental grading differences arising from ordinary refurbishment or diagnostic findings.

Nothing herein shall be interpreted to require the Awarded Vendor to litigate or individually negotiate minor grading variances inherent in the used technology refurbishment industry.

Awarded Vendor shall process, test, refurbish, grade, recycle, or otherwise evaluate the collected equipment in a commercially reasonable manner consistent with the requirements of this Agreement.

Unless otherwise agreed in writing by the parties, Awarded Vendor shall complete:

- All material refurbishment, testing, grading, and processing activities
- The final reconciliation report identifying upgraded and downgraded devices, pricing adjustments, and final compensation due to the Eligible Entity
- All required data destruction and processing documentation, within thirty (30) calendar days following pickup and removal of the equipment from the Eligible Entity site unless a different date is agreed to in writing by both parties
- The final reconciliation report shall include, to the extent applicable:
    - Itemized device quantities
    - Final grading determinations
    - Upgrade and downgrade adjustments
    - Supporting pricing calculations
    - Deductions or adjustments authorized under the Contract
    - Final amount due to the Eligible Entity

Awarded Vendor shall remit payment to the Eligible Entity within thirty (30) calendar days following issuance of the final reconciliation report unless a different payment period is specified in the Awarded Vendor's awarded proposal and accepted by the Eligible Entity.

If extraordinary circumstances outside the reasonable control of the Awarded Vendor materially delay processing, including but not limited to unusually large inventory volumes, catastrophic equipment failure, natural disasters, supply-chain interruptions, labor disruptions, or significant delays in downstream processing, Awarded Vendor shall promptly notify the Eligible Entity and provide an estimated revised completion date.

Awarded Vendor shall not intentionally delay refurbishment, grading, reporting, resale processing, or payment for the purpose of obtaining favorable market fluctuations or reducing amounts payable to the Eligible Entity.

An Eligible Entity may request reasonable status updates during the processing period.

Failure to provide the final reconciliation report or payment within the required timeframes without reasonable justification may constitute a material breach of the Contract

VIII.12 Transportation, Logistics, and Transfer of Equipment

Except as otherwise agreed in writing by the participating Eligible Entity and the Awarded Vendor, the

Awarded Vendor shall be responsible for all labor, loading, packing, pallets, containers, transportation, freight, shipping, handling, and related logistical services necessary to remove and transport equipment from the Eligible Entity's site.

The Awarded Vendor shall bear all ordinary transportation and removal costs associated with pickup of equipment unless alternative arrangements are mutually agreed upon in writing.

Notwithstanding the foregoing, the Eligible Entity and Awarded Vendor may mutually agree to alternate logistics arrangements, including but not limited to:

- Delivery of equipment by the Eligible Entity to a designated processing center
- Consolidated regional drop-off locations
- Shared transportation arrangements
- Staged pickups
- Mail-in or shipped-in device returns
- Other commercially reasonable transportation methods.

Any such alternate arrangement may include adjusted pricing, transportation credits, reduced handling costs, or other mutually agreed financial considerations.

Proposers shall clearly identify in their proposals the manner in which transportation costs are incorporated into their pricing structure, including whether:

- Transportation costs are fully included within the proposed market adjustment factor, markup, markdown, revenue-share percentage, or pricing formula
- Transportation costs vary based upon factors such as distance, shipment size, rural access, site conditions, minimum volume thresholds, or regional logistics considerations.

For purposes of proposal evaluation, the solicitation may require transportation pricing, transportation assumptions, service territories, minimum pickup requirements, or rural service adjustments to be separately disclosed and evaluated in order to permit reasonable comparison among proposals.

Agency acknowledges that transportation costs associated with remote, rural, geographically isolated, low-volume, or multi-site pickups may materially affect the economic value of equipment recovery services.

Accordingly, nothing herein shall prohibit the solicitation from:

- Separately evaluating transportation pricing factors
- Establishing regional pricing schedules
- Establishing minimum pickup quantities
- Permitting mileage-based adjustments
- Allowing mutually agreed transportation alternatives between participating Eligible Entities and the Awarded Vendor.

Unless otherwise agreed in writing, title and risk of loss shall transfer in accordance with the title transfer provisions of this Agreement upon completion of loading, inventory confirmation, and release of the shipment from the Eligible Entity's site.

IX Bid Procedures and Directions [Return to Top]

IX.1 Help on Submitting a Responsive Bid

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

The following Sections provide an overview of Bid procedures, requirements, and directions leading to a Responsive Bid.

IX.2 Registration

Vendors interested in bidding must obtain a supplier account at www.Epylon.com if they do not already have one. The entire bidding process will be conducted electronically using Epylon's eBid software. Epylon imposes no fee to register or use its eBid software.

IX.3 Delivery of the CalSave Bid Form

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

- Another employee under the company's account has accepted the Bid form on behalf of the company. Only one Bid form may be active for any given company, but any employee can forward the Bid form to another company representative. Contact Epylon Customer Service to see if another company employee has opened the Bid form.
- The company has not categorized itself as a technology-related supplier. Contact Epylon Customer Service to be added as a "technology supplier." Then the Bid form will be promptly forwarded to the company's inbox.
- The company has divided its employees into geographic territories, and the Bid has been directed to employees designated solely for California.
- For assistance in finding the Bid form, Bidders may contact Customer Service at (888) 211-7438 or Service@Epylon.com.

IX.4 Pre-Bid Meetings

No pre-Bid meeting will be held for this RFB.

IX.5 Bidders' Questions

Bidders who have Bid questions about the Bid or its Terms and Conditions may submit them in the Bidders' Question Section of the electronic Bid no later than 4 p.m. PDT on the Questions Due Date.

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

IX.6 Exceptions to Terms and Conditions

Any proposed exception to the requirements indicated in this RFB or from the Terms and Conditions must be stated in writing. Send any exceptions to the Bid Contact no later than 4 p.m. on the Exception Due

Date. No material exceptions will be accepted with final electronic Bid submissions received on the Bid Due Date. Any material exceptions submitted by Bidder with the final electronic Bid submission may disqualify the Bid from consideration at the sole discretion of the Agency.

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

IX.7 An Overview of the Bid Form

Completing a Bid requires opening an electronic Bid form starting from an inbox on the Epylon eCommerce system. Users may work on their Bids at any time and save their work as they progress. There are three major components, including multiple tabs, to the electronic Bid form:

- Answers to Questions: If a question is tagged as required, a response must be provided, or the user will get an error message when saving their work. Some questions accept answers with file attachments
- Checking the Box to enable bidding on the Technology Buyback Bid name and description. Then the Bidder must attach several files within various tabs of the electronic Bid form
- Completion of the Pricing Template: The template is a spreadsheet with three tabs. Bid discount formulas must be entered on the Quote Sheet Tab. Data for calculating Bid formulas into effective prices are entered on the Bid Response Tab. More information on filling out the form is located in the Pricing Specification Section.

IX.8 Required Attachments

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

Attachments that go alongside the name Buyback Technology Services are:

- CalSave Pricing Template with two tabs filled out

Attachments that go in the Required Documents Section are:

- Signed awarded vendor agreement
- Description of Marketplace Price Basis
- Grading standards
- Transportation parameters
- Detailed marketing plan
- Reference forms (three separate forms)

Attachments that can be uploaded to the additional response information section are:

- Any optional files to provide the agency with more information

IX.9 Marketing Plan

Agency requests that all Awarded Vendors develop a marketing program to promote knowledge of their awarded Contracts to Buyback Eligible Entities by way of activities and media such as printed materials, web-based information, e-mails, advertising, social media, telemarketing, webinars, trade shows, and other commercial avenues of communication. This plan must be described or attached to the Bid form in response to a question in the Question Section.

IX.10 Danger of Procrastination

It is in the best interests of Bidders to submit their Bids far enough in advance of the Bid Due Date to avoid any hindrances out of the control of the Bidder, eCommerce Consultant, or Agency. Such impediments could include extremely heavy Internet traffic, phone line disruption, busy circuits, unexpected computer outages, or weather-related obstacles. Agency assumes no responsibility for impediments out of its control and encourages Bidders to submit early to avoid any possibility their Bids may be late

IX.11 Submission

When Bidders complete their Bids, clicking on the Continue button at the bottom of the page enables the Bidders to make one last review of their work before submission. When satisfied, Bidders must click the Submit button to send the Bid electronically to the Agency. Once successfully transmitted, the Bid will display as "Sent" in the user's inbox.

IX.12 Electronic Signature

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

IX.13 Status of Submitted Bids

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

IX.14 Withdrawal

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

After the Bid has been opened, it may not be withdrawn, and the Bidder must supply its offered services and buy back Products at the Bid price and in accordance with the Terms and Conditions.

IX.15 Receipt and Opening of Bids

Electronically sealed Bids must be received by the Bid Due Date. Bids will be electronically unsealed and publicly read at the Bid Opening Date and Time. Opening and public reading will consist of opening and displaying the electronic Bid forms in front of any interested members of the public and staff in a public setting.

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

IX.16 Late Bids

The Agency will not consider late Bids.

IX.17 Offer Expiration

After the public opening, Bids will be evaluated. The Agency will conduct this process as quickly as possible so that award recommendations can be formulated. Bidder's Bid, including responses to the RFB, Bid formulas discount formulas, and pricing shall be valid and irrevocable for ninety days after the Bid Opening Date.

IX.18 Protests

Protests shall be filed with the Agency and shall be resolved following applicable law. A protest must be filed with the Agency. A protest of solicitation must be received at the Agency before the Bid Opening Date. A protest of a proposed award or an actual award must be filed within 10 days after the protester knows or should have known the basis of the objection.

A protest must include:

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

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

X Bid Evaluation and Award Process [Return to Top]

X.1 Qualification for Evaluation

Following applicable California state law and accepted standards for competitive, sealed bidding, the Agency will evaluate for the highest projected effective market-adjusted value across the representative market basket.

X.2 Creation of Contracts

Evaluated Bids that are recommended for award do not become formal Contracts until the Agency's elected Superintendent of Schools or designated signatory signs the Contracts.

X.3 Bid Evaluation Process

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

- Bids will be evaluated to determine if the Bidder is Responsive and that all required attachments and documents are present

- Bidder's responses to questions will be examined to ensure the Bidder is Responsible and capable of providing Products to Eligible Entities under Agency's Terms and Conditions
- Any bidding company deemed not "Responsible" will be notified and entitled to a hearing
- Pricing will be compared to competing Bids to rank pricing
- The Bidder with the highest projected overall value to Eligible Entities based upon the evaluation criteria established under this RFB with a Responsive Bid from Responsible Bidders will be recommended for an award

X.4 **Rejection of Bids**

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

- Late Bids
- Bids that are not Responsive
- Bids from Bidders deemed not Responsible, so judged following a hearing
- Bids in which prices are lower than street prices or are unreasonable compared to other contracts

X.5 **Ambiguities**

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

X.6 **Evaluation of Responsiveness**

Bid submissions by Bidders must pass a test for Responsiveness before the Bids move on to be evaluated for price. The following factors will be evaluated for Responsiveness:

- The Bid was received on time
- Bid Terms and Conditions were accepted
- Reference forms for the Bidder were attached
- A narrative describing shipping/transportation costs
- A Narrative of Bidder's Marketplace Price Basis
- Submission of a signed contract document
- Acceptance grading standards or submission of alternate standards
- Bid includes offer to buy Apple products and Chromebooks
- Meets R2v3 requirements
- Can serve all of California

X.7 **Evaluation of Responsibility**

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

- Provided evidence of a permanent place of business within California
- Is not insolvent or currently involved in bankruptcy
- Has no known overdue tax liabilities or provides a satisfactory explanation
- Owes no overdue CalSave Transaction Fees
- Certifies it has not colluded in submitting its Bid or developing pricing

- Is not under suspension or debarment
- Has provided positive references from buying agencies or has past CalSave experience
- Has given evidence of previous sales in the public sector
- Deploys system of customer support and service to all chosen Eligible Entities as described on the Bid form
- Complied with any previous or existing CalSave or Agency contracts

X.8 Evaluation of Pricing

Effective pricing from competing, responsive, and responsible Bidders will be compared in order to rank competing Bidders. The responsive and responsible Bidder determined by Agency to provide the highest projected overall value to Eligible Entities based upon the evaluation criteria established under this RFB shall be named as the Awarded Vendor.

In the event of tie Bids, the winning Bidder will be decided by the flip of a coin or another method of chance selected by Agency.

X.9 Non-Material Deviations

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

X.10 Notice of Award

Agency will send a notice of award to the responsive and Responsible Bidder whose pricing methodology and resulting effective market-adjusted pricing is determined by Agency to provide the highest projected financial return to Eligible Entities using the representative market basket and evaluation methodology established under this RFB. Non-awarded Bidders may view the status of Bid awards by visiting their inbox and then clicking on the Bid title.

XI Post-Award Requirements [Return to Top]

XI.1 XII.1 Audit Requirements

Agency reserves the right to ask any Awarded Vendor for proof of correct Bid-price Quotation, buyback prices, and payments. Agency may conduct spot checks or hire a third-party accounting firm to statistically sample records to verify the integrity of base pricing, quotations, and payments. Therefore, Awarded Vendors are required to:

- Maintain standard business records for at least three years following any payment
- Store underlying cost data for pricing
- Cooperate with CalSave staff or auditors for any request for records to sample or verify any of their posted pricing or invoiced sales.

XI.2 XII.3 Contact and Ordering Instructions

CalSave will send newly Awarded Vendors an email with instructions on how to complete Buyer Ordering Instructions. Awarded Vendors must fill out and return the document in Microsoft Word format. The instructions will give Eligible Entities advice on who to contact and how to request a Quotation.

Ordering Instructions must be updated whenever an Awarded Vendor's information changes, especially when contact information changes.

XI.3 Pricing Updates

Base pricing may change when the Award Vendor’s Commercially Available Base Price changes for the company’s wider audience. However, the Bid discount formula may not change. Awarded Vendors must always maintain current CalSave effective pricing.

XI.4 Contract Promotion, Advertising, and Marketing

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

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

For the term of its Contract, CalSave will extend Awarded Vendors a license to use the CalSave logo on the vendor's website and in marketing collateral. Advance permission and review are required. However, the Agency may cause the Awarded Vendor to recall any collateral or any use of the CalSave logo that is not in conformance with guidelines, untruthful, or inaccurate.

For each awarded Catalog, Awarded Vendors are required to carry out marketing plans as offered in their Bid submissions. At any time, CalSave may telephone or email an Awarded Vendor for a progress report and evidence of activities conducted under their marketing plans.

XI.5 Training of the Sales Force

Awarded Vendor is responsible for informing and training its sales force and Authorized Resellers on the use of its Agency Contracts for sales under Agency’s Bid-protection provisions.

XI.6 Contract Extension

At no time will the Contract be in force for more than three whole years at a time. Agency reserves the right to extend any Bid award, twice, for a period of up to one additional year at a time. The extension of any awarded Bid will be optional upon the agreement of the Agency and the Awarded Vendor.

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

XII Other Terms and Conditions *[Return to Top]*

XII.1 Entire Agreement

The Contract will represent the complete agreement between the Agency and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Contract shall be in writing in the form of an amendment signed by Agency and Awarded Vendor (and the eCommerce Consultant if the eCommerce Consultant is a necessary party).

The Contract will represent the complete agreement between the Eligible Entity and the Awarded Vendor, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Contract shall be in writing in the form of an amendment signed by Eligible Entity and Awarded Vendor.

XII.2 Novation

If the Awarded Vendor assigns, sells, or transfers substantially all assets or the entire portion of the assets used to perform the Contract, a successor in interest must guarantee to fulfill all obligations under the Contract and offer buybacks at the same or better pricing determined by the original Bid pricing formula. Agency reserves the right to recommend acceptance or rejection of the new party.

Confirmation of the acquiring vendor's intent and ability to honor all the obligations under the Contract and to offer awarded Products at the same or better pricing determined by the Bid pricing formula will be documented by signing and submitting an Agency Contract Assignment Form. A simple change of the Awarded Vendor's name will not change the contractual obligations of the Awarded Vendor.

XII.3 Default Related to the Contract

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

- Failure to pick up the surplus item(s) within the period specified under a Quotation and Agreement
- Failure to transmit a Quotation when properly requested
- Insolvency
- Assignment made for the benefit of creditors
- Failure to protect, to repair, or to make good any damage or injury to property as required by the Contract
- Breach of any provision of the Contract, if such breach is not cured within thirty (30) days of receipt of written notice thereof
- Failure to adequately perform the services set forth in the Contract and issued thereunder if such failure is not cured within thirty (30) days of receipt of written notice thereof
- Failure to make progress in the performance of the Contract and/or giving Agency reason to believe that Awarded Vendor will not or cannot perform to the requirements of the Contract if such failure is not cured within thirty (30) days of receipt of written notice thereof
- Failure to observe any of the Terms and Conditions of the Contract, if such failure is not cured within thirty (30) days of receipt of written notice thereof
- Failure to pay Transaction Fees
- Failure to follow the established procedures, for payments as stipulated by the Agency and/or Eligible Entity
- Failure to maintain its baseline prices for examination
- Nonperformance in sales
- Suspension or Debarment occurring during the term of the Contract
- The Awarded Vendor, Authorized Reseller has been identified by the U.S. Government as posing a national security threat to the integrity of communications networks or the communications supply-chain Remedies

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

The Agency's or Eligible Entity's failure to exercise any rights or remedies provided in these Terms and Conditions, at law, in equity, or under the Contract shall not be construed to be a waiver by the Agency or Eligible Entity of its rights and remedies in regard to the event of default or any succeeding event of default.

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

XII.4 Force Majeure

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

- The Awarded Vendor shall notify the Agency regarding obligations pursuant to the Contract or the Eligible Entity regarding obligations pursuant to the Purchase Order orally within five business days and in writing within ten business days of the date on which the Awarded Vendor becomes aware or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall:
- Describe fully such cause(s) and its effect on performance
- State whether performance under the Contract, as applicable, is prevented or delayed
- If performance is delayed, state a reasonable estimate of the duration of the delay if the nature of the force majeure event does not prevent Awarded Vendor from reasonably making such an estimation

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

In the event of a declared emergency by competent governmental authorities, the Eligible Entity by notice to the Awarded Vendor, may suspend all or a portion of the Purchase Order, and resume activities when the suspension ends, including making any delayed payments resulting from the suspension.

XII.5 Termination of Contract

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

- At any time, the Agency reserves the right to conduct a review of the Awarded Vendor's performance of Contract responsibilities with the possibility of cancellation of the whole or any part of this Contract due to failure by the Awarded Vendor to carry out any obligation, term, or condition of the Contract. The Agency may, but is not obligated to, follow these procedures:
- Step 1: Issue a warning Letter of Concern outlining the violations and length of time to correct the problems
- Step 2: Issue a letter of intent to cancel the Contract, if the problems are not resolved by a given date
- Step 3: Issue a letter to cancel the Contract

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

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

XII.6 **Assignability and Subcontracting**

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

The Awarded Vendor shall not subcontract with any person or entity to perform all or substantially all of the work to be performed under the Contract or a Purchase Order, without notifying the Agency and Eligible Entity, as applicable. The use of delivery/removal carriers does not constitute subcontracting. Awarded Vendor may use subcontractors regularly retained by Awarded Vendor in the ordinary course of business to perform cost, freight, and insurance, custom factory integration, warranty, break/fix, administrative and back office services, provided such subcontractors shall not have access to Eligible Entity's confidential information other than billing and contact information, and Awarded Vendor shall indemnify and hold harmless Agency and Eligible Entity from any claims, penalties, damages, and expenses of any nature (including attorneys' fees and costs) arising out of or relating to such subcontractors.

The Awarded Vendor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities thereunder without the prior written consent of the Agency and Eligible Entity, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed.

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

Any assignment consented to by Agency or Eligible Entity shall be evidenced by a written assignment agreement executed by the Awarded Vendor and its assignee in which the assignee agrees to be legally bound by all of the Terms and Conditions of the Contract, as applicable, and to assume the duties, obligations, and responsibilities being assigned. Unless the Agency or Eligible Entity has consented to an assignment and agreed in writing to release the assignor from liability under the Contract, no assignment shall release the Awarded Vendor from liability under the Contract.

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 Eligible Entities holding outstanding Purchase Orders written notice of any such change of name.

Notwithstanding the foregoing, the Awarded Vendor may, without the consent of the Eligible Entity, assign the Agreement to a successor entity in connection with a merger, consolidation or dissolution of all or substantially all of Awarded Vendor's assets or business, provided that Awarded Vendor's successor entity assumes in writing all of Awarded Vendor's obligations under this Agreement and agrees in writing to be bound by this Agreement, assign its rights to payment to be received pursuant to the Purchase Order, provided that the Awarded Vendor provides written notice of such assignment to the Eligible Entity together with a written acknowledgment from the assignee that any such payments are subject to all of the Terms and Conditions of the Purchase Order.

Further, notwithstanding the foregoing, the Awarded Vendor may, without the consent of Agency or Eligible Entity, assign leases to a third party for securitization or factoring.

XII.7 Data Security, Privacy, and Indemnification

Awarded Vendor acknowledges that equipment transferred under this Agreement may contain confidential, protected, privileged, personally identifiable, student, employee, financial, medical, law enforcement, or other sensitive information subject to federal and California privacy laws and regulations, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), California Education Code provisions relating to pupil records, the California Consumer Privacy Act ("CCPA"), and applicable data breach notification laws.

Awarded Vendor shall be solely responsible for the secure handling, transportation, storage, sanitization, destruction, recycling, refurbishment, resale, and disposal of all data-bearing devices and media received from the Eligible Entity.

Awarded Vendor shall implement and maintain commercially reasonable administrative, technical, and physical safeguards designed to

- Prevent unauthorized access to confidential information
- Prevent downloading, copying, transfer, retention, disclosure, or misuse of data by Awarded Vendor personnel or subcontractors
- Ensure complete and verifiable destruction or sanitization of data-bearing media
- Prevent recovered data from entering the possession or control of unauthorized third parties, and
- Maintain chain-of-custody documentation for all data-bearing devices

Awarded Vendor shall be fully responsible and liable for all acts, omissions, negligence, misconduct, intentional wrongdoing, or unauthorized activities of its officers, employees, agents, sub-Awarded Vendors, downstream processors, recyclers, and representatives.

Awarded Vendor shall promptly notify the Eligible Entity of any actual or suspected security incident, unauthorized disclosure, data breach, theft, or compromise involving Eligible Entity information, but in no event later than twenty-four (24) hours after discovery.

Awarded Vendor shall defend, indemnify, and hold harmless the Eligible Entity, its board, officers, employees, agents, and representatives from and against any and all claims, demands, liabilities, damages, penalties, fines, regulatory actions, losses, judgments, costs, and expenses, including attorneys' fees and forensic investigation costs, arising out of or relating to:

- Failure to properly erase, sanitize, or destroy data
- Unauthorized access to or disclosure of confidential information
- Downloading, copying, retention, transfer, or misuse of data by Awarded Vendor personnel
- Loss or theft of devices or media after transfer of custody
- Discovery of recoverable data on devices represented as sanitized or destroyed
- Violations of FERPA, California student privacy laws, or other applicable privacy statutes
- Data breaches or security incidents associated with Awarded Vendor's handling of Eligible Entity equipment
- Acts or omissions of Awarded Vendor's sub-Awarded Vendors or downstream vendors

- Awarded Vendor's obligations under this section shall survive expiration or termination of the Agreement and shall survive transfer of title to the equipment

XII.8 **Intellectual Property Indemnity**

Awarded Vendor shall defend, indemnify and hold harmless the Agency and Eligible Entity (collectively, "Indemnities") from and against all claims, damages, losses and expenses, including without limitation reasonable attorney's fees and legal costs, that Indemnities incur as a result of any third-party claims, demands, or actions arising out of or resulting from a claim or allegation that any services or buybacks provided by Awarded Vendor in connection with the Contract ("Covered Product") infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property rights of any third party enforceable in the United States (each a "Covered Claim"). Awarded Vendor shall have no obligation for Covered Claims to the extent they are caused by: (i) the combination of a Covered Product with third-party Products with which such Covered Product was not intended to be used, (ii) the unauthorized modification of a Covered Product, (iii) the use of a Covered Product for a purpose or in a manner for which such Covered Product was not designed, or (vi) the use of a Covered Product after Awarded Vendor has informed Eligible Entity of modifications or changes to the Covered Product that do not result in a material loss of functionality and that are required to avoid such Covered Claim, and has offered to promptly implement such modifications or changes free of charge, if such Covered Claim would have been avoided by implementation of such modifications or changes. To obtain the benefit of the foregoing indemnification, Indemnitees must (a) promptly notify Awarded Vendor of a Covered Claim.

(b) provide Awarded Vendor with such reasonable assistance as Awarded Vendor reasonably requires from time to time, provided Awarded Vendor shall pay for all Indemnitees' out of pocket costs, and (c) give Awarded Vendor full control of the defense and settlement of the Covered Claim, provided that no settlement shall require an admission of guilt from Indemnitees or the payment of any amount not indemnified for hereunder. If a Covered Claim is made, or in Awarded Vendor's opinion is likely to occur, Awarded Vendor, at its sole discretion and expense, may perform one of the following: (a) use its reasonable endeavors to procure for Indemnitees the right to continue using the Covered Products.

(b) use its reasonable endeavors to replace or modify the Covered Products so that they become non-infringing, without material loss of functionality, or (c) if neither (a) or (b) are practicably available to Awarded Vendor acting reasonably, reimburse to Indemnitees all prepaid amounts, and reimburse Indemnitees for the total cost of such Covered Products depreciated on a straight-line basis over a period of five years. This Section states the exclusive and entire liability of Awarded Vendor to Indemnitees for Covered Claims.

XII.9 **Indemnification**

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

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

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

Further, nothing in these indemnification provisions is intended to waive or extinguish the immunity protections of Agency or Eligible Entity, its agents, or employees as set forth in California law or other similar state or federal laws or Constitutional provisions. Awarded Vendor's indemnity obligations shall be in addition to any insurance requirements under the Contract. The obligations shall survive the expiration or earlier termination of the Contract.

XII.10 **Limitation of Liability**

Under no circumstances, and notwithstanding the failure of essential purpose of any remedy set forth herein, will any party be liable for any incidental, indirect, special, punitive, or consequential damages, including, but not limited to, loss of profits, business, revenues or savings, and loss, damage or corruption of data or software, even if such party has been advised of the possibilities of such damages or if such damages are otherwise foreseeable.

In the event of any liability incurred by Awarded Vendor or any of its affiliates hereunder, the entire liability of Awarded Vendor and its affiliates for damages from any cause whatsoever will not exceed the dollar amount paid to the Eligible Entity or Agency [determined by the party bringing the claim] for the specific Products or services giving rise to the claim.

XII.11 **Governing Law, Jurisdiction and Venue, and Severability**

The Agreement between the Agency and the Awarded Vendor and its Authorized Resellers will be governed and construed in the courts with the laws of the state of California without giving effect to its conflict-of-laws provisions. Claimants submit to the exclusive jurisdiction of the courts of Monterey in the state of California and any United States courts located within Agency's jurisdiction for purposes of any and all litigation arising out of or relating to this Agreement or the use of the CalSave website. Claimants waive any objections to the forum of California for lack of venue, *forum non-conveniens*, or any other jurisdictional ground.

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

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

XII.12 **Rights of Eligible Entities**

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

XII.13 **Legal Notices**

All notices explicitly or implicitly required by the Contract shall be delivered by certified mail or other commercial carrier offering proof of delivery to the parties at the address referred to in the Awarded Vendor

Agreement. Unless proven to the contrary by the recipient, notice shall be considered received no more than two business days after its postmark by the postal service or proof of delivery by a commercial carrier.

XII.14 Binding Nature and Survival

The Contract and each Purchase Order shall be binding on and inure to the benefit of the respective parties thereto and their respective successors and assigns. It is understood and agreed, whether or not specifically provided herein, any provision of the Contract, which by its nature and effect is required to be observed, kept, or performed after the expiration or termination of the Contract shall survive the expiration or termination of the Contract.

XII.15 Copyright

[END]