

CHEYNEY UNIVERSITY OF PENNSYLVANIA

a member of the

STATE SYSTEM OF HIGHER EDUCATION**REQUEST FOR PROPOSAL
FOR
Online Payment Processing System
For Cheyney University****NOTICE TO CONTRACTORS**

The State System of Higher Education invites you to submit a sealed bid proposal for **Online Payment Processing System**, for Cheyney University, otherwise referred to as “Cheyney” or “the University”, a member of the State System of Higher Education herein referred to as “the System”.

Sealed proposals with pricing sealed separately and provided in strict compliance with requested specifications, as noted to insure acceptance, will be received at the 1837 University Circle, Cheyney, PA 19319 Attn: Procurement Services no later than **2:00 p.m., July 18, 2011**. All sealed proposals must be valid for a minimum of ninety (90) days from the bid due date above.

Purchasing Section 1**GENERAL****1.1 Overview**

This request for proposal (RFP) provides interested suppliers with sufficient information to prepare and submit proposals for consideration with the intent of contracting to provide the services described herein.

Cheyney University of Pennsylvania is requesting firm pricing from providers, herein referred to as “the Contractor(s)”, who are offering their services, with detailed comparisons between requested specifications and those of their own. Respondents are encouraged to provide enhancements to the specifications.

Instructions for proposal submissions, a description of services to be provided in accordance with the project specifications, and general evaluation criteria are contained herein. This RFP is to be distributed to a range of applicable suppliers able to provide the services required.

This contract will be awarded to the Contractor(s) judged to be the best meeting or exceeding the requirements as specified.

1.2 General Conditions and Specifications

POINT OF CONTACT: The point of contact for this RFP is Monique Baylor, Director, Procurement Services, Cheyney University of Pennsylvania, Phone: 610-399-2343, e-mail mbaylor@cheyney.edu, fax: 610-399-2616. It is preferable that all questions are received via e-mail or fax.

1.3 Bid Opening Date: 2:00 p.m., July 19, 2011 – Wade Wilson Room 329**1.4 Incurring Costs**

Cheyney is not liable for any cost incurred by the supplier for preparation of the RFP or costs incurred prior to award of a contract.

1.5 Contract Expectations

The selected supplier(s) will be expected to execute the terms of a standard Commonwealth contract (see Attachment B, example), considered to be an official Cheyney University contract. The chosen Contractor's terms and conditions, if present, will be attached to the contract and/or referenced and considered to be incorporated into the contract document.

1.6 Fiscal Condition

At all times this RFP and any subsequent contract(s) shall be conditional upon the availability of the fiscal budget.

1.7 Contract Length

The contract will be in effect for a period of 3 years or from the effective date assigned by the Contracting Officer until December 30, 2014.

The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

1.8 Response Copies

The cost portion of the proposal must be bound and sealed separately from the remainder of the proposal.

1.9 Taxes

The Commonwealth is exempt from all excise taxes and all transportation taxes imposed by the Internal Revenue Code. Sales made to the Commonwealth are exempt from the

provisions of the Fair Trade Law and the Pennsylvania Sales Tax. No tax shall be included in the bid price.

1.10 E-mail Address Request/Acknowledge of Receipt

Respondents are requested to provide an acknowledgement of receipt and an appropriate e-mail address and/or fax number immediately upon receipt of this RFP if applicable to the companies scope of work. Any changes in dates, dissemination of addendum to this RFP, etc. will be issued through e-mail or fax communications.

Address your acknowledging e-mail to mbaylor@cheyney.edu or fax 610-399-2616.

1.11 Response Format

Each comment and/or response to this RFP must be indexed in the exact same order as written. Deviations from this required response format may result in the rejection of part or all of the bid submission. **The cost portion of the proposal must be bound and sealed separately from the remainder of the proposal.**

1.12 Conditional Price Escalations

Conditional Price Escalations.

Price increases may be tolerated if in accordance with the following statements:

Escalation of annual costs for subsequent years of this contract is not automatic and shall not exceed inflation guidelines as established by the nationally accepted Consumer Price Index-Urban (CPI) for each year for this particular commodity or service. Contractor must provide documentation to justify escalation and make escalation request in writing on an annual basis.

Should escalation figures prove to be above CPI levels, the contractor must provide sufficient justification for the increase and said increase must be acceptable to the University. Newly negotiated labor agreements, federally recognized fuel inflation adjustments, statutory increases, and applicable federal and state wage laws are acceptable increases which may exceed CPI levels.

1.13 Terms and Conditions Exceptions

It is mutually agreed by and between the University and the Contractor that the university will be accepting the supplier's offer through issuance of one or more contracts that shall be an agreement between the parties thereto containing all specifications, and terms and conditions as stated in this Sealed Bid Proposal. **The supplier shall clearly state, on the bid response, any exceptions to or deviations from the Terms and Conditions contained herein at:**

<http://www.passhe.edu/inside/legal/layouts/WordViewer.aspx?id=/inside/legal/Doc>

[uments/StdTermsAndCond.doc&DefaultItemOpen=1](#). Such exceptions or deviations may be considered in evaluating the bids received and may result in rejection of that bid.

1.14 Billing Procedures

When applicable, payments will be made and paid according to the terms and conditions as set forth and agreed upon by both parties.

The University requires itemized invoices for remittance of payments. Each invoice shall include the purchase order number / contract number, dates of service, types of services provided and equal expected charges as will be delineated in the purchase order.

Invoices will not be paid without proper approval of the University's designee for these services. University payment terms are Net /30, unless otherwise agreed to by both parties.

Respondents should outline their proposed procedures for handling Cheyney University's account and provide the name of a person who will be familiar with this contract and the correct billing procedures. The name of the person having overall responsibility for Cheyney University's account should also be included.

1.15 Hold Harmless Provision

The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

1.16 Insurance

The Contractor must provide public liability insurance. Amounts of such insurance are suggested to be no less than \$1,000,000 for any particular loss for any one person, including property damage, and not less than \$1,000,000 for any one accident involving injury, including wrongful death to more than one person including property damage. Additionally, the Contractor is responsible for all Workmen's Compensation Insurance requirements as dictated by Federal and State statutes.

1.17 Termination of Agreement

The Commonwealth has the right to terminate the Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor:

(a) Termination for Convenience. The Commonwealth shall have the right to terminate the Contract for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed

prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover lost profits.

(b) Non-appropriation. The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

(c) Termination for Cause. The Commonwealth shall have the right to terminate the Contract for Contractor default under paragraph 19 Default, of the contract terms and conditions upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under subparagraph (a).

1.18 Right To Know

Please be advised that effective January 1, 2009 all responses to this procurement opportunity are subject to the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 et seq., (Act 3 of 2008). The Right-to-Know Law permits any requestor to inspect and/or copy any record prepared and maintained or received in the course of the operation of a public office or agency that is not subject to the enumerated exceptions under the law. If your response to the procurement opportunity contains a trade secret or confidential proprietary information, you should include with your response a separate signed written statement to that effect. Should your response become the subject of a Pennsylvania Right-to-Know Law request, you will be notified by the procurement office to identify all trade secrets or confidential and proprietary information that is included in your response. The Pennsylvania State System of Higher Education (PASSHE) will then determine whether the claimed trade secret or confidential and proprietary information is subject to disclosure.

1.19 Non-Exclusivity

This RFP and any resulting contract is not exclusive and is intended to be an expedient and efficient means of providing the University's needs for this (i.e. service, installation, etc.) at this location. Additionally, it is the University's intent to be able to assure the campus community that the highest quality services were purchased at the best possible rate.

1.20 Silence of Specifications

The apparent silence of this specification and any supplemental specifications as to any details or the omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial/professional practices are to prevail and that only workmanship and materials of first quality and of the correct type, size, and design are to be used. All interpretations of the specification shall be made upon the basis of this statement.

1.21 Bid Rejection

Cheyney University of Pennsylvania reserves the right to reject any or all bids/RFPs for any or all reasons and is not bound to accept the lowest response if that bid is judged contrary to the best interests of the University.

1.22 Notice As To Filing A Bid Protest

1) A bidder or offeror, a prospective bidder or offeror, or a prospective contractor, that is aggrieved in connection with the solicitation or award of a contract under the *Commonwealth Procurement Code*, except as provided in 62 Pa.C.S.A. § 521 (relating to cancellation of invitations for bids or requests for proposals) may file a protest with the Office of the Chancellor, State System of Higher Education, 2986 North Second Street, Harrisburg, Pennsylvania, 17110.

A copy of any protest must also be simultaneously mailed to the Office of the President of the university that issued the bid solicitation. In the event that the Educational Resources Group (ERG) issued the bid solicitation, a copy of the Protest should be filed with its President. No additional notification need be sent if the Office of the Chancellor issued the bid solicitation.

2) If the protestant is a bidder or offeror or a prospective contractor, the protest must be filed with the Office of the Chancellor at the aforementioned address within seven (7) days after the aggrieved bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest. In no event may a protest be filed later than seven (7) days after the date the contract was awarded.

3) If the protestant is a prospective bidder or offeror, a protest must be filed with the Office of the Chancellor at the aforementioned address prior to the bid opening time or the proposal receipt date.

4) If a bidder or offeror, a prospective bidder or offeror, or a prospective contractor fails to file a protest, or files an untimely protest, the bidder or offeror, the prospective bidder or offeror, or the prospective contractor will have waived its right to protest the solicitation or award of the contract in any forum. The State System of Higher Education shall disregard protests that are untimely filed.

- 5) A protest must state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.
- 6) Upon receipt of the protest, the Office of the Chancellor will render a decision in accordance with the procedures outlines within the *Commonwealth Procurement Code*, 62 Pa.C.S.A. §1711.1 *et seq.*

1.23 Collaborative Purchasing

Any goods/services described above purchased by the specified University on this order may also be procured by any other university that is part of the Pennsylvania State System of Higher Education (“PASSHE”), including the Dixon University Center (Office of the Chancellor) and the interested contractor agrees to supply the goods/services to those universities on the same terms and conditions. To the extent that other universities procure from this order/contract, they assume the liability for payment to the successful vendor.

(The remainder of this page has been intentionally left blank.)

Purchasing Section 2.0**SPECIFIC ISSUES RELATIVE TO THIS RFP****2.1 Bid Submission Instructions**

All responses are to be returned in tact including the entire RFP with any comments and required responses in addition to any required attachments. **The cost portion of the proposal must be bound and sealed separately from the remainder of the proposal.** It is extremely important that an authoritative signature be applied to bottom portion of the "Request for Quotation" cover form as well as Attachment A, Bid Proposal form and signature page. All documents must then be placed in an appropriate envelope and mailed to the University with the following information clearly displayed on the outside of the envelope. The envelope should be addressed as follows:

**Procurement Services
Cheyney University of PA
1837 University Circle
Cheyney, PA 19319**

The following information must be CLEARLY LEGIBLE in the lower left-hand corner of the outside envelope to assure timely delivery to the Purchasing Office:

SEALED BID RETURN ENCLOSED

RFP No. CU2011-013MB

Opening Date & Time: 2 p.m., July 19, 2011

2.2 Cost and Price Analysis

The cost information requested herein is required to support the reasonableness of your quotation and is for internal University use only. This cost portion of the proposal must be bound and sealed separately from the remainder of the proposal and should include the cost proposal and any other related documentation as requested in this RFP as well as other pertinent cost information.

2.3 Experience, References and Corporate Viability:

The selected Contractor(s) must be a company normally engaged in providing this service. Contractors are to include with their response their qualifications to meet RFP specifications in terms of past and current experience.

Information attesting to corporate growth, reputation, experience, quality of service, quality of support personnel, etc. should be supplied in ATTACHMENT A, Part B –

Contractor's Qualification Statement. The selected Contractor may be requested to provide an annual report and/or financial statements attesting to the fiscal viability of the company.

Contractors without past experience with System member institutions must provide a minimum of four (4) references. The System prefers references from educational institutions with a similar environment where the responding firm has supplied the exact or similar services. Include the name and address of the organization, the name(s), titles and telephone numbers of the person(s) to be contacted and a general scope of the services provided.

2.4 Evaluation Criteria

The proposals, which are judged to meet or exceed Cheyney's needs, at the most advantageous prices or best value, will be selected for the overall contract.

The bid specifications contained herein are not intended to be exclusionary, but rather a guide for the type of purchase and service we wish to have provided. All proposals will be accepted, reviewed and evaluated, but the University reserves the right to accept the proposal or proposals which are judged best to meet or exceed the needs of the University. Each proposal will be equally evaluated where pricing is only one consideration and not necessarily the primary deciding factor.

2.5 Evaluation Standards

Evaluation standards will focus primarily on the following criteria:

- Whether a business is a(an) minority/disadvantaged/women owned businesses
- Pricing as presented by the respondent. Pricing must be bound and sealed separately from the remainder of the proposal;
- Meet or exceed the required specifications as described, including but not limited to, providing detailed information on how the respondent proposes to accomplish the detailed project;
- Respondent's history with Cheyney University or similar projects, references either provided or researched by the University, exhibition of financial stability, etc.
- Respondent's business longevity under favorable reports as determined by the University either through provided or researched references.

2.6 Proposed Time Schedule:

Request for Proposal Distributed	<u>July 1, 2011</u>
Pre-Bid Conference	<u>n/a</u>
RFP Formal Opening - 2:00 p.m.	<u>July 19, 2011</u>
Proposal Evaluation	<u>July 25, 2011</u>
Trustee Approval (if >\$25,000)	
Contract Awarded	<u>August 8, 2011</u>
Contract Approvals complete	<u>October 28, 2011</u>

2.7 Contract Awards

The awarded contract(s), once created, must go through a mandatory review and approval process. Below is the routing the document will follow for the process:

- a) The document is mailed to the awarded contractor(s) for signature;
- b) Contractor returns the document to the University for University signatures;
- c) University forwards document to University legal counsel for review and approval;
- d) University legal counsel submits document the Commonwealth Attorney General for review and approval;
- e) If the contract amount is greater than \$500,000.00, the document is sent to the Commonwealth Office of General Counsel for review and approval.

Only after these steps have been followed, is a copy of the contract returned to the contractor(s) as official notification to commence services as directed.

2.8 Bid Security: (not applicable)

Contractor shall submit as part of bid requirements, bid security in the form of certified check, bank cashiers check or bid bond drawn to the order of Cheyney University in the amount of \$2,000, which, it is understood, will be forfeited if this Proposal or any part thereof is accepted by the University and the Contractor shall fail to execute the Contract; otherwise said check or Bid Bond shall be returned. All checks or Bid Bonds not forfeited under the terms of bidding, except for the two lowest responsive, responsible bidders, shall be returned on or before the 10th day subsequent to the Bid Opening.

2.9 Contract Bond (not applicable)

The successful bidder will be responsible for securing a Contract Bond in the amount of the awarded contract. The individual, partnership, or corporation to whom or to which Contract Bonds have been requested, must within ten (10) days after the receipt of the documents, sign, have the Surety execute, and return them to the University. The Contractor's surety company shall successfully demonstrate, in writing prior to award, that the amount of the bond or reinsurance or other security has been obtained in conformance with Section 661 of the Pennsylvania Insurance Company law of 1921, 40

P.S. 832. Failure of the bidder to execute the required bond within the time specified will result in payment to the University, **Not As A Penalty**, but as liquidated damages, their proposal guaranty, in the amount of the difference between their bid proposal and the next lowest responsive responsible bid proposal, or the proposal guaranty amount, whichever is less. The University shall have the right to award the contract to the next lowest responsive responsible bidder.

Please be advised that your Surety must be licensed by the Commonwealth of Pennsylvania Insurance Department. Should your Surety not be listed on the latest Commonwealth of Pennsylvania Insurance Department Surety list, we would ask your Surety to provide proof of their license by the Insurance Department.

A sample of the Contract Bond, agreements and instructions that will be provided with it follow:

(The remainder of this page has been intentionally left blank.)

CONTRACT BOND

KNOW ALL PERSONS BY THESE PRESENTS, That we the undersigned

as Principal and _____
(Surety Company)

(Address)

a corporation organized and existing under the laws of the State of _____ and authorized to transact business in Pennsylvania, as Surety, are held and firmly bound unto the State System of Higher Education as hereinafter set forth, in the full and just several sums of

(A) _____
(100% of contract amount)

_____ Dollars (\$ _____),

for faithful performance of the contract as designated below;

(B) _____
(100% of contract amount)

_____ Dollars (\$ _____),

for payment for labor, material, equipment rental and public utility services as designated below; and

(C) _____
(10% of contract amount)

_____ Dollars (\$ _____),

for maintenance as designated below ; lawful money of the United States of America, to be paid to the State System of Higher Education, its successors or assigns, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our respective seals and dates this _____ day of _____ 19____.

WHEREAS, the above bounden Principal has entered into a contract with _____ University of the State System of Higher Education for:

upon certain terms and conditions in said contract more particularly mentioned; and

WHEREAS, it is one of the conditions of the award of the State System of Higher Education pursuant to which said contract is about to be entered into, that these presents be executed;

NOW, THEREFORE, the joint and several conditions of this obligation are such:

A. That if the above bounden Principal as Contractor shall well and faithfully do and perform the things agreed by him to be done and performed according to the terms of said contract and general provisions, including the plans and specifications therein referred to and made part thereof, and such alterations as may be made in said plans and specifications as therein provided, and which are hereby made part of this bond the same as though they were fully set forth herein, and shall indemnify and save harmless the State System of Higher Education and all of its officers, agents and employees from any expense incurred through the failure of said Contractor to complete the work as specified and for any damages growing out of the manner of performance of said contract by said Contractor or his Subcontractors, or his or their agents or servants including but not limited to patent, trademark and copyright infringements, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

B. That if the above bounden Principal shall and will promptly pay or cause to be paid all sums of money which may be due by the Principal or any of his subcontractors to any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor entered into and became component parts of the work or improvements contemplated, and for rental of equipment used, and services rendered by public utilities in, or in connection with, the prosecution of such work, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

C. That, if the above bounden Principal shall remedy without cost to the State System of Higher Education any break of warranty and/or defects which may develop during a period of one (1) year from the date of final completion and acceptance of all the work performed under said contract; provided, in the judgment of the State System of Higher Education or its successor having jurisdiction in the premises, such defects are caused by defective or inferior materials or workmanship, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect. The duties and responsibilities incurred by the Principal pursuant to said Maintenance Bond shall in no way qualify or limit any right of the State System of Higher Education arising pursuant to the terms and conditions of the Performance Bond or absolve the Principal of any duty, responsibility or obligations vested in the State System of Higher Education.

D. It is further agreed that any alterations which may be made in the terms of the contract or in the work to be done, or materials to be furnished, or labor to be supplied or performed, or equipment to be rented, or public utility services to be rendered, or the giving by the State System of Higher Education of any extension of time for the performance of the contract, or the reduction of the retained percentage as permitted by the contract, or any other forbearance on the part of either the State System of Higher Education or the Principal to the other, shall not in any way release the Principal and the Surety or Sureties or either or any of them, their heirs, executors, administrators, successors or assigns, from their liability hereunder; notice to the Surety or Sureties of any such alterations, extension, or forbearance being hereby waived.

E. The Principal and Surety hereby jointly and severally agree with the obligee herein that every person, co-partnership, association or corporation who, whether as Subcontractor or as a person otherwise entitled to the benefits of this Bond, has furnished material or supplied or performed labor or rented equipment used in the prosecution of the work as provided and any public utility who has rendered services, in, or in connection with, the prosecution of such work, and who has not been paid in full therefore, may sue in assumpsit on this bond in his, their, or its name and prosecute the same to final judgment for such sum or sums as may be justly due him, them, or its, and have execution thereon; provided, however, that the State System of Higher Education shall not be liable for the payment of any costs or expenses of such suit to a third party under any theory of law of equity.

F. Recovery by any persons, co-partnership, association, or corporation hereunder shall be subject to the provisions of the Act of December 20, 1967, P.L. 869, Act No. 385 (8 P.S. 191 ET SEQ), as amended, which Act is incorporated herein and made a part hereof, as fully and completely as though its provisions were fully and at length herein recited, except that where said Act refers to the Commonwealth of Pennsylvania or a Department thereof, it shall be deemed to refer to the State System of Higher Education.

IN WITNESS WHEREOF, the said Principal and Surety have duly executed this Bond under seal the day and year above written.

WITNESS:

Principal-Individual (SEAL)

Surety

(SURETY SEAL)

BY _____
Attorney-in-Fact

WITNESS:

Principal-Partnership

(SEAL)

(SEAL)

(SEAL)

Surety

(SURETY SEAL)

BY _____
Attorney-in-Fact

(CORPORATE SEAL)

Secretary or Treasurer

Principal-Corporation

BY _____
President or Vice-President

Surety

(SURETY SEAL)

BY _____
Attorney-in-Fact

(DATE)

(CONTRACTOR)

SUBJECT: Contract Bonds**Reference: (Project Name & Number)
(Contract Amount: \$\$\$ for Base Bid #_____)**

In accordance with the requirements of the Bid Form and the Instructions to Bidders, the System is requesting your Surety to provide the required Contract Bonds on the Rider F forms attached, in the amount of one hundred per cent (100%) of the contract price. Failure of your firm to provide the Contract Bond within ten (10) calendar days from the receipt of this letter will result in award of this contract to the next lowest responsible bidder, and may result in payment to the System of the bid proposal guaranty, in accordance with the provision in the Instructions to Bidders.

Please be advised that your Surety must be licensed by the Commonwealth of Pennsylvania Insurance Department. Should your Surety not be listed on the latest Commonwealth of Pennsylvania Insurance Department Surety list, we would ask your Surety to provide proof of their license by the Insurance Department.

We wish to point out the following guidelines pertaining to the Contract Bond form:

Page 1: Record your company name and street address in the first paragraph marked for the Principal. **Should your business be individually owned (and not incorporated), identify both your name and the trading name or business name on the agreement, should it be different.**

Have your Surety company type in their name and street address on the lines so marked. **The street address shall be that as recorded in the Commonwealth of Pennsylvania Insurance Department Surety List for either the mailing address or the home address. The only exception being the branch office of a Surety may use their street address.**

In the bottom paragraph, type in the date that your Surety signs this Contract Bond.

Page 4: Choose the appropriate signature block, depending on the type of company organization.

If your company is a corporation, please have the President or Vice President of your corporation sign on the line so marked. Please have the Secretary or Treasurer of your corporation sign on the line so marked. After they have signed, please draw a line through whichever titles are not appropriate (for example, if the President signs, draw a line through the words "Vice President"). The Assistant Treasurer or Assistant Secretary are also acceptable signatures.

If you substitute other signatures for the corporate officers, please provide to our office a certified copy of the resolution of the corporation's board of directors stating that the individual who signed the Agreement is "authorized to bind the corporation to contracts" for the dollar amount in question. **The resolution or certification must be dated prior to and not later than the date of the agreement.**

Should there only be one officer of the corporation, provide a copy of the incorporation papers or a copy of the board of directors meeting minutes appointing one person to all offices.

Should any signatures, in your opinion, be illegible or not clear as to identify them properly, please type their names beneath the signature line.

- * It is very important that the same persons who will sign the Agreement for your company sign the Contract Bond.
- * Seals for both your company (**if your company is a corporation**) and your Surety are to be affixed where indicated.
- * Attach your Surety's Power of Attorney to Page 4 of both Contract Bonds. This Power of Attorney must be dated **the same date** as the date typed on Page 1 of the Contract Bond. This is to ensure that the person who signs for the Surety had authority to sign as of the date of this Contract Bond.
- * Please return two originals of the completed Contract Bond form to our office for incorporating into the agreement.

Purchasing Section 3.0**Online Payment Processing System****3.1 Purpose/Scope:**

Cheyney University of Pennsylvania is undertaking a project that will involve the purchase of an ONLINE PAYMENT PROCESSING SYSTEM.

3.2 University Requirements:

Cheyney University of Pennsylvania is seeking a solution for online payment processing. The online solution should integrate with the University's current student information system and student room and board system (SCT – PowerCampus and Blackboard and Raiser's Edge) and provide an online marketplace for other departments to use for e-commerce. The payment processing system must be a hosted web based site and must be centrally processed in one system and database. The site must provide controls to ensure the University's compliance with various federal regulations (FERPA, PCI etc.)

3.3 Specifications:**Scope of Work**

Cheyney University is seeking proposals for an online payment processing system which is provided through one vendor. The system should be web-based and integrate with the University's current systems (SCT-PowerCampus and Blackboard, and Raiser's Edge). The system must also be able to perform the following:

Electronic Bill Presentment

The system will allow the University to e-mail notifications and present billing statements online to students.

Online Payment Processing in Real-Time

The system will allow the University to present real-time student account balances for payment .

eRefund

The system will allow the University to send refunds via Electronic Funds Transfer (EFT).

Installment Plans

The system will allow the University to create and manage installment payment plans.

Departmental eCommerce

The system will allow the University to establish Storefronts" through wizard-driven web site creation.

Online 1098T presentation

4.0 ATTACHMENTS

The following attachments include:

ATTACHMENT A – Bid Proposal Form / Contractor Qualification Statement
ATTACHMENT B – Example of Commonwealth/University Contract

ATTACHMENT A

RFP# CU2011-013MB

(5 pages)

CHEYNEY UNIVERSITY OF PENNSYLVANIA
STATE SYSTEM OF HIGHER EDUCATION

ONLINE PAYMENT PROCESSING SYSTEM

BID PROPOSAL

Proposal of: _____
(Name) (Federal ID #)

_____ (Address) _____ (Business Telephone)

_____ (City State Zip) _____ (Fax)

_____ (Email Address)

hereinafter called "Bidder".

To: Cheyney University of Pennsylvania, hereinafter called "University".

Sirs:

In conformity with your invitation for bids for _____
_____, and having examined the Specifications and Conditions and being familiar with all conditions in connection with the proposed project, the Bidder does hereby propose to furnish all services in accordance with the Bid Documents at a price stated hereinafter.

The undersigned agrees that he will not withdraw his bid for a period of sixty (60) days from the date of bid opening.

The Bidder understands that the University reserves the right to reject any or all bids and to waive any informalities in the bidding.

Upon receipt of written notice of acceptance of this bid, the bidder will execute and deliver certificates of insurance within ten days or as required.

The following must be provided as part of the proposal submission:

PART A – COST AND TECHNICAL PROPOSAL

PART B - CONTRACTOR'S QUALIFICATION STATEMENT

(Complete only if you last completed a statement for Cheyney University more than 1 year ago.
If statement was completed less than 1 year ago, give bid number last statement was completed for: #_____.

The undersigned certifies under oath the truth and correctness of all statements and all answers to questions made hereinafter.

Submitted to: Cheyney University of Pennsylvania
1837 University Circle, Attn: Procurement Services Rm. 329
Cheyney, PA 19319 (Check one) (Check one, if applicable)

Submitted by: Name: _____ () Corporation () **BBE**
Address: _____ () Partnership (Black Business Enterprise)
_____ () Individual () **MBE**
_____ () Joint Venture (Minority Business Enterprise)
Principal Office: _____ () Other
_____ () **PIBH**
(PA Industries for the
Blind/Handicapped
)
1. How many years has your organization been in business
as a provider of these services? _____ () **WBE**
(Women-Owned Business)

2. How many years has your organization been in business under its present business name? _____

3. If a corporation, answer the following:
Date of incorporation: _____
State of incorporation: _____
President: _____
Vice President(s): _____
Secretary: _____
Treasurer: _____

4. If a partnership, answer the following:
Date of organization: _____
Type of partnership: _____ (i.e. general, limited)

Name and address of all partners:

4. If other than a corporation or partnership, describe organization and name principals:

5. Does your firm have minority certification? _____ If so, please indicate certification number and

classification: _____

6. Have you ever failed to complete any work awarded to you? If so, indicate when, where, and why: _____

7. Has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a contract? _____ If so, state circumstances:

8. List major contracts for similar type services your organization has in progress on this date.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. List major contracts for similar type work your organization has had in the last five years.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

10. Indicate name, address and telephone of agent that will be handling your insurance for this project: _____

If you are low bidder for this contract, you may be asked to submit a statement of financial conditions, including contractor's latest regular dated financial statement or balance sheet, which must contain current assets and liabilities. Are you willing to submit this information? _____

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

PROPOSAL SIGNATURE PAGE

When the bidder is an **individual**:

(Signature)

Witness:

(Date)

When the bidder is a **partnership**:

(Partnership Name)

(Partner)

(Partner)

(PARTNERSHIP SEAL)

(Partner)

(Witness)

(Date)

When the bidder is a **corporation**:

(Corporation Name)

(President)

(CORPORATE SEAL)

(Date)

ATTEST:

(Secretary/Treasurer)

The _____ is a corporation organized and existing under the laws of _____ and has (has not) been granted certificate of authority to do business in Pennsylvania as required by the business corporation law, approved May 5, 1933, P.L. 364, as amended.

The _____ is an individual or partnership trading under a fictitious or assumed name and has (has not) registered under the Fictitious Name Act of Pennsylvania; namely, the Act of May 24, 1945, P.L. 967.

ATTACHMENT B

RFP# CU2011-013MB

(20 pages)

CHEYNEY UNIVERSITY OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
STATE SYSTEM OF HIGHER EDUCATION

CONTRACT FOR

THIS AGREEMENT, made and entered into this _____ day of _____ between Cheyney University of Pennsylvania of the State System of Higher Education 840 Wood Street, Cheyney, PA 16214, (hereinafter “University,” “Commonwealth,” or “Agency”),

and

(Contractor’s full name which must be in its legally recognized form, i.e., corporate registration, full legal name if an individual and must be the same throughout this Contract. Deviations must be satisfactorily explained, except that the Contractor may be referred to as “Contractor” within this document from this point forward) at (address) acting through its proper officials, (hereinafter referred to as “Contractor”) (Federal I.D. # _____ or if an individual, Social Security Number).

Both the University and Contractor, when used together, are hereinafter referred to as Parties. The University is an instrumentality of the Commonwealth of Pennsylvania, established by and existing pursuant to Article XX-A of the Public School Code of 1949, as amended, 24 P.S. § 20-2001-A, et seq., and is authorized thereby to enter into this Contract.

The University desires to obtain _____ (Short description of the goods and/or services to be provided) from the Contractor.

NOW THEREFORE, for and in consideration of the foregoing and the mutual promises hereinafter expressed and intending to be legally bound hereby, the Parties agree as follows:

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- 1. CONTRACTOR DUTIES.** The Contractor, subject to the terms and conditions set forth below, shall perform the following specified duties: _____.

- 2. TERM OF CONTRACT.** The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Effective Date shall be fixed by the Contracting Officer after the Contract has been fully executed by the Contractor

and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the Effective Date is affixed and the fully- executed Contract has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Commonwealth shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract. The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

3. RENEWALS. _____.

- 4. COST OF AGREEMENT.** It is understood that the cost of this Agreement to the University shall not exceed _____. (Note that this is the maximum amount of this contract and is not a guaranteed payment. The University shall only pay for actual services rendered.)

4.1 CONDITIONAL PRICE ESCALATIONS

Price increases may be tolerated if in accordance with the following statements:

Escalation of annual costs for subsequent years of this contract is not automatic and shall not exceed inflation guidelines as established by the nationally accepted Consumer Price Index-Urban (CPI) for each year for this particular commodity or service. Contractor must provide documentation to justify escalation and make escalation request in writing on an annual basis.

Should escalation figures prove to be above CPI levels, the contractor must provide sufficient justification for the increase and said increase must be acceptable to the University. Newly negotiated labor agreements, federally recognized fuel inflation adjustments, statutory increases, and applicable federal and state wage laws are acceptable increases which may exceed CPI levels.

- 5. COMPENSATION/EXPENSES.** The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.
- 6. INVOICES.** Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an

itemized invoice to the agency at the address referenced on the purchase order promptly after services are satisfactorily completed. The invoice should include only amounts due under the Contract/purchase order. The purchase order number must be included on all invoices. In addition, the Commonwealth shall have the right to require the Contractor to prepare and submit a "Work In Progress" sheet that contains, at a minimum, the tasks performed, number of hours, hourly rate, and the purchase order or task order to which it refers.

7. PAYMENT.

a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Provide Service and Bill To" address if a date on which payment is due is not 141 specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or purchase order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or purchase order.

8. TAXES. The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental

entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

9. ASSIGNMENT OF ANTITRUST CLAIMS. The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Contract.

10. OWNERSHIP RIGHTS. The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

11. TERMINATION OF AGREEMENT. The Commonwealth has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.

b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the contract. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose.

c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract for Contractor default under Paragraph 19, Default, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 11.a.

12. AUDIT PROVISIONS. The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

13. CONTRACTOR RESPONSIBILITY.

- a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

Department of General Services
Office of Chief Counsel

603 North Office Building
Harrisburg, PA 17125
Telephone No. (717) 783-6472
FAX No. (717) 787-9138

14. CONTRACTOR INTEGRITY.

a. For purposes of this clause only, the words “confidential information,” “consent,” “contractor,” “financial interest,” and “gratuity” shall have the following definitions.

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

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

3) Contractor means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.

4) Financial interest means:

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

5) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

b. The Contractor 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 Commonwealth.

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

d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, 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 Commonwealth.

e. The Contractor shall not, in connection with this or any other agreement with the

Commonwealth, 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 Commonwealth.

f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.

g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.

k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

15. AMERICANS WITH DISABILITIES ACT.

a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the

disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph a above.

16. ASSIGNABILITY AND SUBCONTRACTING.

a. Subject to the terms and conditions of this Paragraph 16, this Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

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

f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.

g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

17. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE. During the

term of the Contract, the Contractor agrees as follows:

a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor 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 on account of gender, race, creed, or color.

c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

18. FORCE MAJEURE. Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the

requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay. In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract.

19. DEFAULT.

a. The Commonwealth may, subject to the provisions of Paragraph 18, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Paragraph 11, Termination Provisions) the whole or any part of this Contract for any of the following reasons:

- 1) Failure to begin work within the time specified in the Contract or as otherwise specified;
- 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract terms;
- 3) Unsatisfactory performance of the work;
- 4) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
- 5) Discontinuance of work without approval;
- 6) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- 7) Insolvency or bankruptcy;
- 8) Assignment made for the benefit of creditors;
- 9) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
- 10) Failure to protect, to repair, or to make good any damage or injury to property; or
- 11) Breach of any provision of this Contract.

b. In the event that the Commonwealth terminates this Contract in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated,

and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.

c. If the Contract is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Issuing Office, such partially completed work, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

f. Following exhaustion of the Contractor's administrative remedies as set forth in Paragraph 21, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

20. HOLD HARMLESS PROVISION. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

21. CONTRACT CONTROVERSIES.

a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.

b. The contracting officer shall review timely- filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting

officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

22. AMENDMENTS. This Agreement represents the complete agreement between the parties, superceding any other prior or contemporaneous written or oral agreements. Any changes, corrections or additions to this Agreement shall be in writing in the form of a supplemental agreement signed by all necessary parties and setting forth therein the proposed change, correction or addition.

23. SEVERABILITY. Should any term of this 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 agreement to the extent possible.

24. APPLICABLE LAW. This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

25. INDEPENDENT CONTRACTOR. In performing the services required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.

26. POST-CONSUMER RECYCLED CONTENT. Except as specifically waived by the Pennsylvania State System of Higher Education in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified in Exhibits A-1 through A-8 to these Standard Contract Terms and Conditions.

EXHIBITS A-1 THROUGH A-8 REFERENCED WITHIN THIS DOCUMENT ARE LOCATED AT THE END OF THE CONTRACT IN APPENDIX A. IT HAS NOT BEEN REPLICATED HERE IN ORDER TO SAVE SPACE

Or

26. POST-CONSUMER RECYCLED CONTENT. *(The University has determined the Post-Consumer Recycled Content clause to be not applicable to this agreement.)*
(Don't forget to delete Appendix A when this clause is used.)

27. ENVIRONMENTAL PROVISIONS. In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

Or

27. ENVIRONMENTAL PROVISIONS. *(The University has determined the Environmental Provisions clause to be not applicable to this agreement.)*

28. HAZARDOUS SUBSTANCES. The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1 et seq.

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

1) Hazardous substances:

- a) The chemical name or common name,
- b) A hazard warning, and
- c) The name, address, and telephone number of the manufacturer.

2) Hazardous mixtures:

- a) The common name, but if none exists, then the trade name,
- b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
- c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
- d) A hazard warning, and
- e) The name, address, and telephone number of the manufacturer.

3) Single chemicals:

- a) The chemical name or the common name,
- b) A hazard warning, if appropriate, and
- c) The name, address, and telephone number of the manufacturer.

4) Chemical Mixtures:

- a) The common name, but if none exists, then the trade name,

- b) A hazard warning, if appropriate,
- c) The name, address, and telephone number of the manufacturer, and
- d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

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

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container. The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

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

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

Or

HAZARDOUS SUBSTANCES. *(The University has determined the Hazardous Substances clause to be not applicable to this agreement.)*

29. WARRANTY. The Contractor warrants that all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the contract, all services and parts are warranted for a period of one year following completion of performance by the Contractor and acceptance by the Commonwealth. The Contractor shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the Commonwealth.

30. COMPLIANCE WITH LAW. The Contractor shall comply with all applicable

federal and state laws and regulations and local ordinances in the performance of the Contract.

31. INTEGRATION. The Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate Commonwealth form.

32. PATENT, COPYRIGHT AND TRADEMARK INDEMNITY. The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the Commonwealth under the contract. The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which is obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

33. COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract 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.

34. CHANGE ORDERS. The Commonwealth reserves the right to issue change orders at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change order shall be in writing signed by the Contracting Officer. The change order shall be effective as of the date appearing on the change order, unless the change order specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required under any change order shall be handled through Paragraph 21, "Contract Controversies."

For purposes of this Contract, "change order" is defined as a written order signed by the Contracting Officer directing the Contractor to make changes authorized under this clause.

35. INSURANCE. The Contractor must provide public liability insurance. Amounts of such insurance are suggested to be no less than \$1,000,000 for any particular loss for any one person, including property damage, and not less than \$1,000,000 for any one accident involving injury, including wrongful death to more than one person including property damage. Additionally, the Contractor is responsible for all Workmen's Compensation Insurance requirements as dictated by Federal and State statutes.

36. ATTACHMENTS. *(if applicable)*

Appendix A – Post Consumer Recycled Content EXHIBITS A-1 THROUGH A-8

(The remainder of this page has been intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due and legal action authorizing the same to be done the date first written above.

FOR THE CONTRACTOR:

FOR THE UNIVERSITY:

SAMPLE
Individual or Partner (if Contractor is an individual or partnership)

Vice President of
Finance and Administration
Cheyney University of Pennsylvania
State System of Higher Education

SAMPLE
Title

APPROVED AS TO FISCAL RESPONSIBILITY, BUDGETARY APPROPRIATENESS AND AVAILABILITY OF FUNDS

SAMPLE
President or Vice President of Corporate Contractor (Circle Title)

Fiscal Officer

SAMPLE
Secretary or Treasurer of Corporate Contractor (Circle Title)

APPROVED AS TO FORM AND LEGALITY

Note regarding signatures above. If a corporation, two signatures are required, one being the President or Vice President, the second being the Secretary or Treasurer. Signatory authority of either signatures can be delegated provided there is a certified Board resolution presented with this contract.

University Legal Counsel

Deputy Attorney General

CONTRACT
EFFECTIVE DATE