



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

DTMB Central Procurement Services

525 W. Allegan St, 1st Floor, NE
PO Box 30026, Lansing, MI 48913

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **190000000268**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Staples Contract and Commercial dba Staples Business Advantage
	500 Staples Drive
	Framingham, MA, 01702
	Cathy Peterson-Jennings
	586-945-5789
	cathy.peterson-jennings@staples.com
	CV0000932

STATE	Program Manager	Varies per Agency	SW
	Contract Administrator	Valerie Hiltz	DTMB
		517-249-0459	
		hiltzv@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Office Supplies and Office Related Products- Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 1, 2019	May 31, 2022	2 one-year	May 31, 2022
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		1 day Lower Peninsula, 2 day Upper Peninsula	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
☒ P-card ☐ Payment Request (PRC) ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
\$35.00 for delivery			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER: Orders will be placed directly by the State Agency via the authorized document, established in Schedule A, Section 6.4. Authorizing documents, and per terms, conditions and specification of this contract.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$15,116,780.00

**FOR THE CONTRACTOR:**

Staples Inc/Staples Business Advantage
Company Name

Joanne E Harris

Authorized Agent Signature

Joanne E Harris

Authorized Agent (Print or Type)

Feb 7, 2019

Date

**FOR THE STATE:**

Pamela Platte
Signature

Pamela Platte, Division Director, Commodities and Services Division
Name & Title

DTMB Central Procurement Services
Agency

2-12-2019
Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS Office Supplies and Office Related Products

This STANDARD CONTRACT ("Contract") is agreed to between the State of Michigan (the "State") and Staples Contract & Commercial LLC ("Contractor"), a Delaware Limited Liability Company. This Contract is effective on March 1, 2019 ("Effective Date"), and unless terminated, expires on May 31, 2022.

This Contract may be renewed for up two (2) additional one (1) year periods. Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

- Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule A – Statement of Work** (the "Contract Activities"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Schedule A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor (as relates to the State of Michigan):
Valerie Hiltz 525 W. Allegan St, 1 st Flr, NE PO Box 30026 Lansing, MI 48913 hiltzv@michigan.gov 517-249-0459	Cathy Peterson-Jennings 17187 N. Laurel Park Drive Livonia, MI 48152 cathy.peterson-jennings@staples.com 586-945-5789
	If to Contractor



	(as relates to the NPP National Cooperative Contract):
	Don Hasch 16501 Trojan Way La Mirada, CA 90638 don.hasch@staples.com 714-868-4274

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "Contract Administrator"):

State:	Contractor:
Valerie Hiltz 525 W. Allegan St, 1 st Flr, NE PO Box 30026 Lansing, MI 48913 hiltzv@michigan.gov 517-249-0459	Don Hasch 16501 Trojan Way La Mirada, CA 90638 don.hasch@staples.com 714-868-4274

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

State:	Contractor:
Varies by Agency To Be Provided to Contractor	Cathy Peterson-Jennings 17187 N. Laurel Park Drive Livonia, MI 48152 cathy.peterson-jennings@staples.com 586-945-5789

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better. Subcontractors will maintain their own insurance and abide by these requirements.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.



Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimal Limits:</u> \$1,000,000	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section substantially consistent with the risks of the products or services provided by such subcontractor; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled and a gap in coverage would be reasonably expected to occur; and (d) waive all rights against the State for damages covered by insurance, except with respect to Privacy and Security Liability (Cyber Liability) Insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. **Administrative Fee and Reporting.** In addition to the fees imposed by National Purchasing Partners Government Division ("NPPGov") in a separate Vendor Administration Agreement entered into between NPPGov and Contractor, the Contractor must pay an administrative fee on all Net Sales made to the State and MiDEAL members under this Contract. As used herein, "Net Sales" means the gross sales price of the products sold under this Contract, less any rebates actually paid, discounts and allowances actually taken, rejections and returns to the extent credit is given or paid, and also excluding sales made via (i) Contractor's retail website, or (ii) any Contractor retail channel if the sale is completed without a convenience and/or registered procurement card.

The administrative fee and reporting is as follows:



a. To the State:

- i. For sales made to the State, the administrative fee equals one percent (1%) of the total Net Sales.
- ii. For sales made to MiDeal Members pursuant to **Section 8**, the administrative fee is divided equally between the State and the MiDeal Member. The administrative fee to the State equals a half percent (.5%) of the total MiDeal Members Net Sales.
- iii. The Contractor must remit all applicable administrative fee payments owed to the State by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget
 Financial Services – Cashier Unit
 Lewis Cass Building
 320 South Walnut St.
 P.O. Box 30681
 Lansing, MI 48909

Contractor must submit an itemized purchasing activity report of all State and MiDeal Member purchases, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.

The administrative fee and purchasing activity report are due within 45 calendar days from the last day of each calendar quarter.

b. To the MiDEAL Members:

- i. For sales made to MiDeal Members, the administrative fee remitted to the MiDEAL members equals a half percent (.5%) of the total Net Sales made to MiDeal Members.
- ii. The Contractor must remit the applicable administrative fee payments owed to the MiDeal Member by check payable directly to the MiDeal Member and mailed to their provided address.

Contractor must submit an itemized purchasing activity report of the MiDeal Member purchases, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to the MiDeal Member.

The administrative fee and purchasing activity report are due within 45 calendar days from the last day of each calendar quarter.

8. Extended Purchasing Program.

a. This contract is extended to:

- 1) Members of NPPGov across the nation, as well as government units in all other states (collectively, "Participating Agencies"),
- 2) MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals within the State of Michigan. A current list of MiDEAL members is available at www.michigan.gov/mideal.

b. Contractor must supply all Contract Activities at the established Contract prices and terms.

c. Contractor must submit invoices to, and receive payment from, Participating Agencies or MiDeal Members on a direct and individual basis. The Contractor agrees that the State will have no liability, obligation or responsibility for any sales, purchases, or payments involving any Participating Agencies or MiDeal Members.



d. State Employee Purchases

State employees, in their personal capacity, will be able to purchase deliverables from this Contract at the same pricing available to the State. The Contractor will supply deliverable(s) to State employees on a direct and individual basis. No administrative fees will be imposed on State employee purchases made in their personal capacity. The Contractor agrees that the State will have no liability, obligation or responsibility for any sales, purchases, or payments involving any State employee(s) who purchases any deliverables in their personal capacity under this section.

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any, to the extent first reduced to practice in performance of the Contract Activities by Contractor. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the United States, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.
10. **State License Grant.** The State hereby grants to Contractor a limited, non-exclusive, non-transferable license to use, display, reproduce, distribute and transmit in digital form the State's (or individual agencies, department's or division's) name, trademarks, service marks or logos, for the sole and exclusive purpose of providing the Contract Activities and solely in accordance with the State's written specifications communicated to Contractor. Use of the State's (or individual agencies, department's or division's) name, trademarks, service marks or logos will be specified in the applicable Statement of Work.
11. **Software License.** Contractor hereby grants to the State and its authorized users the right and license to use the online purchasing portal in accordance with the terms and conditions of this Contract.
12. **Subcontracting.** Except for national couriers including UPS, Fed-Ex and the US Postal service, Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor. For the avoidance of doubt, Contractor's notice requirements outlined in this Section 12 are applicable to the State only, or as mutually agreed upon.
13. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor
14. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, cost and expense, may also perform background checks.
15. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the



Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

16. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

17. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
18. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 25, Termination for Cause.
- Within 15 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.
- If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the deficient Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.
19. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.
20. **Risk of Loss and Title.** Title and risk of loss or damage to the products remains with Contractor until conforming products are delivered to and accepted by the State. Contractor is responsible for filing, processing, and collecting all damage claims incurred prior to delivery and in transit. The State will record and report to Contractor any evidence of visible damage within 3 business days. If the State rejects the products, Contractor must remove them from the premises within 20 calendar days after notification of rejection and accept the rejected goods as is. Rejected products not removed by Contractor within 20 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it with no further obligation to Contractor. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected products.
21. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Schedule A. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.



- 22. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt, except as otherwise agreed. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT) or as otherwise provided in the Statement of Work. Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract provided that Contractor has not issued credit for such amounts. If, under the terms of this Contract, the parties have agreed that a credit is owed the State, Contractor's invoice will reflect the credit within one of its next two invoices to the State immediately following the date that the parties have agreed a credit is owed. If the Contractor has not included the credit in one of those next two invoices, the State may then set off the agreed upon credit amount in paying the amount then due and owing in the third invoice following the date the parties agreed a credit is owed the State. In all other cases, other than credits, the State shall provide ten (10) days' prior written notice to Contractor prior to affecting its set-off rights described herein.

- 23. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
- 24. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 25. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.
- If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 26, Termination for Convenience.
- The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the effective date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative



costs, attorneys' fees, court costs, transition costs, and up to 50 % of costs the State incurs to procure the Contract Activities from other sources.

Termination by Contractor. If the State breaches a material provision of this Contract, then the Contractor will provide the State with written notice of the breach and a time period (not less than thirty (30) calendar days) to cure the breach. The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, or (iii) does not cure the material breach within the time period specified in a written notice of breach, or as otherwise provided by law.

26. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty due to appropriation or budget shortfalls. The State may terminate this Contract in whole or in part without penalty for any other reason, after first providing Contractor at least thirty (30) days' notice of the State's intent to terminate. The notice in either case will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 27, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
27. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities"). This Contract will automatically be extended through the end of the transition period.
28. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all third party actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).
- The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.
- The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim,



action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

- 29. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 30. Disclaimer of Damages and Limitation of Liability.** Neither the Contractor nor the State is liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED TWICE THE AGGREGATE CONTRACT PRICE. As used in this clause "Aggregate Contract Price" means the total price for the Initial Term and all Renewal Terms of this Contract. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.
- 31. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract that materially impacts Contractor's ability to perform the Contracting Activities, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract. In all other cases not described above, the State acknowledges and agrees that information made available directly to the State from the Contractor's, or its parent company's, publicly filed documents will satisfy the requirements of this Section.
- 32. Reserved.**
- 33. State Data.**
- a. **Ownership.** The State's data ("State Data," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities and (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. All State Data shall be located, at all times, in the continental United States. This Section survives the termination of this Contract.



- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. Extraction of State Data. Contractor must, within ten (10) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format mutually agreed upon by the parties.
- d. Backup and Recovery of State Data. Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within four (4) hours at any point in time or in a timeframe mutually agreed upon by the parties.
- e. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than forty eight (48) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as reasonably required by the State; (c) in the case of PII, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of becoming aware of such occurrence; or (ii) reimburse the State for any reasonable costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to the reasonable costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data mutually agreed upon without charge to the State; and (i) provide to the State a detailed plan as soon as practicable after the occurrence and after devising a plan describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the



affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification, of a breach that involves State of Michigan information, to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this Section 33 are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract.

34. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "Confidential Information" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party promptly, but no later than 48 hours in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination,



without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 10 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 10 business days from the date of termination to the other party. However, both parties' legal ability to destroy data may be restricted by their retention and disposal schedules, in which case Confidential Information will be destroyed after the retention period expires.

35. Data Privacy and Information Security.

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; (e) ensure that all State Data remains in the continental United States; and (f) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing..
- b. Audit by Contractor. No less than annually, Contractor must conduct a independent third-party audit of its information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any reasonable safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.
- f. Third-Party Statement on Standards. If Contractor engages a third-party auditor to perform a Statement on Standards for Attestation Engagements No. 16 SOC 2 (SSAE 16 SOC 2) audit of Contractor's operations, information security program or disaster recovery/business continuity plan, Contractor will provide a copy of the audit report to the State within thirty (30) days after Contractor's receipt of such report. Any such audit reports will be recognized as Contractor's Confidential Information.

36. Payment Card Industry Data Security Standard.

- a. Undertaking by Contractor. Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the Payment Card Industry Data Security Standard (PCI DSS). The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.
- b. Cooperation to Notify of Breach. The Contractor must notify the State's Contract Administrator, within 48 hours of discovery, of any breaches in security where cardholder



data has been compromised. In that event, the Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. The Contractor must provide, at the request of the State, the results of such third-party security review. At the State's sole discretion and expense, the State may perform its own security review, either by itself or through a PCI approved third party. Such review must not be an excessive burden on Contractor, must not interfere with ongoing breach investigation, and must not risk other customers' confidential information.

- c. Responsibilities for Costs Incurred. The Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or State initiated security review. Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.
- d. Disposing of Cardholder Data. The Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. The Contractor must continue to treat cardholder data as confidential upon contract termination.
- e. Audit by Contractor. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance or a Report on Compliance showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.

37. Reserved.

- 38. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

With no less than 30 calendar days written notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 39. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract signatory has the authority to enter into this Contract; (f) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (g) all information furnished and



representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (h) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 25, Termination for Cause.

40. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
41. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
42. **Reserved.**
43. **Reserved.**
44. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
45. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
46. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
47. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
48. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
49. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.



Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

50. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
51. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
52. **Schedules.** All schedules that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A	Statement of Work
Schedule B	Pricing (Inclusive of Worksheets B.1 Core Hot List Products and Pricing, B.2a Core Discount Per Category, B.2b. Discounted Core List, B.3a Manufacturer-Direct Furniture Pricing and B.3b. Manufacturer-Direct Furniture Service Prices)
Schedule C	Direct Furniture Manufacturer List

53. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
54. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
55. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
56. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
57. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.



STATE OF MICHIGAN

OFFICE SUPPLIES and OFFICE RELATED PRODUCTS

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

BACKGROUND

The State of Michigan (hereinafter referred to as the State), operating under a Memorandum of Understanding with National Purchasing Partners, LLC dba NPPGov (hereinafter referred to as "NPPGov") is serving as the Lead Contracting Agency.

NPPGov is owned by two non-profit healthcare organizations and provides group purchasing opportunities and purchasing administrative support for governmental entities and nonprofit institutions within its membership. NPPGov's membership includes participating public and nonprofit entities across North America.

SCOPE

The purpose of this Contract is to provide a vehicle by which the State of Michigan, State of Michigan Employees, its MiDeal Members, and NPPGov Participating Agencies may procure office supplies and office related products (henceforth referred to as "office supplies"), in 28 different categories at the lowest price available. The Contractor is responsible for warehousing, data collection, reporting and distribution of office supplies.

1. GENERAL REQUIREMENTS

- A. This Master Agreement is established for use by the State of Michigan, State of Michigan Employees, and its MiDeal members, as well as other NPPGov Participating Agencies across the nation.
 - 1) The State of Michigan will enter into an Intergovernmental Cooperative Purchasing Agreement with other Participating Agencies (not including MiDeal Members), through NPPGov, after this Master Agreement is executed.
 - 2) Intergovernmental cooperative purchasing agreements allow Participating Agencies to make purchases at the State's accepted contract price, terms and conditions, provided that the Participating Agency has satisfied all its local and state cooperative procurement requirements.
 - 3) The Contractor agrees to make the same proposal terms and price, exclusive of any possible rebates, incentives, freight and transportation fees, available to other Participating Agencies.
 - 4) Neither the State of Michigan nor NPPGov will incur any direct liability with respect to specifications, delivery, payment, or any other aspect of purchases by such Participating Agencies or nonprofit institutions.
- B. The Contractor will work directly and separately with the Participating Agencies concerning the placement of orders, deliveries, disputes, invoicing and payment.
 - 1) Neither the State of Michigan nor NPPGov will be held liable for any costs or damages incurred by or because of the actions of the Contractor or any Participating Agency.
 - 2) The Contractor will comply with state and local laws, rules and regulations in each state and locality where the product or service is provided.



- C. This Master Agreement is extended to MiDeal members and members of NPPGov across the nation as well as government units in all other states (collectively, "Participating Agencies"), See **Standard Contract Terms, Section 8 Extended Purchasing Program**.
- 1) While the terms of the Master Agreement will govern the general pricing terms, each Participating Agency may request modification of the Master Agreement in accordance with each Participating Agency's state and/or local purchasing laws, rules, regulations and procedures, provided any modifications are not material changes.
 - 2) Each Participating Agency may, at its discretion, and upon written agreement by the Participating Agency and the Contractor, request additional legal and procedural provisions not included herein that the Contractor will adhere to if it wishes to conduct business with the Participating Agency using the Master Agreement.
 - 3) Each Participating Agency may negotiate for its own "Hot List" of items, comprising of or independent of the State's "Hot List", that will represent its' most used items. Participating agencies "Hot List" item pricing may be less than, but never more than the prices established in this Master Agreement.
- D. The Contractor, in addition to executing a Master Agreement with the State of Michigan will also execute a Vendor Administration Agreement with NPPGov. NPPGov provides Contractor exposure/marketing and contract utilization support for the Contractor's products and service.
- E. The Contractor will:
- 1) Pay a Contract Administration Fee of an agreed upon percentage of actual net sales under the Master Agreement to NPP as established in the NPPGov Vendor Administration Agreement. Administration fees may not be listed or charged as a separate line item to users of the contract. The value of trade-ins or rebates will not affect the amount of the administration fee paid to NPPGov and;
 - 2) In addition to the NPPGov Contract Administration Fee, the Contractor will pay a Contact Administration Fee to the State for sales within the State, including those sales made to MiDeal members, as outlined in **Standard Terms and Conditions Section 7. Administrative Fee and Reporting**. This fee may not be listed or charged as a separate line item to the State.
- F. The Contractor will commit to:
- 1) low pricing;
 - 2) and accurate and timely reporting to NPPGov pursuant to the reporting requirements identified in the NPPGov Vendor Administration Agreement.
 - 3) In addition, the Contractor must commit to marketing of the Master Agreement nationwide and that the sales force will be trained, engaged and committed to offering NPPGov pricing to member government agencies nationwide, including the opportunity for NPPGov to train the Contractor's sales staff.
- G. **Contract Usage.** There is no obligation for any Participating Agencies to purchase anything from the Contractor. It is the intent of this Master Agreement that Participating Agencies may buy directly from the Contractor.



2. Deliverables / Products

2.1. Product Specifications

- A. The Contractor will provide their organization's entire catalog of products and services as part of this contract. This will allow the State and Participating Agencies the opportunity to order a broad range of products and services, as appropriate for their needs.
 - 1) The contract Schedule B "Core" items, of which the "Hot List" items are a subsection, will be items for which there are SKU sets established in either the wholesaler Essendant's or the Contractor's catalog, approximately 24,000 items, thereby providing published, established, auditable list prices.
 - 2) The contract's "balance of contract items" will be those items available outside of the established Schedule B Core SKU sets. See Schedule B.
- B. All products offered must be new, unused and the most current product lines, unless otherwise clearly identified as remanufactured goods.
- C. "Core" Products will be categorized into the following 28 categories.
 - 1) Participating Agencies must be allowed to reasonably restrict purchase of products, in part or in whole, as it deems necessary and as mutually agreed upon with the Contractor.
 - 2) Revisions to this list during the contract term will be mutually agreed upon by the State and Contractor:

CATEGORY #	CATEGORY
1	Binders & Binding Systems
2	Calendars/ Dated Goods
3	Converted paper Product
4	Copy Paper
5	Facilities Breakroom
6	Facilities Chemical
7	Facilities Equipment
10	Facilities Soap
11	Facilities Supplies
12	Filing & Record Storage
13	Inkjet Supplies- OEM
14	Inkjet Supplies- Remanufactured
15	Labels and Mailing Supplies
16	Miscellaneous Office Products
17	Office Accessories
18	Pens, Pencils & Correction
19	School Art Supplies
20	School Paper
21	School Supplies
22	Specialty Paper Products
23	Technology Products
24	Toner- OEM (Hewlett Packard Only)
25	Toner- OEM (Dell)
26	Toner- OEM (Except Hewlett Packard & Dell)
27	Toner- Remanufactured
28	Furniture



D. **Proprietary Items.** The contract will also include proprietary items, which are items purchased and warehoused by the Contractor specifically for use and purchase by the State of Michigan. Those items are as listed herein. This list may be modified per change notice.

- 1) Items.
 - a. 15" x 12" x 9.75" 44ECT, C Flute Kraft RSC, Glued, 1 color imprint – SOM Records Management Storage Box. Initial Estimated Annual Usage- 30,000 Each
 - b. 26" x 12" x 9.75" 44ECT, C Flute Kraft RSC, Glued, 1 color imprint- SOM Records Management Storage Box. Initial Estimated Annual Usage- 1,000 Each
- 2) Initial Order. Prior to the manufacture of these proprietary items and the purchase and warehousing on the part of the Contractor, the Contractor shall supply to the State proofs and/or samples of each item which shall be approved by the Contract Administrator or designee prior to a full production run.
- 3) Inventory Levels. The State shall provide to the Contractor an initial estimated annual usage for each Proprietary Item. The estimated annual usage is based on historic data and does not guarantee that this is the quantity that will be purchase on an annual basis. This estimate becomes the basis of the initial run and a forecast of the provision of the item during the first year of the contract or of when the items is added. Subsequently, the Contractor shall monitor usage monthly and adjust ordering of the items to maintain the proper inventory levels.
 - a. Contractor shall purchase and maintain up to a 90-day supply of Proprietary Products. If the contractor elects to warehouse more than a 120-day supply of any proprietary item, the contractor does so at their own risk.
 - b. The State acknowledges that the manufacturer of the Proprietary Item may have a minimum production run requirement.
- 4) Prices. Pricing for Proprietary Items shall conform to the schedule set forth for all negotiated "Hot List" items per Section 5.2. Price Term. There are no separate initial set up fees. Price changes will be per Section 5.3. Price Changes.
- 5) Changes to Proprietary Items after Initial Introduction. Should the State require changes to a Proprietary Item:
 - a. The Contractor will provide a quotation to the Contract Administrator for any costs incurred to a change in design or imprinting. The price adjustments, if any, will be made via Change Notice.
 - b. The State will supply camera-ready artwork and design specifications if required to the Contractor.
 - c. The Contractor shall supply to the State proofs and/or samples of revised items which shall be approved by the Contract Administrator or designee prior to a full production run.
- 6) Discontinuation. Should the State deem an inventoried Proprietary Item no longer necessary:
 - a. The State will give the Contractor a (60) sixty day written notice of its intent to discontinue.



- b. Upon receipt of this notice, the Contractor shall cease to purchase additional Proprietary Items from the manufacturer unless a last purchase is requested by the Contract Administrator.
 - c. The Contractor shall provide to the State a list indicating the quantity of remaining stocked and warehoused Proprietary items.
 - d. The State shall purchase and take delivery, at a location of the State's choosing within (60) sixty days, of at least the 120-day supply of remaining Proprietary Items ordered and warehoused on behalf of the State, and
 - e. The State shall make payment for the Items once delivered as per the terms of this contract.
- 7) Termination. Upon expiration or termination of the contract:
- a. The Contractor will provide to the State a list indicating the quantity of remaining stocked and warehoused Proprietary items.
 - b. The State is not obligated to purchase more than a 120-day supply of proprietary items, as determined by the average monthly usage of the previous fiscal year total usage.
 - c. The State will provide to the Contractor instructions for disposition of all remaining Proprietary Items ordered and warehoused on behalf of the State if applicable. The State shall make payment for the Items once delivered as per the terms of this contract.
- E. **Product Substitution.** Once the product lists are established, **product substitution is not allowable unless written approval is received from the Contract Administrator.**
- 1) Auto substitution without the State or Participating Agency written approval will be considered Breach of Contract.
 - 2) During the contract, the Contractor may offer alternate products meeting or exceeding original specifications to be approved by the State. A proposed alternate must clearly describe all variances from the specifications and must include descriptive literature that contains complete specifications, if available.
- F. **Restricted Items.** The State intends to partially or fully restrict the purchase of some items or categories, as these items must be purchased from mandatory-use State contracts, including but not limited to such categories and items as: chemicals and cleaning supplies, can liners, computer equipment and software.
- 1) The State reserves the right to restrict purchases of any item in any category or remove restrictions as it deems necessary.
 - 2) Restrictions may be revised over the course of the contract.
 - 3) The Contract Administrator is the only individual with the authority to change item restriction status.
 - 4) The State's restrictions on items or categories shall in no way apply to Participating Agencies or MiDeal members, and pricing established in **Schedule B.2 Discount Off List** will be the basis for establishing prices for these items.



- 5) Participating Agencies and MiDeal members may establish restrictions, or not, as they deem necessary. **See Section 2.1.C.1)** above.

2.2. Warranties

- A. Any warranty with respect to the products under this contract will come from the manufacturer. Contractor will pass through to the State any applicable manufacturer warranties, to the extent transferable and provide documentation at time of delivery as well as making the documents available for viewing on line.
- 1) The Contractor will pass through to the State of Michigan any applicable manufacturer OEM warranties, to the extent transferable and provide documentation upon request.
 - 2) Should a State of Michigan end-user encounter a warranty/return issue, the product may be returned to the Contractor for full credit or a replacement product, and the Contractor will handle all returns to the manufacturer.
- B. The State may report any product or warranty issues by contacting the Contractor's Customer Service or the Contractor Representative assigned to the State. Contractor will work with the OEM to remedy the warranty claim on the State's behalf up to and including return for full credit, replacement of the defective item or repair of the defective item as dictated by the applicable warranty.
- C. Furniture Warranties. All manufacturers' warranties and recommended maintenance documentation are provided at the time of purchase.
- 1) Warranties apply only if products are used in the manner in which they are intended and within manufacturer specifications.
 - 2) Most manufacturers warrant their products to be free from defects in material and workmanship for as long as the original purchaser owns the product.
 - 3) The manufacturer will, free of charge, repair or replace a damaged product with a comparable product (at the manufacturer's discretion). Warranties differ by manufacturer.
 - 4) Most warranties do not apply to:
 - a. Normal wear and tear over the course of ownership
 - b. Modifications or attachments to the product not approved by the manufacturer
 - c. Products not installed, used or maintained in accordance with product instructions and warnings
 - d. Products used for rental purposes
 - e. Damage caused by the carrier in transit, which is handled under separate terms

2.3. Recall Requirements and Procedures

The Contractor will advise the State's Contract Administrator via e-mail of any product recalls within 10 calendar days of the Contractor becoming aware of any recall notifications. The Contractor will work with the State to remedy the recalled products in accordance with the OEM's recall procedures.

2.4. Quality Assurance Program

Contractor's quality approach will include the following elements:

- A. The Contractor will have a customer satisfaction team responsible for measuring and improving the customer experience. Any customer satisfaction polling or surveys to State agencies or Extended Purchasing Program participants must be reviewed and approved by the Contract Administrator



before they are conducted, the results of which will be made available to the Contract Administrator upon request.

- B. Comprehensive data collection and reporting on all customer shipments, which results in visibility of every order from entry through delivery which will be available to the Contract Administrator upon request.

2.5. Incentives

- A. The contractor will coordinate with Hewlett Packard in the creation, maintenance and updating of HP Big Deal and "white box" pricing Programs.
- B. Contractor may pass through any OEM special pricing, incentives, discounts or rebates.
- C. At Contractor's discretion, Contractor may offer additional incentives to individual Participating Agencies

3. Service Levels

3.1. Retail Locations

The State will be able to make purchases at any of the Contractor's retail locations.

3.2. Extending the Contract Pricing and Discount at Retail Locations

- A. The State and its staff can make in-store purchases with a registered procurement card to receive the Core contract pricing or the retail pricing, whichever is lower, for those Core items available at the retail store at the time of purchase. The process to ensure that your purchasers receive the proper pricing/discount is as follows:
 - 1) End users can register their procurement card (corporate credit card issued by American Express, Visa, Discover or MasterCard) online.
 - 2) Once registration is complete, all credit card information is sent to a third party and encrypted. By the next day, end users' credit card information will be registered with our retail systems and they will receive their corporate discount pricing at the point-of-sale.
 - 3) Purchases made with a procurement card will appear on the end user's monthly statement from the credit card company.
- B. Users can also place orders via StalesAdvantage.com and select the Pick Up in Store option for some or all items in that order. The selected items will be available for pick up in less than one hour at the retail location selected when the order is placed.

3.3. Product Catalog

The Contractor will provide to the State product catalogs in two versions. The Contractor will not be permitted to distribute any printed catalogs to State agencies unless expressly approved by the Contract Administrator.

- 1) The Contractor will host a searchable, on-line, web-based custom catalog that will include a purchasing platform. This catalog will include all items offered by the Contractor, listed with a full description, photo of the product and the contract pricing, additionally it will include the following features:
 - a. The State's "Hot List" products will always populate first when users search for similar items. From least expensive to most expensive.
 - b. The State's "Core" products, of which the Hot List items are part, will be noted by icon or another marking system that is easily identified in any search results.



- c. If an item is selected, yet a similar item is available at a lower price, a prompt or "pop-up" will alert the user that there is a lower price alternative available and provide them a reroute to the alternative item.
 - d. Items that meet or exceed the State's recycled products parameters listed in **Section 12.1, Recycled Content and Recyclability** will be denoted with an icon or other marking system that is easily identified in any search results.
 - e. The on-line platform will have the capability to "restrict" the purchase of items as determined by the State and those items, although viewable, will be notated to make users aware that these items cannot be selected for purchase.
- 2) The Contractor will provide an electronic catalog which will be a PDF version of the "Hot List" products. This catalog will meet the following requirements:
- a. Have a Table of Contents listing all 28 contract categories and will link to the first page of each category.
 - b. Products will be grouped and then listed alphabetically within the contract category where the product has been assigned.
 - c. Each Product will have a photo, description and the contract price listed.
 - d. Because the PDF Catalog will be published for use by the State of Michigan, it must meet ADA requirements. Requirements can be found at <https://www.michigan.gov/som/0,4669,7-192-86761---,00.html>
 - e. The PDF Catalog must be maintained by the Contractor and updated annually.

3.4. Installation

Installation if required, it will be addressed, on a case by case basis, specific to the product and no work will commence without an approved and signed quote, between the contractor and Participating Agency's contract administrator, as applicable.

3.5. Reporting

- A. The Contractor must submit the following periodic reports to the State:
- 1) Usage reports, to the Contract Administrator, including item, quantity and dollars for State and MiDEAL members, as requested.
 - 2) Purchasing metric reporting, as requested and/or available through the on-line website purchasing platform, including but not limited to:
 - a. Yearly Program Review
 - b. Order Levels
 - c. Core vs Non-Core Usage
 - d. Agency Core Compliance
 - e. Year to Year Comparisons
 - f. Product Category Usage
 - g. Eco Friendly Product Usage
 - 3) The Contractor must submit reports of purchasing activities to the MiDEAL program coordinator, on a quarterly basis. The Contractor will utilize the format specified by the State. Reports will include, at a minimum, an itemized listing of purchasing activities by each State of Michigan agency and MiDEAL member, with the agency name, invoice



number, product description, quantity, total value of purchases for each agency, date of purchases, and a grand total of all purchases.

- 4) The Contractor must supply electronic files for all account numbers, agency contacts (administrators all levels), ship to addresses, and authorized purchases upon request, but no more often than a quarterly basis.
- 5) By the second Friday of every December, the Contractor must submit a report of recycled content in commodities sold in that calendar year to the Contract Administrator.
- 6) Essendant wholesale catalog list prices for time periods as requested by the Contract Administrator, or as requested by the State's Auditors, possibly as often as quarterly.

B. The Contractor must submit reports of purchasing activities by MiDEAL members

On a quarterly basis. Refer to Terms and Conditions Section 8, Administrative Fee and Reporting. The Contractor will utilize the format specified by the MiDEAL Administrator. Reports will include, at a minimum, an itemized listing of purchasing activities by the MiDEAL member, invoice number, product description, quantity, total value of purchases for each agency, date of purchases, and a grand total of all purchases.

- C. The State reserves the right to request other reports throughout the term of this Contract as deemed necessary.

3.6. Meetings

The Contractor must attend the following meetings:

- A. Kick-off meeting, to be attended by the Contractor Representative and other Key Personnel within 30 calendar days of the Effective Date
- B. Annual contract review as requested by the Contract Administrator
- C. The State and its agencies or its MiDEAL members may request meetings as it deems appropriate

3.7. Transitions

- A. Transition-In.** At the execution of the contract the Contractor must assist the State in making the transition from the expiring contract and the incumbent Contractor by providing the following:

- 1) The Contractor must work with the Contract Administrator and the incumbent Contractor to take possession of any Proprietary items held within their inventory, if any, and place it within their inventory for future shipment.
- 2) Contractor must work with the State and its Agencies in setting up the users in their on-line website purchasing portal. Work will include but not be limited to: establishing multiple agencies with multiple users, a multitude of ship to addresses and bill to accounts, and the necessary approval paths, if any, as specifically required by each Agency. Contractor may need to meet with each agency individually to facilitate this process. There are currently around 3500 State of Michigan users.
- 3) Contractor must create and work within the approved Transition-In timeline which will include, but is not limited to:
 - a. Setting up the web-based catalog/ purchasing platform
 - b. Training users
 - c. Creating collateral for publication/ information
 - d. Attend Meetings and showcases as necessary



e. Rolling "Go Live"

- B. Transition-Out.** At the end of the contract the Contractor must assist the State in making the transition to a new Contractor by providing the following:
- 1) Proprietary items inventoried for the State by the incumbent Contractor must be held for a period of up to six months. During which time arrangements must be made between the transitioning Contractors and the Contract Administrator, or their designee, for the delivery of the remaining inventory to the new Contractor's facility or to the State.
 - 2) The Contractor must provide all requested user data and other records as requested by the Contract Administrator.
 - 3) Contractor will submit to the State all final billing within 45 calendar-days of the contract expiration date and provide any requested back up documentation as may be necessary to make final payment within that same 45 calendar-day time. No additional invoicing after the 45 calendar-day period will be honored.

3.8. Emergency Preparedness/ Disaster Recovery

A. Emergency Preparedness:

- 1) As a first responder, in the event of an emergency or disaster, the State shall be served before other customers and the Contractor will make commercially reasonable efforts to prioritize service to the State.
- 2) The State reserves the right to purchase from any category which the Contractor can provide during a declared emergency or disaster.
- 3) In the event of an Emergency, the Contractor's Contract Representative will be the contact and will provide to the Contract Administrator a phone number where they can be reached anytime.

- B. Disaster Recovery.** The Contractor has developed a documented contingency plan to account for natural disasters and other situations that may disrupt the normal flow of business.

- 1) The emergency contingency as follows:
 - a. If there is a catastrophe in any location, the Contractor's contingency program will automatically transfer orders to the nearest fulfillment center which has access to our combined product offering.
 - b. The Contractor operates two main Data Centers, one for production and the other for Disaster Recovery. Our most critical customer applications, such as our StaplesAdvantage.com e-commerce ordering website, are protected by Multi Site High Availability (MSHA) and have a Recovery Time Objective (RTO) of 24 hours and a Recovery Point Objective (RPO) of 15 minutes.
 - c. In the event of a prolonged total systems outage, the Contractor's contingency plan also provides for emergency order fulfillment to be processed from Staples' more than 1,200 U.S. retail stores.
- 2) **Fulfillment Center Outage.**
 - a. In the event of catastrophic damage or a force majeure event (fire, flood, earthquake, etc.), the Contractor can redirect orders normally filled by the assigned fulfillment center to the next closest fulfillment center. Once the fulfillment center is repaired, the Contractor would reinsert it into the search logic and resume normal operation.



- b. To handle brief power interruptions, all our fulfillment centers have uninterruptible power sources on all communications equipment. All facilities also have redundant dial backup data circuits that are tested quarterly, and our larger fulfillment centers have fully redundant data circuits and communications equipment. Back-up fulfillment centers are fully capable of handling customer orders, though it may take longer than normal to process orders given the extra volume demands placed on that fulfillment center's staff.
- c. In cases where delivery trucks cannot access a customer location due to a force majeure event, drivers will report the problem. Staples' Customer Service Representatives will contact the customer to notify them of the delay and provide an opportunity to cancel the order or determine a new location for delivery.

4. Staffing

4.1. Contractor Representative and Key Personnel

The Contractor must appoint one Contractor Representative and other Key Personnel, specifically assigned to State of Michigan accounts, who will be knowledgeable on the contractual requirements and directly responsible for the day to day operations of the Contract.

- A. The Contractor Representative and Key Personnel must be: available via a statewide toll-free number for customer service calls and must be available during the hours of 8 a.m. to 5 p.m. ET Monday through Friday.
- B. The Contractor Representative and Key Personnel must respond to the State within 8 business hours to State inquiries.
- C. The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative or Key Personnel.
- D. The Contractor may not remove or assign a new Contractor Representative or Key Personnel without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause.
- E. The Contractor has identified the following personnel as assigned to the State:
 - 1) **Contractor Representative.** This person will be expected to have intimately knowledge of this contract and its parameter and will have the ability to answer questions about our unique program, handle day to day issues, remove restrictions on items if requested by the Contract Administrator, and assist with projects and quote special order items. The Contract Manager will:
 - a. Establishing guidelines and timetables for services expansion or new locations implementation
 - b. Analyzing spend and recommending cost-saving measures and product improvements
 - c. Setting program goals
 - d. Providing overall program supervision and project management
 - e. Conducting regular business reviews
 - f. Work with the Contract Administrator with regard to required contractual changes, amendments and the like.

Cathy Peterson-Jennings, Strategic Account Leader
17187 N. Laurel Park Drive, Suite 220
Livonia, MI 48152



- 2) **Customer Service Specialist.** This person will be the back-up or "right hand" for the Contractor Representative both on a daily basis and should the Contractor Representative be unavailable. This person will be expected to have intimately knowledge of this contract and its parameter and will have the ability to answer questions about our unique program, handle day to day issues, remove restrictions on items if requested by the Contract Administrator, and assist with projects and quote special order items.

Nicole Ray, Customer Success Consultant
700 Taylor Road, Suite 100
Columbus, OH 43230

- 3) **Customer Service.** The State of Michigan requires the Contractor will have a dedicated, U.S. based staff for customer service calls, who are familiar with the contract and its pricing parameters. Customer Service is the first line of contact for:
- a. Placing orders
 - b. Verifying pricing
 - c. Order status inquiries
 - d. Confirming inventory levels
 - e. Tracking backorders
 - f. Answering product questions
 - g. Completing returns
 - h. Expediting rush orders
 - i. Cross-referencing stock numbers

Customer Service will available Monday through Friday from 8:00 a.m. to 5:00 p.m. Eastern by email, phone or via live chat on StaplesAdvantage.com.

Customer Service for MiDeal and Participating Agencies may be provided via dedicated U.S and/or Canadian based staff, off shore staff, or as otherwise negotiated.

4.2. Toll-Free Numbers

- A. **Customer Service.** The Contractor will provide to the Contract Administrator, and publish on the Staples Advantage platform, the toll-free number dedicated to the State's for its use to contact with customer service staff. MiDeal and Participating Agencies may be assigned other toll-free numbers.
- B. **Online Catalog and Technical Support.** The contractor will have dedicated staff available for online web collaboration and technical support via phone, Monday through Friday, during the hours of 8 am to 5 pm ET.

4.4. Disclosure of Subcontractors

Contractors are required to identify any subcontractors servicing the State. For the sake of this contract a subcontractor is defined as an entity to which the Contractor has made arrangement or agreement for performance of any part of this work. Excluded are national delivery companies such as Fed-Ex, UPS or USPS.

- A. Any subcontractors will be bound by the terms of this contract. The State will not accept billing from nor make direct payments to any subcontractor.
- B. The Contractor will give the State 30 calendar days' notice if it intends to replace any subcontractor and provide the same information as required below.



C. The Contractor has named the following as a subcontractor:

Lasership
701 E South Street.
Lansing, MI 48910

4.5. Security

- A. The Contractor's staff or subcontractors may be required to make deliveries to or enter State facilities, either at dock or to desktop. The State may require the Contractor's and or subcontractor's personnel to wear State issued identification badges.
- B. Delivery drivers and delivery personnel will be required to wear company-issued uniforms.
- C. **Background Checks.**
 - 1) The Contractor and all subcontractors are required to conduct background checks on all driver personnel including but not limited to:
 - a. pre-employment and/or random drug-screening;
 - b. felony background check and seven-year criminal search;
 - c. Social Security Number Trace (or SSN Trace)

5. Pricing

5.1. Pricing

Pricing for Core items are as established in the Schedule B Pricing, B.1 Hot List Pricing, B.2 Discount Off List Pricing, and B.3 Manufacturer Direct Furniture Pricing. See Sections 5.1. A, B and C below.

Balance of Catalog items, items not identified as "Core" as defined below nor addressed in the Schedule B, will be considered Non-Core and offered by the Contractor at market pricing. See Section 5.1.D. below.

Products will be offered based on this pricing structure:

- A. **Core/Hot List.** Firm, fixed, quoted and negotiated pricing on approximately 1,200 items established for the State and Participating Agencies and are identified in **Schedule B, Worksheet B.1.** Participating Agencies may modify or amend this list per their specific requirements and usage if deemed necessary to create their own "Hot Lists".
 - 1) Subject to change per contract terms
 - 2) Hot List prices will always be accurately reflected on the State of Michigan published pricing web/purchasing platform.
 - 3) The Contractor will never charge more, but may charge less, than the quoted Hot List if special pricing, discounts or offers become available.
- B. **Core/Discount Off List.** Products not identified in the Hot List but which have SKU numbers/ list prices as established and published in **Schedule B.2b- Discounted Core Catalog** will be sold in categories and have the discounts applied as identified in **Schedule B, Worksheet B.2.a- Core Discount per Category** "List Price" is defined as the manufacturer's suggested list price as published by Essendant or by the Contractor.
 - a. The Contractor will provide the updated published price list files to the State by June 1st for an effective date of July 1st and by December 1st for an effective date of January 1st of each calendar year.
 - b. List prices will be held firm for the six-month price term.



- 1) Core prices will always be accurately reflected, with the discount off- list already applied, on the SoM published pricing web/purchasing platform.
 - 2) The Contractor will never charge more, but may charge less, than the quoted Discount Off List price (defined in 2. above) for Core products as identified in the Discount-Off Category section in Schedule B.2. Pricing which reflect the discounts to be established in the resulting contract.
- C. **Core/ Manufacturer Direct.** While the core does provide furniture pricing on many items, if volume purchases are required, MiDeal members or Participating Agencies may purchase furniture through Staples who will coordinate and order directly from the manufacturer at the discounts established in **Schedule B, Worksheets B.3a and B.3b**, resulting in an even greater savings.
- 1) Customers will need to contact their Contractor Representative or the Customer Service Specialist in order to obtain a quote for these products.
 - 2) This option is currently restricted for the State of Michigan.
- D. **Non-Core Balance of Catalog.** Non-Core Balance of Catalog Items are those items that are not on the Schedule B but are available on Staplesadvantage.com.
- 1) For those Non-Core Items that also appear on Staples.com, prices will be based on the current national Staples.com pricing exclusive of tier pricing, closeouts, promotions and/or specials, or items that are regionally sensitive.
 - 2) The prices for Non-Core Items that are not available for purchase on Staples.com but which appear on Staplesadvantage.com, will be adjusted to reflect changes in stock availability, market conditions, buying expense, and other factors that affect the overall cost of the Non-Contract Items.
- E. **Quoted Products: Special Orders, Manufacturer Direct Furniture and Promotional and/or Bulk Purchases.** There may be additional services available which are associated with certain products, including, but not limited to: furniture, facilities or water/coffee dispensers, customized products etc. which at the option of the State or Participating Agency may be allowable for purchase or lease at the time of order/agreement. Customers will need to contact their Contractor Representative or the Customer Service Specialist in order to obtain a quote for these products and the costs for such products and/or services shall be established at the time of purchase.
- 1) **Special Orders.** The Contractor will be able to quote, as need arises for office supply and office related items which are not available on Staples Business Advantage.com, or other products and services as otherwise mutually agreed. The State will not be required to purchase special order items if the item can be purchased at a lower price or within a better timeframe from elsewhere.
 - 2) **Manufacturer Direct (Furniture).** The Contractor will be able to quote for large scale furniture needs utilizing discounts off the then current manufacturer's list pricing. Manufacturer's published list prices can be made available upon request. These discounts are established in Schedule B, Worksheet B.3.
 - 3) **Technology Products outside of StaplesAdvantage.com.** Prices for technology items provided to the Participating Agencies under the Staples technology ordering system referred to as Sequoia (or its successor) shall be priced at the then-current List Price and may be subject to discount. State of Michigan users are currently restricted from using this option.



- 4) **Promotional Purchases.** The Contractor may offer promotional products on a contract margin relative to the order size. Contract margin is defined as meaning Contractors cost plus percentage. These prices are auditable, if necessary, from invoices sent to the Contractor. These Contract Margins for promotional products ordered on our Staples Promotional Product ordering system referred to as Linc (or its successor). State of Michigan users are currently restricted from using this option. Discounts are as identified below:

ORDER/ TRANSACTION SIZE	CONTRACT MARGIN
\$0 - \$999.99	28%
\$1,000 - \$4,999.99	26%
\$5,000- \$9,999.99	24%
\$10,000 +	22%

F. Lowest Available Price.

- 1) For Core contract items, the Hot List and Core pricing will be based upon fixed price or discount off fixed list price, however, occasionally special pricing through promotion or other means may be passed on as they become available. These special prices are temporary.
- 2) For Non-Core Balance of Contract items, the Contractor will utilize "best price logic" as identified in Section 5.1.D.
- 3) The Contractor will utilize "best price logic" for purchases made in its retail stores, which would result in the State receiving the lower of the current retail store price or the current contract price for those Core items available at the retail store at the time of purchase.

5.2. Price Term

- A. Hot List Pricing will be firm fixed from contract execution to June 30, 2020 (exclusive of copy paper, toner and ink) and thereafter may be adjusted every 365 days, July 1st to June 30st. (Except as noted in **Section 5.3.B.** below). Adjustments may be requested, in writing, by either party and price increases will take effect no earlier than the date the Contract Change Notice (CCN) is processed incorporating the adjustments and it is executed by DTMB Central Procurement Services. Price decreases may be offered at any time and will be applied immediately and automatically by the Contractor.
- B. The Hot List prices for copy paper, toner and ink will be held firm from contract execution through June 30, 2019 and then may be adjusted every 182 days (six months) with sixty days' notice (except as noted in **Section 5.3.B.** below). Adjustments may be requested, in writing, by either party and price increases will take effect no earlier than the date the Contract Change Notice (CCN) is processed incorporating the adjustments, is issued by DTMB Procurement Services. Price decreases may be offered at any time and will be applied immediately and automatically by the Contractor.
- C. Core items which are based on discounts off list prices will be held firm from contract execution through June 30, 2019 and then may be adjusted every 182 days (six months) with sixty days' notice (except as noted in **Section 5.3.b.** below). Adjustments to list pricing may be requested, in writing, by either party and price increases will take effect no earlier than the date the Contract Change Notice (CCN) is processed incorporating the adjustments and it is executed by DTMB Central Procurement Services. Price decreases may be offered at any time and will be applied immediately and automatically by the Contractor. Core items will never be more than the established percentage off list price.



- G. Non-Core, Balance of Contract items as defined in Section 5.1.D., will be the market prices that appear on the ordering platform at time of order.

5.3. Price Changes

- A. Adjustments to the Hot List prices, will be based on changes in actual Contractor costs, but increases will not exceed 3% on total aggregate of overall the Hot List during any given adjustment period/term. See Section 5.2. A & B. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.
- B. Adjustments to the Core list prices will be based on changes in manufacturer or Contractor List Price that will be amended no more than every six months. Hot list items have their own amendment terms, see Section 5.2. A & B. Any request must be supported by the published Essendant and/or Contractor List prices. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.
- C. In the event of Force Majeure as described in Terms and Conditions Section 47, pricing changes may be considered, with the provision of acceptable substantiation, prior to expiration of the firm dates.
- D. In the event of unforeseen tariff changes on products resulting in price increases or decreases, the State and the Contractor may address and negotiate changes in pricing for those items independent of pricing terms defined in Section 5.1 and 5.2.
- E. Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by agreement between the Contract Administrator and the Contractor Representative.
- F. The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period. Any changes to pricing must be implemented through an issuance of a Contract Change Notice by DTMB Central Procurement Services (which will be executed by the Parties as soon as practicable). All Contract Change Notices will include a new item listing (for all categories: paper, toner, general office supplies) which will replace all prior versions of the item listing. The Change Notices will clearly describe which price categories have not changed and which categories have been modified.
- G. New pricing shall not apply to products ordered prior to the exercised Change Notice and the mutually accepted execution date even if they had not yet been shipped, received or billed.

5.4. Pricing Audit

- A. **List Pricing.** The Contract Administrator may request from the Contractor on a quarterly basis list pricing as published by wholesalers Essendant or by the Contractor for the Contractor's catalog of products, however, the list prices for the Core items will be held initially for six months and thereafter as per 5.2.C. **Price Term.** The initial list price data will be expected to be provided at contract execution and then again at contract "go live" on March 1, 2019.
- B. **Balance of Contract Pricing.** Those items considered to be Balance of Contract are priced at time of purchase and are not subject to audit other than verification that price presented at time of order



and as confirmed, and/or contained on the packing slip, is the price being charged on the applicable invoice.

- C. **Incorrect Pricing/ Correction and Refund.** This Contract may be audited quarterly, at the State's discretion, via electronic invoicing documentation provided to the State by the Contractor. If audit findings show that incorrect prices were invoiced, the State will contact the Contractor to remedy the situation and issue refunds.

- 1) Pricing will be corrected within 24 hours
- 2) Refunds will be issued to the State within 30 days.

- D. **Retention of Records.** See **Standard Terms and Conditions, Section 37.**

- E. The State expects Contractor to conduct internal pricing and contract compliance audits continuously throughout the term of this Contract, or at a minimum on a quarterly basis, during the months of July, October, January, and April to assure accurate pricing.

5.6. Core Review

On an annual basis the Hot List may be reviewed and may be updated. Hot List pricing shall be the best pricing available and will always be less than the Core discount off list percentage pricing.

- A. The Contractor will provide a State line item usage report for all items purchased that year which shall include the item number, product description, count of items purchased, price paid. This report shall be used in determining the next year's Hot List. Based on State usage, items may be added or removed from the Hot List, and prices negotiated/confirmed which shall be held firm per **Section 5.2. Price Term.**

- B. The Contractor will provide to the State of Michigan a National consolidated line item usage report for all items purchased that year including the item number, product description, count of items purchased, price paid. This report shall be used in determining the next year's Hot and Core List. Based on National usage, items may be added or removed from the hot and core, and prices negotiated/confirmed which shall be held firm per **Section 5.2. Price Term.**

6. Ordering

6.1. Method of Procurement

Products must be made available for procurement through the following methods:

A. **Online Catalog/Ordering System**

- 1) Contractor's online catalog/ordering system will be available 24 hours a day, 7 days a week, except for scheduled maintenance.
 - a. Contractor's online catalog/ordering system will include all the Contractors available product items. The items the State has specifically requested to be "restricted" will remain viewable, however, those items shall be noted as being restricted and will be unavailable for selection to purchase.
 - b. Contractor's online catalog/ordering system will identify State of Michigan "Core" items and will drive usage to these items.
 - c. The Core items shall be listed first in any search on the purchasing platform and shall appear least expensive to most expensive, effectively placing Hot List items first in viewing order.
 - d. Online customers can view product availability before placing orders and the online system will automatically notify online customers when less expensive alternate is available and direct them to it.



- e. Website will allow for order tracking and order history review. Ideally, the purchasing platform will allow for users to create "frequently ordered" lists that can be used to expedite purchases.
 - f. Order acknowledgements must be provided electronically to customers.
- 2) Contractor will work closely with the State and its agencies to initiate usage of their online ordering platform by establishing authorized users, assigning accounting and shipping codes, and establishing approval paths
- 3) The Contractor will provide training to all authorized online ordering platform users throughout the terms of the contract.
- a. Prior to go live date, in a timeline established in the transition in, training materials will be provided by the Contractor to State, for its use, shall include but not be limited to:
 - 1. Recorded webinars and electronic training tutorials which provide orientation to the web-catalog/ purchasing platform and aspects of order, shipping, billing and receiving.
 - 2. Tutorials for "administrators" regarding user and account management and reporting functionality.
 - 3. The Contractor will update these webinars and tutorials throughout the contract period should the on-line purchasing platform and web page change, or as requested by the state.
 - b. At the time users first obtain access to the ordering system, they will be sent a welcome e-mail which provides links to tutorials and to the State's intranet.
 - c. The Contractor will provide to the State prior to the go live date and at times as requested by the Contract Administrator in-service training to agency personnel on on-line platform usage, products, installation, and product safety issues. This training will be extended to MiDEAL members.
 - d. The Contractor will also provide agency training jointly with the State as needed during the period covered by the Contract at no additional charge. This training will be extended to MiDEAL members.
 - e. The Contractor will provide to the State, prior to the go live date and updated as necessary, a FAQ PDF for use on the State's Intranet as requested.
- 4) Website will allow designated customer administrators to set up, add, modify, and delete end users, with permissions and restrictions, approval paths, varying levels of authorization of purchases, etc. independently, without having to contact customer service or Contractor's sales representative.
- 5) The Contractor will be willing and have the capacity to work with third-party providers of Electronic Data Interchange (EDI) services which have been chosen by the State. The Contractor will be willing, at no additional charge to the State or to the EDI provider, to transmit text and image catalog information to the State's provider of EDI services at the State's request.
- 6) Online Catalog Technical Support. Contractor will have sufficient help desk resources to promptly provide technical assistance to the State and MiDeal members.
- a. Contractor will provide online Customer Service support which enables real-time, online interaction with Customer Service through:
 - 1. instant messaging;



2. live log-on assistance;
3. web collaboration; and
4. call-back requests.

B. Phone, Fax or E-mail Orders. Phone, fax or e-mail orders can only be places by authorized users.

- 1) The Contractor will maintain multiple U.S. based contract customer support centers and an additional support center for retail and centralized functions.
 - a. All the Contractor's contract call centers will overlap support capabilities and have redundant data and power entry.
 - b. Contractor will reroute calls in the event of a phone outage or other emergency
- 2) Contractor will offer a toll-free Customer Service/Order number dedicated to State of Michigan and MIDEAL member Accounts.
- 3) The Contractor's normal business hours for receiving orders and providing customer service will be Monday through Friday, 8:00 a.m. to 5:00 p.m. (ET).
- 4) The Contractor will assign an order number, if not provided by the State, for invoicing purposes.
- 5) Orders place via phone, fax or e-mail are limited to \$2,500.00 unless written on a SIGMA generated DO.

C. Retail Network

Contractor will have a nationwide retail network.

- 1) Purchases can be made at any of the Contractor's retail locations via a registered procurement card and receive either the contract pricing or the retail pricing, whichever is lowest at the time of purchase.
- 2) Purchasers may place orders via Staples Business Advantage and elect to pick up all or some of their order at their selected retail location for items that are actually stocked and available for pick-up at that location.

D. Diversity Program. The Contractor offers the option for purchases to be made through approved Staples Tier One Diversity partners. Entities looking to meet diversity sourcing requirements for their organizations will want to discuss this with the Contractor.

- 1) Contractor reserves the right to implement up to a 4% pricing upcharge when establishing a Tier One Diversity program for any Participating Agency.
- 2) State of Michigan users are currently restricted from using this option.

E. Employee Purchase Program

The Contractor shall allow State employees to purchase from this Contract utilizing State pricing. The Contractor will supply Deliverable(s) to State employees on a direct and individual basis. Purchases may be made in the following manner:

1. Employees must register with the Contractor to take advantage of the Employee Purchase Program. The Contractor will offer a Personal Advantage program that extends coupons for employee's personal use on products and services throughout the year in any of their U.S. Staples stores. These coupons will provide discounts on popular retail products and services.



2. State employees may register their personal credit cards and receive contract pricing on personal purchases made via StaplesAdvantage.com. Purchases made through this program will ship direct to the employee's home.
3. State employees may make purchases at any one of the retail locations and using their register personal credit cards receive contract pricing on personal purchases.

6.2 Order Fulfillment

- A. **Fill Rate.** The Contractor will strive to maintain a monthly State of Michigan statewide average Fill Rate of 98%. If the fill rate falls below 98% for three consecutive months and the Contractor fails to provide an explanation for the reduction which is satisfactory to the State, the State may cancel the contract with a 30-day written notice to the Contractor.
- B. **Backorders.** Customers will be notified at time of order placement of shipment delays, partial shipments and back orders.
 - 1) If the Contractor is temporarily out of stock on an item, the Contractor will first notify the end user in one of the following ways:
 - a. Contractor's Internet ordering system provides in-stock/backorder status.
 - b. Customers phoning in orders will be notified of a backorder at the time of order placement.
 - c. A backordered item will be annotated on a FaxBack or e-mail order confirmation, and
 - d. Annotated on the packing list that the end-user receives with the order. The packing list will automatically provide a systemically generated due date (this due date is based on average Contractor lead-time).
 - 2) The Contractor will then work to fill the backorder.
 - a. If the Contractor's system is unable to fill a line, the Contractor's local purchasing group will source the backordered item.
 - b. The order is then placed to ship from the nearest, quickest source. In the event the back order cannot be satisfied within 10 days, or the time required by the customer, the order may be cancelled by the State.
 - 3) Backordered items will not be billed for until the item has been delivered.
- C. **Discontinued/ Unavailable Items.** If an item is discontinued, or has an unusual lead-time, the customer will be notified of this at the time of the order, or if the order is faxed, the Customer will be called the same day and given a choice of canceling the order/item or selecting an alternate.
- D. **Product Substitution.** Product substitution is not allowable unless written approval is received from the requesting agency.
- E. **Special Orders.** Customers may purchase items that are not normally stocked or are volume purchases. Delivery times for these orders will be as established in the quotation provided by the Contractor.



6.3 Minimum Orders

There shall be a minimum order requirement of \$35.00 unless otherwise mutually agreed upon.

6.4. Authorizing Document

The appropriate State of Michigan authorizing document for the Contract will be:

- A. An order placed through the on-line purchasing portal which has gone through the State Agency's established approval process, if applicable and requested by the Agency.
- B. An order placed via, e-mail, phone, fax or at a retail location which must be placed by an authorized user set up in the system.
- C. All orders placed utilizing any of these methods will be bound by the terms and conditions of this contract.

6.5. Order Verification

- A. Only authorized individuals may make purchases under this contract. The Contractor will need to verify that all orders placed via phone, fax or e-mail have been placed by user that have been established and registered as a user in the on-line purchasing platform.
- B. Orders placed by unauthorized individuals are not to be fulfilled. The Contractor will notify the party making the order request to contact their Primary Office Supply Contact to become an authorized purchaser.

7. Delivery

7.1. Time Frames

All Contract Activities must be delivered as follows:

- A. Contractor will use commercially reasonable efforts to ship stocked products, ordered before 4:00 p.m. local time, for delivery the next business day to the Lower Peninsula after acceptance of an order, except for backordered or special-order products.
- B. Contractor will use commercially reasonable efforts to ship stocked products, ordered before 4:00 p.m. local time, for delivery within two (2) business days to the Upper Peninsula after acceptance of an order, except for backordered or special-order products.
- C. If a product is backordered, or shipment is delayed for any reason:
 - 1) The purchaser will be notified during the ordering process or immediately after the order is placed via e-mail of such delay and provided with the anticipated ship date, and Contractor will use commercially reasonable efforts to deliver the delayed product as promptly as commercially practicable.
 - 2) Contractor will treat any such delayed order as active unless the purchaser contacts the Contractor and provides other instructions to cancel the order.

7.2. Delivery

- A. All deliveries shall be made to the location indicated in the order and shall be made during the location's standard business hours, typically between 8 am and 5 pm, although the Contractor will be required to verify delivery time requirements per location.
- B. All deliveries must be accepted/signed for. No deliveries shall be made or "dropped" outside of any location in the anticipation that an employee may receive it when they arrive or see it.



- C. Standard Delivery. Unless specified otherwise below, delivery is governed by Section 18, Delivery, in Standard Terms and Conditions. Prices are F.O.B. Destination, "within Government Premises with transportation charges prepaid by the Contractor on all orders.
1. Building/Loading dock. Delivery to a main loading dock, primarily for palletized and large bulk orders.
 2. Desk top. Delivery to specific addresses, floors and locations on those floors.
 3. Secured Facilities. Some deliveries will be made to Department of Correction facilities and drivers entering those facilities will have to have LEIN clearance prior to admittance. The clearance applications will be made available upon request.
 4. Some State employees work from home offices around the State. Orders from these employees will be delivered to their home office (unless otherwise specified).
- D. Additional freight charges may apply for special delivery, non-standard delivery, rush delivery, or special or custom order products which will be disclosed at the time of the quote and/or the placement of the order by the purchaser.
- 1) Common delivery exceptions that require a surcharge include, but are not limited to:
 - a. Furniture unpacking or assembly
 - b. Expedited deliveries
 - c. Bulky or heavy items such as cases of water, soda, ice melt and chemicals
 - d. Manufacturer direct or special orders
 - e. Deliveries outside of the Contractor's standard distribution area, such as Alaska and Hawaii
- E. "Non-UPS-able" items are items classified as hazardous material, including ORM-D (other regulated materials for domestic transport only). Staples policy prohibits us from shipping any fully regulated hazardous material items; they must be shipped directly from the vendor.

7.3. Packaging and Palletizing

Packaging must be optimized to permit the lowest freight rate. Shipments must be palletized whenever possible using manufacturer's standard 4-way shipping pallets.

8. Acceptance

8.1. Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of Products:

- A. **Initial Inspection**
- 1) If at the time of delivery, damage is visually noted, the delivery will be rejected, and the product returned with the driver.
 - 2) Within 8 business hours of delivery, the State will initially inspect to confirm that product has been delivered as ordered and that there are no signs of damage.
 - a. If this inspection reveals incorrect product or damage, the State will notify the Contractor of deficiencies within three business days.
 - 3) If the order passes the initial inspection, it will be conditionally accepted dependent on continued inspection as they are consumed by the business areas.
- B. **Continued Inspection.** After the order has been conditionally accepted and the products are placed into stock, as each box is opened for use it will be inspected as to usability by the business area.



- 1) If at any time once in stock, until the products use, it is determined that a deficiency has been discovered the State will notify the Contractor within twenty-four hours to discuss the nature of the deficiency and work with the Contractor to either correct the deficiency by providing replacement stock or credit the State.

8.2. Damaged Goods, Defective Merchandise, Returns

A. Damaged Freight, Error in Shipment, Defective Items

- 1) The Contractor will pay and arrange for all shipping and handling charges for items returned because of freight damage, error in shipment or defective items.
- 2) Agencies will be credited the full amount of all items returned.
- 3) All credits will be made to the account codes used to purchase the returned items.
- 4) If the order had multiple account codes, the agency will instruct the Contractor to which code or codes the credit will be assigned.
- 5) The Contractor will issue credit within seven (7) calendar days once item has been returned to Contractor's in-state distribution warehouse.

B. Credit and Return Policy. Products may, if unused, be returned to Contractor for any reason, other than as stated in **Section 8.2.A.**, in accordance with the following policy:

- 1) The product must be returned to the Contractor with its complete and original packaging intact (original UPC code, packaging materials, instructions, manuals, etc.).
- 2) General office supplies must be returned within 30 days of receiving the product.
- 3) Software, if purchase is allowed, may only be returned if unopened, within 30 days of receiving the product. If software is opened and defective it may be exchanged for the same title and version within 30 calendar days of receiving the software.
- 4) Facilities Supplies must be returned within 30 days of receiving the product.
- 5) Furniture must be returned within 14 days after delivery. Furniture in new condition, unassembled and in original packaging are eligible for return. A 35% restocking fee may apply. Special order, customized, manufacturer-direct shipped or assembled furniture is not returnable, unless such products arrive damaged or defective.
- 6) Custom products are not returnable unless damaged or defective within 30 days
- 7) Account will be credited when returned merchandise is received back into inventory.

8.3. Return Process.

The Contractor will accept returns of a product in resalable condition with its complete and original manufacturers' packaging intact and undamaged, including Universal Product Code (UPC), manuals and parts and a copy of the packing slip.

- 1) Users/purchasers can call the Customer Service team to submit a return or use the no-hassle online return process offered through StaplesAdvantage.com.
- 2) Your delivery driver will pick up the returned item so no shipping expense is required. Typically, returns are picked up within 1 to 5 business days.
- 3) Credit for returned items is issued once the items are received at the Staples fulfillment center. The credit is released within 24 to 48 hours after receipt of the items.
- 4) **IMPORTANT NOTES ABOUT ALL RETURNS:**



- a. Non-defective dated goods such as forms, batteries, film, toner and ink cartridges are subject to approval and require a Return Authorization for credit.
- b. Calendars cannot be returned after January 31 of the year to which they correspond.
- c. For health and safety reasons, food, beverages, first aid and medical products cannot be returned.
- d. For similar reasons, janitorial and sanitation products (such as cleaning chemicals) can only be returned in unopened and unaltered original case quantities and packaging.
- e. Products purchased in bulk, including those intended to be used during a World Health Organization epidemic or pandemic alert, are subject to review prior to return.
- f. Additional charges may be incurred for the shipping and handling of products classified as hazardous or oversized materials. Partial cartons or opened containers of hazardous materials cannot be returned. It is your responsibility to ensure the products are used and disposed of in accordance with all applicable federal, state, county and local laws and regulations, including environmental rules and regulations.

9. Invoice and Payment

9.1. Invoice Requirements

- A. All invoices submitted to the State must be submitted with a summary sheet for the invoices included during any given frequency period.
- B. At least two Agencies within the State will require consolidated or alternate invoicing. The Contractor must be willing to work with those Agency to meet their needs.
- C. Frequency: Invoices may be required to be sent biweekly or monthly depending on the State Agency's requirements.
- D. Invoices will include:
 - 1) Date;
 - 2) Master Agreement Number
 - 3) Delivery Order Number (if any- dependent on type of order) or Contractor Assigned Order Number
 - 4) Ship To and Bill To Addresses
 - 5) Name of Authorized Purchaser
 - 6) Quantity;
 - 7) Description of the Contract Activities;
 - 8) Unit price;
 - 9) Shipping cost (only allowable as a line item on Special Order quoted products); and
 - 10) Total price.

**9.2. Payment Methods**

- A. The State prefers to make payment for Contract activities via EFT or P-Card. If electronic payment fails, a paper warrant will be issued.
- B. P-Card/credit card may be used at the time of purchase only but may not be used to pay an AR invoice.

9.3 Payment Term

- A. For the State of Michigan and all MiDeal members, all undisputed invoice amounts are payable within 45 days of receipt.
- B. For Participating Agencies all undisputed invoice amounts are payable within 30 days of receipt or as negotiated

10. Project Plan – Transition In.

- A. This contract and contract pricing are effective on the Contract Effective Date.
 - 1) The State intends to "go live" and begin using this new contract as soon as possible, based upon the Contractor meeting its transition responsibilities outlined in 10.B. and as deemed acceptable by the Contract Administrator.
 - 2) Those participating agencies currently utilizing the NPP Office Supply Contract may transition into utilizing this Master Agreement at any time once the Intergovernmental Cooperative Purchasing Agreement has been signed and filed with NPP, as allowed by their laws, statutes or procurement procedures, and as agreed upon with the Contractor.
 - a. Participating agencies will establish their own transition timelines and tasks.
 - b. Contractor will provide sufficient management to guarantee implementation is completed quickly and according the Participating Agency's exact requirements.
 - 3) Any new participating agencies may utilize this Master Agreement at any time once the Participating Agency Endorsement and Authorization has been signed and filed with NPP, as allowed by their laws, statutes or procurement procedures, and as agreed upon with the Contractor.
 - a. Participating agencies will establish their own transition timelines and tasks.
 - b. Contractor will provide sufficient management to guarantee implementation is completed quickly and according the Participating Agency's exact requirements.
- B. The Contractor will work with the State and:
 - 1) Will meet with the Contract Administrator by February 15, 2019 to establish a timeline for a full-scale contract introduction campaign educating the State's users regarding the new contract, how the new contract changes the way things are done, improvements to the Contractors' online purchasing portal. This will include, but is not limited to:
 - a. Contract introduction meeting to be held with the State's Primary Office Supply Contacts.
 - b. Production of Lunch and Learns or other applicable training
 - c. Production of communication collateral
 - d. Updating or creation of web-based tutorials
 - 2) Conduct account "hygiene" by arranging to meet with all Office Supply Primary contacts by February 15, 2019 to confirm, amend and update user information including but not limited to:



- a. User Name,
 - b. User ID/E-mail address
 - c. Bill To
 - d. Ship To
 - e. Delivery Requirements
 - f. Frequency of Invoicing
- 3) Produce the PDF version of the State's "Hot List" Catalog for a publication date of March 1, 2019 if not sooner.
- C. The Contractor will internally:
- 1) Consolidate vendor lines to leverage better cost pricing
 - 2) Shift items from third-party suppliers to items stocked internally.
 - 3) Analyze and explore other opportunities to achieve product cost savings.

11. Liquidated Damages

Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, the State may assess liquidated damages against Contractor as specified below.

- A. The State is entitled to collect \$1,000 per individual per day for the removal of any Key Personnel without prior approval of the State.
- B. The State is entitled to collect \$1,000 per individual per day for an unapproved subcontractor replacement.

Notwithstanding the foregoing, reassignment or removal of Key Personnel for reasons beyond the Contractor's control, including but not limited to illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause will not be deemed "unauthorized Removal of Key Personnel" and will not entitle the State to assess liquidated damages.

12. Additional Requirements

12.1. Recycled Content and Recyclability

- A. **Deliverables in General.** Without compromising performance or quality, the State prefers Deliverable(s) containing higher percentages of recycled materials.
- B. **Paper.** To the extent available, a portion of the paper products purchased by the State must contain recycled paper if the cost of such paper products does not exceed by 10 percent the cost of non-recycled paper products.
 - 1) The statutory goals are that 50% of the paper purchased must contain 50% recycled fibers. (See MCL 18.1261b).
 - 2) During the contract, the contractor will research and offer recycled paper products as possible replacement options to assist in reaching these goals.
 - 3) DTMB requires that some paper be provided as "virgin" to process through the printers properly.
- C. **Packaging.** The State prefers packaging materials that:



- 1) are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
 - 2) minimize or eliminate the use of polystyrene and other difficult to recycle materials;
 - 3) minimize or eliminate the use of packaging and containers or, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;
 - 4) provide for a return program where packaging can be returned to a specific location for recycling; and
 - 5) contain materials that are easily recyclable in Michigan.
- D. **Recycling Options.** If allowed, the Contractor can offer through this contract a wide range of no- and low-fee recycling services:
- 1) **Ink & Toner Cartridges** – The Contractor provides free delivery driver pick-up and mail-back service. Simply work with your delivery driver to pick a location for regular pick-up or print a mail-back label from StaplesAdvantage.com.
 - 2) **Technology** – The Contractor can offer low cost options for responsible and secure technology recycling including certificate of recycling and optional serial number tracking services. If approved, users can order prepaid recycling kits, boxes and pallets for larger items through StaplesAdvantage.com. The Contractor's tech recycling partner ERI Direct is e-Stewards and R2 certified at all locations for responsible e-waste management practices.
 - 3) **Furniture** –Talk to the Contractor Representative/ Strategic Account Leader for details on recycling, decommissioning and donating office furniture. The Contractor's customers can trade in their old outdated cubicle systems and furniture to Davies for a credit towards Grade A like new remanufactured furniture by Davies from leading brands like Knoll, Steelcase, Haworth and more. Alternatively, the Contractor can direct customers to other furniture donation and recycling options like IRN. Currently not applicable to the State.
 - 4) **Lamps, Ballasts & Batteries** – The Contractor offers mail-back recycling services on StaplesAdvantage.com. Simply order the right-size container, fill it with your goods and put it in the mail. Pricing is inclusive of packaging, shipping and recycling.
 - 5) **Other Hard-to-Recycle Items** – Divert hard-to-recycle waste from landfills with Staples Zero Waste Boxes. Simply fill, close and ship — StaplesAdvantage.com box prices include all shipping and recycling fees. Use our Zero Waste Boxes to recycle coffee pods, breakroom waste, binders, safety supplies, writing instruments and more.

Schedules B and C, which are part of this total contract, are attached separately.