

Board of Education Regular Meeting

July 23, 2024 6:00 PM

City Hall Council Chambers

I. CALL TO ORDER Procedural Item	Chair Butch Campbell
A. Pledge of Allegiance Procedural Item The Pledge of Allegiance will be led by Mrs. Angela Fairchild, Director of Special Education	
B. Moment of Silence Procedural Item	
II. APPROVAL OF AGENDA Action Item	Chair Butch Campbell
III. COMMUNICATIONS Information Item Thank you to Dana Womack, State Farm and United Way of Rutherford and Cannon County for financially supporting our McKinney Vento program as we kick off the school year. Thank you to the Nissan Foundation for sponsoring robotics across our district this year. Open Houses for our schools are scheduled for August 5. The school calendar is on the website with the full dates and details of our schedule this year. There are several back-to-school supply drives going on throughout the city and county this year. Thank you to all of the faith-based organizations, businesses and individuals who are helping our students begin with new backpacks and school supplies including Stuff the Bus, Hwy 231 South, NHC and so many more. Congratulations to our nutrition team for another successful MCS Summer Food program hosted at our schools and through the CHOW Bus. The program will run through August 2.	Mrs. Lisa Trail
A. Introduction of New Administrators for the 2024-2025 School Year: M'Lisa Miffleton-Principal at Northfield Elementary Ashley Whitaker-Assistant Principal at Northfield Elementary Alexandra Juneau-Assistant Principal at Mitchell-Neilson Elementary Christopher Penrose-Assistant Principal at Reeves-Rogers Elementary Sarah Chumney-ESL Specialist Jennifer Lowe-Community Engagement Procedural Item	Dr. Trey Duke
B. The Best of MCS-Beth Prater Procedural Item	Dr. Trey Duke
C. Spotlight on Education-Overview of Summer Trainings and Preview of August 1st District-wide In-service Procedural Item	Ms. Sheri Arnette
D. Public Comment Procedural Item	Chair Butch Campbell
IV. CONSENT ITEMS	Chair Butch Campbell

Consent Agenda	
A. Approval of 6-25-24 Board Minutes Consent Item	
B. Approval of Contract-KnowBe4 Consent Item	
C. Approval of Contract-EZ ChildTrack Consent Item	
D. Approval of Contract-Instructure Consent Item	
E. Approval of Contract-Best Partners Consent Item	
F. Second Reading of Board Policies Consent Item	
i. Approval of Board Policy 1.501 Visitor Code of Conduct, on Second Reading Consent Item	
ii. Approval of Board Policy 3.202, Emergency Preparedness Plan, on Second Reading Consent Item	
iii. Approval of Board Policy 3.400, Student Transportation, on Second Reading Consent Item	
iv. Approval of Board Policy 4.214, Use of Artificial Intelligence Programs, on Second Reading Consent Item	
v. Approval of Board Policy 4.301, Interscholastic Athletics, on Second Reading Consent Item	
vi. Approval of Board Policy 4.403, Library Materials, on Second Reading Consent Item	
vii. Approval of Board Policy 4.603, Promotion and Retention, on Second Reading Consent Item	
viii. Approval of Board Policy 5.307, Physical Assault Leave, on Second Reading Consent Item	
ix. Approval of Board Policy 5.602, Staff Time Schedules, on Second Reading Consent Item	
x. Approval of Board Policy 6.309, Zero Tolerance Offenses, on Second Reading Consent Item	
V. ACTION ITEMS Action Item	Chair Butch Campbell
A. Approval of 2024-2025 Student Fees Action Item	Dr. Trey Duke
B. Approval of Budget Amendment and Contract-United Way Grant Action Item	Dr. Trey Duke
C. Approval of Budget Amendment and Job Description-School Nutrition Action Item	Dr. Trey Duke
D. Approval of Contract-Sentell-MNE Painting Action Item	Dr. Trey Duke

E. Approval of Contract-Staples Renewal Action Item	Dr. Trey Duke
F. Approval of Contract-NHC Rehabilitation Services for Special Education Action Item	Dr. Trey Duke
G. Approval of Contract-School Nutrition Produce Agreement Action Item	Dr. Trey Duke
H. Approval of Contract-Discovery Education Action Item	Dr. Trey Duke
I. Approval of Contract-Open Up Resources Action Item	Dr. Trey Duke
J. Approval of Contract-Upland Software for Use of the Filebound Software Program Action Item	Dr. Trey Duke
K. Approval of Board Policies on First Reading Action Item	Ms. Lauren Bush
i. Approval of Board Policy 1.800 School Calendar on First Reading Action Item	Ms. Lauren Bush
ii. Approval of Board Policy 3.301, Use of District Provided Cell Phones, on First Reading Action Item	Ms. Lauren Bush
iii. Approval of Board Policy 6.406-Student Psychological Services on First Reading Action Item	Ms. Lauren Bush
iv. Approval of Board Policy 6.407-Student Social Services on First Reading Action Item	Ms. Lauren Bush
v. Approval of Board Policy 6.500 Special Education Students on First Reading Action Item	Ms. Lauren Bush
vi. Retirement of Board Policy 6.501 Special Education Behavioral Supports Action Item	Ms. Lauren Bush
vii. Approval of Board Policy 6.505 Students in Foster Care on First Reading Action Item	Ms. Lauren Bush
VI. REPORTS AND INFORMATION Information Item	Chair Butch Campbell
A. Director's Update Information Item	Dr. Trey Duke
VII. OTHER BUSINESS Information Item	Chair Butch Campbell
VIII. ADJOURNMENT Action Item	Chair Butch Campbell

MINUTES

Board of Education Regular Meeting

June 25, 2024 6:00 PM

City Hall Council Chambers

<p>I. CALL TO ORDER Procedural Item Present: Mr. Wesley Ballard, Mr. Butch Campbell, Ms. Karen Dodd, Ms. Barbara Long, Ms. Amanda Moore, Mr. David Settles. Mr. Jimmy Richardson III was absent.</p> <p>In attendance: Dr. Trey Duke, Sheri Arnette, April Zavisa, Maria Johnson, Ken Rocha, Don Bartch, Lisa Trail, Caitlin Bullard, Beth Warren, Daniel Owens, Angela Fairchild, and Emily Spencer.</p> <p>Assistant City Attorney Lauren Bush and City Liaison Bill Shacklett.</p>	Chair Butch Campbell
<p>A. Pledge of Allegiance Procedural Item The Pledge of Allegiance was led by Assistant Superintendent Sheri Arnette.</p>	
<p>B. Moment of Silence Procedural Item</p>	
<p>II. APPROVAL OF AGENDA Action Item Motion to approve the agenda. This motion, made by Ms. Amanda Moore and seconded by Mr. Wesley Ballard, passed. Yea: 6, Nay: 0, Absent: 1</p>	Chair Butch Campbell
<p>III. COMMUNICATIONS Information Item</p>	Mrs. Lisa Trail
<p>A. The Best of MCS-Discovery Students attended the National Beta Convention Procedural Item The National Beta Convention was recently held in Savannah GA. Dr. Bullard introduced Rohan Schott, who placed 5th in Science and Margaret Stewart (absent tonight) placed 4th in Poetry, along with their sponsor, Ms. Beth Warren. Dr. Duke congratulated all the students who advanced to the national level. Mr. Campbell asked how many students attend this convention. Dr. Bullard or Ms. Warren weren't sure of the number of national competitors, but the state level elementary portion was over 1,000 students.</p>	Dr. Trey Duke
<p>B. Public Comment Procedural Item</p>	Chair Butch Campbell
<p>IV. CONSENT ITEMS Consent Agenda Motion to approve consent agenda.. This motion, made by Ms. Barbara Long and seconded by Mr. David Settles, passed. Yea: 6, Nay: 0, Absent: 1</p>	Chair Butch Campbell
<p>A. Approval of 6-11-24 Board Minutes Consent Item</p>	
<p>B. Second Reading of Board Policies Consent Item</p>	
<p>i. Approval of Board Policy 1.1041, Board Compensation and Benefits, on Second Reading Consent Item</p>	
<p>ii. Approval of Board Policy 1.403, Agendas, on Second Reading Consent Item</p>	
<p>iii. Approval of Board Policy 1.8012, Extended School Program, on Second Reading</p>	

Consent Item	
iv. Approval of Board Policy 3.201, Safety, on Second Reading Consent Item	
v. Approval of Board Policy 3.4031, Vehicle Accidents on School Property, on Second Reading Consent Item	
vi. Approval of Board Policy 4.100, Instructional Program, on Second Reading Consent Item	
vii. Approval of Board Policy 4.205, Magnet Schools, on Second Reading Consent Item	
viii. Approval of Board Policy 4.206, Homebound Instruction, on Second Reading Consent Item	
ix. Approval of Retirement of Board Policy 4.212, Virtual Education Program, on Second Reading Consent Item	
x. Approval of Board Policy 4.608, Transcript Alterations, on Second Reading Consent Item	
xi. Approval of Board Policy 6.205, Assignment of Students to Schools and Classes, on Second Reading Consent Item	
C. Approval of Contract-Central Technologies Consent Item	
D. Approval of Contract-Zearn Consent Item	
E. Approval of Contract-Studies Weekly Consent Item	
F. Approval of Contract-Palmer Hamilton Consent Item	
V. ACTION ITEMS Action Item	Chair Butch Campbell
A. Approval of Board Policy 1.501 Visitor Code of Conduct, on First Reading Action Item Motion to approve Board Policy 1.501 Visitor Code of Conduct, on First Reading. This motion, made by Mr. David Settles and seconded by Ms. Karen Dodd, passed. Yea: 6, Nay: 0, Absent: 1 Mr. Ballard asked if this will be posted in each school and website. He was told that once the policy has been through both readings and is final, this information will be posted in the student handbook, posted in schools and on the website. Dr. Duke said that the law states that copies need to be available in school offices as well.	Ms. Lauren Bush
B. Approval of Board Policy 3.202, Emergency Preparedness Plan, on First Reading Action Item Motion to approve Board Policy 3.202, Emergency Preparedness Plan, on First Reading. This motion, made by Mr. David Settles and seconded by Ms. Barbara Long, passed. Yea: 6, Nay: 0, Absent: 1 Karen Dodd asked if these procedures will be in place in August when school starts. Dr. Duke said yes. He explained that Don Bartch and Andy Taylor have already been working on this. He said that he feels very good that we will be ready to train principals on this before they start school.	Ms. Lauren Bush
C. Approval of Board Policy 3.400, Student Transportation, on First Reading Action Item Motion to approve Board Policy 3.400, Student Transportation, on First Reading. This motion, made by Mr. Wesley Ballard and seconded by Ms. Barbara Long, passed. Yea: 6, Nay: 0, Absent: 1	Ms. Lauren Bush

<p>D. Approval of Board Policy 4.214, Use of Artificial Intelligence Programs, on First Reading Action Item Motion to approve Board Policy 4.214, Use of Artificial Intelligence Programs, on First Reading. This motion, made by Mr. David Settles and seconded by Ms. Karen Dodd, passed. Yea: 6, Nay: 0, Absent: 1 Dr. Duke explained that the two instructional technicians are currently training teachers on AI. April Zavisa will be involved, and a committee will be created to vet programs any students will be using.</p> <p>Amanda Moore asked how students' data and personal information would be safe. Dr. Duke said that April Zavisa will vet any software that comes in, and contracts must cover the fact that student data is not exposed.</p>	Ms. Lauren Bush
<p>E. Approval of Board Policy 4.301, Interscholastic Athletics, on First Reading Action Item Motion to approve Board Policy 4.301, Interscholastic Athletics, on First Reading. This motion, made by Ms. Barbara Long and seconded by Mr. David Settles, passed. Yea: 6, Nay: 0, Absent: 1 Karen Dodd asked if there are charges for homeschool students to play sports with us. Lauren Bush said that they are subject to the same charges as our students. Dr. Duke added that this board policy is a result of a new state law.</p>	Ms. Lauren Bush
<p>F. Approval of Board Policy 4.403, Library Materials, on First Reading Action Item Motion to approve Board Policy 4.403, Library Materials, on First Reading. This motion, made by Ms. Karen Dodd and seconded by Mr. Wesley Ballard, passed. Yea: 6, Nay: 0, Absent: 1 Amanda Moore asked that if these challenges come before the Board, would the Board be able to talk about it at a Board meeting? Mrs. Bush said the Board would be able to ask questions and discuss as long as it's related to the book at hand.</p> <p>David Settles asked if we have had any complaints about library materials. Dr. Duke said that we have not had any formal complaints about library books. He said that we have had complaints from parents about a book in the classroom and, in that instance, Sheri Arnette worked with parents.</p>	Ms. Lauren Bush
<p>G. Approval of Board Policy 4.603, Promotion and Retention, on First Reading Action Item Motion to approve Board Policy 4.603, Promotion and Retention, on First Reading. This motion, made by Ms. Amanda Moore and seconded by Ms. Barbara Long, passed. Yea: 6, Nay: 0, Absent: 1</p>	Ms. Lauren Bush
<p>H. Approval of Board Policy 5.307, Physical Assault Leave, on First Reading Action Item Motion to approve Board Policy 5.307, Physical Assault Leave, on First Reading. This motion, made by Mr. David Settles and seconded by Ms. Karen Dodd, passed. Yea: 6, Nay: 0, Absent: 1</p>	Ms. Lauren Bush
<p>I. Approval of Board Policy 5.602, Staff Time Schedules, on First Reading Action Item Motion to approve Board Policy 5.602, Staff Time Schedules, on First Reading. This motion, made by Ms. Amanda Moore and seconded by Mr. Wesley Ballard, passed. Yea: 6, Nay: 0, Absent: 1</p>	Ms. Lauren Bush
<p>J. Approval of Board Policy 6.309, Zero Tolerance Offenses, on First Reading Action Item Motion to approve Board Policy 6.309, Zero Tolerance Offenses, on First Reading. This motion, made by Mr. David Settles and seconded by Ms. Barbara Long, passed.</p>	Ms. Lauren Bush

<p>Yea: 6, Nay: 0, Absent: 1 David Settles said that he is glad to see this policy changed. He is not a fan of zero tolerance because he feels every situation is different, and every situation needs to be heard.</p>	
<p>K. Approval of Budget Amendment-General Purpose Fund 141 & ESP Fund 146 Action Item Motion to approve Budget Amendment-General Purpose Fund 141 & ESP Fund 146. This motion, made by Mr. David Settles and seconded by Ms. Karen Dodd, passed. Yea: 6, Nay: 0, Absent: 1</p>	Dr. Trey Duke
<p>L. Approval of Construction Contract-Reeves Rogers Administrative Addition Awarded to Romach, Inc. Action Item Motion to approve Construction Contract-Reeves Rogers Administrative Addition Awarded to Romach, Inc.. This motion, made by Mr. David Settles and seconded by Ms. Amanda Moore, passed. Yea: 6, Nay: 0, Absent: 1</p>	Dr. Trey Duke
<p>M. Approval of Resolution-CBG Nutrition Action Item Motion to approve Contract-CBG Nutrition. This motion, made by Mr. Wesley Ballard and seconded by Ms. Barbara Long, passed. Yea: 6, Nay: 0, Absent: 1</p>	Dr. Trey Duke
<p>N. Approval of Contract-Curriculum and Instruction Agreements Action Item Motion to approve Contract-Curriculum and Instruction Agreements. This motion, made by Ms. Barbara Long and seconded by Mr. David Settles, passed. Yea: 6, Nay: 0, Absent: 1</p>	Dr. Trey Duke
<p>O. Approval of Contract-Genesis Academy Action Item Motion to approve Contract-Genesis Academy. This motion, made by Ms. Barbara Long and seconded by Ms. Karen Dodd, passed. Yea: 6, Nay: 0, Absent: 1</p>	Dr. Trey Duke
<p>P. Approval of Resolution-Cooperatives Action Item Motion to approve Resolution-Cooperatives. This motion, made by Ms. Amanda Moore and seconded by Mr. Wesley Ballard, passed. Yea: 6, Nay: 0, Absent: 1</p>	Dr. Trey Duke
<p>VI. REPORTS AND INFORMATION Information Item</p>	Chair Butch Campbell
<p>A. Update on Summer Construction Projects Information Item Don Barch updated the Board on the construction projects halfway through the summer. Don thanked the City for working with us on these projects.</p> <p>Cason Lane, Erma Siegel and Black Fox Cooling Towers are substantially complete, minor punch list items remain. HVAC is operational in all three buildings.</p> <p>Reeves-Rogers and Hobgood roof top HVAC installations are ongoing, as well as wrap up from 23-24 bard unit installations.</p> <p>Bleachers at MNE, Bradley, Reeves-Rogers and Discovery School are slated for mid-late August.</p> <p>Discovery sport courts should be completed the week after the 4th of July.</p>	Mr. Don Barch

<p>Mitchell Nielsen's new playground has recently been completed. Our maintenance team is working hard to keep the new sod happy.</p> <p>Cason Lane PreK has a new parking lot.</p> <p>Hobgood's ceiling rebuild is on track.</p> <p>Mitchell Nielson is slated to have the classrooms painted in mid-late July.</p> <p>Scanning access to the schools that did not have that system is complete. Working out a few technological kinks. Should be operating smoothly at all sites after the 4th.</p> <p>After the 4th, we will be initiating the resurfacing process for the sport courts at Mitchell Nielsen and Reeves-Rogers.</p> <p>We have initiated the planning stages for the transportation and maintenance facility with the appropriate city departments. He said that the building will not be staying at the present site. Chair Campbell said this project has been going on for a very long time. Mr. Barch said that he is researching spots. Barbara Long asked how much space we need, and Mr. Barch told her about 10 acres. Wes Ballard asked if we are able to work with commercial realty companies, and Mr. Barch said that we have to work with the City on that.</p> <p>Overall Creek and Scales Elementary are currently having their gym floors resurfaced.</p>	
<p>B. Director's Update Information Item</p> <p>Dr. Duke told the Board that summer school ends this Thursday 6/27. They are doing post testing right now. For 3rd grade students, this determines where they go next.</p> <p>Dr. Duke said that we should receive 4th grade adequate growth scores next week.</p> <p>Congratulations to Maria Johnson who defended her dissertation today. Her graduation will be August 10th.</p> <p>Lisa Trail passed out Reeves Rogers ribbon-cutting invitation to the Board tonight.</p>	<p>Dr. Trey Duke</p>
<p>VII. OTHER BUSINESS Information Item</p>	<p>Chair Butch Campbell</p>
<p>VIII. ADJOURNMENT Action Item</p> <p>Meeting adjourned at 6:50 p.m.</p>	<p>Chair Butch Campbell</p>

Agenda Item Title: Contract KnowB4 - Approval of Contracts Exceeding \$25,000, but less than \$50,000

Board Meeting Date: July 23, 2024

Department: Technology

Presented by: April Zavisia

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board will be provided with a list of written contracts with a between \$25,000.00 and \$50,000.00 at the regularly scheduled Board meeting immediately following approval of the contract or agreement. KnowBe4 provides security awareness software and training for the school district.

Staff Recommendation

Approval of consent agenda item

Fiscal Impact

The total cost of the contract is \$31,320.00 and funding will be provided by the general-purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

ADDENDUM TO MASTER TERMS OF USE

This Addendum (herein "Addendum") amends the KnowBe4 Inc. Master Terms of Use, and all attachments, exhibits, any physical or virtual documents or writings, referenced therein, and any click through, clickwrap, shrink-wrap, or other such virtual agreement (all of which are herein "Agreement") between KnowBe4 Inc. (herein "Contractor") and Murfreesboro City Schools (herein "Customer") for the use of goods and services as provided for in the Agreement. In consideration of using Contractor's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

- 1. Precedence.** Notwithstanding any other provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions, or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control.
- 2. Indemnity, Limitation of Liability and Disclaimer of Warranty.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring Customer to indemnify or hold harmless Contractor or any other person or entity and any limitation of liability in favor of Contractor is deleted. No provision of this Agreement shall act or be deemed a waiver by Customer of any immunity, including its rights or privileges afforded by the Tennessee Constitution or state law including but not limited to any provision of the Tennessee Governmental Tort Liability Act, T.C.A. 29-20-101 et seq. Because Tennessee law may not allow Customer to agree to the disclaimer of warranties any such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law, and Customer reserves all rights afforded to local governments under law for all general and implied warranties.
- 3. Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq., are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, Customer must, upon proper request, release public documents and records as defined by T.C.A. §10-7-503 et seq., including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Contractor or provide Contractor with notice or the time to obtain a protective order. Customer does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 3 serves to meet such burden and authorization of disclosure.
- 4. Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.
- 5. Selection of Jurisdiction, Waiver of Jury Trial, Venue, Service of Process.** Pursuant to the Constitution and Laws of the State of Tennessee, Customer is a sovereign entity subject only to those courts with jurisdiction over Customer. If a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state courts in Murfreesboro, Tennessee or the Federal court for the Middle District of Tennessee.

However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. The parties hereby consent to the mandatory and exclusive venue and jurisdiction of the state court located in Murfreesboro, Tennessee or the Federal court for the Middle District of Tennessee. Service of process on Customer shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and Customer does not agree to any other service of process procedure.

- 6. Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual provisions for the payment of attorney's fees. In the event of litigation between Customer and Contractor each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure.
- 7. Non-appropriation.** Contractor acknowledges that Customer is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event Customer fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to Customer, such termination shall not be a breach of this Agreement, and any unused payment made to Contractor shall be returned to Customer. Furthermore, this provision shall extend to any and all obligations imposed upon Customer to reimburse Contractor for any reimbursements, refunds, chargebacks, penalties, fees, or other financial obligations which exceed the funds tendered to Contractor, FPPs, or Payment Processing Partners in relation to any event.
- 8. No Taxes.** As a tax-exempt entity, Customer shall not be responsible for sales or use taxes incurred for products or services. Customer shall supply Contractor with its Sales and Use Tax Exemption Certificate upon Contractor's request.
- 9. Warranty.** Contractor warrants that the products purchased herein when used in accordance with the documentation shall operate in all material respects in conformity with the written representations of Contractor. If it does not perform as warranted, Contractor shall use commercially reasonable efforts to correct the products so that it operates in all material respects in conformity with the written representations of Contractor. If it cannot correct the products within a reasonable period of time, Contractor shall refund the purchase price of the products.
- 10. Amendment.** This Addendum and the Agreement shall not be modified or altered other than by written agreement executed by both parties.
- 11. Survival.** This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.
- 12. No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that

ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.

13. Counterparts. This Addendum may be executed in one or more counterparts by Customer and Contractor. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.

14. Effective Date. This Addendum shall be effective immediately after the Agreement is effective.

Contractor

Murfreesboro City Schools

Signature

Bobby N. Duke, III
Director of Schools

Date

Date

Printed Name

Title

Approved as to form:

Lauren Bush, Assistant City Attorney



KnowBe4
33 N Garden Avenue, Suite 1200
Clearwater, FL
33755 US

Created Date 1/24/2024 5:15 PM
Expiration Date 6/30/2024
Quote Number Q-975443
Payment Terms Net 30

Prepared By Jenna Larson
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Contact Name April Zavis
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Bill to Name Murfreesboro City Schools
2552 S Church St
Murfreesboro, TN 37127-6342
USA

Ship to Name Murfreesboro City Schools
2552 S Church St
Murfreesboro, TN 37127-6342
USA

Description New Subscription Terms:
7/28/24-7/27/25

Notes

Total Term(Months) 12

Non Profit Discounting has been applied to this quote.

PRODUCT	DESCRIPTION	QTY	LIST PRICE	SALES PRICE	MONTHLY NET PRICE	TOTAL PRICE
KMSATD	KnowBe4 Security Awareness Training Subscription Diamond	1,450	USD 21.60	USD 21.60	USD 1.80	USD 31,320.00

Grand Total USD 31,320.00

Signature
Name
Title
Date

Terms & Conditions

Your signature on this quote tells us that you have the authority to make this purchase on behalf of your company and that you agree to pay within the stated terms. For first year subscriptions, mid-subscription add-ons, and/or upgrades, the subscription period will begin when we process your order, which is when we receive your signed quote. For renewal subscriptions, the subscription period will begin on the day after your current subscription expires. Unless included on the invoice, customer is responsible for any applicable sales and use tax.

KnowBe4's standard Terms of Service (www.KnowBe4.com/Legal) and Product Privacy Policy (www.KnowBe4.com/Product-Privacy-Notice) apply, unless mutually agreed otherwise in writing.

Agenda Item Title: EZ Child Track contract for 2024-2025

Board Meeting Date: July 23, 2024

Department: Extended School Program

Presented by: Cynthia Hopkins

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board will be provided with a list of written contracts with a between \$25,000.00 and \$50,000.00 at the regularly scheduled Board meeting immediately following approval of the contract or agreement. The contract with EZChildTrack provides online childcare software that allows automated billing/payment, parent portals, site access, and attendance options.

Staff Recommendation

Approval of consent agenda item

Fiscal Impact

The total cost of this agreement is \$30,000 for the 2024-2025 school year. Funding will be provided through the Extended School Programs budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



MURFREESBORO CITY SCHOOLS

Contract for Childcare Management Software



[CONFIDENTIAL]

Submitted by

GTSOFT Inc.
ezchildtrack.com

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CONTACTS

Delivered To:

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Contacts

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CONTRACT FOR SOFTWARE SERVICES

This Contract for Software Services (“Contract”) is entered into on this 1st day of July, 2024 (“Effective Date”) by and between GTSoft Inc. (“Contractor”), having its principal place of business at One Sugar Creek Center Blvd, Suite 410, Sugar Land, Texas 77478 and Murfreesboro City Schools (“Client”), having its principal place of business at 2552 South Church Street, Murfreesboro, Tennessee 37172. Contractor and Client may be referred to collectively as “the Parties.”

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Services.** Contractor will provide Client with use of EZChildTrack SaaS including data transmission, access, and storage (“Services”) as defined in the attached cost proposal.
2. **Term and Termination.** The term of this Contract shall commence on July 1, 2024 and shall continue in effect until June 30, 2025 (“the Term”). The Parties may agree to terminate this Contract before the end of the Term. Any such early termination requires at least ninety (90) days prior written notice to the other Party. Unless either party sends written notice to the other party at least 90 days prior to the end of the Initial Term or any subsequent term, this agreement shall automatically renew for up to 3 additional years on each July 1st following the Initial Term.
3. **Grant of License.** Subject to the terms of this Contract, Contractor grants Client a non-exclusive, non-transferable right to use the Services, solely for Client’s own internal business purposes. Further, subject to the terms of this Contract, Client grants to Contractor the non-exclusive right to use, copy, store, transmit and display Client data solely to the extent necessary to provide the Services as requested by Client. Client shall not (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make available to any third party the Services, technology, or intellectual property of Contractor; (b) modify or make derivative works based upon Contractor’s Services, technology, or intellectual property; (c) commercially exploit the Contractor’s Services, technology, or intellectual property in any way; or (d) “frame” or “mirror” any content contained in, or accessible from, the Services on any other server, wireless or Internet-based device; or (e) allow any third parties access to the EZChildTrack software including, but not limited to, allowing any third parties access to screen shots of the EZChildTrack software. Contractor shall not use the Client’s data for any purpose other than to provide the Services to Client. All rights not expressly granted to Client are reserved by Contractor. Regardless of any other terms of this Contract, Client shall not have access or any rights to object code or source code owned by Contractor.

4. **Charges and Payment of Fees.** As compensation for the Services and the provision of any other services as may be applicable, Client shall pay Contractor as set forth in the attached cost proposal. The Parties agree that all payments by Client shall be non-refundable, and no payments will be prorated. Further, Client's payments to Contractor shall be made as set forth in the attached cost proposal as well. Any information disclosed pursuant this provision shall be considered Confidential Information as defined in Section 16.
5. **Technical Support.** All authorized administrators and staff will have access to the integrated web-based support system. Contractor shall authorize two Client Coordinators nominated by Client, and these Client Coordinators shall act as liaison between the Parties. The Client Coordinators will have access to telephone support in case of technical problems with the Services. Any additional modifications/enhancements will be charged at a rate of one hundred dollars (\$100.00) per hour. Technical support does not include problems caused by bad or invalid data.
6. **Data Storage.** Contractor will provide the services for hosting the website through Rackspace, Inc., a national hosting company. Data security features provided by Rackspace, Inc. include a firewall and 256-bit SSL encryption. Contractor reserves the right to change the website hosting provider.
7. **Service Availability.** The Services may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications. Contractor will make reasonable efforts to minimize such delays or problems to ensure that Client suffers minimal disruption to its operations.
8. **Client Responsibilities.** Client is responsible for any and all activities that occur under Client's user accounts. Client (a) shall notify Contractor immediately of any unauthorized use of any password or account or any other known or suspected breach of security including, but not limited to, third-party access to the EZReports software and/or screen shots of the EZReports software; (b) shall report to Contractor immediately and use reasonable efforts to stop immediately any copying or distribution of any content or materials that is known or suspected by Client; (c) represents and warrants that use of the Services shall at all times comply with all applicable local, state, federal, and international laws, regulations, and conventions, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data; (d) shall not impersonate another client or user of Contractor or provide false identity information to gain access to or use the Services.
9. **Ownership.** All rights, title, and interest in Contractor's technology including, but not limited to, techniques, algorithms, methods, software, content, Services, and any other intellectual property at the time of this Contract is executed shall be and remain the property of Contractor. Further, all rights, title, and interest in software, techniques, algorithms, methods, data, program images and text viewable on the Internet, HTML code relating thereto, or any program code, including site related program code, created, developed, or prepared during or after the Term by Contractor, including manuals, training

materials, and documentation shall be owned by Contractor. Also, any and all suggestions, ideas, enhancement requests, modifications, feedback, recommendations or other information provided by Client or any other party relating to the Services shall be owned by Contractor. Contractor will not have any rights to Client's data. This Contract is not a sale and does not convey any rights of ownership in or related to the Services, Contractor's technology, or intellectual property owned by Contractor to Client. Contractor's name, logo, and product names associated with the Services are trademarks of Contractor or third parties, and no right or license is granted to Client to use them.

10. **Representations and Warranties.** Each Party represents and warrants that it has the legal power and authority to enter into this Contract. Contractor represents and warrants that it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision. Client represents and warrants that it has not falsely identified itself nor provided any false information to gain access to the Services. In performing the Services under this Contract, Contractor is an independent contractor and nothing herein is to be construed as establishing an employer/employee relationship. The Parties agree that all work shall be performed in accordance with the highest professional standards.

11. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE OR RESPONSIBLE TO ANYONE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, INTERRUPTION OF USE OR LOST REVENUES) ARISING OUT OF OR RELATED TO THE CONTRACTOR PRODUCT OR SERVICES, UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, REGARDLESS OF WHETHER THAT PARTY HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12. **Competitors.** In addition to the other provisions of this Contract, which may also be applicable, Client is specifically barred from sharing any information related to the EZChildTrack software and the Services with any competitors of Contractor, unless required by law. This includes, but is not limited to, sharing any details related to the operation of the software, screen shots, the performance of the Services, or anything else that may provide information about the EZChildTrack software or the Services to any and all competitors of Contractor. In the event of a breach of this provision by Client, Client shall immediately notify Contractor in writing and take all necessary steps to mitigate the impact of the breach. Contractor shall have the right to seek injunctive relief and any other remedies available under law or equity to protect its proprietary information. Recipient acknowledges that any actual or threatened material breach of this Contract by Client will constitute immediate and irreparable harm to Contractor for which monetary damages would be an inadequate remedy and entitle Contractor to obtain immediate injunctive relief, as well as such further relief as may be granted by a court of

competent jurisdiction, without the requirement of posting bond. Further, Client shall be responsible for all of its users' actions as they relate to this and the other provisions

13. **Governing Law and Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflicts of law principles. In the event that Contractor initiates a lawsuit for any disputes arising out of or relating to this Contract ("Contractor Lawsuit"), the Parties agree that exclusive jurisdiction for any such Contractor Lawsuit shall be in the state or federal courts of Texas. The Parties further agree that the exclusive venue for any such Contractor Lawsuit shall be in a court of competent jurisdiction in Fort Bend County, Texas. Additionally, in the event that Client initiates a lawsuit for any disputes arising out of or relating to this Contract ("Client Lawsuit"), the Parties agree that exclusive jurisdiction for any such Client Lawsuit shall be in the state or federal courts of Tennessee. The Parties further agree that the exclusive venue for any such Client Lawsuit shall be in a court of competent jurisdiction in Rutherford County, Tennessee. Furthermore, nothing in this Section removes or interferes with either Parties' ability or obligation to file a counterclaim in a lawsuit properly initiated by the other Party.

14. **Entire Agreement.** This Contract constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Contract. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Contract are expressly merged into and superseded by this Contract.

15. **Severability.** In the event that any one or more of the provisions of this Contract shall be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Contract shall not be affected thereby.

16. **Confidentiality.** "Confidential Information" means all documents, software, screen shots, reports, data, records, forms and other materials and information obtained by one Party (the "Receiving Party") from the other Party (the "Disclosing Party"), either verbally or in writing, in the course of performance of any Services (including, but not limited to, records and information of the Disclosing Party): (a) that have been marked as confidential; (b) whose confidential nature has been made known by the Disclosing Party to the Receiving Party; or (c) that due to their character and nature, a reasonable person under like circumstances would treat as confidential. Notwithstanding the foregoing, Confidential Information shall, in all events and whether or not marked or communicated as being confidential, include Personal Data, and all information relating to the Disclosing Party's business plans, pricing information, cost proposals, and customers, computer operations; organizations; products, product development and marketing; financing; payroll; and the like; which is disclosed to the Receiving Party either directly or indirectly, in writing or orally. Confidential Information does not include information which: (a) is already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is or becomes publicly known through no wrongful act of the Receiving Party; (c) is

independently developed by the Receiving Party without benefit of the Disclosing Party's Confidential Information; or (d) is lawfully received by the Receiving Party from a Third Party without restriction and without a breach of an obligation of confidentiality.

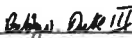
The Receiving Party shall not use or disclose to any person, firm or entity any Confidential Information without the Disclosing Party's express, prior written permission; provided, however, that the Receiving Party may disclose such information to its employees in connection with this Contract on a need-to-know basis and who are subject to a prior written agreement containing obligations of confidentiality at least as protective as this Contract. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent that it is required to be disclosed pursuant to a statutory or regulatory provision or court order. The Receiving Party shall provide notice to the Disclosing Party as soon as practicable upon knowledge of any potential or actual required disclosure and, if requested by the Disclosing Party, shall reasonably cooperate with the Disclosing Party in limiting such disclosure.

In the event of the termination of this Contract, the Receiving Party shall, if requested by the Disclosing Party and at Disclosing Party's option, either return to Disclosing Party all Confidential Information and all copies thereof, and all other property obtained from or through Disclosing Party, or certify under penalty of perjury that it has destroyed the Confidential Information, including any copies thereof and all other property obtained from or through Disclosing Party, within thirty (30) days of said request by Disclosing Party.

17. **Expiration or Termination**; Survival. Expiration or earlier termination of this Contract shall not impair or affect any liability or obligation of Contractor or Client which has accrued on or before the date of expiration or earlier termination of this Contract. Further, unless otherwise specifically provided in this Contract, all provisions of this Contract which by their nature contemplate performance after the expiration or earlier termination hereof, including but not limited to all provisions that contain obligations of confidentiality, data privacy, indemnity, defense, representations, warranties, waiver or release made by any party to this Contract, shall survive such expiration or earlier termination of this Contract.

Murfreesboro City Schools

GTSOFT Inc.


Trey Duke (Jul 4, 2024 16:48 CDT)

Bobby N. Duke III, Director of Schools

Jeffrey Thomas
Director

Date: 07/04/24

Date: _____

Agenda Item Title: Instructure Contract for 2024-2025

Board Meeting Date: July 23, 2024

Department: Curriculum and Instruction

Presented by: Sheri Arnette

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board will be provided with a list of written contracts with a between \$25,000.00 and \$50,000.00 at the regularly scheduled Board meeting immediately following approval of the contract or agreement. The contract with Instructure provides benchmark assessments for science in 3rd – 6th grades. Data is used to measure progress and make instructional goals for student learning.

Staff Recommendation

Approval of consent agenda item

Fiscal Impact

The total cost of this agreement is \$45,496.00 for the 2024-2025 school year. Funding will be provided through the general-purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



Services Order Form

Order #: Q-353491-1
 Date: 2024-01-31
 Offer Valid Through: 2024-07-31

6330 South 3000 East, Suite 700, Salt Lake City, UT 84121, United States

Order Form For Murfreesboro City School District

Address: 2552 SOUTH CHURCH STREET
 City: MURFREESBORO
 State/Province: Tennessee
 Zip/Postal Code: 37127
 Country: United States

Order Information
 Billing Frequency: Annual Upfront
 Payment Terms: Net 30

Billing Contact

Name: _____
 Email: _____
 Phone: _____

Primary Contact

Name: Lea Bartch
 Email: lea.bartch@cityschools.net
 Phone: +1 615 893 2313

Billing Frequency Term:

Non-Recurring items will be invoiced upon signing. Recurring items will be invoiced 30 days prior to the annual start date.

Year 1						
Description	Start Date	End Date	Metric	Qty	Price	Amount
Mastery View Predictive Assessments TN - One Subject (Sem 2BA, Trad 3BA) - District Pacing - Science - 3;4;5;6	2024-08-15	2025-08-14	User	4,700	USD 8.47	USD 39,809.00
Paper-Pencil Benchmarks	2024-08-15	2025-08-14	User	4,700	USD 1.21	USD 5,687.00
Recurring Sub-Total						USD 45,496.00
Year 1 Total						USD 45,496.00
Grand Total:						USD 45,496.00

Deliverable	Description	Expiration	Qty
Mastery View Predictive Assessments TN - One Subject (Sem 2BA, Trad 3BA) - District Pacing - Science - 3;4;5;6	Mastery View Predictive Assessments - Grade Levels	N/A	4,700
Paper-Pencil Benchmarks	Charge for the pre-coded answer documents and UPS shipping labels for shipping to/from the Instructure office. Schools/Districts are responsible for copying the benchmarks.	N/A	4,700

The items above must be completed during the time period beginning on the later of the Effective Date or the initial Start Date specified in this Order Form and ending pursuant to the time frame set forth in the Expiration column above.

Metrics and Descriptions:

User: User Metric reflects the maximum number of individuals authorized by the Customer to access and/or use the Service and Customer has paid for such access and/or use.

In the event Customer enables access to the Service to more Users over a given contract year than are allocated to such contract year as set forth above, then Instructure reserves the right, in its sole discretion, to invoice the Customer for such additional number of Users. In addition, the User fees set forth above are based on the assumption that Customer's Users will use the Service commensurate with the average usage patterns of users across Instructure's user base in the aggregate (such average usage being referred to herein as "Typical Use") and do not account for usage of the Service by Customer's Users beyond such Typical Use. To the extent the Users' usage of the Service, in the aggregate, exceeds the Typical Use at any given time, Instructure reserves the right, in its sole discretion, to increase the fees by an amount proportional to such excess usage. In the event Instructure increases the fees pursuant to this paragraph, Instructure shall send an invoice to Customer for the applicable increase along with documentation evidencing the additional usage of or additional Users who have access to the Service giving rise to such fee increase. Any invoice sent pursuant to the foregoing shall be due and payable within 30 days of receipt.

Product	Description
Mastery View Predictive Assessments - Grade Levels	Mastery View Predictive Assessments for the State Tested Subject Areas.

Duration: The Services provided under this Order Form shall begin on the first year Start Date set forth above and continue through the last year End Date set forth above, provided, however, that Instructure may provide certain implementation related Services prior to the first year Start Date at its sole discretion.

Miscellaneous: Instructure's support terms are available as follows:
Canvas & Catalog: <https://www.instructure.com/canvas/support-terms>
Portfolium: <https://portfolium.com/support-terms>
MasteryConnect: <https://www.masteryconnect.com/support/>

As part of our commitment to provide the most innovative and trusted products in the industry, at times we must increase our renewal rates to cover additional expenses associated with advancing our products. If you have concerns with any increases, please reach out to your account representative.

In the event that Customer fails to execute this Order Form prior to the Start Date listed above, all fees shall become due payable upon Customer's receipt of an invoice.

Terms and Conditions

This Order Form shall be governed by the Master Terms and Conditions which can be found here: <https://www.instructure.com/policies/master-terms-and-conditions>

The provision of any Predictive Assessment Services shall also be governed by the Addendum which can be found here:

<https://www.instructure.com/benchmark-assessment-addendum>.

In the event of any conflict between this Master Terms and Conditions and any addendum thereto and this Order Form, the provisions of this Order Form shall control.

The parties agreement with regards to Instructure's processing of personal data or personally identifiable information can be found at: <https://www.instructure.com/policies/data-processing>

Notes

This quote is for 3 BA for Science only for grades 3-6. Administration will be in paper pencil format.

PURCHASE ORDER INFORMATION	TAX INFORMATION
<p>Is a Purchase Order required for the purchase or payment of the products on this order form?</p> <p>Please Enter (Yes or No): _____</p> <p>If yes, please enter PO Number: _____</p>	<p>Check here if your company is exempt from US state sales tax : _____</p> <p><i>Please email all US state sales tax exemption certifications to ar@instructure.com</i></p>

Customer purchasing documentation, such as Purchase Orders, shall only be used as proof of acceptance of the Order Form referenced therein, and the associated Master Terms and Conditions. Any terms and conditions included in any such Customer purchasing documentation are hereby expressly disclaimed by Instructure, shall be void and of no effect, and shall in all cases be superseded by the applicable Master Terms and Conditions.

By executing this Order Form, each party agrees to be legally bound by this Order Form.

Murfreesboro City School District

Signature:	_____
Name:	_____
Title:	_____
Date:	_____

Instructure, Inc.

Signature:	_____
Name:	_____
Title:	_____
Date:	_____

ADDENDUM TO MASTER TERMS AND CONDITIONS

This Addendum (herein "Addendum") amends the Instructure, Inc. Master Terms and Conditions, and all attachments, exhibits, any physical or virtual documents or writings, referenced therein, and any click through, clickwrap, shrink-wrap, or other such virtual agreement (all of which are herein "Agreement") between the Instructure, Inc. (herein "Contractor") and Murfreesboro City Schools (herein "Customer") for the use of goods and services as provided for in the Agreement. In consideration of using Contractor's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

- 1. Precedence.** Notwithstanding any other provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions, or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control.

- 2. Indemnity, Limitation of Liability and Disclaimer of Warranty.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring Customer to indemnify or hold harmless Contractor or any other person or entity and any limitation of liability in favor of Contractor is deleted. No provision of this Agreement shall act or be deemed a waiver by Customer of any immunity, including its rights or privileges afforded by the Tennessee Constitution or state law including but not limited to any provision of the Tennessee Governmental Tort Liability Act, T.C.A. 29-20-101 et seq. Because Tennessee law may not allow Customer to agree to the disclaimer of warranties any such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law, and Customer reserves all rights afforded to local governments under law for all general and implied warranties.

- 3. Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq., are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, Customer must, upon proper request, release public documents and records as defined by T.C.A. §10-7-503 et seq., including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Contractor or provide Contractor with notice or the time to obtain a protective order. Customer does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 3 serves to meet such burden and authorization of disclosure.

- 4. Confidentiality- Education Records.** For purposes of carrying out this Agreement, Contractor is hereby designated by District as a school official having a legitimate educational interest in accessing, using, and tracking student education records, as permitted by the Family Educational Rights and Privacy Act, (FERPA) (34 CFR Part 99.3).
 - 4.1. Contractor understands and agrees to comply with FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) in that the storage and use of student education records by Contractor will comply with all FERPA requirements.
 - 4.2. Contractor understands and agrees that that it remains under direct control of

District with respect to the use and maintenance of the education records. Contractor understands that to access education records there must be a legitimate educational interest and must be essential to complete a function or task under this agreement.

4.3. Contractor understands and agrees that it is prohibited from re-disclosing any personally identifiable information from the education records at any time or for any purpose whatsoever.

5. Governing Law. The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.

6. Selection of Jurisdiction, Waiver of Jury Trial, Venue, Service of Process. Pursuant to the Constitution and Laws of the State of Tennessee, Customer is a sovereign entity subject only to those courts with jurisdiction over Customer. If a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state courts in Murfreesboro, Tennessee or the Federal court for the Middle District of Tennessee. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. The parties hereby consent to the mandatory and exclusive venue and jurisdiction of the state court located in Murfreesboro, Tennessee or the Federal court for the Middle District of Tennessee. Service of process on Customer shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and Customer does not agree to any other service of process procedure.

7. Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees. Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual provisions for the payment of attorney's fees. In the event of litigation between Customer and Contractor each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure.

8. Non-appropriation. Contractor acknowledges that Customer is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event Customer fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to Customer, such termination shall not be a breach of this Agreement, and any unused payment made to Contractor shall be returned to Customer. Furthermore, this provision shall extend to any and all obligations imposed upon Customer to reimburse Contractor for any reimbursements, refunds, chargebacks, penalties, fees, or other financial obligations which exceed the funds tendered to Contractor, FPPs, or Payment Processing Partners in relation to any event.

9. No Taxes. As a tax-exempt entity, Customer shall not be responsible for sales or use taxes incurred for products or services. Customer shall supply Contractor with its Sales and Use Tax Exemption Certificate upon Contractor's request.

10.Warranty. Contractor warrants that the products purchased herein when used in accordance with the documentation shall operate in all material respects in conformity with the written representations of Contractor. If it does not perform as warranted, Contractor shall use commercially reasonable efforts to correct the products so that it operates in all material respects in conformity with the written representations of Contractor. If it cannot correct the products within a reasonable period of time, Contractor shall refund the purchase price of the products.

11.Amendment. This Addendum and the Agreement shall not be modified or altered other than by written agreement executed by both parties.

12.Survival. This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.

13.No Presumption Against Drafter. This Addendum shall not be construed for or against any party because that party or that party’s legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.

14.Counterparts. This Addendum may be executed in one or more counterparts by Customer and Contractor. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.

15.Effective Date. This Addendum shall be effective immediately after the Agreement is effective.

Contractor

Murfreesboro City Schools

Signature

Bobby N. Duke, III
Director of Schools

Date

Date

Printed Name

Title

Approved as to form:

Lauren Bush, Assistant City Attorney

Agenda Item Title: BEST Partners contract approval for 2024-2025

Board Meeting Date: July 23, 2024

Department: Student Support Services

Presented by: Lauren Bush

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board will be provided with a list of written contracts with a between \$25,000.00 and \$50,000.00 at the regularly scheduled Board meeting immediately following approval of the contract or agreement. Best Partners provides social emotional support services and training to district staff and students.

Staff Recommendation

Approval of consent agenda item

Fiscal Impact

The total cost of the contract will be dependent on the number of hours of services provided, however the total cost of the contract will not exceed \$48,750.00. The funding source for this contract is provided partially through federal funds and the remaining portion is provided through general purpose funds.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City Schools
2252 South Church Street, Murfreesboro TN 37127
Phone (615) 893-2313 **Fax** (615) 893-2352
cityschools.net



FY2025 CONTRACT REVIEW FORM

Requesting Department/School: Student Support Services

Contract: BEHAVIORAL, EMOTIONAL, SOCIAL TEACHING CONSULTING SERVICES

Vendor: Best Partners LLC

Contract Term: 7/3/24-6/30/25 Contract Identifier: 2025-SSS-003

Is there a contract renewal option? Yes No Cost: \$48,750.00

Contract monitoring required? Yes No Date of Biannual Review: 1/15/25

Is Board approval required: Yes No Board Meeting Date: Consent--7/23/25

Is the contract issued pursuant to a grant agreement? Yes No


Is the contract issued pursuant to an ITB/RFP? Yes No ITB/RFP No.: _____

Does the contract require student information? Yes No

Legal Review

Are any amendments to the contract required? Yes No

Brief description of amendments and/or other comments:

Legal Approval: 

Date: 7/11/24

Finance Review

Budget Account Number: 141-72130-399

Funding Source: General Purpose Federal Other: _____

Other comments:

Budgeted \$35,000 in this line for FY24-25.

Finance Approval: 
Daniel Owens Jul 12, 2024 08:22 CDT

Date: 07/12/24

**CONSULTING CONTRACT
BETWEEN
MURFREESBORO CITY SCHOOL DISTRICT
AND
BEST PARTNERS, LLC
FOR
BEHAVIORAL, EMOTIONAL, SOCIAL TEACHING CONSULTING SERVICES**

This contract made this 3rd day of July, 2024, by and between **MURFREESBORO CITY SCHOOLS** (“MCS”), a municipal school system of the State of Tennessee, and **BEST PARTNERS, LLC**, a Tennessee Limited Liability Company (“Consultant”).

Duties and Responsibilities of Consultant. Consultant shall work with the Instruction Department and the Student Support Services Department to give guidance with student behavior issues. The Consultant will also work with school counselors, social workers and behavioral interventionists to better meet the needs of all students.

1. **Term.** This contract shall not be effective until approved by the Director of Schools (or Board of Education, if necessary) and signed by all required parties. The term of this contract will be from July 3, 2024, through June 30, 2025.
2. **Payment to Consultant.** MCS shall pay the Consultant the equivalent of six hundred and twenty-five dollars (\$625.00) a day not to exceed seventy-eight (78) days. Such payment shall be made within thirty (30) calendar days of receipt of an invoice for services delivered. Total amount of this contract shall not exceed forty-eight thousand seven hundred and fifty dollars (\$48,750.00) unless prior written approval is received by the Director of Schools and this contract is amended to include the additional payment amount. Consultant shall submit written, signed reports of the time spent performing consulting services under this contract, itemizing in reasonable detail the dates on which services were performed, the number of hours spent on such dates, and a brief description of the services rendered.
3. **Termination.**
 - a. **Termination—Breach.** In the event that any of the provisions of the Agreement are violated by the Consultant, MCS may serve written notice upon the Consultant of its intention to terminate the Agreement, and unless within three (3) business days after the serving of such notice upon the Consultant, such violation or delay shall cease and satisfactory arrangement for correction be made, MCS may immediately terminate the Agreement at anytime after said three (3) business days. Such termination shall not relieve Consultant of any liability to MCS for damages sustained by virtue of any breach by Consultant.
 - b. **Termination—Funding.** Should funding for this Agreement be discontinued, MCS shall have the right to terminate the Agreement immediately upon written notice to Consultant.
 - c. **Termination—Notice.** MCS or Consultant may terminate this Agreement at any time upon thirty (30) days written notice. In that event, the Consultant shall be entitled to receive [all earned but unpaid] just and equitable compensation for any satisfactory authorized work completed as of the termination date.

4. **Compliance with Laws.** Consultant agrees to comply with any applicable federal, state, and local laws and regulations applicable to the services rendered.
5. **Maintenance of Records.** Consultant shall maintain documentation for all charges against MCS. The books, records, and documents of Consultant, insofar as they relate to work performed or money received under the Agreement, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by MCS or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
6. **Modification of Contract.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto. Depending upon the nature and amount of the amendment, the approval of the Murfreesboro City School Board may be required. Minor modifications to the Contract may be approved by the Director of Schools.
7. **Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act, or omission of any other party contrary to the terms of this paragraph.
8. **Independent Contractor.** Nothing herein shall be construed to create an employer-employee relationship between MCS and Consultant. Consultant is an independent contractor and not an employee of MCS. The consideration set forth in Section 2 of this contract shall be the sole consideration due Consultant for the services rendered hereunder. It is understood that MCS will not withhold any amounts for payment of taxes from the compensation of Consultant hereunder. Consultant will not represent to be or hold themselves out as an employee of MCS.
9. **Subcontractors.** Consultant shall not assign this Contract or enter into sub-contracts for any of the services covered by this Contract without obtaining the prior written approval of the MCS.
10. **Waiver.** No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
11. **Employment.** Consultant shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, genetic information, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
12. **Non-Discrimination.** It is the policy of MCS not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to

all aspects of this Agreement, Consultant certifies and warrants it will comply with this policy.

13. **Indemnification and Hold Harmless.** Consultant shall indemnify and hold harmless MCS, its officers, agents, and employees from:
 - a. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Consultant, its officers, employees and/or agents, including its sub or independent Consultants, in connection with the performance of the Agreement, and,
 - b. Any claims, damages, penalties, costs and attorney fees arising from any failure of Consultant, its officers, employees and/or agents, including its sub or independent Consultants, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
 - c. Consultant shall pay MCS any expenses incurred as a result of Consultant's failure to fulfill any obligation in a professional and timely manner under this Agreement.
14. **Attorney Fees.** Consultant agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the Agreement, the prevailing party shall, in addition to all other remedies, be entitled to recover its reasonable expenses of such action, including MCS's reasonable attorney fees, expenses, and costs at all stages of the litigation.
15. **Assignment—Consent Required.** The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Consultant under this Agreement, neither this Agreement nor any of the rights and obligations of Consultant hereunder shall be assigned or transferred in whole or in part without the prior written consent of MCS. Any such assignment or transfer shall not release Consultant from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONSULTANT UNDER THIS AGREEMENT MUST BE SENT TO THE ATTENTION OF DIRECTOR OF SCHOOLS, MURFREESBORO CITY SCHOOLS, 2552 SOUTH CHURCH STREET, MURFREESBORO, TN 37127.
16. **Entire Agreement.** This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
17. **Force Majeure.** This Agreement shall be inoperative during such period of time that the aforesaid delivery or acceptance may be rendered impossible by reason of fire, Act of God, or government regulation.
18. **Governing Law.** The validity, construction, and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Consultant may provide.

19. **Venue.** Any action between the parties arising from this agreement shall be maintained in the courts of Rutherford County, Tennessee.

20. **Confidentiality of Records.** All educational records created, disclosed or maintained pursuant to the terms of this contract are confidential and shall be created, disclosed and maintained pursuant to the provisions of the Family Educational Right to Privacy Act, also known as FERPA (20 U.S.C. §1232g), its regulations and Board Policy.

21. **Background Checks.** Consultant shall comply with Tennessee Code Annotated section 49-5-413, which requires all Consultants to facilitate a criminal history records check conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation for each employee prior to permitting the employee to have contact with students or enter school grounds when students are present.

22. **Tobacco Free Policy.** Pursuant to Murfreesboro City School Board Policy 1.803, the use of tobacco and tobacco products, including smokeless tobacco, are prohibited on all of the Murfreesboro City School property.

23. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.

24. **Notices.** Any notice to Consultant from MCS relative to any part of the Agreement shall be considered delivered and the service thereof completed when said notice is posted by registered mail, to the said Consultant at its last given address or delivered in person to said Consultant or its authorized representative on the work.

a. Notices to MCS shall be sent to:

Department: Murfreesboro City School District
Attention: Director
Address: 2552 South Church Street
Murfreesboro, TN 37127

b. Notices to Consultant shall be sent to:

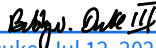
Consultant: BEST Partners, LLC.
Address: 402 Brick Path Lane, #201
Franklin, TN 37064

25. **Effective Date.** This Agreement shall not be binding upon the parties until it has been signed first by the Consultant and then approved by the Murfreesboro City School Board and signed by the Director. When it has been so signed, this Agreement shall be effective as of the date first written above.

**MURFREESBORO CITY SCHOOL
DISTRICT**

BEST PARTNERS, LLC. CONSULTANT

By:


Frey Duke (Jul 12, 2024 08:23 CDT)
Dr. Bobby N. Duke, III, Director

By:


Kim H. Frank (Jul 17, 2024 07:43 EDT)
Kim Frank

Approved as to form:


Lauren Bush, Assistant City Attorney












Best Partners Consulting Services Agreement

Final Audit Report

2024-07-17

Created:	2024-07-11
By:	Lauren Bush (lbush@murfreesborotn.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhMOdd_REFwIcbyjcgkjQjfeOvZr8STqX

"Best Partners Consulting Services Agreement" History

-  Document created by Lauren Bush (lbush@murfreesborotn.gov)
2024-07-11 - 6:50:51 PM GMT
-  Document emailed to Daniel Owens (daniel.owens@cityschools.net) for signature
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-  Document e-signed by Trey Duke (trey.duke@cityschools.net)
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-  Email viewed by Kim Frank (kim.frank@cityschools.net)
2024-07-12 - 2:58:19 PM GMT
-  Signer Kim Frank (kim.frank@cityschools.net) entered name at signing as Kim H. Frank
2024-07-17 - 11:43:13 AM GMT
-  Document e-signed by Kim H. Frank (kim.frank@cityschools.net)
Signature Date: 2024-07-17 - 11:43:15 AM GMT - Time Source: server

✔ Agreement completed.

2024-07-17 - 11:43:15 AM GMT



Adobe Acrobat Sign

Murfreesboro City School Board

Monitoring: Review: Annually, in August	Descriptor Term: Visitors to the Schools	Descriptor Code: 1.501	Issued Date: 09/24/14
		Rescinds: BO 29	Issued:

1 *General*

2 A visitor is defined as any individual other than the enrolled students in the school and school
3 employees or officials. Except on occasions such as school programs, athletic events, open house, and
4 similar public events, all visitors will report to the school office when entering the school and shall
5 sign a log book. In addition, the principal or principal's designee shall have the discretion to require an
6 adult visitor to present photo identification at the time of registration. Authorization to visit elsewhere
7 in the building or on the school campus will be determined by the principal/designee. Guest passes
8 shall be issued for all persons other than students and employees of the school.¹ Visitors shall return to
9 the school's office before leaving the building and record their time of departure in the school's visitor
10 log.

11 In order to maintain the conditions and atmosphere suitable for learning, no other person shall enter
12 onto the grounds or into the school buildings during the hours of student instruction except students
13 assigned to that school, the staff of the school, parents of students, and other persons with lawful and
14 valid business on the school premises.² Parent observations of classroom activities must be
15 preapproved by the principal and Director of Schools to ensure there is no disruption to the learning
16 environment and student privacy is protected.

17 **VISITOR CONDUCT**

18 Persons who come onto school property shall be under the jurisdiction of the school
19 administrator/designee. Individuals who come onto school property or who contact employees on
20 school or district business are expected to behave accordingly. **The Director of Schools shall develop a
21 visitor code of conduct to be presented to the Board Attorney, and then, approved by the Board.³ This
22 code shall prohibit the following:**

- 23 1. **Cursing and use of obscenities;**
- 24 2. **Disrupting or threatening to disrupt school or office operations;**
- 25 3. **Acting in an unsafe manner that could threaten the health or safety of others;**
- 26 4. **Verbal or written statements or gestures indicating intent to harm an individual or property; and**
- 27 5. **Physical attacks intended to harm an individual or substantially damage property.**

28 **The visitor code of conduct shall be posted on the district's website as well as the school's website,
29 and copies of the code shall be provided to all teachers, counselors, administrative staff, and other
30 school employees. In addition, each school entrance shall have the visitor code of conduct posted**

1 prominently along with the phone number of someone in the school's administration who can answer
2 questions about the code.

3 Annually, parent(s)/guardian(s) shall be provided with a printed copy of the code of conduct, along
4 with the phone number of someone in the school's administration who can answer questions about the
5 code. Parent(s)/guardian(s) shall sign a statement acknowledging that they have read and understood
6 the code of conduct.

7 **CONSEQUENCES FOR CODE OF CONDUCT VIOLATION**

8 The principal/designee has the authority to exclude from the school premises any persons disrupting
9 the educational programs in the classroom or in the school, disturbing the teachers or students on the
10 premises, or on the premises for the purpose of committing an illegal act.²

11 The principal shall contact law enforcement officials when he/she believes the situation warrants such
12 measures.

13 **CENTRAL OFFICE AND ALL OTHER NON-SCHOOL FACILITIES**

14 Except on occasions such as special programs, public meetings, open houses, and similar public
15 events, all visitors shall use the appropriate entrance and report to the reception desk or designated area
16 when entering the facility and must sign the visitors' log during normal office hours. Guest passes shall
17 be issued for all visitors.

18 Authorization to visit elsewhere in the facility shall be determined by the Director of Schools or the
19 Director's designee.

20 The Director of Schools, supervisors, and their designees shall have the authority to exclude from the
21 premises any persons disrupting the work environment at a facility, disturbing the employees in the
22 facility, or committing an illegal act in the facility. The Director of Schools, supervisors, or designees
23 shall contact law enforcement officials when the situation warrants such measures.

Legal References

1. [TCA 49-2-303\(b\)\(4\)](#)
2. [TCA 49-6-2008](#); [TCA 39-14-406](#)
3. [Public Acts of 2024, Chapter No. 810](#)

Cross References

Board-Community Relations 1.500
Section 504 and ADA Grievance Procedures 1.802
Vendor Relations 2.809
Safety 3.201
Security 3.205
School Volunteers 4.501
Care of School Property 6.311

Murfreesboro City School District

Monitoring: Review: Annually, in October	Descriptor Term: Emergency Preparedness Plan	Descriptor Code: 3.202	Revised: Click here to enter a date.
		Rescinds: 3.202	Issued: 09/13/22

1 The Director of Schools shall be responsible for developing, maintaining, and acquiring Board
2 approval of the district Multi-Hazard Operations Plan,¹ which shall include, but not be limited to,
3 procedures for nuclear or bomb threats, civil disturbances, armed intruders, earthquakes, fires,
4 tornadoes or other severe weather, and medical emergencies.

5 The principal of each school shall develop and implement emergency preparedness drills which shall
6 be approved by the Director of Schools. When appropriate, such drills shall be held in conjunction with
7 emergency response agencies. These procedures shall be in written form and distributed to all staff,
8 students, and parents.

9 FIRE AND SAFETY DRILLS

10 The principal shall ensure that one fire drill requiring full evacuation is given every thirty (30) school
11 days, with two (2) fire drills occurring during the first thirty (30) full days of the school year.
12 Additionally, he/she shall ensure that four (4) fire safety educational announcements are conducted
13 throughout the year.²

14 The principal shall ensure that three (3) additional safety drills are given during the school year. These
15 drills may cover inclement weather, earthquakes, armed intruders, or other emergency drills that do not
16 require full evacuation. A record of all fire or safety drills, including the time and date, shall be kept in
17 each school's office.³

18 The principal shall regularly check the quantity, locations, and conditions of fire extinguishers and
19 shall give all school personnel instructions on how to properly use fire extinguishers.

20 **The district shall work with local law enforcement and the local fire department to develop a procedure**
21 **for identifying the cause of fire alarm activation. This procedure must be in place by January 1, 2025,**
22 **and shall be reviewed and updated annually thereafter.**⁴

23 ANNUAL DRILLS⁵

24 The Director of Schools or designee shall ensure that each school safety team conducts each of the
25 following type of drills annually:

- 26
- 27 1. At least one (1) armed intruder drill annually in coordination with local law enforcement.
- 28
- 29 2. An incident command drill; and

30 3. An emergency safety bus drill.

31 **AED DRILLS⁶**

32 All schools shall conduct a CPR and AED drill for school personnel to practice the use of these life
33 saving devices and to evaluate the school's preparedness in the event of a medical emergency. The
34 principal shall be responsible for ensuring the drill occurs.

35 All schools shall establish a program for the use of an AED in compliance with TCA 68-140-404 and
36 conduct an annual AED training with expected users. The Director of Schools shall develop the
37 necessary administrative procedures on AED and CPR training, planning, notification, and
38 maintenance to comply with state law.

39 **MEDICAL EMERGENCIES/PANDEMIC FLU⁷**

40 In the event of medical emergencies, such as a pandemic flu outbreak, school officials shall cooperate
41 and consult with the local and state health departments and other local emergency or healthcare
42 providers in protecting students and the community from further infection. The Director of Schools
43 shall develop procedures for health emergencies in accordance with state law and regulations.

44 **REMOTE LEARNING DRILLS⁸**

45 At least once each school year, a remote learning drill shall be conducted. The drill shall accurately
46 reflect how students will transition to remote learning in the event of a disruption to school operations.
47 Students shall not be asked or required to transition to remote learning at any time during the drill.

Legal References

1. [TRR/MS 0520-01-02-.30\(2\)](#); [TCA 49-6-804](#); [TCA 49-6-805\(8\)](#)
2. [TCA 68-102-137\(b\)](#)
3. [TCA 68-102-137\(f\)](#)
4. [Public Acts of 2024, Chapter No. 563](#)
5. [TCA 49-6-807](#)
6. [TCA 49-2-122](#); [TCA 49-6-1208](#); [Public Acts of 2024, Chapter No. 625](#)
7. [TCA 49-6-3004\(a\), \(e\)](#); [TCA 49-5-404](#)
8. [TCA 49-2-139](#)

Cross References

Emergency Closings 1.8011
Safety 3.201
Community Use of School Facilities 3.206

Murfreesboro City School Board

Monitoring: Review: Annually, in October	Descriptor Term: Student Transportation Management	Descriptor Code: 3.400	Issued Date: Click here to enter a date.
		Rescinds: 3.400	Issued: 10/22/16

1 The safety and welfare of student riders shall be the first consideration in all matters pertaining to
2 transportation. School buses shall be maintained and operated in accordance with state law and in
3 accordance with the specifications developed by the Department of Education and approved by the
4 Department of Safety. School buses shall be maintained and operated in accordance with state law and
5 State Board Rules and Regulations.¹

6 Each bus shall be equipped with the phone number for reporting safety complaints. This number shall
7 appear on the rear bumper.² Buses shall also include notice in a conspicuous place that only authorized
8 persons shall enter the bus. This notice shall include appropriate contact information in case of an issue
9 on the bus.³

10 To avoid the financial burden of replacing an aging bus fleet at any one time, the Board shall attempt to
11 replace a certain number of buses each year on a rotating basis.

12 All accidents, regardless of the damage involved, must be reported to the Transportation Supervisor,
13 including, but not limited to, incidents in which any part of the bus contacts any other object or vehicle.
14 The Transportation Supervisor shall be responsible for submitting all records and required reports to the
15 Tennessee Risk Management Trust and state and local agencies.

16 The Director of Schools shall develop procedures to ensure compliance with the statutory and
17 regulatory requirements for the transportation program.

18 SCHOOL BUS DRIVERS

19 Each school bus driver shall receive a certificate from the Board prior to operating a school bus for the
20 school district. The issuance of a certificate to a school bus driver shall be based on the qualifications
21 of school bus drivers as determined by the Director of Schools.⁴ Annually, the Board shall require
22 each school bus driver to have a physical and mental examination. The Board shall revoke the
23 certificate of any school bus driver found to be physically, mentally, or morally unfit to operate a
24 school bus. Additionally, a certificate shall be revoked if the school bus driver is convicted of driving
25 under the influence, vehicular assault, vehicular homicide, aggravated vehicular homicide, or the
26 manufacture, delivery, sale, or possession of a controlled substance or analogue.⁵

27 TRANSPORTATION SUPERVISOR³SUPERVISOR⁶

28 The Director of Schools shall appoint a Transportation Supervisor for the district. The Supervisor shall
29 be responsible for monitoring and oversight of transportation services for the district.

30 The Transportation Supervisor shall complete a student transportation management training program
31 upon appointment. The Transportation Supervisor shall complete a minimum of four (4) hours of
32 training annually.

33 The Director of Schools shall ensure that training is completed and shall provide the State Department
34 of Education with appropriate documentation.

35 **COMPLAINT ~~PROCESS~~⁴PROCESS⁷**

36 The following procedure will govern how students, teachers, staff, and community members shall
37 submit bus safety complaints:

- 38 1. All complaints shall be submitted to the Transportation Supervisor on forms designated by the
39 district.
- 40 2. Forms may be submitted in person, via mail or email. The forms designated by the district will
41 be located on the district website.
- 42 3. The Transportation Supervisor shall begin an investigation of all safety complaints within
43 twenty-four (24) hours of receipt.
- 44 4. Within forty-eight (48) hours of receipt of the initial complaint, the Transportation Supervisor
45 shall submit a preliminary report to the Director of Schools. This report shall include:
 - 46 a. The time and date the complaint was received;
 - 47 b. The name of the bus driver;
 - 48 c. A copy or summary of the complaint; and
 - 49 d. Any prior complaints or disciplinary actions taken against the driver.

50 Within sixty (60) school days of receiving the initial complaint, the Transportation Supervisor shall
51 submit a final written report to the Director of Schools that details the investigation's findings as well
52 as the action taken in response to the complaint.

53 An annual notice of this complaint process shall be provided to parents and students. This information
54 shall be made available in the student handbook.

55 **~~RECORDKEEPING~~⁵RECORDKEEPING⁸**

56 The Transportation Supervisor shall be responsible for the collection and maintenance of the following
57 records:

- 58 1. Bus maintenance and inspection forms;
- 59 2. Bus driver credentials, including required background checks, health records, and performance
60 reviews;
- 61 3. Driver training records; and
- 62 4. Complaints received and any records related to the investigation and complaints.

63 FIELD TRIPS

64 School buses are available for use when the trip is directly related to the planned instructional program.
65 However, use of the bus during the school day must not interfere with the regular transportation
66 program.

67 Annually, the Transportation Supervisor will provide information related to costs, procedures in
68 arranging for use of buses, and other pertinent information.

Legal References

1. [TCA 49-6-2109; TRR/MS 0520-01-05; Public Acts of 2023, Chapter No. 122](#)
2. [TCA 49-6-2116\(d\)\(3\)](#)
3. [Public Acts of 2024, Chapter No. 548](#)
4. [TCA 49-6-2107](#)
5. [TCA 49-6-2107\(e\)\(1\); Public Acts of 2023, Chapter No. 122](#)
6. [TCA 49-6-2116\(a\)-\(c\)](#)
7. [TCA 49-6-2116\(d\)\(1\)-\(2\)](#)
8. [TCA 49-6-2116\(d\)\(5\)](#)
 1. ~~TCA 49-6-2109; TRR/MS 0520-01-05~~
 2. ~~TCA 49-6-2116(d)(3)~~
 3. ~~TCA 49-6-2116(a)-(c)~~
 4. ~~TCA 49-6-2116(d)(1)-(2)~~
 - 5-9. [TCA 49-6-2116\(d\)\(5\)](#)

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Use of Artificial Intelligence Programs	Descriptor Code: 4.214	Issued Date:
		Rescinds:	Issued:

1 *General*

2 Artificial Intelligence (AI) programs as defined by state law may be used by staff and students in the
3 district.¹

4 Only approved AI programs may be utilized in student instruction or in completing student work. The
5 Director of Schools shall develop a procedure for staff to submit additional programs for approval.

6 District technology staff and district instructional technology staff are tasked with overseeing the
7 implementation of AI programs. These staff members will review artificial intelligence programs to
8 ensure compliance with district policies as well as state and federal student data privacy laws and
9 present recommendations to the Director of Schools for approval. Any approved programs shall be
10 accessible to all students.

11 Employees shall not place personally identifiable information, financial information, intellectual
12 property, or other confidential information into an AI system.

13 The Director of Schools shall provide training programs on AI into professional development for
14 district staff. This training shall focus on responsible use of AI and best practices for use in school
15 settings and include instruction regarding personally identifiable information and the need to comply
16 with state and federal data privacy laws. Emphasis shall be placed on the importance of securing and
17 properly storing any data that is collected by the district in compliance with state and federal law.

18 **STAFF USE**

19 Staff may use AI in the completion of their own work. This may include, but not be limited to, drafting
20 communications, notes, images, and the development of content for instructional or administrative
21 purposes, as well as analyzing data and information. The following requirements shall be adhered to
22 when using AI in the completion of work:

- 23 1. Employees shall disclose their use of a generative AI tool if failure to do so would:
 - 24 a. Violate the terms of the use of the AI tool;
 - 25 b. Would mislead a supervisor or others as to the nature of the work; or
 - 26 c. Would be inconsistent with the teacher code of ethic;²
- 27 2. Employees shall take all reasonable precautions to ensure the security of private student data
28 when utilizing AI programs;
- 29 3. Outputs from AI programs shall be verified by reliable sources and reviewed prior to use in
order to reduce the risk of errors and inaccuracies;

1 4. Outputs shall not be incorporated into proprietary content or works.

2 **STUDENT USE**

3 Teachers may allow students to use approved AI programs for instructional purposes. Any such use
4 shall align with approved instructional standards and curriculum. Prior to using AI, teachers shall
5 ensure students are provided with appropriate instruction on the responsible use of AI.

6 **ACADEMIC INTEGRITY**

7 Prior to allowing students to use AI programs, they shall be instructed on responsible use standards
8 including but not limited to the following:

- 9 1. Effective use of generative AI;
- 10 2. When it is appropriate to use AI in assignments;
- 11 3. How to determine whether AI responses are accurate;
- 12 4. Users assume responsibility for incorporating AI content responsibly; and
- 13 5. The difference between cheating and seeking support.

14 **NOTICE TO PARENTS**

15 The Director of Schools shall provide notice to parent(s)/guardian(s) about the use of AI programs
16 used by students in the district. An approved list of AI programs will be provided by posted the
17 approved programs on the official school district website.

18 **REPORTING**

19 The Director of Schools shall submit a copy of this policy and any related administrative directives to
20 the State Department of Education by July 1st on an annual basis.

Legal References

1. [Public Acts of 2024, Chapter No. 550](#)
2. [TCA 49-5-1001](#)

Cross References

Use of the Internet 4.406

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Interscholastic Athletics	Descriptor Code: 4.301	Issued Date: Click here to enter a date.
		Rescinds: STU 58	Issued: 03/25/14

1 No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be
2 treated differently from another person or otherwise be discriminated against in any athletic program of
3 the school. Equal athletic opportunities shall be provided for members of both sexes.¹ Student athletes
4 shall only be allowed to participate in athletic activities or events that align with the student's sex
5 indicated on his/her original birth certificate.² The Director of Schools/designee shall require the
6 parent/guardian to provide the student's original birth certificate prior to participation in any
7 interscholastic athletics. If the original birth certificate is not available or does not indicate the
8 student's sex at the time of birth, the parent/guardian shall provide medical documentation showing
9 evidence of the student's sex at birth.

10 Interscholastic athletics shall be administered as a part of the regular school program and shall be the
11 principal's responsibility. Principals shall ensure that school regulations regarding participation in a
12 sport are reasonable. The principal or designee must accompany an athletic team on trips.

13 ~~Only students currently enrolled in Murfreesboro City Schools may participate in athletics. The~~
14 ~~Director of Schools shall develop a code of conduct for all coaches to follow in order to ensure the~~
15 ~~health and safety of athletes.~~³ Coaches, employees, and volunteers of the school district shall not
16 encourage, permit, condone or tolerate hazing activities.⁴

17 ~~Home school students that are zoned for the school shall be permitted to participate in interscholastic~~
18 ~~athletics to the same extent as other students.~~⁵

19 **INSURANCE & PHYSICAL EXAMINATIONS**

20 Prior to participation in interscholastic athletics, every student must complete an annual physical
21 examination.⁶ The parents/guardians of each student shall be responsible for covering the cost of the
22 examination, and these records shall be on file in the principal's office. It shall be the responsibility of
23 the parent(s) or guardian to provide health and hospitalization insurance for all students participating in
24 interscholastic athletics.

25 **SEVERE WEATHER⁷**

26 Severe weather is any type of weather that could impede the safety of any athlete by compromising the
27 playing conditions of the interscholastic sport. Severe weather includes, but is not limited to, thunder,
28 lightning, and extreme temperatures. When severe weather is forecasted, suspension of play shall be
29 discussed with all players, coaches, and officials, if applicable.

30 All coaches who oversee or participate in outdoor training, practice, or competition shall annually
31 complete a heat illness prevention course approved by the Tennessee Department of Health as well as
32 receive training on activity modifications based on environmental conditions.

33 **SCHEDULING CONFLICTS**

34 No principal or teacher shall dismiss his/her school or any group of students for the purpose of attending
35 the practice of any interscholastic sport during the school day without written permission from the
36 Board.⁸ Students shall not be required to attend a school athletic event, or event related to participation
37 on a school athletic team, if the event is on an official school holiday, observed day of worship, or
38 religious holiday. The student's parent/guardian shall notify the coach in writing three (3) full school
39 days prior to the event.⁹

Legal References

1. 34 CFR § 106.41; 20 USCA § 1681 et seq.
2. TCA 49-6-310(a)
3. TCA 49-6-3601
4. TCA 49-2-120
5. Public Acts of 2024, Chapter No. 639
6. 20 USCA 1232h(c); TRR/MS 0520-01-13-.01(1)(a)
7. TCA 49-6-3601
8. TCA 49-6-1002(a)
9. TCA 49-6-1002(c)

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Library Materials	Descriptor Code: 4.403	Issued Date: 09/13/22
		Rescinds:	Issued:

1 *General*

2 The School Librarian shall be responsible for library collection development. Library materials shall be
3 reviewed to ensure the content aligns with state law.¹ The library collection shall adhere to the following
4 criteria²:

- 5 1. Materials shall be suitable for and consistent with the educational mission of the school;
- 6 2. Materials shall be appropriate for the age and maturity levels of the students who may access
7 them. The determining factor will be based on an assessment of any mature themes or content
8 (i.e., violence, sexual content, vulgar language, substance abuse);
- 9 3. Materials shall contain literary, historical, and/or artistic value and merit; and
- 10 4. The collection as a whole shall offer a variety of viewpoints.

11 The district's Literacy Coordinator shall be responsible for periodically reviewing the district's library
12 collection in line with these established standards.

13 **Any materials that meet the following criteria shall be removed and excluded from the district's library**
14 **collection:**

- 15 1. **Contains nudity, descriptions or depictions of sexual excitement, sexual conduct, excess**
16 **violence, or sadomasochistic abuse as defined in state law³;**
- 17 2. **Are patently offensive as defined in state law; or**
- 18 3. **Appeal to the prurient interest as defined in state law.**

19 **The Board shall be notified when any library materials are challenged or removed pursuant to this policy.**

20 **COMPLAINTS⁴**

21 **If a complaint is made by an employee, student, or parent/guardian, the person receiving the complaint**
22 **shall:**

- 23 1. **Inform the complainant of the selection procedures and make no commitments.**
- 24 2. **Request the complainant to submit a Request for Reconsideration of Library Materials form.**
- 25 3. **Inform the principal (and other appropriate personnel).**
- 26 4. **Keep challenged materials available for use during the reconsideration process.**

27 **Upon receipt of the completed form, the principal may notify the Director of Schools. The principal**
28 **may request review of the challenged materials by an ad hoc materials review committee within thirty**

1 (30) days. If the principal appoints a review committee, it should include certified library media
2 personnel, representatives from classroom teachers, and one or more parents.

3 After receiving the challenged materials, the following steps should occur:

- 4 1. Read, view, or listen to the contested material in its entirety;
- 5 2. Check general acceptance of the material by reading recognized and evaluative reviews;
- 6 3. Determine the extent to which the material is appropriate for the age and maturity levels of the
7 students who have access to the materials and whether the material is suitable for, and
8 consistent with, the educational mission of the school; and
- 9 4. Complete the appropriate Checklist for Reconsideration of Library Materials, judging the
10 material for its strength and value.

11 The principal shall present a recommendation to the Director of Schools. The Director of Schools shall
12 assess the findings along with the recommendation of the principal and present a recommendation to
13 the Board.

14 The Board shall evaluate the recommendations of the principal and the Director of Schools along with
15 the material to determine whether it is appropriate for the age and maturity levels of the students who
16 have access to the materials and whether the material is suitable for, and consistent with, the
17 educational mission of the school. The Board shall review the findings and affirm, overturn, or modify
18 the decision within sixty (60) days from which the feedback was received.

19 **REMOVAL OF LIBRARY MATERIALS**

20 If it is determined that the material is not appropriate for the age and maturity levels of the students
21 who have access to them or is not suitable for, and consistent with, the educational mission of the
22 school, the material shall be removed from the library collection.

Legal References

1. *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, 102 S. Ct. 2799 (1982); [TCA 49-6-3803](#)
2. [Public Acts of 2024, Chapter No. 782](#)
3. [TCA 39-17-901](#)
4. [TCA 49-6-3803](#)

Cross References

Textbooks and Instructional Materials 4.400
School and System Websites 4.407
Controversial Materials 4.801

Murfreesboro City School Board

Monitoring: Review: Annually, in November	Descriptor Term: Promotion and Retention	Descriptor Code: 4.603	Issued Date: 12/13/22
		Rescinds: IS 14	Issued: 04/79; 11/98; 04/01; 09/05; 02/12

1 *General*

2 All promotion and retention decisions shall be made on a case-by-case basis and comply with state and
3 federal law. All decisions shall be made in consultation with a student's IEP and/or 504 team, if
4 applicable.¹

5 Students who have difficulty in achieving the requirements for promotion may be considered for
6 retention. Schools shall identify these students by February 1st. Factors used to identify students for
7 retention shall include:²

- 8 1. Ability to perform at the current grade level;
- 9 2. Results of local assessments, screening, or monitoring tools;
- 10 3. State assessments, as applicable;
- 11 4. Home Literacy Reports;³
- 12 5. Overall academic achievement of the student;
- 13 6. Likelihood of success with more difficult material if promoted to the next grade;
- 14 7. Attendance record; and
- 15 8. The student's maturity.

16 Students may be identified for retention after the February 1st deadline if the delay in identifying a
17 student is due to:⁴

- 18 1. Date of enrollment;
- 19 2. Additional information acquired after results of local assessment, screening, or monitoring are
20 released; or
- 21 3. Students do not make previously expected progress.

22 **PROMOTION PLANS⁵**

23 When a student is identified for retention, the student's parent(s)/guardian(s) shall be notified within
24 fifteen (15) calendar days, and an individualized promotion plan shall be developed to help the student
25 avoid retention. The plan shall be developed in coordination with the student's teachers, IEP or 504
26 team, if applicable, and may also include input from the student's parent(s)/guardian(s), school
27 counselor, or other appropriate school personnel.

28 Promotion plans shall incorporate evidence-based strategies, including expectations and measurements
29 that will verify whether a student has made sufficient progress to be promoted to the next grade level,
30 and be tailored to the student's learning needs. Promotion plans for students in third and fourth grade
31 will include additional requirements for promoting students in these grades. A copy of the plan will be

32 provided to the student's parent(s)/guardian(s), and the school shall offer the opportunity for a parent-
33 teacher conference to discuss the plan. If a student is not making progress on the promotion plan, then
34 the strategies shall be modified. Parent(s)/guardian(s) shall be provided with any changes to the
35 promotion plan.

36 A student who demonstrates sufficient academic progress according to his/her promotion plan shall be
37 promoted to the next grade level unless retention is required per additional requirements for students in
38 third and fourth grade.⁶

39 If a student has not demonstrated sufficient academic progress according to his/her promotion plan by
40 the end of the school year, the student shall be eligible to enroll in a summer reading or learning
41 program, if available. Parent(s)/guardian(s) shall be notified of a decision for retention at least ten (10)
42 calendar days prior to the start of the next school year if the student was enrolled in a summer program.
43 However, if the student wasn't enrolled in a summer program, the parent(s)/guardian(s) shall be
44 notified of a decision for retention at least thirty (30) calendar days prior to the start of the next school
45 year.⁷

46 **RETENTION⁶**

47 A student may be retained when such retention is in the best interests of the student or when retention
48 is required per additional requirements for students in third and fourth grade.

49 *Decision of Retention – General⁸*

50 If a student is retained, the Principal/designee shall develop an individualized academic remediation
51 plan within thirty (30) calendar days after the beginning of the next school year. A copy of the plan
52 shall be provided to the student's parent(s)/guardian(s) within ten (10) calendar days of its
53 development. The plan shall include at least one of the following strategies:

- 54 1. Adjustment to the current instructional strategies or materials;
- 55 2. Additional instructional time;
- 56 3. Individual tutoring;
- 57 4. Modification to the student's classroom assignment to ensure the student receives
58 instruction from a teacher with a level of overall effectiveness of above expectations (level
59 4) or significantly above expectations (level 5); or
- 60 5. Attendance or truancy interventions.

61 A student shall not be retained more than once in any grade. The progress of students who are retained
62 shall be closely monitored and reported to parent(s)/guardian(s) at least three (3) times during the
63 school year in which the student is retained. The Director of Schools shall develop procedures to
64 ensure appropriate recordkeeping of students who are retained.

65 *Decision of Retention – Students with Disabilities⁹*

66 Retention and promotion decisions shall be made on a case-by-case basis and in consultation with the
67 student's IEP and/or 504 team to determine whether the student's performance on the ELA portion of
68 TCAP was due to the student's disability. The school district shall not retain a student with a disability
69 or a suspected disability that impacts their ability to read.

70 **APPEALS**^{7,10}

71 When a student is identified for retention, the parent(s)/guardian(s) shall be notified about the decision
 72 to retain the student and provided with information on the right to appeal the decision. Appeals shall be
 73 made to a committee appointed by the principal within fourteen (14) days. The student and his/her
 74 parent(s)/guardian(s) shall be provided written or actual notice of the appeal hearing and shall be given
 75 the opportunity to address the committee. The committee shall conduct a hearing within thirty (30) days
 76 to determine if the student will be promoted and issue such decision within fourteen (14) days. Upon
 77 notification of the committee decision, the principal shall send written notification to the Director of
 78 Schools/designee and the parent(s)/guardian(s). The notification shall advise parent(s)/guardian(s) of
 79 their right to appeal such action within 7 days to the Director of Schools/designee.

80 The appeal shall be heard no later than ten (10) business days after the request for appeal is received. A
 81 decision shall be issued within seven (7) business days.

82 Within five (5) business days of the Director of Schools/designee rendering a decision, the student's
 83 parent(s)/guardian(s) may request a hearing by the Board, and the Board shall review the record.
 84 Following the review, the Board may affirm or overturn the decision of the Director of Schools/designee.
 85 The action of the Board shall be final.

86 **VOLUNTARY RETENTION**

87 **A parent/guardian of a student enrolled in kindergarten through second grade may choose to retain**
 88 **his/her student in the current grade level if:**

- 89 **1. The student has a documented academic or behavioral delay; and**
 90 **2. The parent/guardian believes that retention may benefit the student.¹¹**

 Legal References

1. 20 USCA § 1400 *et seq.*; 29 U.S.C. § 794 (Section 504); TRR/MS 0520-01-03-.16; TCA 49-6-3115
2. TRR/MS 0520-01-03-.16(5)
3. TCA 49-1-905(e)
4. TRR/MS 0520-01-03-.16(4)
5. TRR/MS 0520-01-03-.16(6)
6. TRR/MS 0520-01-03-.16(6)(f)
7. TRR/MS 0520-01-03-.16(6)(e)
8. TRR/MS 0520-01-03-.16(6)(g)
9. 29 U.S.C. § 794 (Section 504); 20 USCA § 1400 *et seq.*; TRR/MS 0520-01-03-.16(7)(e)
10. TRR/MS 0520-01-03-.16(3); TRR/MS 0520-01-02-.17(7); TCA 49-6-3102(e)(1)
11. **Public Acts of 2024, Chapter No. 829**

 Cross References

Credit Recovery 4.210
 Grading System 4.600
 Reporting Student Progress 4.601
 Attendance 6.200
 Student Assignments 6.205
 Homeless Students 6.503
 Student Records 6.600

Murfreesboro City School Board

Monitoring: Review: Annually, in January	Descriptor Term: Physical Assault Leave	Descriptor Code: 5.307	Issued Date:
		Rescinds:	Issued: 03/22/22

1 *General*

2 Employees shall be notified of their right to report a physical assault to the appropriate law
3 enforcement agency.¹

4 An employee ~~A-teacher~~ who is absent from assigned duties as a result of personal injury caused by
5 physical assault or other violent criminal acts committed in the course of the ~~employee teacher's~~
6 employment duties shall receive his/her full salary and full benefits until the ~~employee teacher~~ is
7 released by his/her physician to return to work or his/her physician determines the ~~employee teacher~~ is
8 permanently unable to return to work. Hourly employees shall receive an amount representing the
9 average number of hours the employee works for the district per pay period along with their full
10 benefits, if available, until the employee is released by his/her physician to return to work or his/her
11 physician determines the employee is permanently unable to return to work. An hourly employee is not
12 eligible to receive the continued pay and benefits if he/she has been employed by the district for less
13 than one (1) full pay period.²

14 If the ~~employee teacher~~ receives workers' compensation or other similar benefits, the Board shall pay
15 the difference between that amount and the ~~teacher employee's~~ full salary or average pay, as
16 applicable.² The district shall pay the full salary or average salary, or the difference between the
17 employee's full salary or average pay, as applicable, and the workers' compensation or similar
18 benefits, if any, for up to one (1) year.

19 **PHYSICIAN STATEMENT**

20 A signed statement listing the cause of the absence shall be provided by the employee on forms
21 furnished by the Director of Schools and shall promptly be given to the immediate supervisor in
22 support of all claims. A certificate from the physician on forms furnished by the Director of Schools
23 may also be required to verify the extent of the injury.³

Legal References

1. [Public Acts of 2024, Chapter No. 915](#)
2. [TCA 49-5-714\(a\); Public Acts of 2024, Chapter No. 839](#)
3. [TRR/MS 0520-01-02-.04\(4\)\(b\)](#)

Cross References

- Worker's Compensation 3.602
- Sick Leave 5.302
- Long Term Leaves of Absence 5.304

Murfreesboro City School Board

Monitoring: Review: Annually, in March	Descriptor Term: Staff Time Schedules	Descriptor Code: 5.602	Issued Date: 03/22/22
		Rescinds: 5.602	Issued: 05/28/24

1 WORK SCHEDULES

2 The workday for full-time, ~~exempt licensed and professional~~ certified and classified staff will be a
3 minimum of seven hours and thirty minutes (450 minutes)¹ and will continue until professional
4 responsibilities to the ~~student and the school~~ district are completed. The workday for full-time, non-
5 exempt salaried and hourly certified and classified staff will be a minimum of seven hours (400
6 minutes).

7 Administrative meetings, curriculum development, student supervision, assigned duties, parent
8 conferences, group or individual planning and extra-curricular activities may require hours beyond the
9 stated minimum. When a school has activities beyond the school day and teacher participation is
10 needed, these hours will be distributed as equitably as possible among the faculty.

11 Teachers shall be allotted an individual duty-free planning period of two and one-half (2 1/2) hours
12 each traditional, five-day week to provide time for planning, preparation for effective teaching and
13 attention to major program improvement.² Work schedules for other employees will be defined by the
14 Director of Schools or their designee, consistent with the Fair Labor Standards Act and provisions of
15 this policy.

16 WORKWEEK DEFINED

17 Working hours for all employees not exempted under the Fair Labor Standards Act,³ including
18 secretaries, bus drivers, cafeteria, custodial and maintenance personnel, will conform to federal and
19 state regulations. The Director of Schools will ensure that job positions are classified as exempt or
20 non-exempt and that employees are made aware of such classifications. Supervisors will make every
21 effort to avoid circumstances which will require non-exempt employees to work more than forty (40)
22 hours each week. For purposes of compliance with the Fair Labor Standards Act, the workweek for
23 school district employees will be 12:00 a.m. Sunday until 11:59 p.m. Saturday.

24 OVERTIME AND COMPENSATORY TIME⁴

25 The Board discourages overtime work by non-exempt employees. A non-exempt employee shall not
26 work overtime without the express approval of their supervisor. All overtime work shall be expressly
27 approved in writing by the Director of Schools or their designee. All supervisory personnel shall
28 monitor overtime on a weekly basis and report such time to the Director of Schools/designee.
29 Principals and supervisors shall monitor employees' work, ensure that overtime provisions of this
30 policy and the Fair Labor Standards Act are followed, and ensure that all employees are compensated

31 for any overtime worked. Principals or supervisors may need to adjust daily schedules to prevent non-
32 exempt employees from working more than forty (40) hours in a workweek. Accurate and complete
33 time records of actual hours worked during the workweek will be recorded by each employee and
34 submitted to the Human Resources Director. The Director of Finance will review work records of
35 employees on a regular basis to make an assessment of overtime use.

36 In lieu of overtime compensation, non-exempt employees may receive compensatory time off at a rate
37 of not less than one and one-half (1.5) hours for one hour of overtime worked, if such compensatory
38 time is: (1) pursuant to an agreement between the employer and employee reached before overtime
39 work is performed, and (2) authorized by the immediate supervisor.

40 Employees will be allowed to use compensatory time within a reasonable period after requesting such
41 use if the requested use of the compensatory time does not unduly disrupt the operation of the school
42 district. Employees may accrue a maximum of sixty (60) compensatory time hours before they will be
43 provided overtime pay at the rate earned by the employee at the time the employee receives such
44 payment. In addition, upon leaving the school district, an employee must be paid for any unused
45 compensatory time at the rate of not less than the higher of (1) the average regular rate received by the
46 employee during his/her last three (3) years of employment, or (2) the final regular rate received by the
47 employee.

48 Non-exempt employees whose workweek is less than forty (40) hours will be paid at the regular rate of
49 pay for time worked up to forty (40) hours. Such employees shall be provided overtime pay or
50 compensatory time as provided for working more than forty (40) hours in a workweek.

51 This policy shall be included in the employee handbook, however, employees will be provided with a
52 copy of this policy and will be required to sign this policy to acknowledge their understanding of
53 overtime and compensatory time provisions. Such signed policy shall be placed in the employee's
54 personnel file and shall constitute the written agreement outlined in this section.

55 ATTENDANCE EXPECTATIONS

56 All employees are expected to be present during all work hours. Absence without prior approval,
57 chronic absences, habitual tardiness or abuses of designated working hours are all considered neglect
58 of duty and will result in disciplinary action up to and including dismissal.

59 If an employee fails to report to work for three consecutive days without notifying their supervisor or
60 the Human Resources Department, the employee will be considered to have abandoned their position
61 and voluntarily resigned. Employees subject to separation under this part may be considered for
62 reinstatement if the employee can provide a valid explanation and documentation for their absences
63 directly related to exigent circumstances. Reinstatement decisions will be made on a case-by-case
64 basis.

Legal References

1. [TRR/MS 0520-01-02-.31\(5\)](#)
2. [TRR/MS 0520-01-02-.31\(6\)](#); [TCA 49-1-302\(e\)\(2\)](#)
3. [29 CFR § 553.20](#)

Cross References

- School Day 1.801
Curriculum Development 4.200

4. [29 CFR § 541.100—101, 200, 204, 300, 303](#)

Professional Growth and Development 5.113

Murfreesboro City School Board

Monitoring: Review: Annually, in March	Descriptor Term: Zero Tolerance Offenses	Descriptor Code: 6.309	Revised: 7/25/23 Prior Revised Dates: 04/28/20 04/26/22 04/26/22
		Rescinds: STU 38	Issued: 05/08/11

1 In order to ensure a safe and secure learning environment, the following offenses shall not be
2 tolerated:¹

- 3 1. Unauthorized possession of a firearm on school property;²
- 4
- 5 2. Unlawful possession ~~of any of any drug, including drug, including-~~ any
6 controlled- substance,- controlled- substance analogue, or legend drug on school grounds or at a
7 school-sponsored event;³ and
- 8
- 9 3. Aggravated assault⁴ or assault that results in bodily injury⁵ upon any teacher, principal,
10 administrator, any other employee of the school or school resource officer.
- 11
- 12 4. ~~Threats~~ Valid threats of mass violence on school property or at a school-related activity as
13 determined by a school district threat assessment team.⁶

14 Committing any of these offenses shall result in a student being expelled from regular attendance at
15 school for at least one (1) calendar year, unless modified by the Director of Schools. Modification to
16 the length of time shall be granted on a case-by-case basis.

17 DETERMINATION AND NOTIFICATION

18 The principal or the principal's designee shall be responsible for investigating alleged violations of this
19 policy. If the investigation reveals that a violation of this policy has occurred, the principal shall expel
20 the student for not less than (1) calendar year, subject only to the due process procedures set forth in
21 Board Policy 6.316 and this policy and the authority of the Director of Schools to modify the expulsion
22 requirement on a case-by-case basis.⁷

23 When it is determined that a student has violated this policy, the principal of the school shall notify the
24 student's parent(s)/guardian(s) and the criminal justice or juvenile delinquency system as required by
25 law.⁸

26 APPEAL

27 An appeal of a principal's determination that a student has committed a zero-tolerance offense must
28 be filed in accordance with the procedures set forth in Board Policy 6.316. The review on appeal, by

1 either the Disciplinary Hearing Authority or the School Board, of a principal's determination that a
2 student committed a zero-tolerance offense shall be limited in scope to the question of whether the
3 evidence supports the principal's determination that the student committed the offense.

4 **PUBLICATION OF POLICY**

5 This policy shall be published in the Code of Conduct as set forth in the *Parent Handbook*, and
6 provided annually to all teachers, administrative staff, and parents.

Legal References

1. TCA 49-6-3401(g)
2. 18 USCA § 921(a)(3); 20 USCA § 7961
3. TCA 39-17-454; TCA 53-10-101
4. TCA 39-13-102
5. TCA 39-13-101(a)(1)
6. TCA 39-16-517; ~~Public Acts of 2023, Chapter No. 299~~[TCA 49-6-3401\(g\)\(2\)\(D\); Public Acts of 2024, Chapter No. 882](#)
7. TCA 49-6-3401(g)(2); TCA 49-6-3402
8. TCA 49-6-4209; TCA 39-17-1312; 20 USCA § 7961(h)(1)

Cross References

[Threat Assessment Team 3.204](#)
Code of Conduct 6.300
Drug-Free Schools 6.307
Suspension 6.316
Student Disciplinary Hearing Authority 6.317
Alternative Education 6.319
Safe Relocation of Students 6.4081

Agenda Item Title: Student Fees for the 2024-2025 School Year

Board Meeting Date: July 23, 2024

Department: Finance

Presented by: Trey Duke, Director of Schools

Board Agenda Category:

- Consent Agenda
 - Action Item
 - Reports and Information
-

Summary

Board Policy 6.709 states that prior to the start of each school year, the Board, upon the recommendation of the principals and Director of Schools, shall approve all known student fees for the upcoming school year. Additional fees may be approved during the year as needed.

The Director of Schools is recommending the Board approve the following student fees for the 2024-2025 school year:

- Student field trip fees up to \$20.00 per student. This pre-approval will decrease turnaround time and allow schools to begin collecting funds immediately after Central Office approval of a standard field trip. Field trips beyond the \$20.00 per student limit will still be approved individually at the next Board meeting.
- Student recorder fees up to \$10.00 per student. This fee, incurred by 4th grade students at some of our schools, will allow those schools to begin collecting funds immediately after principal approval. Any additional student fees that arise will still be approved individually at the next Board meeting.
- Student t-shirt fees up to \$15.00 per student. This fee, incurred by students for varying activities at our schools, will allow those schools to begin collecting funds immediately after principal approval. Any t-shirt fees above the \$15 limit that arise will still be approved individually at the next Board meeting.

Staff Recommendation

Recommending approval of student fees for the 2024-2025 school year.

Fiscal Impact

No fiscal impact.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.

- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Agenda Item Title: United Way Grant and Budget Amendment

Board Meeting Date: July 23, 2024

Department: Student Support Services

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Murfreesboro City Schools was awarded a Fostering Resilience with Marginalized Youth and Families grant of \$85,000 by United Way of Rutherford and Cannon Counties. Funds will be used for a STARS school-based therapist and to partner with Read To Succeed to expand Family Literacy Nights to include a Social Emotional Learning (SEL) and multilingual focus.

Staff Recommendation

Recommend approval of the contract and corresponding budget amendment of \$85,000 for the General-Purpose fund.

Fiscal Impact

\$85,000 will be amended in the General-Purpose fund.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City Schools
2252 South Church Street, Murfreesboro TN 37127
Phone (615) 893-2313 Fax (615) 893-2352
cityschools.net



CONTRACT REVIEW FORM

Requesting Department/School: Student Support Services

Contract: Partnership Agreement for grant

Vendor: United Way Cost: No cost yet - MCS will know in June 24 if grant is awarded

Contract Start Date: July 1, 2024 Term of Agreement: 1 year

Does the contract require student information? Yes No
Is the contract subject to grant requirements or an issued RFP? Yes No

Other Comments: Submitted by Amanda Adams

LEGAL REVIEW

Amendments needed? Yes No

Brief description of amendments and/or other comments:

United Way grant in collaboration with Read to Succeed and STARS Nashville

Legal Approval:

FINANCE REVIEW

Budget Account Number: 141 R 44570

Comments from Finance Department:

Looks good.

Finance Approval:



United Way
of Rutherford &
Cannon Counties

PARTNERSHIP AGREEMENT BETWEEN

Murfreesboro City Schools

Participating Agency(ies)
hereinafter referred to as the Agency(ies)

And

United Way of Rutherford and Cannon Counties
hereinafter referred to as United Way

For the time period of July 1, 2024 – June 30, 2025.

All requests must align to Bold Goals 2030 as well as at least one strategy and tactic within the bold goal for which you are applying.

I. Both United Way and the Agency(ies) agree to:

- a. inform each other on all matters of common concern and to consult together when problems or misunderstandings arise in order to reach solutions in the best interest of the community;
- b. conform to all policies, procedures, and guidelines governing applicable UWRCC funding relationships;
- c. abide by ethical methods of publicity, promotion, and solicitation of funds with each organization's mission;
- d. a partnership which functions as a team in a positive and cooperative manner.

II. United Way agrees to:

- a. respect the autonomy of the program partner and recognize the responsibility of the Agency(ies)' boards to determine its own policies and manage its own programs;
- b. maintain a responsible board of directors which shall meet at least four times annually;
- c. provide periodic program and budget reviews and to direct funding toward programs which meet its high standards of accountability and which address pressing community needs;
- d. cooperate with other Agency(ies) in promoting effective services, efficiency, and economy;
- e. conduct ongoing fund development efforts to support community needs;
- f. be a responsible steward of funds contributed to United Way by:
 1. addressing community issues;

Pages 1 through 3 of this agreement must be completed and submitted in the Agency's proposal for funding.



United Way
of Rutherford &
Cannon Counties

2. honoring donor wishes which comply with the designation policy;
 3. submitting all appropriate records for an annual audit by an independent certified public accountant.
- g. provide prompt consideration and response to any request from a program partner.

III. The Agency(ies) agree to:

- a. coordinating agency agrees to make any agreed upon payments to collaborative agency(ies) by the 5th of every month
- b. operate under applicable state and federal laws;
- c. maintain a responsible board of directors which shall meet at least four times annually;
- d. cooperate with other organizations, both public and private in meeting the needs of the community, in preventing unnecessary duplication of services, and in promoting high standards of efficiency and effectiveness;
- e. meet the following standards of the partnership terms:
 1. provide reports related to use of funds, program outcomes, or any other requested information
 2. provide activity, outputs, outcomes reporting to United Way by the stated deadline in a complete format
 3. understanding that deviation from the stated use of funds without express written consent from United Way could jeopardize continued receipt of and/or return of any funds other than those specifically designated to the Agency(ies)
 4. monthly check in meetings to help troubleshoot any unforeseen challenges and explore opportunities for growth
 5. utilize shared metrics and measurements as provided by United Way (for the program/service for which United Way is providing funding)
 6. meet program-level benchmarks and goals as determined in the agency's proposal for funding and subsequently agreed upon with United Way
- f. recognize and identify publicly United Way's partnership with your Agency, to display the United Way insignia on property, and to include references in publicity materials produced in order to strengthen public identification with United Way;
- g. keep its program fees and service charges commensurate with the ability of the participants to pay (if applicable), the costs of the services rendered, and the nature of the program;
- h. advise United Way of contemplated expansion, consolidations, mergers, and significant changes in partnership programs;
- i. recognize that United Way is under no obligation to increase funding to agency for expansion, consolidations, mergers, or significant changes in program;
- j. recognize that no oral understandings or statements may vary the terms of this contract;

Pages 1 through 3 of this agreement must be completed and submitted in the Agency's proposal for funding.



United Way
of Rutherford &
Cannon Counties

- k. operate without discrimination, accepting and aligning with United Way's statement on Diversity, Equity, and Inclusion;
- l. recognize that the grant award provided by United Way is an "intent to fund" for the above stated time period, and should United Way experience a decrease in fundraising, or other relevant financial circumstance, the grant award may be adjusted accordingly.

IV. United Way reserves the right to terminate or suspend funding at any time, for any reason.

V. The Agency(ies) further agrees to accept for the period covered by this agreement an amount approved by the United Way Board of Directors.

We, the undersigned, confirm that this Agreement has been read and approved and the Agency agrees to abide by the terms of this contract, should funding be awarded to the Agency.

Coordinating Agency Board Chair Signature

Date

Coordinating Agency Board Chair Printed Name

Bobby N. Duke III

Bobby N. Duke III - Mar 19, 2024 15:11 CDT

19/03/2024

Coordinating Agency Executive Director/President Signature

Date

Bobby N. Duke III

Coordinating Agency Executive Director/President Printed Name



United Way
of Rutherford &
Cannon Counties

APPENDIX

Provided by United Way upon award of funding.

We the undersigned confirm that at the meeting of the United Way Board of Directors held on June 13, 2024, the Agency or Agencies have been approved to receive funding as outlined in this agreement.

Total Grant Award 2024-2025:

\$85,000.00


For the Agency or Collaborative Proposal Titled:

Fostering Resilience with Marginalized Youth and Families


United Way Board Chair Signature

6/13/24
Date

Don Clayton
United Way Board Chair Printed Name


United Way President and CEO Signature

6/13/24
Date

Kristen Swann
United Way President and CEO Printed Name

June 13, 2024

Murfreesboro City Schools, STARS, Read to Succeed
Fostering Resilience with Marginalized Youth and Families
Trey Duke
2552 South Church Street
Murfreesboro, TN 37127

Dear Dr. Duke,

On behalf of the United Way Community Impact Committee, we are pleased to inform you that your collaborative has been awarded a grant by the United Way of Rutherford and Cannon Counties' (UWRCC) Board of Directors. It is our intent to fund your program for the 2024-2025 year at the level outlined below. You can expect to receive a monthly payment toward the grant beginning July 1, 2024, and concluding June 30, 2025.

Fostering Resilience with Marginalized Youth and Families:\$85,000

In addition, your agency could receive other funds through various funding sources as a result of companies outsourcing their campaign pledge processing. You may receive funding from any of the following third party processors: Truist, YourCause, Cyber Grants, directly from a corporation or foundation, and multiple other United Ways. These funding sources will pay results of the United Way campaign directly to the agency which is known as a "pay direct." Your agency may also receive designations made to your agency through the UWRCC's fundraising efforts as well as through the CFC, TECC, and TBR campaigns (if your agency was eligible to participate in any or all of those campaigns).

If you need to make any changes to your projected outcomes, please contact Ella Weaver at Ella.Weaver@yourlocaluw.org. All changes must be submitted by July 12th and will be approved by the Community Impact Committee.

We appreciate your partnership and the outstanding work you provide in the community.

Sincerely,



Don Clayton
Chair, UWRCC Board of Directors



James Evans
Chair, UWRCC Community Impact Committee

Enclosed: Appendix to 2024-2025 Partnership Agreement



United Way of Rutherford
& Cannon Counties

P.O. Box 330056
Murfreesboro, TN 37133

P: 615-893-7303
F: 615-849-5909

yourlocaluw.org

2023-2024
Board of Directors

Dr. Gloria Bonner
Dr. James Calder
Patrick Cammack
Don Clayton
Carolyn Cox
Brandon Doyle
Dr. Trey Duke
James Evans
Yolanda Greene
Fred Halfpap
Lauren Herald
Gernell Jenkins
Shay Maupin
James McCarroll
Casey Rainey
Ronald Roberts
Thomas Roddy
Francela Salas
Jason Schmitt
Robin Seay
Dr. Ellen Slicker
Rick Smith
Ashley Stearns
Matthew Stump
Kasey Talbott
Deb Thompson
Diane Turnham
Stacy Wilder
Ty Williams

General Purpose Schools Fund 141
Fiscal Year 2024-25

Account Number	Account Description	BUDGET AS PASSED OR PREV AMENDED	AMENDED BUDGET	AMENDMENT INCREASE (DECREASE)
<u>Revenues</u>				
141 R 44570	Donations (United Way)	15,000	100,000	85,000
Total Increase in Revenues		\$ 15,000	\$ 100,000	\$ 85,000
<u>Expenditures</u>				
141 E 72130 189	Other Salaries and Wages	\$ 970,000	\$ 971,000	\$ 1,000
141 E 72130 201	Social Security	181,270	181,335.0	65
141 E 72130 204	Retirement	288,865	288,990	125
141 E 72130 212	Medicare	42,395	42,410	15
141 E 72130 399	Other Contracted Services	55,000	125,000	70,000
141 E 72130 499	Other Supplies and Materials	35,000	48,795	13,795
Total Increase in Expenditures		\$ 1,572,530	\$ 1,657,530	\$ 85,000

CHANGE IN FUND BALANCE (CASH)

MCS was awarded a grant by the United Way of Rutherford & Cannon Counties in the amount of \$85,000. Funds from the Fostering Resilience with Marginalized Youth and Families grant will be used to fund one STARS school-based therapists \$71,205 and the remaining \$13,795 will be used to partner with Read To Succeed to expand Family Literacy Nights to include a Social Emotional Learning and multilingual focus.


7/16/24

 Reviewed by Finance Director/Finance Manager Date

Approved	<input checked="" type="checkbox"/>		7/16/24
Declined	<input type="checkbox"/>	Director of Schools	Date

Agenda Item Title: FY25 Budget Amendment and Job Description – School Nutrition Fund

Board Meeting Date: July 23, 2024

Department: Nutrition

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

This amendment is to reallocate \$65,672 of funds within the Central Cafeteria Fund with no change to fund balance. These expenditures address changes in salary, benefits, and insurance to allow for the new position of Assistant Supervisor of School Nutrition. The new position will be covered by a reduction of expenses in accountant/bookkeeper and cafeteria personnel lines.

Staff Recommendation

To approve the FY25 budget amendment to help recognize changes within the Central Cafeteria fund.

Fiscal Impact

The budget amendment recognizes the need for an additional position, and it will be supplemented within the FY25 approved budget with no net change to Fund balance.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success.

Murfreesboro City Schools
Assistant Supervisor of School Nutrition
Department of Nutrition

Reviewed -----

Credentials: A minimum of associate degree in an USDA approved field, certification in nutrition or food service management is preferred.

Other Qualifications: The person in this position must be able to work effectively and cooperatively with all school staff; be able to train, motivate, lead, supervise and evaluate the job performance of others; must be safety oriented, confidential, efficient in work habits, knowledgeable and enthusiastic about child nutrition service and handle multiple tasks. The person must be computer literate in Microsoft Office Products including Word, Excel, Power Point, Outlook email and a computerized POS system. Person must always demonstrate a professional demeanor demonstrating a happy and helpful attitude, using correct grammar, articulate clearly, be able to keep information confidential, follow directions, be organized, committed to detail and accuracy, be trustworthy and poses the ability of being a leader and advocate for children as it relates to food service. The person must have a vehicle available for use during working hours. Experience is preferred.

Physical Demands: The person in this position must have a good memory, be able to organize thoughts and activities, be able to perform basic mathematical computations, be able to give and follow directions while also being able to work independently without continuous supervision and direction. Most importantly, the person must be able to work the hours necessary to complete accurate and complete reports for State and Federal requirements under strict regulatory guidelines and timetables and be flexible with time requirements. Person must be emotionally mature and able to cope with stress in various office situations and be able to tolerate interruptions and changes. Employee must be able to lift or move boxes weighing up to fifty (50) pounds and stand for a prolong period.

Essential Job Functions: The person in this position will be responsible for assisting the planning, organizing and directing the school nutrition program with emphasis on good nutrition, enjoyment, compliance with guidelines of all regulatory agencies and assure fiscal soundness of the overall program. Specific job functions include:

1. Under guidance of the Supervisor of School Nutrition help assist and supervise all aspects of the Department of School Nutrition working with the Finance and Administrative Services Director, principals, farmers, and cafeteria personnel to develop and follow procedures by which the school nutrition program can adapt to changing policies from regulatory agencies and changing economic conditions.
2. Maintain inventory records to assist in making reports to various state, federal and local agencies as required as well as monitor supply usage.

3. Administer the compliance of the school nutrition program to assure that it is following various applicable local, state, and federal directives, policies, regulations, standards, and laws.
4. Review the financial status of the program and assist in developing the School Nutrition budget.
5. Prepare and assist requests for bids on food or other cafeteria equipment.
6. Ensure all nutrition employees are continuing on-the-job continuous training and completion of training hours for Federal, State, and local policies and standards.
7. Evaluate menus; assisting managers in providing proper storage, food preparation, and serving.
8. Supervise and oversee the Jr. Chef program with emphasis on integrity and compliance.
9. Receive and allocate USDA commodities to schools and supervise utilization and proper storage.
10. Cooperate with other school personnel in conducting program evaluation or accreditation studies.
11. Work with Coordinated School Health to support nutrition education initiatives for students, staff, and parents to promote healthy eating and exercise.
12. Keep informed by attending professional meetings and workshops and periodically visiting all school cafeterias.
13. Coordinate and assist nutrition bookkeeping for purchasing/requisitions.
14. Execute training for all cafeteria workers in the use of universal precautions and all other safety rules.
15. Exercise discretion and use good independent decision-making skills.
16. Report to the Supervisor of School Nutrition matters which are believed to be potential problems and/or issues which may require his/her attention.

Staff Relationship: Reports directly to the Supervisor of School Nutrition.

Terms of Employment: Twelve (12) month position, salary, and benefits set annually, Exempt.

Murfreesboro City Schools

INTER-FUND BUDGET TRANSFER/AMENDMENT REQUEST

Budget Fiscal Year 2024-2025 Central Cafeteria Fund 143

July 23, 2024

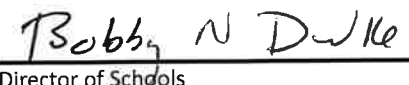
Expenditure Accounts	Description	Increase	Decrease
143 E 73100 105	SUPERVISOR/DIRECTOR	46,112	
143 E 73100 119	ACCOUNTANT/BOOKKEEPER		19,000
143 E 73100 165	CAFETERIA PERSONNEL		46,672
143 E 73100 201	SOCIAL SECURITY	2,860	
143 E 73100 204	RETIREMENT	5,615	
143 E 73100 206	LIFE INSURANCE	115	
143 E 73100 207	MEDICAL INSURANCE	10,000	
143 E 73100 208	DENTAL INSURANCE	300	
143 E 73100 212	MEDICARE	670	
Total Central Cafeteria Fund		\$ 65,672	\$ 65,672
Total Expenditures		\$ 65,672	\$ 65,672

To transfer \$65,672 in budgeted expenditures within categories to recognize changes in personnel. The increase in Supervisor salary will recognize the new Assistant Supervisor position, plus increases to benefits and insurance. The savings within the fund will come through a decrease in the accountant and cafeteria personnel lines.

There are no new revenues but it will create a new position within the department.


7/17/24

 Reviewed by Finance Director/Finance Manager Date

Approved	<input checked="" type="checkbox"/>	 Bobby N Duke Director of Schools	7/17/24 Date
Declined	<input type="checkbox"/>		

Agenda Item Title: Cooperative Agreement with Sumner County Schools and Sentell Brothers of Whitehouse, Inc for painting of Mitchell-Neilson Elementary

Board Meeting Date: July 23, 2024

Department: Operations

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

This cooperative purchasing agreement pursuant to the terms and pricing of Sumner County Contract 20240215 for painting services is submitted to the Board for approval. State statute allows for local education agencies to engage in cooperative purchasing based on the same terms of a legal bid initiated by another LEA in Tennessee.

Sentell Brothers will provide paint, materials, and services to paint the hallways, gym, and restrooms at Mitchell-Neilson Elementary School.

Staff Recommendation

Approve the Cooperative Agreement with Sumner County Schools and Sentell Brothers of Whitehouse, Inc

Fiscal Impact

The total cost of the agreement is \$70,005.00 funded through the general-purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

SENTELL BROTHERS OF WHITEHOUSE, INC.

1032 WASHINGTON DRIVE
COTTONTOWN, TN 37048
(615) 642-8123 OFFICE
(615) 672-2898 FAX

SUBMITTED TO : Murfreesboro City Schools

STREET : 2552 South Church St.

JOB NAME : Painting gym.

CITY : Murfreesboro

JOB LOCATION : Mitchell-Neilson Elementary.

STATE & ZIP : Tennessee. 37128

PHONE : 615-893-2313

We hereby submit specifications & estimates for:

Providing all labor, paint, and equipment necessary to paint the gym, hallways, and bathrooms at Mitchell Neilson Elementary for Murfreesboro City Schools. Sherwin Williams paint products will be used on this project. Colors will be as selected by owner. Prices include providing 1 coat of primer and 2 coats of finish paint to all Surfaces. Bid prices include caulking where necessary prior to painting. All flooring will be protected while any Painting work is in process to protect from paint drips. All labor and materials will be guaranteed for 1 year.

GYM:

LINE ITEM # 1 - BLOCK WALLS - PREP: 1,200 SQUARE FEET @ \$1.25/SF = \$1,500.00

LINE ITEM # 2 - BLOCK WALLS - PAINT: 11,900 SQUARE FEET @ \$1.25/SF = \$14,875.00

LINE ITEM # 3 - DOOR FRAMES: 160 SQUARE FEET @ \$1.25/SF = \$200.00

LINE ITEM # 4 - DOOR SLABS: 280 SQUARE FEET @ \$1.25/SF = \$350.00

LINE ITEM # 5 - WOOD BASEBOARDS: 360 SQUARE FEET @ \$1.25/SF = \$450.00

LINE ITEM # 6 - LIFT RENTAL: LUMP SUM = \$1,500.00

TOTAL FOR LINE ITEMS 1 - 6 = \$18,875.00

OPTION # 1 - PAINT WOODWORK ON FRONT OF STAGE: 400 SQUARE FEET @ \$1.25/SF = \$500.00

NOTES:

1. Bid price does not include painting aluminum window frames.
2. Bid price does not include painting back in stage area.

We propose to complete the above mentioned work for the sum of :

SEE ABOVE PRICES.

DOLLARS

Payment terms:

NET 30

Authorized Signature :

Note : This proposal may be withdrawn by us if not accepted within the following number of days :

90

Acceptance of Proposal - The above prices, specifications & conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature :

Date of acceptance :

SENTELL BROTHERS OF WHITEHOUSE, INC.

106 EDWARDS CT.
WHITE HOUSE, TN 37188
(615) 642-8123 OFFICE
(615) 672-2898 FAX

SUBMITTED TO : Murfreesboro City Schools

STREET : 2552 South Church St.

JOB NAME : Painting gym.

CITY : Murfreesboro

JOB LOCATION : Mitchell-Neilson Elementary.

STATE & ZIP : Tennessee. 37128

PHONE : 615-893-2313

We hereby submit specifications & estimates for:

We propose to complete the above mentioned work for the sum of : 0

SEE ABOVE PRICES.

DOLLARS

Payment terms : NET 30

Authorized Signature :

Note : This proposal may be withdrawn by us if not accepted within the following number of days : 90

Acceptance of Proposal - The above prices, specifications & conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature :

Date of acceptance :

Steve Sentell@gmail.com

SENTELL BROTHERS OF WHITEHOUSE, INC.

1032 WASHINGTON DRIVE
COTTONTOWN, TN 37048
(615) 642-8123 OFFICE
(615) 672-2898 FAX

SUBMITTED TO : Murfreesboro City Schools

STREET : 2552 South Church St.

JOB NAME : Library, TWA, art room, music room & guidance

CITY : Murfreesboro

JOB LOCATION : Mitchell-Neilson Elementary

STATE & ZIP : Tennessee. 37127

PHONE : 615-893-2313

We hereby submit specifications & estimates for:

Providing all labor, paint, and equipment necessary to paint the library, TWA, art room, music room & guidance Offices (2 total) at Mitchell-Neilson Elementary for Murfreesboro City Schools.

LIBRARY: **NOTE: We will not be painting behind bookshelves**

LINE ITEM # 1 - BLOCK WALLS: 3,300 SQUARE FEET @ \$1.25/SF = \$4,125.00

LINE ITEM # 2 - DRYWALLS BULKHEAD: 800 SQUARE FEET @ \$1.25/SF = \$1,000.00

TOTAL FOR LINE ITEMS 1 - 2 = \$5,125.00

TEACHER WORK AREA:

LINE ITEM # 1 - BLOCK WALLS: 1,000 SQUARE FEET @ \$1.25/SF = \$1,250.00

LINE ITEM # 2 - DOOR FRAMES: 96 SQUARE FEET @ \$1.25/SF = \$120.00

LINE ITEM # 3 - DOOR SLABS: 168 SQUARE FEET @ \$1.25/SF = \$210.00

TOTAL FOR LINE ITEMS 1 - 3 = \$1,580.00

ART ROOM:

LINE ITEM # 1 - BLOCK WALLS: 1,300 SQUARE FEET @ \$1.25/SF = \$1,625.00

LINE ITEM # 2 - DOOR FRAMES: 96 SQUARE FEET @ \$1.25/SF = \$120.00

TOTAL FOR LINE ITEMS 1 - 2 = \$1,745.00

MUSIC ROOM: LINE ITEM # 1 - BLOCK WALLS: 1,700 SQUARE FEET @ \$1.25/SF = \$2,125.00

LINE ITEM # 2 - DOOR FRAMES: 160 SQUARE FEET @ \$1.25/SF = \$200.00

TOTAL FOR LINE ITEMS 1 - 2 = \$2,325.00

GUIDANCE OFFICES: 2 TOTAL

LINE ITEM # 1 - BLOCK WALLS: 1,800 SQUARE FEET @ \$1.25/SF = \$2,250.00

LINE ITEM # 2 - DOOR FRAMES: 128 SQUARE FEET @ \$1.25/SF = \$160.00

TOTAL FOR LINE ITEMS 1 - 2 = \$2,410.00

We propose to complete the above mentioned work for the sum of :

SEE ABOVE PRICES

DOLLARS

Payment terms: NET 30

Authorized Signature :

Note : This proposal may be withdrawn by us if not accepted within the following number of days : 90

Acceptance of Proposal - The above prices, specifications & conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature :

Date of acceptance :

SENTELL BROTHERS OF WHITEHOUSE, INC.

106 EDWARDS CT.
WHITE HOUSE, TN 37188
(615) 642-8123 OFFICE
(615) 672-2898 FAX

SUBMITTED TO : Murfreesboro City Schools

STREET : 2552 South Church St.

JOB NAME : Library, TWA, art room, music room & guidance

CITY : Murfreesboro

JOB LOCATION : Mitchell-Neilson Elementary

STATE & ZIP : Tennessee. 37127

PHONE : 615-893-2313

We hereby submit specifications & estimates for:

We propose to complete the above mentioned work for the sum of : 0

SEE ABOVE PRICES

DOLLARS

Payment terms : NET 30

Authorized Signature :

Note : This proposal may be withdrawn by us if not accepted within the following number of days : 90

Acceptance of Proposal - The above prices, specifications & conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature :

Date of acceptance :

SENTELL BROTHERS OF WHITEHOUSE, INC.

1032 WASHINGTON DRIVE
COTTONTOWN, TN 37048
(615) 642-8123 OFFICE
(615) 672-2898 FAX

SUBMITTED TO : Murfreesboro City Schools

STREET : 2552 South Church Street

JOB NAME : Painting hallways & bathrooms.

CITY : Murfreesboro

JOB LOCATION : Mitchell-Neilson Elementary

STATE & ZIP : Tennessee. 37127

PHONE : 615-893-2313

We hereby submit specifications & estimates for:

Providing all labor, paint, and equipment necessary to paint the hallways & bathrooms at Mitchell-Neilson Elementary for Murfreesboro City Schools. Sherwin Williams paint products will be used on this project. Colors Will be as selected by owner. Prices include applying 1 coat of primer and 2 coats of finish paint to all surfaces. Bid prices include caulking where necessary. All labor & materials will be guaranteed for 1 year. All flooring will Be protected while any painting work is in progress to protect from paint drips.

HALLWAYS:

LINE ITEM # 1 - BLOCK WALLS: 17,160 SQUARE FEET @ \$1.25/SF = \$21,450.00
LINE ITEM # 2 - DOOR FRAMES: 1,840 SQUARE FEET @ \$1.25/SF = \$2,300.00
LINE ITEM # 3 - WINDOW FRAMES: 2,208 SQUARE FEET @ \$1.25/SF = \$2,760.00
LINE ITEM # 4 - DOOR SLABS: 2,448 SQUARE FEET @ \$1.25/SF = \$3,060.00
TOTAL FOR LINE ITEMS 1 - 4 = \$29,570.00

BOYS/GIRLS BATHROOMS: 3 SETS TOTAL

LINE ITEM # 1 - BLOCK WALLS: 6,300 SQUARE FEET @ \$1.25/SF = \$7,875.00

We propose to complete the above mentioned work for the sum of :

SEE ABOVE PRICES

DOLLARS

Payment terms: NET 30

Authorized Signature :

Note : This proposal may be withdrawn by us if not accepted within the following number of days : 90

Acceptance of Proposal - The above prices, specifications & conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature :

Date of acceptance :

SENTELL BROTHERS OF WHITEHOUSE, INC.

106 EDWARDS CT.
WHITE HOUSE, TN 37188
(615) 642-8123 OFFICE
(615) 672-2898 FAX

SUBMITTED TO : Murfreesboro City Schools

STREET : 2552 South Church Street

JOB NAME : Painting hallways & bathrooms.

CITY : Murfreesboro

JOB LOCATION : Mitchell-Neilson Elementary

STATE & ZIP : Tennessee. 37127

PHONE : 615-893-2313

We hereby submit specifications & estimates for:

We propose to complete the above mentioned work for the sum of : 0

SEE ABOVE PRICES

DOLLARS

Payment terms : NET 30

Authorized Signature :

Note : This proposal may be withdrawn by us if not accepted within the following number of days : 90

Acceptance of Proposal - The above prices, specifications & conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature :

Date of acceptance :

Agenda Item Title: Cooperative Agreement #012320-SCC with Sourcewell and Staples for purchase of office paper materials for the 2024-2025

Board Meeting Date: July 23, 2024

Department: Finance

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

This cooperative purchasing agreement pursuant to the terms and pricing of Sourcewell Contract #012320-SCC for office paper materials is submitted to the Board for approval. State statute allows for local education agencies to engage in cooperative purchasing based on the same terms of a legal bid initiated by a cooperative purchasing group. This agreement will provide paper products for the entire school district.

Staff Recommendation

Approval of Cooperative Agreement #012320-SCC with Sourcewell and Staples for purchase of office paper materials

Fiscal Impact

The total cost of the contract will be dependent on type and number of materials purchased; however, total cost will not exceed the amount budgeted for this line item. The total cost of the contract for fiscal year 2024 was \$85,687. The funding source for this contract will be through the general-purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



Solicitation Number: RFP#012320

CONTRACT

This Contract is between **Sourcewell**, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and **Staples Contract & Commercial LLC**, 500 Staples Drive, Framingham, MA 01702 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to its members. Participation is open to all levels of governmental entity, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and its Members (Members).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective August 1, 2020.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires April 6, 2024, unless it is cancelled sooner pursuant to Article 24. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.
- C. **SURVIVAL OF TERMS.** Articles 11 through 16 survive the expiration or cancellation of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new/current model. Vendor may offer close-out or refurbished Equipment or Products if they are clearly indicated in Vendor's product and pricing list. Unless agreed to by the Member in advance, Equipment or Products must be delivered as operational to the Member's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **LAWS AND REGULATIONS.** All Equipment, Products, or Services must comply fully with applicable federal laws and regulations, and with the laws of the state or province in which the Equipment, Products, or Services are sold.

C. **WARRANTY.** Vendor warrants that all Products and installation thereof will conform to specifications as stated in manufacturer documentation. Vendor will pass through all manufacturers' warranties to Member (copies of such manufacturer warranties provided upon request). Vendor warrants that all Products branded TRU RED, Perk, NXT Technologies, Union & Scale, or Coastwide Professional are: (1) merchantable; (2) of good quality and workmanship; (3) free from defects latent or patent in material design and workmanship for whichever period is shorter, either (a) one year from the date of purchase, or (b) as otherwise specified on the packaging of the Products; (4) fit sufficient and safe for their intended purpose and for the particular purpose for which they were designed; and (5) in conformity with Vendor's samples, if any. Vendor warrants that for a period of one year from performance, installation and assembly Services will meet or exceed generally accepted standards in the industry and will meet any required specifications mutually agreed upon by Vendor and Member.

Additional warranties applicable to specific product categories, if any, are set forth in Vendor's Proposal.

THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, ORAL OR WRITTEN, EXPRESS OR IMPLIED. VENDOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

D. **DEALERS AND DISTRIBUTORS.** Upon Contract execution, Vendor will make available to Sourcewell a means to validate or authenticate Vendor's authorized Distributors/Dealers relative to the Equipment, Products, and Services related to this Contract. This list may be updated from time-to-time and is incorporated into this Contract by reference. It is the Vendor's responsibility to ensure Sourcewell receives the most current version of this list.

Vendor may utilize certain company affiliates under the Staples, Inc. umbrella to serve as authorized dealers and distributors under this agreement. Any sales by such affiliates pursuant to the Contract would be reflected in a written agreement between such affiliate and Sourcewell participating Member with reference made to this Contract. These affiliates include, but are not limited to, DEX Imaging, LLC, a leading nationwide managed print services provider.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal.

Regardless of the payment method chosen by the Member, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Member at the time of purchase.

When providing pricing quotes to Members, all pricing quoted must reflect a Member's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Member's requested delivery location.

A. SHIPPING AND SHIPPING COSTS. All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Vendor must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcwell or its Members. Members reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery.

Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcwell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Equipment or Products. In the event of the delivery of nonconforming Equipment and Products, the Member will notify the Vendor as soon as possible and the Vendor will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Member.

Vendor will use commercially reasonable efforts to ship Products ordered by Members before 4:00 p.m. local time within one (1) business day after acceptance of a Purchase Order, except for backordered, special-order, or out of stock Products. If a Product is backordered or shipment is delayed for any reason, Member will be notified of a delay and Vendor will deliver the delayed Product as promptly as commercially practicable. Vendor will treat delayed orders as active until Member contacts Vendor and provides other instructions. Vendor's standard shipments will be F.O.B. Member's location in the forty-eight (48) contiguous United States. Additional charges may apply for desk-top delivery, special delivery, non-standard delivery, rush delivery, or special or custom order products or as noted on Vendor's e-commerce platform. Title and risk of loss for the Products will pass to Member at the time the Products are delivered to Member. Eligible products purchased online and picked up at a Vendor retail location will be available for pick up two hours after approval, charged at time of pick up, and cancelled if not picked up after five (5) days. Sales tax will be calculated based upon order pick up location. Member's invoice may not separately designate these items as "in-store pick up." Certain items may incur an additional charge (typically furniture items) which will be invoiced to the Member,

if applicable. Unless otherwise agreed by Vendor and a Member all orders shall be subject to a minimum order size of 35.00 per order. If an order below this amount is placed, the Member will be informed it cannot be processed.

The following will apply for shipments to Alaska or Hawaii: Shipments up to 159lbs. are shipped UPS 2nd Day Air. Shipments over 159lbs. or items which cannot be shipped via UPS (e.g. items classified as hazmat and/or ORM-D) are shipped ocean freight. Vendor will not ship any fully regulated hazmat items, which are shipped directly from the vendor. Ocean shipments are delivered approximately fourteen (14) days from shipment. All shipments to Alaska or Hawaii will be subject to a 25% surcharge.

B. SALES TAX. Each Member is responsible for supplying the Vendor with valid tax-exemption certification(s). When ordering, Members must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Vendor may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Vendor determines it will offer Hot List Pricing, it must be submitted electronically to Sourcwell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcwell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Members.

4. PRODUCT AND PRICING CHANGE REQUESTS

Vendor may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcwell Price and Product Change Request Form to the assigned Sourcwell Contract Administrator. This form is available from the assigned Sourcwell Contract Administrator. At a minimum, the request must:

- Identify the applicable Sourcwell contract number
- Clearly specify the requested change
- Provide sufficient detail to justify the requested change
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change)
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and be incorporated by reference.

Core List. The “Core List” represents net priced items which are inclusive of those products predicted to be the most commonly used products by Sourcewell and its participating Members. Prices for Core List items provided under this contract are set forth in Exhibit 1.

The prices for Core List Items, excluding Premium Products, may be updated biannually on August 1st and February 1st of each year during the term that this contract is in effect. Vendor may request a price change adjustment for Core List items by submitting a price change addendum to Sourcewell thirty (30) days prior to August 1st and February 1st to reflect changes in stock availability, market conditions, buying expense, tariffs and other factors that affect the overall cost of such items.

The prices for Premium Products may be updated quarterly of each year during the term that this contract is in effect. Premium Products are defined as toner, ink, IT hardware, copy paper and furniture that Members purchase from Vendor.

Extraordinary Market Events. Vendor reserves the right to reasonably adjust a Core Item’s price if extraordinary market events require immediate adjustment (e.g. shortages, trade disputes, natural disasters, etc.) and to adjust pricing with the impact of tariffs, customs, or duties imposed on products. Any such adjustments shall be noticed to Sourcewell with thirty (30) days prior written notice accompanied by supporting documentation. Vendor will work with Sourcewell and affected Members to identify alternative products to mitigate the impact of the foregoing where possible.

Updated Items. For purposes of contract management, Vendor may provide to Sourcewell an updated report no more than once a calendar quarter, which shall identify the SKU numbers and prices for the new items that Vendor and Sourcewell have added, as well as SKU numbers for items that have been removed from the Core List. Vendor may from time to time propose substitutions to Core Items. Sourcewell agrees that it will not unreasonably withhold its consent.

Custom Pricing; Rebates & Incentives; Other Terms. Vendor may offer additional pricing discounts, rebates and/or incentives to an individual participating Member based upon commitments and variables that may include, but not limited to, Member size and scope, geography, purchase volume, guarantees, logistical expenses, manufacturer support, specific product usage and other contractual terms/requirements. Members receiving custom pricing or incentives may be required to sign a Participation Agreement with Vendor.

Non-Core Items. The prices for Non-Core Items shall appear on StaplesAdvantage.com and shall be adjusted to reflect changes in stock availability, market conditions, buying expense, and other factors that affect the overall cost of the Non-Core Items. Notwithstanding anything to the contrary Non-Core Items are not subject to customer audit, or any pricing guarantee, nor

shall Non-Core Items be subject to the Change Request process set forth in this Section 4.

Sourced Goods. Members may request certain goods that are non-stock or custom in nature. The prices for Sourced Goods shall be those prices that appear on the ordering platform at time of order, or as otherwise established between Vendor and the applicable participating Member at the time the order is placed. Sourced Goods may include additional delivery or handling charges that would be the responsibility of the ordering Member.

Pricing Exhibits. Please see the Pricing Exhibits for pricing details on the following categories:

- Exhibit 1 – Core List Pricing
- Exhibit 2 – Print & Copy Program
- Exhibit 3 – Promotional Products Program
- Exhibit 4 – Staples Technology Solutions
- Exhibit 5A – Managed Print Services Capabilities
- Exhibit 5B – Managed Print Services Pricing
- Exhibit 5C – Managed Print Services Sample Agreement

Tier One Diversity Program. Vendor reserves the right to implement a pricing upcharge when setting up a Tier One program for any Participating Member to reflect the additional cost of the diversity supplier's program.

5. MEMBERSHIP, CONTRACT ACCESS, AND MEMBER REQUIREMENTS

A. MEMBERSHIP. Membership in Sourcewell is open to public and nonprofit entities across the United States and Canada; such as municipal, state/province, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Members that can legally access the Equipment, Products, or Services under this Contract. A Member's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Member's use of this Contract is at the Member's sole convenience and Members reserve the right to obtain like Equipment, Products, or Services from any other source.

Vendor is responsible for familiarizing its sales and service forces with Sourcewell membership requirements and documentation and will encourage potential members to join Sourcewell. Sourcewell reserves the right to add and remove Members to its roster during the term of this Contract.

Notwithstanding anything to the contrary a Member's participation hereunder including for the avoidance of doubt and extension of credit hereunder is contingent upon Member's satisfaction of Vendor's standard credit requirements. Vendor also reserve the right to refuse sales of Products to Members reselling such Products. To the extent a Member has a pre-

existing separate agreement with Vendor, Vendor reserves the right not to sell products and services under multiple agreements to that Member. In addition, Vendor may terminate this Contract for any reason (i.e., for convenience) with respect to an individual Member by delivering not less than ninety (90) days prior written notice thereof to Sourcewell and the applicable Member.

B. PUBLIC FACILITIES. Vendor's employees may be required to perform work at government-owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Member policies and procedures, and all applicable laws.

6. MEMBER ORDERING AND PURCHASE ORDERS

A. PURCHASE ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, Member must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically a Member will issue a purchase order directly to Vendor. Members may use their own forms for purchase orders, but it should clearly note the applicable Sourcewell contract number. Members will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Member.

B. ADDITIONAL TERMS AND CONDITIONS. Additional terms and conditions to a purchase order may be negotiated between a Member and Vendor, such as job or industry-specific requirements, legal requirements (such as affirmative action or immigration status requirements), or specific local policy requirements. Any negotiated additional terms and conditions must never be less favorable to the Member than what is contained in Vendor's Proposal.

C. PERFORMANCE BOND. If requested by a Member, Vendor will provide a performance bond that meets the requirements set forth in the Member's purchase order.

D. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Member requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Member and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

E. TERMINATION OF PURCHASE ORDERS. Members may terminate a purchase order, in whole or in part, immediately upon notice to Vendor in the event of any of the following events:

1. The Member fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased;

2. Federal or state laws or regulations prohibit the purchase or change the Member's requirements; or
3. Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Member.

Vendor reserves the right to terminate a purchase order pursuant to which a Member requests or demands services to be performed not enumerated by the terms of this Contract.

F. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Member's purchase order will be determined by the Member making the purchase.

7. CUSTOMER SERVICE

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Vendor will assign an Account Representative to Sourcwell for this Contract and must provide prompt notice to Sourcwell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcwell and Member inquiries; and
- Business reviews to Sourcwell and Members, if applicable.

B. **BUSINESS REVIEWS.** Vendor must perform a minimum of one business review with Sourcwell per contract year. The business review will cover sales to members, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. **CONTRACT SALES ACTIVITY REPORT.** Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcwell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State;
- Customer Zip Code;
- Customer Contact Name;
- Customer Contact Email Address;
- Customer Contact Telephone Number;

- Sourcwell Assigned Entity/Member Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcwell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Vendor.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcwell, the Vendor will pay an administrative fee to Sourcwell on all Equipment, Products, and Services provided to Members. The Vendor will submit a check payable to Sourcwell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Members under this Contract during each calendar quarter. Payments should note the Sourcwell-assigned contract number in the memo and must be mailed to the address above "Attn: Accounts Receivable." Payments must be received no later than forty-five (45) calendar days after the end of each calendar quarter.

The administrative fee referenced in this Section shall be calculated as a percentage of Net Sales (defined below) as follows:

Unless otherwise mutually agreed to in writing by Sourcwell and Staples, and except as stated below, Staples will pay Sourcwell an administrative fee of one and half percent (1.5%) of the Members' aggregate Net Sales during each calendar quarter, which have been timely paid, to be paid within forty five (45) days after the end of each calendar quarter.

An exception to the above 1.5% admin fee would be that Staples will pay Sourcwell one half of one percent (0.5%) administrative fee for participating Members' aggregate Net Sales under the managed print services ("MPS") program of the Contract and one quarter of one percent (0.25%) on technology product Net Sales.

Net Sales. Net Sales will be defined as the gross sales price of the applicable products sold pursuant to this Contract, less shipping costs (including freight charges and insurance), taxes, duties, any rebates actually paid, discounts and allowances actually taken, rejections and returns to the extent credit is given or paid, and also excluding purchases made via staples.com, or any Staples retail channel.

Vendor agrees to cooperate with Sourcwell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, Sourcwell reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than thirty (30) days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

10. ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. ASSIGNMENT. Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement. Such consent will not be unreasonably withheld.

This Section shall not apply to Vendor's delivery, installation, design, repair, or refurbishment obligations hereunder, which Vendor may subcontract to reasonably qualified third parties.

B. AMENDMENTS. Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.

C. WAIVER. If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

D. CONTRACT COMPLETE. This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

E. RELATIONSHIP OF THE PARTIES. The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, master-servant, principal-agent, or any other relationship.

11. LIABILITY

Vendor must indemnify, save, and hold Sourcewell and its Members, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees, arising out of the performance of this Contract by the Vendor or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications.

Neither party, nor its officers, directors, employees, or Affiliates, shall be liable to the other for any special, indirect, incidental, consequential, punitive, or exemplary damages including, but not limited to, lost profits, business interruption, loss of data, or cost of cover even if the party

alleged to be liable has knowledge of the possibility of such damages. The limitations set forth in this Section shall not apply to, or in any way limit liabilities arising from, a party's gross negligence or willful misconduct, or from the confidentiality or indemnification obligations of that party.

12. AUDITS

Sourcewell reserves the right to review the books, records, documents, and accounting procedures and practices of the Vendor relevant to this Contract for a minimum of three (3) years from the end of this Contract. This clause extends to Members as it relates to business conducted by that Member under this Contract. Any audit requests shall be made with thirty (30) days advance written notice and shall be conducted during normal business hours at Vendor's corporate offices. If a third-party consultant or auditor is used, Vendor may require the execution of a confidentiality agreement prior to receiving access to any records.

13. GOVERNMENT DATA PRACTICES

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

14. INTELLECTUAL PROPERTY

As applicable, Vendor agrees to indemnify and hold harmless Sourcewell and its Members against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Members by any person on account of the use of any Equipment or Products by Sourcewell or its Members supplied by Vendor in violation of applicable patent or copyright laws.

15. PUBLICITY, MARKETING, AND ENDORSEMENT

A. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

B. **MARKETING.** Any direct advertising, marketing, or offers with Members must be approved by Sourcewell. Materials should be sent to the Sourcewell Contract Administrator assigned to

this Contract. Any use by Sourcewell of Vendor's trademarks, logos, or other intellectual property shall be subject to Vendor's prior written consent.

C. ENDORSEMENT. The Vendor must not claim that Sourcewell endorses its Equipment, Products, or Services.

16. GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota.

17. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

18. SEVERABILITY

If any provision of this Contract is found to be illegal, unenforceable, or void then both Sourcewell and Vendor will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding and must be fully performed.

19. PERFORMANCE, DEFAULT, AND REMEDIES

A. PERFORMANCE. During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Vendor may escalate the resolution of the issue to a higher level of management. The Vendor will have thirty (30) calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by Sourcewell and/or its Members as a result of such failure to proceed will be borne by the Vendor.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Member order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

20. INSURANCE

A. **REQUIREMENTS.** At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

- \$500,000 each accident for bodily injury by accident
- \$500,000 policy limit for bodily injury by disease
- \$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition). At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, products-completed operations including construction defect, contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

- \$1,000,000 each occurrence Bodily Injury and Property Damage
- \$1,000,000 Personal and Advertising Injury
- \$2,000,000 aggregate for Products-Completed operations
- \$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer).

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance.* During the term of this Contract, Vendor will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability.* During the term of this Contract, Vendor will maintain coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Vendor's professional services required under this Contract.

Minimum Limits:

\$2,000,000

6. *Network Security and Privacy Liability Insurance.* During the term of this Contract, Vendor will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Upon commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by an authorized representative. All policies must include there will be no cancellation, suspension, non-renewal, or reduction of coverage without thirty (30) days' prior written notice to the Vendor.

Upon request, Vendor must provide to Sourcewell copies of applicable endorsements, within ten (10) days of a request. Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Vendor agrees to name Sourcewell and its Members, including their officers, agents, and employees, as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance maintained by the additional insureds. Notwithstanding the minimum limits of coverages set forth herein, Vendor shall name Sourcewell and its Members, including their officers, agents, and employees as an additional insured for the full limits of insurance coverage, including but not limited to any excess policy coverage, purchased by Vendor.

D. WAIVER OF SUBROGATION. Vendor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required insurance maintained by the Vendor

E. UMBRELLA/EXCESS LIABILITY. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies).

21. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Vendor must maintain a valid status on all required federal, state, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Members.

22. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcewell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Member. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

23. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Members that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Members may also require additional requirements based on specific funding specifications. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Member accesses Vendor’s Equipment, Products, or Services with United States federal funds.

A. EQUAL EMPLOYMENT OPPORTUNITY. Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5,

“Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. § 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Vendor

certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of three (3) years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

24. CANCELLATION

Sourcewell or Vendor may cancel this Contract at any time, with or without cause, upon sixty (60) days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Termination of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to termination. In addition, Vendor may terminate this Contract for any reason (i.e., for convenience) with respect to an individual Member by delivering not less than ninety (90) days prior written notice thereof to Sourcewell and the applicable Member.

Sourcewell

DocuSigned by:
By: Jeremy Schwartz
C0FD2A139D06489...
Jeremy Schwartz

Title: Director of Operations &
Procurement/CPO

Date: 4/2/2020 | 1:37 PM CDT

Staples Contract & Commercial LLC

DocuSigned by:
By: Joanne Harris
4871E6FEB760485...
Joanne Harris

Title: Chief Commercial Officer

Date: 4/9/2020 | 11:29 AM CDT

Approved:

DocuSigned by:
By: Chad Coquette
7E42B8F817A64CC...
Chad Coquette

Title: Executive Director/CEO

Date: 4/9/2020 | 11:30 AM CDT

RFP 012320 - Office Supply Catalog Solutions

Vendor Details

Company Name: Staples Contract & Commercial LLC
Does your company conduct business under any other name? If yes, please state: See Staples W-9 for list of company names
Address: 500 Staples Drive
Framingham, MA 01702
Contact: Don Hasch
Email: don.hasch@staples.com
Phone: 714-868-4274
HST#: 04-2896127

Submission Details

Created On: Thursday December 05, 2019 16:29:54
Submitted On: Thursday January 23, 2020 14:19:24
Submitted By: Don Hasch
Email: don.hasch@staples.com
Transaction #: 03530933-5d38-4e03-a53c-27c14c4f6471
Submitter's IP Address: 170.37.244.38

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Please do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; mark "NA" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *
1	Proposer Legal Name (and applicable d/b/a, if any):	Staples Contract & Commercial LLC (Staples)
2	Proposer Address:	500 Staples Drive, Framingham, MA 01702
3	Proposer website address:	www.StaplesAdvantage.com
4	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer):	Joanne Harris Chief Commercial Officer, Staples 500 Staples Drive, Framingham, MA 01702 Email: joanne.harris@staples.com Phone: (508) 253-5000
5	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Don Hasch Senior Manager - SLED Team (State, Local, and Education) 16501 Trojan Way, La Mirada, CA 90638 Email: don.hasch@staples.com Phone: (714) 868-4274
6	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Jeremy Landis Area Vice President - Vertical Markets 1945 Old Gallows Rd, Suite 200, Vienna, VA 22182 Email: jeremy.landis@staples.com Phone: (571) 581-3829 Joseph Gorman Vice President - Commercial Sales 1414 Radcliffe Street, Suite 110, Bristol, PA 19007 Phone: (215) 292-3160 Email: joseph.gorman@staples.com

Table 2: Company Information and Financial Strength

Line Item	Question	Response *
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7	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	<p>Staples, The Worklife Fulfillment Company, has 33 years of expertise helping organizations of all sizes be more productive, connected and inspired — however and wherever they work today. With dedicated account teams, category professionals, innovative brands and a curated assortment for business, Staples provides customized solutions to help organizations achieve their goals. Headquartered near Boston, Staples operates in North America.</p> <p>As the pioneer of office solutions, Staples knows work is more than a job. It is a sense of purpose and fulfillment that defines us. As “The Worklife Fulfillment Company”, we have programs that fit every size organization, from a one-person office to the Fortune 100 organization, across all industries, including academic institutions, healthcare, state and federal governments. We’re here to help with products, services and solutions, combined with our expertise, best-in-class national distribution, customer service, competitive pricing and state-of-the-art e-commerce site.</p> <p>WORKLIFE PRODUCTS & SOLUTIONS</p> <p>Our products, services and technology are thoughtfully designed and sourced for the way you work and live. We'll help you and your teams with Worklife:</p> <ul style="list-style-type: none"> • Productivity – Helping customers and their teams do more. • Connectivity – Building better communication and ways of working. • Inspiration – Inciting creative thinking through spaces that feel good. <p>YOU CAN COUNT ON US</p> <ul style="list-style-type: none"> • Reliable financial stability allows us to continually evolve to meet the needs of our customers, as a strong stable supplier. • Community involvement with 42,000 associates across the U.S. who live and work where your Members do. • Eco-responsible business partner to help customers boost everyday sustainability.
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8	Provide a detailed description of the products and services that you are offering in your proposal.	<p>From business essentials to facility supplies, and custom print to furniture, Staples offers an unmatched selection of products and services, saving your participating Members the time and expense of dealing with multiple vendors. With free next-day delivery available for more than 500,000 products on our e-commerce site, our industry-leading breadth and depth of solutions includes:</p> <p>INNOVATIVE PRODUCT SOLUTIONS</p> <p>With the introduction of our new innovative products we offer tools and systems that help drive solutions in business essentials, breakroom, facilities, technology and furniture:</p> <ul style="list-style-type: none"> • Tru Red – Thoughtfully designed business essentials to help you work, create and innovate better. Quality tested and engineered to last. • NXT Technologies – Tech products to keep your teams connected and productive — whether they're at the office or the airport, a coffeehouse or the couch. • Coastwide Professional – Professional-grade facility and pack and ship supplies built to spec and made to perform, with no wasted product or labor. • Perk – Breakroom essentials designed with quality, value and just the right touch of personality to bring fun and energy to break time. • Union & Scale – Furniture and decor that work together in perfect harmony. There's a collection for every style and work style. <p>We've simplified our product assortment to focus on the right choices for business and institutions versus every product out there. So, it will be easier for your participating Members to get exactly what they need.</p> <ul style="list-style-type: none"> • Business Essentials – Staples can help participating Members search for a better way. We fulfill the essentials for teams to be more productive, more organized and more inspired. We carry everything from copy paper to smart phones and accessories, with a wide selection of green and MWBE products. • Facility Solutions – We know that results matter. We can work with participating Members to provide a clean, efficient and seamlessly stocked workspace. Our Facility Solutions offering includes a wide selection of products from best-in-class manufacturers, including Diversey, GOJO, Georgia-Pacific, Kimberly-Clark and Rubbermaid. Our exclusive BluPrint™ site assessment tool helps to analyze participating Members' facilities operations to offer cost saving recommendations. • Furniture Solutions – We can work with participating Members on their journey to create a productive, collaborative environment with inspired workspaces through our products, technology, people and services. Our Furniture Solutions offering provides access to more than 250 best-in-class manufacturers, including Allsteel, HON, Global and National. • Print & Marketing Services – We can create custom print essentials and high-quality products through our expertise and technology. Every year, we handle more than 396,000 print jobs. It is clear customers are already choosing Staples as their trusted print provider. • Technology Solutions – We offer differentiated and thoughtfully designed tech products and exclusive brands. Our Technology Solutions offering includes a wide selection of products from everyday tech and data center solutions to printer fleet management and network services. With more than 1,000 vendors and suppliers, we offer more than one million items delivered nationwide. • Breakroom Solutions – We can help participating Members create a more connected and inspired workspace with a complete breakroom experience. From coffee and coffee brewers to water coolers, cutlery and snacks, the wide variety of products we offer in this category continues to match the needs of every generation in the workforce. Our breakroom specialists are ready to analyze your space and provide cost saving recommendations. • Pack & Ship Solutions – We can unlock advancements through our products, people and supply chain. We can help keep your operations running smoothly. From sourcing package-specific tape to helping lower your damage rate, our Pack & Ship Specialists partner with you to drive efficiency in your participating Members' operations. • Staples Promotional Products – With more than one million products plus well-cultivated relationships with a global supply network, Staples can help participating Members create unique branded solutions for all their buying needs.
9	What are your company's expectations in the event of an award?	<p>Our expectation is to build on our already strong and dynamic partnership, and to continue to drive tremendous value, efficiencies and savings to existing and future Sourcewell Members. Our hope is that many more Sourcewell Members will join the thousands of existing participating Members currently enjoying the benefits that our Sourcewell awarded contracts offer. Our goal is to enhance our value in becoming a true sustainable resource for your Members, providing industry intelligence, advice and research collateral to further supplement the products/services we have offered in the past. Our expectation is to continue the trend of exponential sales growth year over year that we have experienced as a contract award holder for the past 15 years.</p>

10	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Staples represents that it has the financial resources available to perform its obligations under an agreement reached between Staples and Sourcewell. Please see Attachment 1 for Staples' Bank and Trade References. Staples became a private company in 2017 and no longer publicly reports our financial information. Staples can provide limited financial information directly to Dr. Chad Coquette, Executive Director & CEO at Sourcewell, once we have a current, fully executed Non-Disclosure Agreement in place. If provided, please note that our financial information would be considered Trade Secret.	*
11	What is your US market share for the solutions that you are proposing?	Staples' leading financial position allows the company to invest in its business, expand its products and services and provide customers with the confidence of working with a strong and stable supplier. We have programs that fit every size organization, across all industries. As a private company, Staples considers our market position confidential, however, Staples serves more than 2.5 million small, mid-size and commercial enterprise business customers, including many of the largest and most trusted companies and institutions in the U.S.	*
12	What is your Canadian market share, if any?	Please see our response to Question 11 above.	*
13	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No. Staples Contract & Commercial LLC has never been the subject of a bankruptcy action.	*
14	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	Staples is best described as (a) a distributor/dealer/reseller. Staples is authorized to resell all products offered under this proposal by the terms of Vendor Program Agreements (VPA) established with each of our suppliers. Upon request, Staples is willing to provide Sourcewell with specifics of our authorization as a reseller from any of the manufacturers we represent. Staples also intends to utilize certain company affiliates under the Staples, Inc. umbrella to serve as authorized dealers and distributors under this agreement. Any sales by such affiliates pursuant to this agreement would be reflected in a written agreement between such affiliate and Sourcewell participating Member with reference made to the Staples/Sourcewell contract. These affiliates include DEX Imaging LLC, a leading nationwide managed print services provider.	*
15	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	Staples is licensed to do business in all 50 U.S. states, Puerto Rico and U.S. territories. Staples is fully compliant with all applicable federal and state laws and regulations. Staples also requires that all third-party companies and subcontractors that may be utilized in the provision of the services contemplated under this RFP hold all required business licenses and certifications required by law. The following are functions where Staples may involve subcontractors in the provision of the products and services contemplated by this RFP: • Delivery: We utilize a combination of our own fleet and carefully selected third-party courier providers to supplement our territory reach as needed. • Service, Installation & Repair: Some product lines, such as managed print services, furniture and facility solutions may involve service, repair and installation functions. • Diversity One Program: Staples has established strategic alliances with highly respected diverse and small business suppliers who have extensive experience serving the public sector and large institutional customers. We will be happy to share additional information with Sourcewell upon request.	*
16	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Staples Contract & Commercial LLC has not been debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency during the past ten years.	*
17	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Staples offers hundreds of thousands of products in a host of categories that are necessary for Sourcewell Members to manage and maintain their operations and facilities. These categories are ever evolving as customers' needs evolve but they currently include product categories such as office and school supplies, janitorial products and equipment, breakroom, safety, transactional furniture, print, promotional products, technology hardware and software as well as mobile peripherals including tablets, and more. Staples continues to invest in and expand into these and many other product segments based on customer and industry demand.	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
18	Describe any relevant industry awards or recognition that your company has received in the past five years	<p>Thanks to the collaborative effort of our leadership team and our associates around the world, Staples continuously receives awards and accolades for our service and corporate responsibility.</p> <p>COMPANY RANKINGS</p> <ul style="list-style-type: none"> • #20 on Forbes America's Largest Private Companies list for 2018 • #4 on Modern Distribution Management's Top Jan/San Distributors list for 2018 • #2 on Advertising Specialty Institute's Top 40 Promotional Products Distributors list for 2019 • #63 on National Retail Federation's Top 100 Retailers list for 2019 <p>ENVIRONMENTAL AWARDS & RECOGNITIONS</p> <ul style="list-style-type: none"> • Awarded U.S. EPA's ENERGY STAR Partner of the Year-Sustained Excellence in 2019 for the 10th year • S&P Global Platts Grid Edge Award Finalist 2018 • Ranked #13 among retailers on the 2018 Green Power Top Partnership list from the U.S. EPA • S&P Global Platts Corporate Social Responsibility Award Winner 2017 • Selected as component of the Dow Jones Sustainability Indices in 2017 for the 14th consecutive year • Received the 2016 Alliance to Save Energy's Built Environment Star of Energy Efficiency Award for our commitment to reducing energy consumption and improving efficiency in stores <p>DIVERSITY AWARDS & RECOGNITIONS</p> <ul style="list-style-type: none"> • Lesa Rivers, Director of Supplier Diversity, nominated as one of 2014's Top 25 Women in Power Impacting Diversity by DiversityPlus Magazine • Named one of the 2018 Best Places to Work for LGBTQ Equality by the Human Rights Campaign for eight consecutive years <p>SUPPLIER AWARDS</p> <ul style="list-style-type: none"> • NJPA (Sourcewell) Legacy Award (2015) • HP U.S. Partner to Watch (2017) • HP U.S. Supplies Partner of the Year (2017) • CBRE Supplier of the Year (2017)
19	What percentage of your sales are to the governmental sector in the past three years	<p>Staples considers corporate financial information to be proprietary. However, based on our own mutual sales, we achieved over \$70M in state and municipal government sector sales annually under our Sourcewell awarded contracts. Staples' response to question 19 should be considered as "Trade Secret", as defined by Minnesota Statutes 325C.01, Subd. 5. Exempt from public disclosure under applicable law.</p>
20	What percentage of your sales are to the education sector in the past three years	<p>Staples considers corporate financial information to be proprietary. However, based on our own mutual sales, we achieved over \$160M in education sector sales annually under our Sourcewell awarded contracts. Staples' response to question 20 should be considered as "Trade Secret", as defined by Minnesota Statutes 325C.01, Subd. 5. Exempt from public disclosure under applicable law.</p>
21	List any state or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	<p>Staples holds the following national public sector cooperative contracts:</p> <ul style="list-style-type: none"> • Sourcewell • NASPO ValuePoint • NPP Gov • E&I <p>Staples holds numerous state office products purchasing contracts throughout the U.S, including multiple states that have adopted our existing Sourcewell 010615-SCC Office & Related Supplies contract as their state office supplies contract vehicle. Staples considers corporate financial information to be proprietary.</p>
22	List any GSA contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	<p>Staples has the following GSA contracts:</p> <ul style="list-style-type: none"> • 47QSEA19D008T – Schedule 75: Enhanced SIN for Office Supplies & Services/Office Supplies 4th Generation (OS4) • GS-07F-035BA – Schedule 73: Food Service, Hospitality, Cleaning Equipment and Supplies, Chemicals and Services • GS-28F-018AA – Schedule 71: Furniture • GS-03F-051GA – Schedule 78: Sports, Promotional, Outdoor, Recreation, Trophies and Signs <p>Staples considers corporate financial information to be proprietary.</p>

Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible for Sourcewell membership.

Entity Name *	Contact Name *	Phone Number *	
Hillsborough County Public Schools (Florida)	Cristine Jones, CPPB	(813) 272-4370	*
County of Orange (California)	Yarida Guzman	(714) 567-7368	*
County of Sacramento (California)	Craig Rader, CPPO, CPPB	(916) 876-6362	*

Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
Chicago Public Schools	Education	Illinois - IL	Office Supplies and related products and services	Due to various non-disclosure agreements in place, we do not disclose financial information or specific contract details for our customers.	Proprietary Information	*
Hillsborough County Public Schools	Education	Florida - FL	Office Supplies and related products and services	Due to various non-disclosure agreements in place, we do not disclose financial information or specific contract details for our customers.	Proprietary Information	*
Anoka Hennepin Independent School District #11	Education	Minnesota - MN	Office Supplies and related products and services	Due to various non-disclosure agreements in place, we do not disclose financial information or specific contract details for our customers.	Proprietary Information	*
University of Colorado	Education	Colorado - CO	Office Supplies and related products and services	Due to various non-disclosure agreements in place, we do not disclose financial information or specific contract details for our customers.	Proprietary Information	*
County of Orange	Government	California - CA	Office Supplies and related products and services	Due to various non-disclosure agreements in place, we do not disclose financial information or specific contract details for our customers.	Proprietary Information	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell Members across the US, and Canada if applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *

25	Sales force.	<p>Staples has a national service footprint and provides sales coverage to nearly the entire U.S. The map and listing attached does not include the locations of our remote sales teams and account leaders. We have more than 4,500 sales associates dispersed in every major city and market so that we are close to your Members and can quickly meet their needs. Please see Attachment 2 for details on our sales offices nationwide.</p> <p>Our national account management model leverages a single, centralized point of contact for each participating Member. The Account Manager is empowered to make most decisions regarding pricing, contractual terms and service commitments on a day-to-day basis. Of equal importance is the streamlined internal process we have in place to escalate issues requiring management input or approval. This process enables our Account Managers to provide timely responses to any issue, large or small.</p> <ul style="list-style-type: none"> • Business Development – Responsible for communicating the benefits and value of Staples and our offerings to potential new participating Members • Account Manager – Member's partner to provide insights and recommendations on Worklife Solutions • Category Account Executive – Focuses on specific Staples product categories leveraging their in-depth knowledge and expertise to fully support participating Member needs • Customer Success Consultant – Member's support to help with their day-to-day needs • Site Management Team – Team that proactively ensures compliance of each program in all locations • Category Professionals – Industry experts in facilities, technology, furniture, print and promotional products that provide assessments to recommend efficiencies and savings • Customer Service – Live knowledgeable representatives available to get answers fast while shopping on our ordering site through live chat and standing by to help via email and phone
26	Dealer network or other distribution methods.	<p>Staples is best described as a distributor/dealer/reseller. Staples is authorized to resell all products offered under this proposal by the terms of Vendor Program Agreements (VPA) established with each of our suppliers. Upon request, Staples is willing to provide Sourcewell with specifics of our authorization as a reseller from any of the manufacturers we represent.</p> <p>Staples also intends to utilize certain company affiliates under the Staples, Inc. umbrella to serve as authorized dealers and distributors under this agreement. Any sales by such affiliates pursuant to this agreement would be reflected in a written agreement between such affiliate and Sourcewell participating Member with reference made to the Staples/Sourcewell contract.</p>
27	Service force.	<p>Staples has a national service footprint that provides service and distribution coverage to nearly the entire U.S., with more than 8,900 fulfillment and delivery associates employed directly by Staples and are nationally dispersed throughout the U.S. Additionally, Staples has approximately 550 customer service associates in our call centers, including representatives who process fax orders, answer customer emails and provide agent support.</p> <p>Staples proudly operates the most extensive and technologically advanced distribution network in the industry and Sourcewell participating Members will continue to benefit from a robust national network of fulfillment centers equipped to achieve their next-business-day shipping needs. Our network is strategically located close to our delivery partners, vendors and customers to ensure that we always keep our network costs low. This means getting products to Sourcewell Members accurately, on time, complete and undamaged. Please see Attachment 3 for a list of our fulfillment centers in the U.S.</p>

28	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	<p>At Staples, we have a team by each participating Members side, dedicated to serve. Staples owns and operates four North American call centers staffed with highly trained Staples associates. Additional support is provided offshore, as needed, to reduce wait times and ensure ample coverage for our customers nationwide. All customer service associates provide expert support for more than five million customer inquiries per year.</p> <p>To drive higher customer satisfaction, Staples provides:</p> <ul style="list-style-type: none"> • A One & Done Service Culture – With a first-call resolution rate of 90%, we train and empower our associates to resolve issues at initial contact. • Direct Connection to a Live Representative – Participating Members will always reach a Staples Customer Service Representative right away. Our goal is to answer calls within 30 seconds and reply to emails within four hours. • A Knowledgeable, Highly Trained Team – Every call center associate attends a comprehensive three-week training program covering customer service skills, problem resolution and product information. • Proactive Alerts – If a delivery delay is expected, we'll let the Member know. • A Continuous Feedback Loop – We review all customer feedback and if the Member is not satisfied, we follow-up with them to make things right. <p>SERVING SOURCEWELL MEMBERS' NEEDS</p> <p>Our Customer Service Representatives have access to all the details necessary to provide service specific to participating Members' business, and even their location. The Staples Customer Service team is their first line of contact for:</p> <ul style="list-style-type: none"> • Login support and password resets • New user set up and adding ship-to locations • Assisting with online profile management • Aiding with account setup, expedited ordering and research • Pricing inquiries and special orders processing • Delivery and backorder tracking • Billing and tax exemption questions <p>Customer Service is conveniently available Monday through Friday from 8:00 a.m. to 8:00 p.m. EST by email, phone or via live chat on StaplesAdvantage.com.</p> <p>CALL CENTER STRUCTURE</p> <ul style="list-style-type: none"> • Customer Service Representative – Responsible for order entry, issue resolution, providing order status and product information. This individual has ongoing direct contact with participating Member and develops a strong knowledge of the specifics of their account. • Order Resolution Associate – Focuses only on order entry, resulting in time and accuracy efficiencies. • Team Manager – Coordinates the activities of the Customer Service Representatives in each group, ensuring that each account is supported, and procedures are enforced. • Customer Operations Team – Communicates with participating Member about next-business-day delivery exceptions and rare instances of product cancellations. • Quality Assurance Team – Monitors contact between associates and customers and reports on key customer service trends important to the business. Coaches both managers and associates to improve the quality of customer interactions. <p>MANAGED PRINT SERVICES</p> <p>DEX Imaging's Managed Print Services help participating Members create a more efficient, customized and sustainable printing network. DEX Imaging's customer service outreach is a multi-faceted group. There is customer service through each touchpoint of the process: initial meeting, implementation, and ongoing management – making up the participating Member's account team. The DEX Imaging Account Sales Manager is their main point of contact for their MPS program and is in contact with the Member from pre-sale forward. Their customer service representative is involved in the coordination and participation for the installation, setup, and provides solutions for various technological devices while overseeing the customer database. Their project manager is responsible for the implementation of their devices from sale to delivery. With any equipment troubles, there is a 3-layer approach. Participating Members will speak to either Customer Service, a Service Engineer or have a Service Technician dispatched, depending on the complexity of their issue. DEX Imaging's service department has a historical 99.98% approval rating, due in large part to the exclusive Customer Care Program we've implemented.</p>
29	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	<p>Our proposal includes service to all geographic areas in the continental U.S. and Alaska. There are some product and service exceptions and/or additional costs for Hawaii and other U.S. territories. Please see Question 31 below for more details. Staples is not including Canada in the scope of our proposal.</p>
30	Identify any Sourcewell Member sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	<p>Staples has a national presence in the U.S. If re-awarded the office products agreement with Sourcewell, Staples will continue its established efforts to promote the Sourcewell agreement in compliance with Staples' contractual obligations and the suitability of the Sourcewell agreement for the applicable prospect/customer.</p>

31	Define any specific contract requirements or restrictions that would apply to our Members in Hawaii and Alaska and in US Territories.	<p>Staples reserves the right to charge fees to the following locations unless otherwise mutually agreed between Staples and the participating Member.</p> <p>Delivery to Alaska or Hawaii. The following additional delivery terms apply for shipments to Alaska or Hawaii: Shipments up to 159 lbs. will be shipped with transit times of two to three (2 to 3) business days. Shipments over 159 lbs. or items which cannot be shipped via normal means, including any items which are classified as hazmat or ORM-D (other regulated materials for domestic transport only), are shipped via ocean freight. Staples' policies prohibit shipment of any fully regulated hazmat items. Such items must be shipped directly from the vendor. Ocean shipments will be delivered approximately fourteen (14) calendar days from the date of shipment. All shipments to Alaska or Hawaii will be subject to a 25% surcharge to help offset the cost of freight.</p> <p>Every country has specific requirements in which both the exporter and importer must follow; here are some additional specific details for U.S. Territories and Possessions:</p> <p>Delivery to Puerto Rico. The following additional delivery terms apply for shipments to Puerto Rico: Shipments up to 150 lbs. will be shipped with transit times of two (2) business days. Shipments over 150 lbs. are shipped via ocean freight. Any goods classified as ORM-D (other regulated materials for domestic transport only) will also ship ocean freight, regardless of weight. No hazardous goods can be exported to Puerto Rico. Transit time is approximately seven to ten (7 to 10) business days from door-door. Buyer is responsible for all customs or tax filings or applications necessary to effect the importation of the Products. Delays may result from Buyer's failure to satisfy all customs clearance requirements. All taxes, fees, and other costs (including freight) will be charged back to Buyer on a separate invoice.</p> <p>Delivery to U.S. Virgin Islands. The following additional delivery terms apply for shipments to the U.S. Virgin Islands: Shipments up to 150 lbs. will be shipped UPS WorldShip, using the most commercially advantageous WorldShip service available, with transit times of approximately three (3) business days. Products weighing over 150 lbs. will be shipped via ocean freight. No hazardous goods can be exported to these locations. Any goods classified as ORM-D (other regulated materials for domestic transport only) will ship ocean freight, regardless of weight, and will require an additional five (5) days of transit time. Buyer is responsible for all customs or tax filings or applications necessary to effect the importation of the Products. Delays may result from Buyer's failure to satisfy all customs clearance requirements. All taxes, fees, and other costs (including freight) will be charged back to Buyer on a separate invoice.</p> <p>Delivery to American Samoa, Guam, Northern Mariana Islands. The following additional delivery terms apply for shipments to American Samoa, Guam, and the Northern Mariana Islands: Shipments up to 150 lbs. will be shipped UPS WorldShip, using the most commercially advantageous WorldShip service available, with transit times of approximately five (5) business days. Products weighing over 150 lbs. will be shipped via ocean freight. No ORM-D goods or hazardous goods can be exported to these locations. Buyer is responsible for all customs or tax filings or applications necessary to effect the importation of the Products. Delays may result from Buyer's failure to satisfy all customs clearance requirements. All taxes, fees and other costs (including freight) will be charged back to Buyer on a separate invoice.</p> <p>Import/Export. If Staples agrees to export Products from the U.S. to Buyer's locations outside the U.S. (including but not limited to Mexico, Canada and all U.S. Possessions and Territories) (for these purposes referred to as "Other Locations"), the following applies: (a) Staples will not be the Importer of Record for any Products shipping to Other Locations. Buyer or Buyer's agent shall nominate a customs clearing agent to act on its behalf and to facilitate the import customs clearance process. Buyer shall be responsible for obtaining any documentation, such as special permit(s) or license(s) that may be required to import Products; (b) Buyer shall be responsible for payment of any customs clearance and duties and taxes and the full freight cost of the shipment; (c) Staples will not provide Certificates of Origin (C/O) or Free Trade Agreement certificates; (d) Staples will not export the following Products: ORM-D (Other Regulated Materials-Domestic); consumables; and/or Products prohibited from export by Staples' vendors; (e) Staples will not export Products to Other Locations in the event any export restriction applies; and (f) Staples will not accept returns from Other Locations unless agreed in writing.</p>
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Table 7: Marketing Plan

Line Item	Question	Response *
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32	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	<p>Staples response to questions 32 through 34 of this section should be considered as "Trade Secret":</p> <p>Staples' strategy for the national promotion of the Sourcewell Contract consists of four fundamental and ongoing approaches that our experience has shown are critical to the contract's success. These approaches are based on leveraging the unique skills and strengths of our business development and account management sales team.</p> <ul style="list-style-type: none"> • Business Development - prospecting and acquisition process o Continue to focus efforts on acquisition of participating Members in the public sector through the Sourcewell contract o Leverage the unique skills and strengths of our mid-market teams for small and medium sized Members and our enterprise teams for larger more complex Members • New Account Management - new account implementation and ramp o Implement accounts with specificity, efficiency and speed o Comprehensive program training • Existing Account Management - existing account communication and penetration o The development and deployment of program tools to ensure individual entity adoption, compliance, loyalty and satisfaction • Ongoing Internal Training and Education o Continue to develop internal training tools that communicate best practices, processes and contractual specifics throughout our salesforce <p>It is our responsibility and our goal to leverage existing communication tools and best practices to successfully support the Sourcewell contract through the acquisition and implementation of new participating Members and the continued service and management of existing accounts. These tools and tactics are further enumerated in our Attachment 4 – Sourcewell Marketing Plan.</p> <p>We have also included representative samples of some of the marketing materials we make available to your participating Members. Actual examples can be provided upon request.</p> <p>The plan:</p> <ul style="list-style-type: none"> • Is a complete lifecycle of internal and external tools that ensures contract promotion through proven best-practices and constant innovation • Relies on the committed resources of the entire Staples organization, supported by our senior management team • Utilizes a full range of tools and technology including, but not limited to: <ul style="list-style-type: none"> o Online and in-person training tools and techniques o Leveraging the significant investment Staples has made in sales force automation methods to ensure the consistency of message, availability of materials and visibility into progress throughout the entire sales organization. o Internal instructional website presence for sales education o Public-facing website presence for current and prospective Sourcewell participating Members
33	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	<p>As detailed in Attachment 4, Staples utilizes digital, social and sales enablement marketing materials to support Sourcewell targeted opportunities as well as mass communication to select customers. Attached is the comprehensive marketing plan that we have developed to support marketing offerings to support Sourcewell Members. Our marketing plan promotes awareness of the Sourcewell contract to your Members utilizing our marketing technology and ecommerce platform StaplesAdvantage.com</p> <p>ACCOUNT BASED MARKETING (ABM) - USER-FOCUSED</p> <p>To ensure compliance, Staples can use digital retargeting and content syndication to proactively communicate to Sourcewell's membership in order to drive location (site) and end user level (conversion) participation. The goal is to improve compliance and revenue of the Sourcewell/Staples contract.</p> <p>STAPLESADVANTAGE.COM/SOURCEWELL MICROSITE</p> <p>Staples also has a public-facing website that educates prospective and existing customers on the Sourcewell/Staples Contracts:</p> <ul style="list-style-type: none"> • Overall Program Highlights • Contract Highlights • Ordering Overview • Product and Service Overview • Contact Information • Messaging from Sourcewell • Link to www.StaplesAdvantage.com/Sourcewell for more information

34	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	<p>Our success in driving the Sourcewell contract is directly attributable to the support and participation of Sourcewell itself. In continuing to promote the contract, we see significant benefit in this continued support exhibited through:</p> <ul style="list-style-type: none"> • The ongoing collaboration between Sourcewell and Staples that allows for the optimization of identifying, soliciting and acquiring participating Members and contract participants. • The regular communication of industry and public procurement conditions that will allow Staples to tailor its acquisition and management efforts to contract prospects accordingly. • The identification and creation of opportunities that allow Staples to provide Sourcewell participating Members its entire scope of products and services. While providing an increasingly attractive value proposition for prospective Members and a compelling source of value for participating Members. • Assistance in identifying Sourcewell participating Members to provide account of their contract success, these successes would in turn be used to acquire new participating Members to the Sourcewell/Staples contract. • The co-development of marketing materials and the mutual identification of marketing opportunities including public events and trade shows. • Ongoing availability to meet with Sourcewell, Staples' senior-level leadership and sales management to reinforce the opportunity within the contract and the vital role it plays in Sourcewell's and Staples' mutual ongoing success.
35	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	<p>Yes. At StaplesAdvantage.com, participating Members can do more than just order the products they need. Our site is fully customizable to their unique requirements. StaplesAdvantage.com provides easy online ordering, the ability to set spend limits, approval flows, and charge orders to multiple departments plus transactional details to easily reconcile orders. Order management is easy with shopping lists for fast reordering, order tracking, delivery notifications, free returns, reporting and online bill pay. And, we have experience integrating with over 300 third-party purchasing platforms.</p> <p>EASY ORDERING TOOLS</p> <p>StaplesAdvantage.com provides features and functionalities to streamline participating Members' ordering process while minimizing time spent on purchasing the items their organization needs to succeed. Key features include:</p> <ul style="list-style-type: none"> • Increased Login Security – Website generated welcome email contains a password set up link for customers to create their unique password for enhanced security. • Easy Search & Navigation – New header design for effortless navigation and approvals, orders and shopping lists displayed on the home page for easy access. Search by keyword or item number for a summary of categories and top-ranking items that match their criteria. Narrow results by category, brand or your recently purchased items. Advanced search with auto-suggest terms to find what they want fast and the ability to add to their cart from search to save time. • Shopping Lists – Create, save and share lists of frequently ordered or preferred contract items for faster reordering while maintaining program compliance. • Order Status & Tracking – View details on all orders placed in the past 90 days, track their orders and view proof of delivery. • Online Returns – Process returns by clicking Return an Item from the My Order Status page. • Ink & Toner Finder – Search by brand, model or cartridge number. Our enhanced ink and toner finder also includes past purchases and allows end users to save printer information. Or choose from a range of free recycling options by clicking Recycle Ink & Toner. • Favorite Items – Click the heart icon on product tiles and pages to easily add items to a shared or personal shopping list that can be made a favorite. • Time to Reorder – View and reorder items ready for replenishment right from your Home page, based on purchasing history. Frequently purchased items now include a list of products purchased over a one-year timeframe. All order management essentials are available in order history: order search, details, tracking and returns, with up to two years of history. • Easy Savings Alternative – Easy savings alternative products are presented on the product page and at checkout if a similar item with a lower price is available. • Customizable Print Products – Personalize business cards, greeting cards, rubber stamps, nameplates and more using your own design or standard company templates. • Robust Help Center – The StaplesAdvantage.com Help Center enables customers to search help topics, manage their account, track or return orders, view or print their packing slip, get pre-paid address labels to recycle ink and toner and more. <p>ONLINE PROCUREMENT CONTROLS</p> <p>Participating Members can achieve greater control over your purchasing with StaplesAdvantage.com, whether integrated with their existing e-procurement systems or on its own. We offer:</p> <ul style="list-style-type: none"> • User & Location Management – Easily add new users, supervisors and account administrators and remove or add shipping locations. • Approval Controls – Establish spending limits and approval routing to track account expenditures by user and department. • Small Order Controls – To maximize efficiencies, implement order controls that prevent users from placing orders under a minimum amount. • Customization Features – Customize your platform with special instructions and messages to keep users in program compliance. <p>MOBILE CAPABILITIES</p>

		<p>Participating Members can order products, track shipments and access their accounts on their tablets or smartphones using our mobile app. Available for Android and Apple devices, features of the Staples mobile app include:</p> <ul style="list-style-type: none"> • Full account information, including recent orders, orders pending approval and custom deals • Scan-to-order functionality • Search, browse and order on the go • One-touch order approvals • Shopping lists for quick replenishment • Ink & Toner Finder • Quick Order entry • Filterable search results • Order status and package tracking • Integration with StaplesAdvantage.com • Secure Remember Me feature for login convenience <p>ONLINE REPORTING</p> <p>Participating Members can easily access on-demand reports on StaplesAdvantage.com</p> <ul style="list-style-type: none"> • User reports provide pertinent user information including approval hierarchy, ordering limits and assigned ship-to or budget center information. • Spending reports provide a summary of purchases by budget center, bill-to, ship-to or individual for up to 24 months, including details on ordering method, order totals, number of orders and average order size. • Budget reports allow you to monitor the variances between spend versus budget. <p>SCALABILITY</p> <p>If a participating Member has a surge in new hires or acquires a new division, their Staples team is ready. StaplesAdvantage.com is fully scalable to meet their changing business needs. We have the infrastructure in place to handle the ordering needs of additional users without affecting website performance. We analyze site capacity levels and plan for additional volume months in advance. We conduct stress tests regularly to ensure optimum site performance and site speeds.</p> <p>MANAGED PRINT SERVICES</p> <p>DEX Imaging's e-info and Patrol work together as an online reporting channel for participating Members' Printer Fleet. The e-info portal allows the client-based management of an account. Using e-info gives Members the ability to manage devices online by ordering supplies, checking status orders, initiating service requests, inputting meter reads, and generally reviewing all accounting facets. This information is extracted from the Patrol Wi-Fi device we install on all printers on the day of delivery. Patrol safely and securely receives real-time printer information from your print network to order supplies and monitor print volumes, providing the necessary information for powerful reports on printing efficiency. No more wasted staff time with supply ordering or meter readings — the Patrol device will let us know when to ship toner or schedule routine maintenance.</p>
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Table 8: Value-Added Attributes

Line Item	Question	Response *
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36	Describe any product, equipment, maintenance, or operator training programs, and any on-boarding resource or training that you offer to Sourcewell Members. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	<p>Staples can introduce a comprehensive communication campaign prior to program launch to ensure participating Member's employees have a full understanding of their new Staples program. As a standard, we train through online webinars to ensure participating Member's employees across locations and remote users have access to the sessions. Other types of training sessions can be provided, if needed. Our Field Marketing team will customize a plan to maximize program awareness at all your locations, including providing information on available trainings.</p> <p>Tools and support materials are always available at StaplesAdvantage.com/Information. Customized materials can be provided upon request. Training sessions can also be scheduled as needed throughout the life of your program.</p> <p>JANITORIAL TRAINING PROGRAMS</p> <p>To create a successful janitorial program for participating Members, Staples provides customized training programs to demonstrate the best procedures for your staff to use our products. By employing the correct procedures and techniques, Members' facilities staff will dramatically reduce its labor and product costs, increase productivity and improve their sustainability program.</p> <p>We have a dedicated Facilities Technical Training team for both customer and in-house training. This team has an average of 25 years' experience and is certified in the ISSA Cleaning Industry Management Standard, ISSA Cleaning Industry Training Standard, OSHA and GHS standards.</p> <p>We use a library of ISSA-certified training programs along with customized curriculum developed for the specific needs of our customers. Our training materials include process manuals and bi-lingual wall charts. Training methods include onsite and web-based programs, as well as in-person at our training facility in Aurora, Colorado.</p> <p>The courses we provide include:</p> <ul style="list-style-type: none"> • Introduction to cleaning • General safety • Hard floor care • Restroom care • General cleaning • Carpet care • Hazard communication • Customer service <p>Completion of our training program qualifies participating Members' employees for ISSA CITS Master Cleaner Certification.</p> <p>PRINT & MARKETING TRAINING</p> <p>Participating Members will receive customized training and extensive ongoing support from your Staples account team to ensure a successful program launch. Your Print & Marketing Account Executive can provide training for your users. It's our goal to make ordering your print products simple and easy.</p> <p>About four weeks prior to the go live date, our Field Marketing team will create an announcement for Members to send to their users that will help set the tone for their Print program's success. Over the next few weeks we'll follow up with Coming Soon communications to promote program awareness and advantages of your new program with Staples. Staples can send training announcements to users with dates and web-based training details, plus user guides. Their Print & Marketing Account Executive will host trainings, ensuring that their trainer has intimate knowledge of their program details.</p> <p>Once the program launch is complete, participating Member's Print & Marketing Account Executive will continue to monitor the print program to identify areas of improvement and opportunity for increased efficiencies.</p> <p>MANAGED PRINT SERVICES</p> <p>Training for printers and copiers will be performed upon delivery of new equipment and offered through the term of the agreement at no charge. Training is provided by either the DEX Imaging Help Desk Team, Customer Service Team, or our Systems Engineer team. Users will be given key-op training and instructions sheets for better understanding of the equipment. Initial training happens at install and should include all users pointed to a specific device. Multilayer training is available for users of different skill levels. Training will include functionality of the device, operating within the workflow of a specific department, responsible use of the equipment, describing policies set forth by the Administration team as well as general use directions. Ongoing training can be scheduled with the account team and is suggested for new employees, workflow changes, departmental changes and new policies implemented by the facility.</p>
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<p>37</p>	<p>Describe any technological advances that your proposed products or services offer.</p>	<p>To remain at the forefront of our industry, we are constantly implementing new and innovative ideas so that we can enhance the services and offerings we bring to our customers. Some of our current innovations include the following:</p> <p>WORKLIFE PRODUCTS & SOLUTIONS</p> <p>With the introduction of our new innovative products we offer tools and systems that help drive solutions in business essentials, breakroom, facilities, technology, and furniture.</p> <ul style="list-style-type: none"> • Tru Red. Thoughtfully designed business essentials to help you work, create and innovate better. Quality tested and engineered to last. • NXT Technologies. Tech products to keep your teams connected and productive — whether they're at the office or the airport, a coffeehouse or the couch. • Coastwide Professional. Professional-grade facility and pack and ship supplies built to spec and made to perform, with no wasted product or labor. • Perk. Breakroom essentials designed with quality, value and just the right touch of personality to bring fun and energy to break time. • Union & Scale. Furniture and decor that work together in perfect harmony. There's a collection for every style and work style. <p>BLUPRINT™ SITE ASSESSMENT TOOL</p> <p>The Staples BluPrint app is the industry's first and only mobile solution for site assessments for janitorial and facilities programs. Using this innovative tool, the Staples Facilities Specialist can take pictures of various areas and have a conversation with the facility manager about their recommendations for enhancing current assets. Later, a report is generated that includes those pictures as well as a written description of the recommendation and rationale behind it. Then, the Staples Facilities Specialist shares a customized presentation translating our findings into a straightforward, impactful current versus future state comparison.</p> <p>SMARTSIZE PACKAGING™</p> <p>Order delivery is a major area of Staples' and our customers shared environmental footprint. Staples has rolled out award-winning SmartSize technology to most of our U.S. fulfillment centers that tailors box sizes to the exact size of the order. In addition to utilizing about 20% less corrugate, SmartSize lessens our use of air pillows by approximately 60%. In addition, it not only reduces packaging waste, but helps optimize the available space of our courier vehicles.</p> <p>ROBOTIC MATERIAL HANDLING SOLUTION</p> <p>Staples recently developed a cutting-edge robotic material handling solution for our fulfillment centers. Unlike other systems in the market today, the automated robotic storage and retrieval system incorporates two types of automated guided vehicles into a unified system that brings both high and low cubic velocity items to a single pick and pack station. This unique robotic material handling solution provides a more efficient and flexible warehousing operation that improves service to our customers.</p> <p>This solution is live in four of our fulfillment centers and is rolling out across our remaining fulfillment centers in the months to come. We are also exploring other potential applications for our groundbreaking technology outside of our fulfillment centers.</p> <p>E-COMMERCE</p> <p>Staples' new strategy is driven by the company's commitment to helping professionals make their workplaces more productive and connected, and to provide products and services designed to help inspire colleagues to do their best, most creative work.</p> <p>Central to our reimagined brand is an upcoming new, interactive digital experience to make it easier for customers to build a workplace that makes every employee's Worklife fulfilling and collaborative. The future online experience will connect customers to products and solutions in a variety of ways, from intelligent content and peer recommendations, to intuitive shopping and buying tools. Recent enhancements include making it easier to find and reorder product, improving basic ordering features and adding more self-service features.</p> <p>PRINT</p> <p>Technological advances are critical to our corporate strategy. Within print, new direct-to-plate, electronic proofing, digital presses, and electronic pre-press are constantly evolving. The internet has changed and improved many business processes. Electronic forms of varying complexities continue to improve overall business processes. The communications infrastructure required to successfully integrate these technologies is also improving. All these technologies, and more, are changing the printing industry.</p> <p>MANAGED PRINT SERVICES</p> <p>Patrol box is a device hardware, firmware and server application that was developed by DEX Imaging's internal R&D department. It is a patented device that uses smart technology for supply replenishment. To date, over 10 patents have been filed for the PrintCounts embedded Patrol device and requisite software.</p>
<p>38</p>	<p>Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.</p>	<p>Staples offers a full array of sustainability solutions to help participating Members meet their sustainability goals. As a partner committed to sustainability, we carry a large assortment of eco-responsible products across all our product categories, provide comprehensive environmental reporting and offer industry-leading recycling and waste reduction programs. Our sustainability experts can design a program tailored to each participating Member's goals and our Field Marketing personnel will help promote it to their employees. Please see Attachment 5 for more details.</p>

<p>39</p>	<p>Identify any third-party issued eco-labels, ratings or certifications awarded to the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.</p>	<p>ENVIRONMENTAL CERTIFICATIONS ENERGY STAR® CERTIFICATION To improve energy efficiency, we began participating in the ENERGY STAR Building Certification program with the goal of certifying 50% of our active facilities by the end of 2020. At the end of 2018, 51% of our active facilities were ENERGY STAR certified, reaching our goal ahead of schedule. Each certified site has increased energy efficiency by 20% to 30%. For our efforts, Staples has received the EPA's ENERGY STAR Partner of the Year Award for 9 consecutive years.</p> <p>ENVIRONMENTAL PRODUCT CERTIFICATIONS Staples offers a wide array of eco-conscious products that are third-party certified. We track dozens of leading environmental certifications down to the product level, which we can then report to our customers. These items are easily identified in our catalogs and online. Some examples include:</p> <ul style="list-style-type: none"> • ENERGY STAR and EPEAT qualified technology • FSC certified, recycled and alternative fiber-based papers • Green Seal™, UL EcoLogo, and U.S. EPA Safer Choice certified cleaners • AP non-toxic certified writing instruments and art supplies • GREENGUARD, Indoor Advantage and LEVEL-certified furniture <p>ENVIRONMENTAL PARTNERSHIPS & AFFILIATIONS</p> <ul style="list-style-type: none"> • Sustainable Purchasing Leadership Council (SPLC) – This non-profit organization supports and recognizes purchasing leadership that accelerates the transition to a prosperous and sustainable future. Staples is a member of this organization as both a supplier and purchaser. • U.S. EPA ENERGY STAR for Buildings Partner – Staples joined the ENERGY STAR for Buildings program to advance energy efficiency in our operations. • U.S. EPA WasteWise Partner – This voluntary program focuses on helping organizations eliminate waste and increase recycling rates across their operations; Staples joined in 2005. The program has helped us measure and set goals for waste reduction and recycling internally. • U.S. EPA Sustainable Materials Management Electronics Challenge Partner – This voluntary program works to increase the number of electronic devices collected and safely recycled in the U.S. Staples was the first retailer to offer a national office technology-recycling program. • GreenBlue Sustainable Packaging Coalition (SPC) – This non-profit, multi-stakeholder group is dedicated to a more robust environmental vision for packaging. Through strong member support, an informed and science-based approach, supply chain collaborations and continuous outreach, the SPC endeavors to build packaging systems that encourage economic prosperity and a sustainable flow of materials. • GreenBlue Forest Products Working Group – This brings together leading companies that rely on paper, wood and other forest products to share their knowledge and develop innovative solutions to support thriving forests and the forest products industry. • Rainforest Alliance Appalachian Woodlands Alliance (AWA) – We have been working with Rainforest Alliance and several other brands as part of the AWA for several years to explore and test new models for advancing responsible forestry practices in the southeastern U.S. • Carbon Disclosure Project – We have voluntarily reported our greenhouse gas emissions inventory data to this organization since 2005 as part of our commitment to reducing our global carbon emissions. We also share our emissions data with any commercial and enterprise customer who requests it through the CDP Supply Chain program. • EcoVadis – Staples works with EcoVadis, the world's most trusted provider of business sustainability ratings.
<p>40</p>	<p>Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.</p>	<p>Staples shares Sourcewell and its participating Members' commitment to diversity and offers your choice of two diversity programs to achieve participating Member's diverse and small business supplier spending goals.</p> <p>DIVERSITY ONE PROGRAM We've formed strategic alliances with highly respected and experienced diverse and small business suppliers. Using a rigorous supplier qualification process, our Diversity One program connects participating Members with a certified supplier who will collaborate with Staples to provide a fully managed program that meets the quality standards, service and scope required.</p> <p>We find successful, independently owned and credible diverse companies and help them grow their businesses, create jobs and expand their offerings. Staples provides our Diversity One suppliers with extensive coaching and mentoring to build capacity within their organizations.</p> <p>DIVERSITY TWO PROGRAM With this program, participating Members can access a wide selection of high quality, cost-effective products manufactured by diverse and small business suppliers. Participating Members can benefit from:</p> <ul style="list-style-type: none"> • A wide selection of high-quality products easily identified by MBE and WBE symbols • Products across every category — business essentials, furniture solutions, facility solutions and technology solutions • Detailed reporting and tracking of their diverse product spend • Expert, consultative support from their Staples Account Manager, who will identify opportunities to utilize these product groups and report on the Member's progress <p>Please note that Staples reserves the right to implement a pricing upcharge when setting up a Tier One program for any participating Member.</p>

41	<p>What unique attributes does your company, your products, or your services offer to Sourcewell Members? What makes your proposed solutions unique in your industry as it applies to Sourcewell members?</p>	<p>As Sourcewell's current contract supplier, we plan on increasing our overall value and to continue offering built-in flexibility to accommodate the evolving needs of your participating Members. Our new proposal offers a full-service approach that contains the following elements and molds them into a cohesive, cost-reducing procurement program that is unmatched by other suppliers in our industry:</p> <ul style="list-style-type: none"> • Worklife Solutions – Participating Members can maximize unique supplier consolidation savings through our integrated product and service offering, which includes business essentials, facility solutions, breakroom offerings, business furniture and interior design services, pack and ship supplies, technology products and services, promotional products and print and marketing services. • Financial Strength – You never need to worry about us falling short or cutting corners. Our leading financial position allows us to continually invest in our business and provides participating Members with the confidence of working with a strong and stable supplier. • Dedicated Account Team – We put together a full, dedicated team for participating Members' business. Your Account Manager provides insights and recommendations on Worklife solutions. Your Customer Success Consultant manages your programmatic needs and a Site Management team proactively ensures compliance of your program across all locations. • Category Expertise – Industry experts provide assessments and advice on products and process efficiencies. • Superior Delivery Execution – Rely on free, accurate next-business-day delivery to your locations from our strategically located, state-of-the-art fulfillment centers. • E-Procurement Expertise – Our website provides easy online ordering, the ability to set spend limits and approval flows, line item budget center to charge orders to multiple departments and transactional details to easily reconcile orders. Order management is easy with shopping lists for fast reordering, order tracking, delivery notifications, free returns, reporting and online bill pay. And, we have experience integrating with over 300 third-party purchasing platforms. • Recognized Customer Call Centers – Exceeding your expectations is our highest priority. Our knowledgeable Customer Service team is ready to solve your problem in one call. • Largest Retail Network – Our industry-leading network of U.S. stores gives participating Members easy same-day purchasing solutions. Your employees can make in-store purchases and receive your customer pricing for both office supplies and a full range of print solutions on marketing and print services. Or, use our Buy Online, Pick Up in Store option, and your items will normally be available for pick up in less than one hour. • Managed Print Services – DEX Imaging is completely unique in its approach to manage print. We offer multiple programs in managed print to accommodate the various types of organizations and buying strategies. The programs listed within this RFP are by themselves incredibly flexible, and our ability to cross pollinate between these programs is what truly separates us from the competition. This flexibility allows us to partner with any organization regardless of structure and/or financial limitation. • Incentives & Recognition – Staples Promotional Products' incentive and recognition offering is a full-service program built around strategy, technology, execution and ROI measurement. It is the pairing of these services and the people who bring them to clients that creates differentiation. Providing counsel on the best approach and the best way to invest funds in an incentive program means we will counsel you on methods that save you money as well. We can offer participating Members multiple economical options to meet their requirements. • Corporate Responsibility – We are committed to corporate responsibility and recognize the close connection between our success and our efforts in the areas of environmental sustainability, ethics, diversity and community. • Worklife Magazine – In 2019, we launched the first issue of our quarterly magazine, Staples Worklife. Available online and in print, this magazine is for professionals and offers insights, ideas and practical know-how for decision-makers and problem-solvers. It features exclusive interviews with today's trailblazers and articles written by business and productivity experts. <p>With Staples, our focus is our customers' Worklife needs. Sourcewell participating Members can rely on expertise that helps them make smarter purchasing decisions. With the introduction of our new innovative products we offer tools and systems that help drive solutions in business essentials, breakroom, facilities, technology and furniture.</p> <ul style="list-style-type: none"> • Tru Red – Thoughtfully designed business essentials to help you work, create and innovate better. Quality tested and engineered to last. • NXT Technologies – Tech products to keep your teams connected and productive — whether they're at the office or the airport, a coffeehouse or the couch. • Coastwide Professional – Professional-grade facility and ship and pack supplies built to spec and made to perform, with no wasted product or labor. • Perk – Breakroom essentials designed with quality, value and just the right touch of personality to bring fun and energy to break time. • Union & Scale – Furniture and decor that work together in perfect harmony. There's a collection for every style and work style.
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42	Identify your ability and willingness to provide your products and services to Sourcewell member agencies in Canada.	Staples is willing to explore providing goods and services to Sourcewell participating Members located outside the U.S. Sales to such locations will be made in accordance with the operational requirements of our non-U.S. businesses, as well as the requirements of applicable local law. Please note that expanding the use of this contract into other countries will require addenda to the contract, as Staples uses separate legal entities in its non-U.S. operations.
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Table 9: Warranty and Performance Standards

Describe in detail the warranties applicable to the equipment or products included in your proposal, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *
43	Do warranties cover all products, parts, and labor?	<p>Supplier expressly warrants that it will provide Buyer with pass-through of all manufacturers' warranties for all office products sold to Buyer. Supplier expressly warrants that all Supplier-branded Office Products provided by it are: (1) merchantable; (2) of good quality and workmanship; (3) free from defects, latent or patent, in material, design, and workmanship for whichever period is shorter, either (a) one year from the date of purchase, or (b) as otherwise specified on the packaging of the Office Products; (4) fit, sufficient and safe for their intended purpose and for the particular purpose for which they were designed; and (5) in conformity with Supplier's samples, if any.</p> <p>CUSTOM-IMPRINTED PRODUCTS</p> <p>Prior to Supplier's production of custom products such as print or promotional items and items which contain a corporate or personal logo, name or other marking of Buyer (hereinafter "Print Products"), Supplier shall submit to Buyer samples or an appropriate proof of each item, for Buyer's written approval of the Print Products. Buyer agrees to promptly review any items submitted to Buyer for approval under this section.</p> <p>Supplier warrants that Print Products in their unaltered, unmodified form are free from defects in design, workmanship and materials and are in compliance with the specifications agreed to by the Parties. In the event any defects in design, workmanship or materials, or material deviation from the specifications or claims made by Supplier, are discovered by Buyer, Buyer's sole and exclusive remedy shall be, at Supplier's sole election, for Supplier to replace the defective Print Product at Supplier's expense or to credit Buyer's account for the net amount actually paid by Buyer to Supplier for the applicable Print Product, provided that Supplier is reasonably certain that the warranty claim is valid and was not caused by Buyer.</p> <p>The following terms apply when Members provide content for Staples to reproduce:</p> <p>Buyer Warranty. Buyer represents and warrants that it owns or has the right and license to use, adapt and reproduce Buyer Property. Buyer represents and warrants that Buyer Property shall not infringe or misappropriate any patent, trademark, trade secret, mask work, copyright, design or any other proprietary right of any third party, and complies with all applicable federal, state and local laws, regulations, and rules. Buyer grants to Supplier a non-exclusive, worldwide, royalty-free and fully paid up right and license to use, reproduce and incorporate Buyer Property solely in connection with Supplier's obligations hereunder. Supplier acknowledges that, as between Supplier and Buyer, Buyer owns, controls and shall retain all ownership rights in and to Buyer Property. All proprietary rights and goodwill in the Buyer Property shall inure to the benefit of Buyer and not Supplier. Supplier shall acquire no intellectual property rights in the Buyer Property by reason of its use thereof, and if, by operation of law, or otherwise, Supplier is deemed to, or appears to, own any intellectual property in the Buyer Property, Supplier shall, at Buyer's request, execute any and all documents necessary to confirm or otherwise establish Buyer's rights therein. Buyer acknowledges that, as between Supplier and Buyer, Supplier owns, controls and shall retain all ownership rights in and to Supplier's proprietary systems and business processes and any designs, artwork, prototypes, or other materials prepared or produced by or for Supplier.</p> <p>Buyer's Property means the trade names, logos, artwork, forms, trademarks, copyrights, trade devices, trade dress, service marks, symbols, abbreviations, registered marks, indicia of ownership, information, representations, descriptions, classifications, characterizations, statements, or language contained in or on any print or electronic content or materials provided to Supplier by Buyer in connection with Supplier's performance hereunder.</p> <p>To the extent permitted by applicable law, Buyer shall indemnify, defend and hold harmless Supplier for any third party claims, suits, judgments, and costs instituted or recovered against Staples for any alleged or actual infringement</p>

		<p>of any patent, copyright, trademark, trade secret or other intellectual property or other rights of a third party resulting from (i) Buyer's breach of Buyer's warranty related to Buyer Property; or (ii) Supplier's use of Buyer Property in accordance with the specifications provided by Buyer.</p> <p>SERVICES WARRANTY Supplier warrants that the Services shall meet or exceed generally accepted standards in the industry and shall meet any required specifications mutually agreed upon by Supplier and Buyer. Staples' labor services are warranted for one year.</p> <p>MANAGED PRINT SERVICES Each of the programs contract includes supplies, service/maintenance, and parts. DEX Imaging also offers a Lifetime Performance Guarantee on all products and services. Provided that equipment is maintained and serviced under a DEX Equipment Maintenance & Supply Agreement (EMS), DEX Imaging guarantees it. If a unit is not performing up to manufacturer specifications/expectations and DEX Imaging is unable to repair the unit, it will be replaced at no charge.</p> <p>GENERAL WARRANTY DISCLAIMER These warranties are exclusive and in lieu of all others, whether oral or written, express or implied. Supplier specifically disclaims any and all implied warranties, including, without limitation, any implied warranties of merchantability and/or fitness for a particular purpose.</p>	
44	Do warranties impose usage restrictions or other limitations that adversely affect coverage?	Please see our response to Question 43 above.	*
45	Do warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Please see our response to Question 43 above.	*
46	Are there any geographic regions of the United States (and Canada, if applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell Members in these regions be provided service for warranty repair?	<p>Our proposal includes service to all geographic areas in the continental U.S. and Alaska. There are some exceptions for Hawaii and other U.S. territories. Staples is not including Canada in the scope of our proposal.</p> <p>For products purchased through Staples, all manufacturer warranties are passed on to the Member and upheld. Staples will reasonably assist in coordinating the repair or replacement of the product by the manufacturer.</p>	*
47	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	<p>For products purchased through Staples, all manufacturer warranties are passed on to the Member and upheld. Staples will reasonably assist in coordinating the repair or replacement of the product by the manufacturer. Please see our response to Question 43 for more details.</p> <p>MANAGED PRINT SERVICES Service is included on all print devices covered under your MPS contract. DEX Imaging performance guarantee extends beyond manufacturer warranty. Please see our response to Question 43 for more details.</p>	*
48	What are your proposed exchange and return programs and policies?	<p>If for any reason you are not completely satisfied with a product purchased from Staples, you may return it within the applicable return period. We will gladly 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. At any time, you can call our Customer Service team to submit a return or use our no-hassle online return process offered through StaplesAdvantage.com. Your delivery driver will pick up the returned item, so no shipping expense is required from you. Credit for returned items is issued once the items are received at the Staples fulfillment center. Typically, returns are picked up within 1 to 5 business days and the credit is released within 24 to 48 hours after receipt of the items.</p> <p>RETURN PERIODS BY PRODUCT</p> <ul style="list-style-type: none"> • Office Supplies, School Supplies and Facilities Supplies – 30 Days • Software (unopened)* – 30 Days • Opened or defective software may be exchanged for the same title and version within 30 calendar days of receiving the software. • Technology Items and Business Machines – 14 Days • Furniture – 14 Days after delivery (Only products in new condition, unassembled and in original packaging are eligible for return. A restocking fee may apply. Special-order or non-stocked furniture is not returnable, unless such products arrive damaged or defective.) • Non-Stock Products – Not returnable unless damaged/defective (within 30 days) • Custom-Imprinted Products – Not returnable unless damaged/defective <p>FACILITY SUPPLIES & EQUIPMENT We gladly accept the return of stock merchandise within 30 days from the date of delivery. Large orders and merchandise returned after 30 days may be subject to a restocking fee. Additional charges may be incurred for shipping and handling of hazardous or oversized materials. Partial cartons of hazardous materials cannot be returned. Equipment, including custom configured equipment, returns are subject to applicable manufacturer terms and restrictions.</p> <p>FURNITURE</p>	

If for any reason you aren't completely satisfied with a furniture product, or if a product arrives damaged or is found to be defective, you may request to return it within 14 days of its delivery. Sourcewell participating Members can contact your Customer Service team to initiate the return process. The product must be returned to Staples with its complete and original packaging intact (original UPC code, packaging materials, instructions, manuals, etc.). Special order, customized, manufacturer-direct shipped or assembled items are not returnable, unless such products arrive damaged or defective.

PRINT & MARKETING SERVICES

Custom imprinted products are not returnable unless damaged or defective. These items may include, but are not limited to, all business cards, business forms, letterhead, promotional products, products customized per customer's specifications and products that have been imprinted with the customer's trademark, trade name, service mark and/or logo. Staples can work with participating Members throughout the design and proofing process to ensure your print products match your exact specifications. We conduct a thorough analysis of all damaged or defective products to ensure quality issues are corrected at our production facilities.

PROMOTIONAL PRODUCTS

Should a product arrive damaged or defective, please contact our Promotional Products Customer Care team to report it within 48 hours of receipt. Based on the specific damage or defect, Staples will either replace the item or issue a credit to your account. We conduct a thorough analysis of all damaged or defective products to ensure quality issues are corrected at our production facilities.

TECHNOLOGY PRODUCTS

At any time, Sourcewell participating Members can contact your Staples Technology Solutions (STS) Customer Service Representative for a Return Authorization (RA) number before returning any product. All returns/replacements must be in their original packaging and in resalable condition. We are unable to accept returns of non-stock, obsolete or special-order items that were ordered incorrectly. If product is being returned due to an error by STS, our Customer Service Department will provide a return authorization (RA) number and call tag to pick up the product. Returns of certain IT hardware are governed by the policies for return supported by the distribution source and manufacturers used. These may limit returns of non-defective items to a certain time period. They may limit returns of items once opened. They may include specific restocking fees. STS will actively work on behalf of Sourcewell to minimize and mitigate the impact of these limits and fees. We will ship replacement product on the same day that STS is made aware of the situation, as long as it is prior to 3:00 p.m. EST.

MANAGED PRINT SERVICES

DEX Imaging offers multiple programs which gives us the ability to provide a replacement or service loaner machine, if existing isn't operating up to standard, under our Performance Guarantee. Our rental programs also allow flexibility to change equipment if your environment circumstances change – i.e. you can swap out a Mono Printer for a Color Printer. Our Hot Spot Program is also available for devices that are under rental. Under this program, devices can be replaced on the fly, keeping critical areas at a 99.9% uptime.

DAMAGED/DEFECTIVE ITEMS

Please call your Customer Service team to return damaged or defective products. Your account will be credited when returned merchandise is received back into inventory. We conduct a thorough analysis of all damaged or defective products to ensure that our manufacturers correct any quality issues.

IMPORTANT NOTES ABOUT ALL RETURNS

- Non-defective dated goods such as forms, batteries, film, toner and ink cartridges are subject to approval and require a Return Authorization for credit.
- Calendars cannot be returned after January 31 of the year to which they correspond.
- For health and safety reasons, food, beverages, first aid and medical products cannot be returned.
- For similar reasons, janitorial and sanitation products (such as cleaning chemicals) can only be returned in unopened and unaltered original case quantities and packaging.
- 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.
- Neither party shall be liable for any consequential, incidental, special or exemplary damages arising out of or in connection with the sale, delivery, use or performance of the product. In no event shall Staples be liable (whether in contract, tort or otherwise) for damages arising out of or relating to a breach of any warranty or the sales, delivery, installation, use or performance of the product that exceed the purchase price of the product.
- Additional charges may be incurred for the shipping and handling of

		<p>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.</p>
49	<p>Describe any service contract options for the items included in your proposal.</p>	<p>Staples offers a number of lease/service agreement options to meet Sourcewell Members' unique product and/or service needs. These lease options may include the following products and/or services and may require additional signed agreements between Staples and the requesting Sourcewell Member:</p> <p>Coffee: We provide the coffee brewer, installation; maintenance and service through the term of the lease as long as the minimum spend requirements are met for coffee products. Minimum spend requirements vary by type of brewer.</p> <p>Water: Program offered is a lease agreement – the customer pays established fees per month and Staples installs, maintains and services the filtration unit. The customer pays for the number of 5-gallon water bottles delivered to them and has an option to lease a water dispenser if desired – or they can choose to use their own 5-gallon water dispenser.</p> <p>Ware Wash: Utilizes equipment that dispenses chemicals into a commercial dishwasher and Diversey provides the installation and the service as part of the customer's purchase of the Diversey chemicals through Staples.</p> <p>Managed Print Services. DEX Imaging's Managed Print Services help participating Members create a more efficient, customized and sustainable printing network. We can help Sourcewell's participating Members customize a solution that utilizes a vendor neutral strategy which allows us to provide service and support for most print models and devices.</p>

50	Describe any performance standards or guarantees that apply to your services (back-orders, retired products, substitutions, order delays or problems, metrics, etc.).	<p>Delivering your order complete, correct, undamaged and on-time is as important to us as it is to you. Our Supply Chain Quality Assurance team partners cross-functionally within the Staples organization to drive an outstanding customer experience. This means we strive for orders to be picked complete and correct, delivered on-time to the correct location, without damages or defects, every day. The Staples' Supply Chain Quality Program includes:</p> <ul style="list-style-type: none"> • Quality Assurance Supervisors and Leads located in each of our fulfillment centers to drive process improvements • A central Supply Chain Quality Assurance team that develops tools and processes to help local Quality Assurance teams identify and address defects within the order fulfillment process • Conducting weekly interactive and cross-functional collaboration forums to share best demonstrated practices and trends within the business • Tracking key metrics on a daily, weekly and monthly basis <p>THE PROOF IS IN THE NUMBERS</p> <p>We track a variety of metrics to measure quality and service throughout our fulfillment and delivery operations.</p> <ul style="list-style-type: none"> • Fill Rate – Calculated as the percentage of in-stock items shipped from your primary fulfillment center. Our fill rate for 2018 was 97.1%. • Missing & Wrong Rate – Calculated as the percentage of total orders with an error. We count each issue within one order as separate errors. Our missing and wrong rate for 2018 was 0.37%. • Returns Rate – Calculated as the percentage of returns placed. When returns occur, we have processes in place to credit you quickly. Our returns rate for 2018 was 1.45%. • Delivered by Date Confirmed – Calculated as the percent of fulfilled shipments (excluding dropship) where all cartons were delivered on or before the date promised at order confirmation. Our delivered by date confirmed rate for 2018 was 92%. <p>If quality levels fall below expectations, we use a combination of root cause analysis and process improvement techniques to identify and resolve the problem. Our continuous improvement processes have resulted in year-over-year quality level improvement.</p> <p>BACKORDERS</p> <p>Staples goes to great lengths to stock the right assortment of products to meet our customers' needs. We use sophisticated inventory models to ensure that items are stocked in the right fulfillment centers and in the right quantities. We continuously gather customer input to determine which products to include in future stocking models, including the slower moving but necessary ones.</p> <p>Staples' fulfillment logic can source an item from the next closest fulfillment center or a wholesaler when an item is temporarily out of stock. This platform technology allows Staples to fulfill a high percentage of orders immediately. Orders filled by wholesalers are married up with your Staples orders for seamless, on-time delivery. During the implementation process, Staples can work with participating Members to eliminate wholesale items from your core list to offer the best selection of items at the optimal price.</p> <p>Users on StaplesAdvantage.com can also confirm that an item will be delivered the next business day by viewing the Expected Delivery Date notification which automatically displays per item during check out. The checkout page displays a banner when there's an out of stock item. This provides the end user with the opportunity to choose a replacement the item, if preferred.</p> <p>When backorder situations occur, customers receive an email notification alerting them of the delay and of the expected delivery date.</p>
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Table 10: Payment Terms and Financing Options

Line Item	Question	Response *
51	What are your payment terms (e.g., net 10, net 30)?	<p>Staples' standard payment terms are Net 30 days. Each participating Member will remit all invoice payments, including all taxes on its product purchases to Staples in thirty (30) calendar days from receipt of invoice, unless otherwise agreed to in writing by Staples and Member. In the event a participating Member fails to comply in any material respect with the foregoing payment terms, Staples may, at its sole discretion and in addition to any other right or remedy available under applicable law or in equity, immediately suspend all deliveries to such Member's location(s) by written notice to such participating Member and to Sourcewell.</p>

52	Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?	Staples is flexible and utilizes multiple third-party leasing sources for eligible Staples customers. Participating Members may have an existing relationship with their own choice of leasing providers, and we may work with that provider if mutually agreed to. Leasing terms and conditions vary by lease provider and the requirements of the acquisition and are determined as the solution is developed and the leasing source is finalized. Our broad range of leasing options is flexible so that you can tailor the length, acquisition type and amount of your payments to meet your business' needs. Lease options include capital or operating lease options, giving you end of term options to keep (own), upgrade or return assets. Leases may allow for certain soft expenses like service, software and accessories to be include in the monthly payments for an asset acquired under lease. Staples can work with your organization to help finalize the option that best suits your needs.	*
53	Briefly describe your proposed order process. Include enough detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell Members' purchase orders.	Staples operates as a reseller/distributor and does not have a dealer network. Our key business goals center on helping our customers simplify the ordering process, eliminating hidden costs in the procurement process and enhancing delivery accuracy. We offer a variety of ordering methods to achieve these goals: <ul style="list-style-type: none"> • Online via StaplesAdvantage.com • Mobile App • Electronic Data Interchange (EDI) • Third-party interface • Buy Online, Pick Up in Store • Telephone (toll-free number) ORDER FULFILLMENT PROCESS <ol style="list-style-type: none"> 1) Order Placement – Once Staples receive the participating Member's order, it is entered into our order management system. Our system manages customer requirements and validates each order as it is placed. 2) Order Sourcing & Routing – Once in our system, the order goes through a standardized process that determines how to fill the order. The system chooses the best location to source the item, either from the primary or secondary fulfillment center or from a wholesaler — whichever will provide the shortest delivery time for the customer. 3) Box Creation – Next, the warehouse management system creates the optimal box size for each order. Our system analyzes the dimension and weight of each product to ensure their order is protected against damages without excess packaging material. Each carton receives a unique barcode to track it throughout the order cycle in our package tracking system. 4) Order Picking & Quality Control – Fulfillment associates pick orders, inspect for quality and pack orders for shipment. Methods for picking orders include pick-to-light, robotic picking and system-generated tasks to pick everything from a full pallet of paper to an individual toner cartridge. Sophisticated conveyor systems direct cartons through the required pick zones, through Quality Control for final inspection and then finally onto the correct truck for delivery. We perform regular analysis to ensure every order is a complete order — delivered the next business day, without substitutions or damaged, wrong or missing items. 5) Delivery – Once the source for an order is determined, our order management system determines the best method for delivery. Package tracking information uploads into our system once the fulfillment center processes the order for shipping. This tracking system reduces delays, errors and provides visibility to Customer Service Representatives and delivery associates. Customers can check the status of their orders through package tracking on our e-commerce site without contacting customer service. QUARTERLY REPORTING TO SOURCEWELL Staples understands this requirement and has the ability to provide quarterly reporting as requested. However, further discussion is requested on the distribution methods for reporting due to the size and scope of the metrics and transactions to be included.	*
54	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell Members for using this process?	Yes. Procurement Cards (P-Cards) represented by one of the major credit cards (Visa, MasterCard, American Express and Discover) may be used at the time of purchase. However, P-cards may not be used to pay invoices.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can

be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcwell Price and Product Change Request Form.

Line Item	Question	Response *
55	<p>Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcwell discounted price) on all of the items that you want Sourcwell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.</p>	<p>Staples proposed pricing model is designed to take advantage of our industry leading assortment of products, equipment and services. The offering includes a large number of net priced items on the Core List that facilitates price stability on office supplies, school supplies, facility solutions, breakroom products, technology products, furniture and other business essential supplies.</p> <p>Additionally, there is pricing for services and manufactured items like managed print services, promotional products, and printing. Rounding out the offering is non-core pricing that will take advantage of leveraging Staples' strength as one of the largest sellers of office supplies on the Internet.</p> <p>Today, market-based pricing provides full visibility and disclosure of pricing. Successful online sellers like Staples invest in systems and intelligence gathering to strive to ensure that market-based prices are set and maintained in a market-competitive structure.</p>

56	<p>Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.</p>	<p>Staples proposes the following pricing structure:</p> <p>Core List. The “Core List” represents net priced items which are inclusive of those products predicted to be the most commonly used products by Sourcewell and its participating Members. Prices for Core List items provided under this contract are set forth in Exhibit 1. The prices for Core List Items, excluding Premium Products may be updated biannually on August 1st and February 1st of each year during the term that this contract in effect. Staples may request a price change adjustment for Core List items by submitting a price change addendum to Sourcewell thirty (30) days prior to August 1st and February 1st to reflect changes in stock availability, market conditions, buying expense, tariffs and other factors that affect the overall cost of such items.</p> <p>The prices for Premium Products may be updated quarterly of each year during the term that this contract in effect. Premium Products are defined as toner, ink, IT hardware, copy paper and furniture that Members purchase from Staples.</p> <p>Extraordinary Market Events. Staples reserves the right to reasonably adjust a Core Item’s price if extraordinary market events require immediate adjustment (e.g., shortages, trade disputes, natural disasters, etc.) and to adjust pricing with the impact of tariffs, customs, or duties imposed on products. Any such adjustments shall be noticed to Sourcewell with thirty (30) days prior written notice accompanied by supporting documentation. Staples will work with Sourcewell and affected Members to identify alternative products to mitigate the impact of the foregoing where possible.</p> <p>Updated Items. For purposes of contract management, Staples may provide to Sourcewell an updated report no more than once a calendar quarter, which shall identify the SKU numbers and prices for the new items that Staples and Sourcewell have added, as well as SKU numbers for items that have been removed from the from the Core List. Staples may from time to time propose substitutions to Core Items. Sourcewell agrees that it will not unreasonably withhold its consent.</p> <p>Custom Pricing; Rebates & Incentives; Other Terms. Staples may offer additional pricing discounts, rebates and/or incentives to an individual participating Member based upon commitments and variables that may include, but not limited to, Member size and scope, geography, purchase volume, guarantees, logistical expenses, manufacturer support, specific product usage and other contractual terms/requirements. Members receiving custom pricing or incentives may be required to sign a Participation Agreement with Staples.</p> <p>Non-Core Items. The prices for Non-Core Items shall appear on StaplesAdvantage.com and shall be adjusted to reflect changes in stock availability, market conditions, buying expense, and other factors that affect the overall cost of the Non-Core Items. Notwithstanding anything to the contrary, Non-Core Items are not subject to customer audit or any pricing guarantee, nor shall Non-Core Items be subject to the Change Request process set forth in this Section 4.</p> <p>Sourced Goods. Members may request certain goods that are non-stock or custom in nature. The prices for Sourced Goods shall be those prices that appear on the ordering platform at time of order, or as otherwise established between Staples and the applicable participating Member at the time the order is placed. Sourced Goods may include additional delivery or handling charges that would be the responsibility of the ordering Member.</p> <p>Pricing Exhibits. Please see our Pricing Exhibits for pricing details on the following categories:</p> <ul style="list-style-type: none"> • Exhibit 1 – Core List Pricing • Exhibit 2 – Print & Copy Program • Exhibit 3 – Promotional Products Program • Exhibit 4 – Staples Technology Solutions • Exhibit 5A – Managed Print Services Capabilities • Exhibit 5B – Managed Print Services Pricing • Exhibit 5C – Managed Print Services Sample Agreement <p>Tier One Diversity Program. Staples reserves the right to implement a pricing upcharge when setting up a Tier One program for any Participating Member to reflect the additional cost of the diversity supplier’s program.</p>
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57	Describe any quantity or volume discounts or rebate programs that you offer.	Our proposal reflects updated attributes related to pricing, rebates and incentives based on our experience with Sourcewell participating Members' behaviors and desires, as well as market conditions. Staples may offer additional pricing discounts and/or incentives to an individual participating Member based upon commitments and variables that may include, but not limited to, Member size and scope, geography, purchase volume, guarantees, logistical expenses, manufacturer support, specific product usage and other contractual terms/requirements. Members receiving custom pricing or incentives may be required to sign a Participation Agreement with Staples.	*
58	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Staples customers frequently request we source goods and services on their behalf that could be non-stock or custom in nature and are within the scope of our sourcing and distribution capabilities. Staples will also facilitate access to these "Sourced Goods" and services to Sourcewell and its participating Members. Despite having hundreds of thousands of items available through our e-commerce site, Staples customers often have unique product sourcing needs that range from forklifts to industry-specific proprietary items. To fulfill these unique requests for our customers, Staples maintains a highly specialized non-stock procurement team available to assist our customers with these unique requests. Users can submit special order requests directly through our e-commerce site or through your Staples Account Manager. The non-stock procurement team works diligently to fulfill your product needs quickly and at the lowest possible cost. The prices for Sourced Goods shall be those prices that appear on the ordering platform at time of order, or as otherwise established between Staples and the applicable participating Member at the time the order is placed. Sourced Goods may include additional delivery or handling charges that would be the responsibility of the ordering Member.	*
59	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	There may be additional services available which are associated with certain products, including, but not limited to: furniture, facilities, technology, or water/coffee dispensers, etc. which at the option of the Member may be purchased or leased at the time of order/agreement. The costs for such services shall be paid to Staples by the Sourcewell Member. Additionally, there may be some items, typically furniture, where there may be an additional fee charge by the manufacturers that will be passed along to the ordering participating Member.	*
60	If freight, delivery, or shipping is an additional cost to the Sourcewell Member, describe in detail the complete freight, shipping, and delivery program.	Staples does not apply additional charges or fees for standard delivery. However, there are some special exceptions where a delivery or special handling fee may apply. Most fees will be displayed in your shopping cart on StaplesAdvantage.com upon ordering. Common delivery exceptions that require a surcharge include: <ul style="list-style-type: none"> • Furniture unpacking or assembly <ul style="list-style-type: none"> o Stair Carry for upper floor inside deliveries (lack of freight elevator or access to same) o Handling support for facilities that do not operate a fully functioning dock • Expedited deliveries • Deliveries outside Staples' standard distribution area (Alaska and Hawaii) • Bulky, fragile, or heavy items such as fireproof file cabinets, cases of water, soda, ice melt and chemicals • Or as otherwise indicated on our website at the time of purchase. Surcharges are calculated on a per-order basis. Freight will be listed as a line item charge for all Staples Promotional Products orders.	*
61	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Staples reserves the right to charge fees to the following locations unless otherwise mutually agreed between Staples and the participating Member. Delivery to Alaska or Hawaii. The following additional delivery terms apply for shipments to Alaska or Hawaii: Shipments up to 159 lbs. will be shipped with transit times of two to three (2 to 3) business days. Shipments over 159 lbs. or items which cannot be shipped via normal means, including any items which are classified as hazmat or ORM-D (other regulated materials for domestic transport only), are shipped via ocean freight. Staples' policies prohibit shipment of any fully regulated hazmat items. Such items must be shipped directly from the vendor. Ocean shipments will be delivered approximately fourteen (14) calendar days from the date of shipment. All shipments to Alaska or Hawaii will be subject to a 25% surcharge to help offset the cost of freight.	

Every country has specific requirements in which both the exporter and importer must follow; here are some additional specific details for U.S. Territories and Possessions:

Delivery to Puerto Rico. The following additional delivery terms apply for shipments to Puerto Rico: Shipments up to 150 lbs. will be shipped with transit times of two (2) business days. Shipments over 150 lbs. are shipped via ocean freight. Any goods classified as ORM-D (other regulated materials for domestic transport only) will also ship ocean freight, regardless of weight. No hazardous goods can be exported to Puerto Rico. Transit time is approximately seven to ten (7 to 10) business days from door-door. Buyer is responsible for all customs or tax filings or applications necessary to effect the importation of the Products. Delays may result from Buyer's failure to satisfy all customs clearance requirements. All taxes, fees, and other costs (including freight) will be charged back to Buyer on a separate invoice.

Delivery to U.S. Virgin Islands. The following additional delivery terms apply for shipments to the U.S. Virgin Islands: Shipments up to 150 lbs. will be shipped UPS WorldShip, using the most commercially advantageous WorldShip service available, with transit times of approximately three (3) business days. Products weighing over 150 lbs. will be shipped via ocean freight. No hazardous goods can be exported to these locations. Any goods classified as ORM-D (other regulated materials for domestic transport only) will ship ocean freight, regardless of weight, and will require an additional five (5) days of transit time. Buyer is responsible for all customs or tax filings or applications necessary to effect the importation of the Products. Delays may result from Buyer's failure to satisfy all customs clearance requirements. All taxes, fees, and other costs (including freight) will be charged back to Buyer on a separate invoice.

Delivery to American Samoa, Guam, Northern Mariana Islands. The following additional delivery terms apply for shipments to American Samoa, Guam, and the Northern Mariana Islands: Shipments up to 150 lbs. will be shipped UPS WorldShip, using the most commercially advantageous WorldShip service available, with transit times of approximately five (5) business days. Products weighing over 150 lbs. will be shipped via ocean freight. No ORM-D goods or hazardous goods can be exported to these locations. Buyer is responsible for all customs or tax filings or applications necessary to effect the importation of the Products. Delays may result from Buyer's failure to satisfy all customs clearance requirements. All taxes, fees and other costs (including freight) will be charged back to Buyer on a separate invoice.

Import/Export. If Staples agrees to export Products from the U.S. to Buyer's locations outside the U.S. (including but not limited to Mexico, Canada and all U.S. Possessions and Territories) (for these purposes referred to as "Other Locations"), the following applies: (a) Staples will not be the Importer of Record for any Products shipping to Other Locations. Buyer or Buyer's agent shall nominate a customs clearing agent to act on its behalf and to facilitate the import customs clearance process. Buyer shall be responsible for obtaining any documentation, such as special permit(s) or license(s) that may be required to import Products; (b) Buyer shall be responsible for payment of any customs clearance and duties and taxes and the full freight cost of the shipment; (c) Staples will not provide Certificates of Origin (C/O) or Free Trade Agreement certificates; (d) Staples will not export the following Products: ORM-D (Other Regulated Materials-Domestic); consumables; and/or Products prohibited from export by Staples' vendors; (e) Staples will not export Products to Other Locations in the event any export restriction applies; and (f) Staples will not accept returns from Other Locations unless agreed in writing.

62 Describe any unique distribution and/or delivery methods or options offered in your proposal.

Staples delivers an average of 675,000 cartons per day. Our delivery experience, combined with our advanced distribution network, makes us the industry leader. We recently increased the square footage across our 24 strategically located fulfillment centers, ensuring we have more product in stock for next-business-day deliveries. Staples uses a combination of our own fleet, national delivery services, Staples-exclusive carriers and third-party couriers to ensure the fastest, most efficient delivery options for our customers. Our third-party couriers undergo a rigorous evaluation process and we require them to meet our customers' service level agreements. Staples couriers are selected based on the caliber of their management and delivery drivers, their equipment and, more specifically, their ability to provide timely and excellent customer service.

PREMIUM DELIVERY OPTIONS

As part of each participating Member's account setup, we may meet to discuss the individual needs and develop delivery protocols that make it easy to do business with Staples. Our normal delivery hours are 8:00 a.m. to 5:00 p.m. local time, Monday through Friday. Requests for premium delivery service are vetted by our internal transportation team prior to approval. Examples of delivery service exceptions we have approved in the past include:

- Specific delivery windows (before noon, after 10:00 a.m., etc.)
- Desktop delivery (desk to desk)
- Inside delivery (specific floor)
- Mailroom delivery (by floor)
- Delivery to copy areas (where we leave a fixed number of cases of paper per mailroom, in some cases, stocking the shelves)
- Loading boxes through an X-ray machine prior to making delivery

Additional costs may apply for premium services and is customized based on each participating Member's specific requirements.

SAME-DAY DELIVERIES

Same-business-day delivery can be investigated as a possibility by contacting Staples Customer Service. To ensure all appropriate process checks are completed, we recommend a cut-off time of 11:30 a.m. local time. To account for added transportation costs and courier fees incurred on our end, we do require a separate charge for same-business-day requests.

Our industry-leading network of U.S. stores gives participating Members easy same-day purchasing solutions. Your employees can make in-store purchases and receive your customer pricing for both office supplies and a full range of print and marketing solutions. Or, use our Buy Online, Pick Up in Store option, and your items will be available for pickup in less than one hour.

There are some exceptions to same-day delivery service. The delivery location must be within 50 miles of a Staples fulfillment center. Further, the fulfillment center must have the capacity to handle the request that day. In addition, the following items cannot be delivered same day:

- Furniture
- HAZMAT items (this includes items that contain Lithium batteries)
- Liquid
- Food and beverage items
- Custom items
- Drop ship or special-order items
- Orders containing more than six SKUs

BUY ONLINE, PICK UP IN STORE

Participating Members can purchase a wide variety of items on StaplesAdvantage.com and pick their items up in one hour or less at any of our U.S. retail stores. This allows your users to buy within your established purchasing program, with your contract rules and pricing, for same-day purchases. Users can even filter by Pick Up in Store to make those emergency purchases quicker.

PRINT TO STORE

Participating Members can also use Staples' Print to Store option to print directly from their computer to any Staples retail location for pickup. From black & white or color printing to binding and booklet options, Print to Store offers more than 2,000 finishing configurations for your employees' printing needs. Print to Store bills directly to your Staples account, ensuring compliance and more robust tracking while providing easy, on-the-go printing services for your remote and traveling employees.

Participating Members can upload and reconfigure their documents, save their files for future reordering and proof all orders online before submitting. At any time, they can submit their orders right from their desktop to Staples, with delivery to any Staples retail location.

STAPLES PROMOTIONAL PRODUCTS

Staples Promotional Products has a 500,000 square foot contract decoration and distribution center in Orange City, IA. This facility does embroidery, screen print, laser engraving, digital heat transfer, and more. We have pick-to-voice technology and use a pack-right shipping system to cut boxes to the order size. Our facility is centrally located for distribution throughout the U.S. We also use FedEx as our preferred shipper but can utilize any major carrier service. As of 2019, it's also moved to achieve zero waste to landfill status.

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
63	d. other than what the Proposer typically offers (please describe).	Staples supplies a significant number of government agencies and numerous GPOs and cooperative procurement organizations that range in size, geography, purchase volume, guarantees, logistic expenses, incentives, manufacturer support and other contractual terms/requirements. Additionally, Staples provides a wide variety of products and services, including many that are customized and therefore, based on customers' specifications. As a result, while pricing may vary, Staples feels that its proposal provides competitive pricing and exceptionally strong value-added attributes.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *
64	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcwell. This process includes ensuring that Sourcwell Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcwell.	<p>At Staples, we take our national contract obligations seriously. We have a long history of providing accurate pricing and conducting compliance audits with Sourcwell and its participating Members. To maintain contract compliance, we continually verify our pricing data and hold ourselves accountable to the highest internal pricing standards. As such, we have multiple processes in place to ensure pricing accuracy and consistency. For example, national contract pricing is managed and maintained by a single, knowledgeable and experienced pricing team. This ensures that all pricing is consistent with the contract terms and requirements. We also review pricing on a regular basis and compare it to the contract pricing requirements. This further guarantees that your participating Members receive pricing that is consistent.</p> <p>Staples may also work with manufacturers to frequently spot-check and audit pricing and discounts that are applied to customer orders. Additional audits and periodic pricing checks may be conducted randomly throughout the term of the contract to add an extra level of protection and audit control as deemed necessary to maintain our pricing integrity.</p>
65	Identify a proposed administrative fee that you will pay to Sourcwell for facilitating, managing, and promoting the Sourcwell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	<p>Unless otherwise mutually agreed to in writing by Sourcwell and Staples, and except as stated below, Staples will pay Sourcwell an administrative fee of one and half percent (1.5%) of the Members' aggregate Net Sales during each calendar quarter, which have been timely paid, to be paid within forty five (45) days after the end of each calendar quarter.</p> <p>An exception to the above 1.5% admin fee would be that Staples will pay Sourcwell one half of one percent (0.5%) administrative fee for participating Members' aggregate Net Sales under the managed print services ("MPS") program of the Contract and one quarter of one percent (0.25%) on technology product Net Sales.</p> <p>Net Sales. Net Sales will be defined as the gross sales price of the applicable products sold pursuant to this Contract, less shipping costs (including freight charges and insurance), taxes, duties, any rebates actually paid, discounts and allowances actually taken, rejections and returns to the extent credit is given or paid, and also excluding purchases made via staples.com, or any Staples retail channel.</p>

Table 14: Catalog Solution Description

Table 14: Indicate below the features and capabilities of your office supplies catalog solution (Yes | No) and provide supplemental descriptions as needed.

Line Item	Feature	Yes No *	Description
66	Display item description, catalog price, contract price, and photo (if applicable)	<input checked="" type="radio"/> Yes <input type="radio"/> No	StaplesAdvantage.com displays item description, photos and the participating Members' contract pricing. However, the site does not show catalog pricing. All products include images, full description and detailed product specifications, with partial graphic support for wholesaler items on StaplesAdvantage.com.
67	Enhanced catalog content (stock availability, ship/delivery date, product reviews, filters, comparables, etc.)	<input checked="" type="radio"/> Yes <input type="radio"/> No	Search by keyword or item number for a summary of categories and top-ranking items that match your criteria. Narrow results by category, brand or your recently purchased items. Advanced search with auto-suggest terms to find what you want fast and the ability to add to your cart from search to save time.
68	Order tracking and order history	<input checked="" type="radio"/> Yes <input type="radio"/> No	Members can view details on all orders placed in the past 90 days, track your orders and view proof of delivery.
69	Customized member portal or punchout	<input checked="" type="radio"/> Yes <input type="radio"/> No	Members can customize their platform with special instructions and messages to keep users in program compliance.
70	Member preferred products listing	<input checked="" type="radio"/> Yes <input type="radio"/> No	Depending on the situation, Staples may identify preferred items with a customizable On Contract or Core Item icon that can contain your own message. For example, individual participating Members can opt for it to display (Member) Contract Item instead of On Contract. This message will appear with the icon wherever product information is displayed. Users will see the icon on product pages, shopping lists, shopping carts and order status screens. Members can also click the heart icon on product tiles and pages to easily add items to a shared or personal shopping list that can be made a favorite.
71	Member blocked item removal	<input checked="" type="radio"/> Yes <input type="radio"/> No	Upon mutual agreement between the participating Member and Staples.
72	Multiple ship-to locations	<input checked="" type="radio"/> Yes <input type="radio"/> No	User and Location Management allows Members to easily add new users, supervisors and account administrators and remove or add shipping locations associated with user profiles.
73	Display of eco-label or green certifications or attributes	<input checked="" type="radio"/> Yes <input type="radio"/> No	Eco-conscious and recycled items are identified with icons on our search pages and item descriptions, making them easy to find from any search or shopping list.
74	Search by eco-label or green certifications or attributes	<input checked="" type="radio"/> Yes <input type="radio"/> No	Eco-conscious and recycled items are identified with icons on our search pages and item descriptions, making them easy to find from any search or shopping list.
75	Tiered approvals	<input checked="" type="radio"/> Yes <input type="radio"/> No	Members can establish spending limits and approval routing to track account expenditures by user and department.
76	Help function	<input checked="" type="radio"/> Yes <input type="radio"/> No	The StaplesAdvantage.com Help Center enables customers to search help topics, manage their account, track or return orders, view or print their packing slip, get pre-paid address labels to recycle ink and toner and more.
77	Live chat	<input checked="" type="radio"/> Yes <input type="radio"/> No	Our e-commerce site offers a proactive chat feature that helps users quickly find the products they need by interacting with a live agent. This feature helps reduce the time spent searching for and comparing products. By providing more product intelligence prior to purchasing, live chat also decreases returns and helps ensure the best product solution is selected for the purchaser.
78	Integration with member eProcurement/ERP platforms	<input checked="" type="radio"/> Yes <input type="radio"/> No	Staples has experience integrating with over 300 third-party purchasing platforms.

Table 15: Industry Specific Questions

Line Item	Question	Response *
79	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	Some internal metrics used to measure success with the contract include number of participating Members under the contract, geographic distribution of participating Members, sales and number of orders by participating Member and year over year sales growth. Additionally, success metrics can be mutually established and measured in scheduled business reviews between Staples and Sourcewell. Having serviced Sourcewell participating Members for many years, we know that we need to continually raise the bar in our national contract performance. As a current Sourcewell awarded supplier, we commit to increasing our overall value with the built-in flexibility to accommodate the evolving needs of your participating Members.

80	<p>If you are a dealer, distributor, or reseller, describe your capabilities for verification of product authenticity, quality control, and documentation of custody in your supply chain.</p>	<p>Staples is committed to providing high quality products that last, leading to fewer returns, fewer reorders and less frustration for our customers. To uphold this commitment, we capture reporting and regularly audit the quality of the products we source from suppliers, as well as from Staples-exclusive products. Staples' strict product sourcing process assures that products offered are genuine by sourcing products only from OEMs and authorized resellers to mitigate the risk of cloned, fake or counterfeit products that could potentially put Sourcewell Members at risk.</p> <p>ANNUAL VENDOR REVIEWS</p> <p>We only source from the most trusted and reputable suppliers in our industry, including leading wholesalers and brands such as 3M, HP, Avery and HON. We conduct annual vendor contract reviews to measure our suppliers' quality performance. We evaluate the number of returns placed on their products as well as general customer satisfaction survey feedback. At 1.45%, our low product-return rate is a testament to our relentless focus on quality.</p> <p>PAPER & WOOD-BASED PRODUCT SOURCING POLICY</p> <p>We also actively work with our key paper suppliers to ensure transparency into their sourcing and production methods with respect to environmental and social responsibility. The majority of our paper suppliers have achieved chain of custody certification with one or more programs, including the Forest Stewardship Council (FSC) and Sustainable Forestry Initiative (SFI). Approximately 90% of the paper products we sell by weight in the U.S. are manufactured and/or distributed by vendors with FSC chain of custody certification, including brands like Domtar, International Paper, Georgia Pacific, Kimberly Clark, 3M, Esselte, Fellowes, Marcal and others. Our Paper and Wood Based Product Sourcing Policy forms the foundation of our commitment to ensure the paper products we sell are sourced in an environmentally and socially responsible manner. It also defines our expectations for suppliers of paper-based products. The policy focuses on four key areas:</p> <ul style="list-style-type: none"> • Protecting forest resources and communities by seeking to source certified products • Reducing demand for virgin wood fiber • Sourcing from suppliers committed to environmental excellence • Promoting responsibly sourced paper and wood products to our customers <p>PROGRAMS & PARTNERSHIPS</p> <p>We collaborate with a few key non-profits to help us improve paper and wood product sustainability. This includes partnerships with the Rainforest Alliance on the Appalachian Woodlands Alliance and various projects with the Forest Products Working Group (FPWG), an initiative of GreenBlue.</p> <p>PRODUCT BRANDS EXCLUSIVE TO STAPLES QUALITY ASSURANCE</p> <p>Product brands exclusive to Staples are subject to a comprehensive Quality Assurance program that includes:</p> <ul style="list-style-type: none"> • Product Design – Product brands exclusive to Staples are designed to meet or exceed national brand equivalent specifications. • Factory Certification – Production facilities in developing countries undergo third-party audits to uphold our standards for social responsibility and to guarantee practices are in place to deliver quality products. • Rigorous Testing & Inspection – All products are engineer-tested for quality in leading independent labs. Inspectors pull samples from the production line to confirm that products are manufactured to our exact specifications before they ship to our warehouses. • Continuous Monitoring – Throughout a product's lifecycle, inspectors pull samples for follow-up lab testing to certify that the product still meets our specifications. <p>MONITORING PRODUCT QUALITY</p> <p>On the rare occasion that a product fails to meet a Member's satisfaction, we offer fast and easy resolution methods:</p> <ul style="list-style-type: none"> • Purchasers can return any item using our no-hassle online returns process or by contacting Customer Service. • We arrange driver pickup for all product returns at no cost to participating Members. <p>We thoroughly analyze damaged or defective items and ensure our manufacturers address the underlying quality issue. Your Staples Account Manager will share corrective actions and report on progress during regular business reviews.</p>
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81	Describe your ability to address member concerns related to packaging, including product markings, safety, warnings, waste reduction, packaging toxicity, recycling and/or re-use, etc.	<p>PRODUCT CERTIFICATIONS & ECO-LABELING</p> <p>Within our core product assortment, we have identified thousands of items that meet third-party standards and certifications. This is a significant subset of our total assortment of nearly 15,000 products with environmental features, which includes products with recycled content or other design features like solar powered, rechargeable and refillable. The certifications and standards we track include:</p> <ul style="list-style-type: none"> • AP certified non-toxic • Bluesign certified clothing product • BPI compostable • Cradle to Cradle certified • EcoLogo certified • ENERGY STAR qualified • EPA Comprehensive Procurement Guidelines • EPA Design for the Environment (DfE) for Pesticides registered • EPA Safer Choice registered • EPA WaterSense certified • EPEAT qualified • EWG verified • Fair Trade certified • Food Alliance certified • Forest Stewardship Council (FSC) certified • GREENGUARD certified • Green Seal certified • Indoor Advantage certified • Level certified • Made by a Certified B Corporation • Made Safe certified • PMA non-toxic • Rainforest Alliance certified • Roundtable on Sustainable Palm Oil (RSPO) certified • Sustainable Forestry Initiative (SFI) certified • USDA Certified Biobased Product • USDA Organic <p>We are continually improving our ability to capture and track products with environmental certifications in our systems, as well as increase the number of products that meet credible third-party environmental certifications.</p> <p>PACKAGING OPTIMIZATION</p> <p>To help reduce waste at Members' facilities, Staples has engineered our order fulfillment process to minimize packaging and shipping materials on supply deliveries. Simultaneously, we ensure that all deliveries are properly protected in order to arrive to you intact.</p> <ul style="list-style-type: none"> • SmartSize™ – Staples has rolled out award-winning technology to the majority of our U.S. distribution centers that tailors box sizes to the exact size of the order, reducing use of corrugate and air pillows. To further reduce the environmental impact of our delivery process, we use boxes made from 35% to 100% recycled material. This approach to packaging results in an annual carbon footprint reduction of more than 30,200 tons, equivalent to 120,000 trees. • Box Logic – Our warehouse management system uses a series of algorithms that automatically choose the smallest delivery box from eight standard sizes, based on the combined dimensions of items in the order, reducing packaging waste. • Wholesaler Initiatives – As part of our fulfillment process, Staples utilizes three national wholesalers to support our product requirements. We work diligently with these suppliers to confirm they are reducing shipping materials for our customers. The products shipped by our wholesalers undergo similar sizing analysis by their computer systems. <p>Reducing packaging waste is important to our commitment to help the environment. In addition to the internal initiatives above, we're actively working with customers to minimize packaging waste by reducing the frequency of small orders through order consolidation. These initiatives have reduced packaging and shipping materials by up to 20% for some customers.</p> <p>PACKAGE PROTECTION</p> <p>Staples has invested in air pillow dunnage technology to safeguard the product we ship. These air pillows:</p> <ul style="list-style-type: none"> • Are designed to provide maximum protection with a minimum use of material, reducing the amount of packaging required • Can be re-used • Can be deflated prior to disposal, reducing original volume by over 90% • Can be recycled when given to your delivery driver or sent back when making a return • May be returned for recycling to local Sealed Air sites by calling the Sealed Air phone number on the cushion or may be recycled commercially as #4 plastic • Provide high BTU energy contents in municipal incineration
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82	Describe your capabilities related to member need for collection and recycling of toner and ink cartridges, batteries, packaging, etc.	<p>Staples offers our customers a wide range of convenient no- and low-fee recycling services. Check out Staples Recycling Services or speak with your Account Manager for more details on our programs.</p> <ul style="list-style-type: none"> • Ink & Toner Cartridges – Staples 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. • Technology – We offer low cost options for responsible and secure technology recycling including certificate of recycling and optional serial number tracking services. You can order prepaid recycling kits, boxes and pallets for larger items through StaplesAdvantage.com. Staples' tech recycling partner ERI Direct is e-Stewards and R2 certified at all locations for responsible e-waste management practices. • Furniture – Talk to your Account Manager for details on recycling, decommissioning and donating office furniture. Staples 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, Staples can direct customers to other furniture donation and recycling options like IRN. • Lamps, Ballasts & Batteries – We offer 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. • 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.
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83	Describe your capabilities or limitations related to ordering and/or deliveries (minimum order requirements, order consolidation, expedited shipping/delivery, etc.)	<p>According to industry research, employees making purchases outside a procurement program can increase operating costs by anywhere from 25% to 45%. Reducing maverick spend can dramatically impact the effectiveness of your procurement program. Staples uses multiple strategies to keep program compliance high and costs low.</p> <p>MINIMUM ORDER SIZE Unless otherwise mutually agreed to by Staples and a Sourcewell participating Member, Sourcewell and its Members shall have a minimum order size of \$35.00 per order.</p> <p>ORDER CONSOLIDATION: REDUCING SMALL, INEFFICIENT ORDERS Industry statistics show the average cost for processing a single order transaction can be as high as hundreds of dollars depending on the organization and payment processing systems. Placing small, frequent orders incurs these costs with each order, which can be significantly reduced by order consolidation. We'll educate your end users to adopt more efficient behaviors, such as:</p> <ul style="list-style-type: none"> • Ordering bi-weekly or monthly, instead of weekly or daily • Coordinating ordering with other departments • Determining frequently ordered items and ordering enough for a week • Anticipating projects that may require more supplies than usual and consolidating these supplies within regularly scheduled orders <p>Benefits of order consolidation include:</p> <ul style="list-style-type: none"> • Reduced order processing costs • Fewer deliveries and invoices to process • Less packaging, label and invoicing paper waste • CO2 savings from fewer truck deliveries <p>INCREASING MEMBERS' ONLINE ORDERS The most efficient way for end users to order from Staples is through our e-commerce site or their e-procurement system. An order placed by phone costs Members significantly more than an order placed electronically. We'll educate participating Member's end users on online order placement.</p> <p>Benefits include:</p> <ul style="list-style-type: none"> • Reduced order processing costs • Faster and easier ordering • Fewer ordering mistakes - fewer product returns • Real-time tracking of product delivery status <p>Staples can communicate ordering best practices to their end users during the implementation process and on a continuous basis through client-approved customized flyers, newsletters and emails.</p> <p>ONLINE COMPLIANCE CONTROLS StaplesAdvantage.com also drives program compliance with features like:</p> <ul style="list-style-type: none"> • The ability to customize their home page with messaging to communicate key program rules (such as minimum order requirements) and guide purchasers to preferred-item shopping lists • Shared or personal shopping lists populated with commonly ordered or preferred core items • Optional spending and approval controls that eliminate inefficient and costly small orders <p>RETAIL PURCHASING PROGRAM & IN-STORE PURCHASING Today, customers can use the Buy Online, Pick Up in Store option and Print-to-Store to get what they need, when they need it for same day purchases. Or, they can take advantage of our Retail Purchasing Program, which ensures customers can shop in stores to receive their custom pricing or in-store sale price, whichever is lowest at the time of purchase, in any Staples store throughout the U.S.</p>
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Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

- [Financial Strength and Stability](#) - Attachment 1 - Staples Bank and Trade References.pdf - Thursday January 23, 2020 12:11:28
- [Marketing Plan/Samples](#) - Attachment 4 - Sourcewell Marketing Plan.pdf - Thursday January 23, 2020 12:11:38
- WMBE/MBE/SBE or Related Certificates (optional)
- Warranty Information (optional)
- [Pricing](#) - Staples Pricing Exhibits 1-5.zip - Thursday January 23, 2020 13:16:09
- [Additional Document](#) - Staples Additional Attachments.zip - Thursday January 23, 2020 13:16:19

Proposers Assurance of Comp

PROPOSER ASSURANCE OF COMPLIANCE

PROPOSER'S AFFIDAVIT

The undersigned, authorized representative of the entity submitting the foregoing proposal (the "Proposer"), swears that the following statements are true to the best of his or her knowledge.

1. The Proposer is submitting its proposal under its true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, the Proposer possesses, or will possess before delivering any products and related services, all applicable licenses necessary for such delivery to Sourcewell member agencies. The undersigned affirms that he or she is authorized to act on behalf of, and to legally bind the Proposer to the terms in this Contract.
2. The Proposer, or any person representing the Proposer, has not directly or indirectly entered into any agreement or arrangement with any other vendor or supplier, any official or employee of Sourcewell, or any person, firm, or corporation under contract with Sourcewell, in an effort to influence the pricing, terms, or conditions relating to this RFP in any way that adversely affects the free and open competition for a Contract award under this RFP.
3. The contents of the Proposer's proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer and will not be communicated to any such persons prior to the official opening of the proposals.
4. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request, and other documents in this solicitation and affirms that any and all exceptions have been noted and included with the Proposer's Proposal.
5. The Proposer will, if awarded a Contract, provide to Sourcewell Members the /products and services in accordance with the terms, conditions, and scope of this RFP, with the Proposer-offered specifications, and with the other documents in this solicitation.
6. The Proposer agrees to deliver products and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
7. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
8. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statute §13.591, Subd. 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals generally become public data. Minnesota Statute §13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.

The Proposer understands that it is the Proposer's duty to protect information that it considers nonpublic, and it agrees to defend and indemnify Sourcewell for reasonable measures that Sourcewell takes to uphold such a data designation.

By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Joanne Harris, Chief Commercial Officer - Staples, Staples Contract & Commercial LLC

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

Yes No

**AMENDMENT #1
TO
CONTRACT #012320-SCC**

THIS AMENDMENT is by and between **Sourcewell** and **Staples Contract & Commercial LLC** (Vendor).

Vendor was awarded a Sourcewell Contract for Janitorial Supplies and Equipment with Related Services effective August 1, 2020, through November 16, 2024, relating to the provision of services by Vendor and to Sourcewell and its Members (Original Agreement).

The parties agree that certain terms within the Original Agreement will be updated and amended and only to the extent as hereunder provided.

IN CONSIDERATION OF the mutual covenants and agreements described in this Amendment, the parties agree as follows:

1. This Amendment is effective February 1, 2021, and upon the date of the last signature below.
2. Section 4: PRODUCT AND PRICING CHANGE REQUESTS – Paragraph 5 is amended as follows:

The prices for Premium Products, except Janitorial Premium Products, may be updated once quarterly: August - October, November -January, February - April, May-July of each year during the term that this Contract. These Premium Products are defined as toner, ink, IT hardware, copy paper, and furniture that Participating Entities purchase from Staples. The prices for Janitorial Premium Products may be updated upon 30 days' prior written notification. Manufacturer's documentation will be provided when available. Janitorial Premium Products are defined as janitorial paper, towel, tissue, paper-related items, petroleum-, resin-, and steel-based products, custom products, and seasonal products that Participating Entities purchase from Staples.

Except as amended by this Amendment, the Original Agreement remains in full force and effect.

Sourcewell

DocuSigned by:
By: Jeremy Schwartz
Authorized Signature
C0FD2A139D06489...

Jeremy Schwartz
Name – Printed

Title: Director of Operations & Procurement/CPO

Date: 12/23/2020 | 1:43 PM CST

Staples Contract & Commercial LLC

DocuSigned by:
By: Joanne Harris
Authorized Signature
4871E6FEB760485...

Joanne Harris
Name – Printed

Title: Chief Commercial Officer

Date: 12/23/2020 | 11:24 AM CST

Sourcewell-APPROVED:

DocuSigned by:
By: Chad Coquette
Authorized Signature
7E42B8F817A64CC...

Chad Coquette
Name – Printed

Title: Executive Director/CEO

Date: 12/23/2020 | 2:27 PM CST



CONTRACT EXTENSION

Contract Number: #012320-SCC

Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Staples Contract & Commercial LLC, 500 Staples Drive, Framingham, MA 01702 have entered into Contract #012320-SCC for the procurement of Office Supply Catalog Solutions. The Contract has an expiration date of April 6, 2024, but the parties may extend the Contract by mutual consent.

Sourcewell and Vendor acknowledge that extending the Contract benefits the Vendor, Sourcewell and Sourcewell’s Members. Vendor and Sourcewell agree to extend the Contract listed above for an additional period, with a new Contract expiration date of April 6, 2025. All other terms and conditions of the Contract remain in full force and effect.

Sourcewell

Staples Contract & Commercial LLC

DocuSigned by:
Jeremy Schwartz
By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 12/6/2022 | 3:28 PM CST

DocuSigned by:
Michele Parzianello
By: 75B171C7A79249D...
Michele Parzianello
Title: Chief sales officer
Date: 12/6/2022 | 4:07 PM CST

Agenda Item Title: NHC Rehabilitation contract for special education services for the 2024-2025 school year

Board Meeting Date: July 23, 2024

Department: Special Education

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board must approve contracts exceeding \$50,000.00. This contract with NHC Rehabilitation will provide special education services to eligible students pursuant to each student's IEP.

Staff Recommendation

Approve contract for NHC Rehabilitation special education services for the 2024-2025 school year

Fiscal Impact

The total cost of the contract will be dependent on the amount and type of services provided; however, the contract will not exceed \$150,000.00. Funding for this contract will be sourced from the federal IDEA Part B budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
MURFREESBORO CITY SCHOOLS
AND
NHC REHABILITATION SERVICES
FOR
SPECIAL EDUCATION SERVICES**

This agreement (“Agreement”) is entered into by and between NHC/OP, L.P. d/b/a NHC Rehabilitation, a limited partnership within the State of Tennessee, (hereinafter referred to as “Contractor”) and Murfreesboro City Schools, a municipal school system of the State of Tennessee (hereinafter referred to as “District”) on the Effective Date as defined below.

WHEREAS, Tennessee Code Annotated § 49-10-107 and State Board of Education Rule 0520-01-09-.03 provide that local education agencies may enter into agreements with suitable public or private agencies having appropriate programs, capacity, and competence where necessary to provide special education services to public school students;

WHEREAS, District, in order to provide comprehensive special education program services, finds it desirable to acquire the services of another agency;

WHEREAS, Contractor is a limited partnership company having appropriate capacity and competence to provide professional services for students who are enrolled with the District, and has in its employ appropriately certified and licensed providers;

NOW, THEREFORE, District and Contractor for the consideration of provided for hereinafter, agree as follows:

SECTION 1: DEFINITIONS

1.1 **Authorized District Representative.** The term “Authorized District Representative” refers to a supervisor, administrator, or coordinator designated to be responsible for the supervision and oversight of special education within the District.

1.2 **Days.** The term “days” means calendar days unless otherwise specified.

1.3 **License.** The term “License” means a valid, non-expired document issued by a licensing agency within the State of Tennessee or other state licensing office authorized to grant licenses and authorizing the bearer of the document to provide certain professional services or refer to themselves using a specified professional title. If a license is not available through an appropriate state licensing agency or the state licensing agency is delayed in processing, a certificate of registration with the appropriate professional organization at the national or state level which has standards established for the certificate that are equivalent to a license shall be deemed to be a license for the purposes of this Agreement.

1.4 **Qualified.** The term “Qualified” means that a person holds a certificate, permit, or other document equivalent to that which staff in a public school are required to hold to provide special education and designated instruction and services and has met federal and state certification, licensing, registration, or other comparable requirements which apply to the area in which the special education or related services rendered, including those requirements set forth in Title 34 of the Code of Federal Regulations, Sections 200.56 and 200.58, and those requirements set forth in Tennessee State Statute and Tennessee State Board of Education rules and policies, and adheres to the standards of professional practice established in federal and state law or regulation.

1.5 **Service Provider.** The term “Service Provider” refers to an employee of the Contractor licensed and qualified to provide special education services under this Agreement pursuant to all applicable federal and state laws and regulations relating to the provision of special education and related services.

SECTION 2: PURPOSE OF AGREEMENT

2.1 **Description of Services.** Contractor shall provide to District the services set forth in Appendix A, including but not limited to, the employment and supervision of all incidental business and administrative supervisory and support staff, and all personnel, equipment, supplies, and other items, necessary to render such services (collectively, “Services”) in compliance with all the rules, regulations, and requirements of the Individuals with Disabilities Education Act (IDEA). Appendix A is subject to amendment by duly executed written agreement of the Parties. It is understood that this Agreement does not commit the District to pay for special education and/or related services provided to any student enrolled in the District unless and until an Authorized District Representative approves the provision of special education and/or related services by Contractor pursuant to an Individualized Education Program (“IEP”).

2.2 **Rates.** Appendix A of this Agreement also includes a Rate Schedule that will apply to the Services provided under this Agreement. Contractor agrees that the rates set forth in this Agreement will remain unchanged unless an amendment to this Agreement is duly executed.

2.3 **Term.** The term of this Agreement shall be from the Effective Date as defined herein, to June 30, 2025, unless terminated by either party for cause or convenience as hereinafter provided. The District may, in its sole discretion, renew this Agreement for up to two (2) successive one (1) year renewal periods as long as written notice is provided at least thirty (30) days prior to the end of the current term or first renewal term, as applicable. The District will review this Agreement annually before the anniversary of its Effective Date for the purpose of incorporating changes required by statutes, executive orders, or the Federal Acquisition Regulation. Changes required to be made by modification to this agreement or by issuance of a superseding agreement. If mutual agreement on the changes cannot be reached, the District will terminate this agreement.

2.4 **Independent Contractor.** Contractor will act as an independent contractor in the performance of its duties under this Agreement and shall retain control over its employees and agents. Under no circumstances shall any employees of any party of this Agreement be deemed

the employees of the other for any purpose. Contractor is not deemed an employee or agent of the District and has no authority to make any binding commitments or obligations on behalf of the District except as expressly provided herein. Contractor shall be free to perform services for other companies, corporations, or organizations during the term of this Agreement. Contractor shall be wholly responsible for paying all taxes related to its employees, including but not limited to, federal and state income taxes, FICA, FUTA, and unemployment taxes to the extent that any or all of the foregoing are applicable. Contractor shall defend, indemnify, and hold harmless the District from and against any claims by any taxing authority, for any taxes, interest, or penalties relating to Contractor or its employees or agents.

SECTION 3: SERVICE PROVIDERS

3.1 **Certification and Licenses.** Contractor possesses all necessary approvals, licenses, permits, and authority to execute and deliver the Services set forth within this Agreement and to engage in the activities contemplated by this Agreement, and Contractor is in full compliance in all respects, and in good standing, with all regulatory and supervisory agencies having jurisdiction over Contractor. All Services under this Agreement shall be provided consistent with the area of certification and licensure specified by the State of Tennessee, and within the professional scope of practice of each Service Provider's license, certification, and/or credentials. All Service Providers assigned to duties pursuant to this Agreement shall possess and maintain current licensure or certification in the State of Tennessee as required by their profession or discipline. All Service Providers shall have a minimum of a Bachelor's degree.

3.2 **Personnel Obligations.** Contractor shall be responsible for its employees on its payroll, including but not limited to, responsibility for recruitment, employment, promotion, retention, payment of wages, pension benefits, health insurance, layoffs, disciplinary action, and termination, and shall comply with all applicable laws and regulations related thereto. Contractor shall prepare and process the payroll for its employees and shall withhold and pay all applicable federal and state employment taxes and payroll insurance relating to its employees including, but not limited to, income, social security, unemployment taxes, and workers' compensation costs and charges.

3.3 **Qualifications of Service Providers.** Contractor shall maintain and make available to District, current employment records for each Service Provider providing services under this Agreement. Records shall consist of an application, current license or certification issued by the State of Tennessee, and two professional references.

3.4 **Criminal History Records Checks.** Contractor shall also require a fingerprint criminal history records check performed by the Tennessee Bureau of Investigation prior to permitting employees to have direct contact with or close proximity to students, as required by Tennessee Code Annotated § 49-5-413. Fingerprint records checks of Service Providers shall be coordinated through Murfreesboro City Schools. Contractor will not allow an employee to come into contact with students or enter any District facilities if the criminal history records check indicates that the employee has been convicted of an offense that is classified as a sexual offense or the employee

was convicted as a violent sex offender as defined by Tennessee Code Annotated § 40-39-202. Any costs incurred to perform these background checks and fingerprinting shall be paid by the District.

SECTION 4: SCOPE OF SERVICES

4.1 **Provision of Services.** Service Providers shall provide direct, related, or consultation services and other duties as outline below as assigned by the Authorized District Representative and required by a child's IEP pursuant to Appendix A and in consultation with the child's IEP.

4.2 **IEP Development.** Service Providers, in collaboration with District personnel, shall be responsible for developing elements of an IEP which will be specifically designed to meet the unique needs of the assigned child, with provision for all support materials and services necessary to provide a free and appropriate public education, including, but not limited to: a statement of the child's present levels of educational performance; a statement of annual goals which describe the educational performance to be achieved by the end of the IEP review period; a statement of specific educational services needed by the student' and, objectives, criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

4.3 **Evaluation of Services.** Service Providers shall evaluate the implementation and effectiveness of Services provided and meet with IEP teams to discuss each assigned child's progress or lack thereof. Service Providers shall provide recommendations to IEP teams related to ongoing evaluation of services of any children assigned to Contractor/Service Provider.

4.4 **Documentation.** Provide the District with necessary documentation to establish and maintain current special education intervention direct or related services section of the child's IEP in accordance with federal and state requirements, including providing updated present levels of performance, draft measurable annual goals, and IEP services recommendations. Service Providers shall document student progress for assigned students and report the progress to the District every nine (9) weeks.

4.5 **IEP Meeting Attendance.** Service Providers shall attend IEP meetings for assigned students and submit the necessary documentation, including present levels of performance, draft measurable annual goals, and IEP services recommendations, at least seventy-two (72) hours prior to the meeting.

SECTION 5: INSURANCE AND INDEMNIFICATION

5.1 **Indemnification.** Contractor shall indemnify, defend, and hold harmless the District from any and all losses, claims, or expenses, of whatever kind, including reasonable attorney fees, arising out of, or resulting from the performance, or failure to perform, of each party of the provisions contained herein. By way of explanation and not by way of limitation such losses may include bodily injuries, death, sickness, property damage or other injury which arises out of the performance of the provisions of this Agreement. Subject to the availability and the lawful appropriation of funds and consistent with the laws of the State of Tennessee, District shall

promptly consider and adjudicate any and all claims which may arise out of this Agreement resulting from the actions of the District, duly authorized representatives, and to pay any damage or injury as may be required by Tennessee law.

5.2 **Notice of Claim.** Notification of any event giving rise to an indemnification claim (“Notice of Claim”) must be received by the indemnifying party on or by the earlier of a date thirty (30) days subsequent to the date which such event was or should have been discovered or ninety (90) days subsequent to the effective termination date of this Agreement. Notice shall include a brief factual summary of the damage and cause thereof. An indemnification claim is expressly subject to and conditioned upon compliance with the Notice provisions hereunder.

5.3 **Insurance.** Contractor shall purchase from and maintain with a company or companies, lawfully authorized to do business in the State of Tennessee, such insurance as will protect Contractor from claims arising out of or resulting from Contractor’s operations under this Agreement, and for which Contractor may be legally liable, whether such operation is conducted by Contractor or subcontractor, or by anyone directly or indirectly employed by any entity performing Services under this Agreement, or by anyone for whose acts any of the above-named entities may be liable. Contractor shall file Certificates of Insurance prior to the commencement of this Agreement and on the date of any renewal. Contractor shall include the District as an additional insured on a primary and non-contributory basis in its General Liability policy and provide at least thirty (30) days’ notice to the District in the event of policy cancellation.

5.4 **Types and Amounts of Insurance Coverage.** Contractor shall secure and maintain the various insurance policies which, at a minimum, meet the requirements set forth herein, including: Worker’s Compensation meeting the statutory limits required by the State of Tennessee, including liability limits no less than \$1,000,000.00 (one million dollars) General and Professional liability insurance for all of its Service Providers at a rate of \$1,000,000.00 (one million dollars) per occurrence, and \$3,000,000.00 (three million dollars) in the aggregate. Coverage shall be maintained without interruption from the date of commencement of work until date of final payment. Contractor shall give District written notice prior to the cancellation or change of any of the above-mentioned policies.

SECTION 6: COMPENSATION AND TERMINATION

6.1 **Compensation.** District agrees to compensate Contractor pursuant to the rate schedule included herein as listed on Appendix A. District agrees to compensate the Contractor pursuant to the rate schedule listed herein for the following services rendered on school days pursuant to the 2024-2025 school calendar for Murfreesboro City Schools: Direct, related or consultation services as required by the child’s IEP; IEP meeting preparation; special education assessments; and report drafting.

6.2 **Invoices.** Contractor will provide detailed invoices once per month, by the fifth (5th) of the month, for all services rendered under this Agreement by Contractor for the previous month. All invoices for services rendered must correspond with those services described in the assigned child’s IEP or as noted in the child’s prior written notice. Payment for invoices are due within thirty

(30) days of the issued invoice. Any invoices unpaid after thirty (30) days of the issued invoice will constitute just cause for the Contractor to terminate this Agreement with no further notice.

6.3 **Termination.** Notwithstanding any other provision of this Agreement, this Agreement may be terminated by either party without cause upon thirty (30) days prior written notice to the other party consistent with the notice clauses provided herein. This Agreement may also be terminated by either party immediately for Cause. For the purposes of this Agreement, the term “Cause” shall mean: The failure to comply with any of the terms of this Agreement after being given written notice of such failure and the failure of the party to cure such condition within five (5) business days after receipt of such notice; the failure to implement or adhere to reasonable policies or procedures of the District after being notified of noncompliance and failing to cure such condition within five (5) business days after receipt of such notice; the failure to competently perform the duties imposed upon Contractor pursuant to this Agreement and the failure to cure such condition within five (5) business days of receipt of such notice.

6.4 **Termination for Convenience.** The District or Contractor may terminate this Agreement without cause for any reason. A termination for convenience shall not be a breach of this Agreement by either party. The District or Contractor shall provide the other party with at least thirty (30) days prior written notice before the effective termination date. Contractor shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the District be liable to the Contractor for compensation for any service that has not been rendered. Upon such termination, Contractor will not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

6.5 **Compensation Following Termination.** In the event of termination of this Agreement, any and all compensation which has accrued as of the date of termination shall be paid to the Contractor in accordance with the terms of this Agreement, but no additional compensation shall be due to Contractor.

SECTION 7: GENERAL TERMS AND CONDITIONS

7.1 **Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.

7.2 **Selection of Jurisdiction and Venue, Waiver of Jury Trial, Service of Process.** Pursuant to the Constitution and Laws of the State of Tennessee, District is a sovereign entity subject only to those courts with jurisdiction over District. Notwithstanding any other provision in the Agreements to the contrary if a dispute, claim, or cause of action should arise between the parties (hereinafter “claim”) the claim shall be brought in the state courts in Rutherford County, Tennessee or in the U.S. District Court for the Middle District of Tennessee, and the parties hereby expressly waive any objections and thereby consent to the jurisdiction and venue of said courts. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. Service of process on District shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and District does not agree to any other service of process procedure.

7.3 **Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private entities and, therefore, prohibits an agreement by District to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual provisions for the payment of attorney's fees, paralegal fees, investigator fees, court costs, or any other expenses related to litigation. In the event of litigation between District and Contractor each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure.

7.4 **Non-appropriation.** Contractor acknowledges that District is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event District fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to District, such termination shall not be a breach of this Agreement. Furthermore, this provision shall extend to any and all obligations imposed upon District to reimburse Contractor for any reimbursements, refunds, chargebacks, penalties, fees, or other financial obligations to Contractor following the date of termination under this Agreement.

7.5 **Taxes.** As a tax-exempt entity, District shall not be responsible for sales or use taxes incurred for products or services. District shall supply Contractor with its Sales and Use Tax Exemption Certificate upon Contractor's request.

7.6 **Binding Effect.** This Agreement is the entire agreement between District, (including District's employees and other end users) and Contractor. No employee of District or any other person, without authorization of the Board of Education can bind District to any contract or agreement and anything contrary contained in the Agreement, the Terms of Service or other agreements or understandings, whether electronic, click-through, or shrink-wrap, and whether verbal or written, with District's employees or other end users, to the contrary are null, void and without effect as it applies to District.

7.7 **Parties to Receive Notice.** Any notices contemplated by the Agreement to District shall also be sent via certified United States mail or via overnight delivery addressed to:

Murfreesboro City Schools
ATTN: Special Education Supervisor
2552 South Church Street
Murfreesboro, TN 37127

NHC/OP, L.P.
ATTN: _____
P.O. Box 1398
Murfreesboro, TN 37133

7.8 **Amendment.** The Agreement shall not be modified or altered other than by written agreement executed by both parties. This includes any changes to pricing, fees, rates, and charges.

7.9 **No Presumption Against Drafter.** This Agreement shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

7.10 **Counterparts.** This Agreement may be executed in one or more counterparts by District and Contractor.

7.11 **Transfer and Assignment.** Contractor may not transfer or assign, including, but not limited to, subcontracting, this Agreement or any part thereof without the prior written consent of the District.

7.12 **Non-Discrimination.** There will be no discrimination in the performance of this Agreement on the basis of race, religion, creed, color, national origin, families with children, sex, marital status, gender, age, genetic history, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, or the use of a service animal by a person with a disability in compliance with (a) Section 503 or Section 504 of the Rehabilitation Act of 1973, as amended, (b) the Americans with Disabilities Act of 1990, as amended, and (c) applicable non-discrimination laws of the State of Tennessee.

7.13 **Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in T.C.A. § 10-7-503 et seq., are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, District must, upon proper request, release public documents and records as defined by T.C.A. § 10-7-503 et seq., including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Contractor or provide Contractor with notice or the time to obtain a protective order. District does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section serves to meet such burden and authorization of disclosure.

7.14 **Student Confidentiality - Compliance.** For purposes of carrying out this Agreement, Contractor will perform an institutional service or function for which the District would otherwise use employees, and is hereby designated by District as a school official having a legitimate educational interest in accessing, using, and tracking student education records, as permitted by the Family Educational Rights and Privacy Act, (FERPA) (34 CFR Part 99.3). Contractor understands and agrees to comply with FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) and the confidentiality provisions under the IDEA Part B (34 CFR 300.610 through 300.626). Contractor understands and agrees that that it remains under direct control of District with respect to the use and maintenance of the education records. Contractor understands that the use of educational records is limited in scope and purpose. Contractor understands and agrees that it is prohibited from re-disclosing any personally identifiable information from the education records at any time

or for any purpose whatsoever. Any failure to comply with applicable FERPA requirements by Contractor or any of its employees will be immediately reported to District by Contractor.

7.15 **Force Majeure.** No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such party's failure or delay is caused by or results from the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; or (h) telecommunication breakdowns, power outages or shortages.

7.16 **Name and Logo.** District does not consent to the use of its name or logo in any advertising or promotional material or distributions or other commercial use by Contractor. Additionally, District does not waive any moral right to the use of the name submitted to Contractor.

7.17 **Effective Date.** This Agreement is effective as of the last date written below (“Effective Date”).

7.18 **Severability.** Each article, paragraph, subparagraph, term, and condition of this Agreement, and any portions thereof, will be considered severable. If, for any reason, any portion of this Agreement is determined to be invalid, contrary to, or in conflict with, any applicable present or future law, rule, or regulation in a final ruling that will not impair the operation of, or have any other effect upon, any other portions of this Agreement, all of which will remain binding on the parties and continue to be given full force and effect.

7.19 **Debarment and Suspension.** Contractor agrees to comply, and assures the compliance of each employee, with Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 1601.

7.20 **Federal Funding.** Contractor acknowledges that federal funding will be used to fund all or a portion of this Agreement. The Contractor will comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives.

7.21 **Captions and Headings.** All captions and/or headings in this Agreement are intended solely for the convenience of the parties and non shall be deemed to affect the meaning or construction of any provision of this Agreement.

7.22 **Non-Compete.** During the term of this Agreement and for a period of two (2) years following any termination of this Agreement, District shall not hire for employment any person who was employed by Provider as of the Effective Date of this Agreement or at any time during the terms of this Agreement or for a period of two (2) years following any termination of this Agreement, or attempt to influence any such person to terminate employment with Contractor. The District recognizes and agrees that a breach of this paragraph will cause irreparable injury and damage to Contract which cannot reasonably or adequately be compensated in money damages. The District agrees, therefore, in addition to any other remedy to which Contractor may be entitled,

Contractor will be entitled to injunctive and other equitable relief to prevent a breach of this paragraph of the Agreement (including a threatened breach) and to secure its enforcement.

7.23 Maintenance of Records. Contractor shall maintain documentation for all charges associated with services provided pursuant to this Contract. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit at any reasonable time and upon reasonable notice by District or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. Contractor specifically agrees to allow the Secretary of the United States Department of Health and Human Services and the Comptroller General of the United States or their duly authorized representatives to, upon their written request, be allowed to access books, documents, and records necessary to verify the cost of the services provided by Contractor herein to District, but only upon the terms and conditions as specified in 42 CFR § 420.300, et seq. In the event this Agreement between the parties hereto and the communications involved therein are privileged, pursuant to statutory, constitutional, or common law, then in that event, please be advised that District, by agreeing to the inclusion of the above language, is not waiving any privileges afforded it by constitutional, statutory, or common law provisions.

7.24 HIPAA Compliance. Contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. 1320d (“HIPAA”) and any current and future regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 CFR Parts 160 and 164 (the “Federal Privacy Regulations”), the federal security standards contained in 45 CFR Part 142 (the “Federal Security Regulations”), and the federal standards for electronic transactions contained in 45 CFR Parts 160 and 162, all collectively referred to herein as “HIPAA Requirements”. Contractor agrees not to use or further disclose any Protected Health information, as defined in 42 USC 1320D, other than as permitted by HIPAA Requirements and the terms of this Agreement.

7.25 Clean Air Act. The Contractor shall be in compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368) Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

7.26 Energy Policy and Conservation Act. The Contractor shall be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

7.27 Program Fraud and False or Fraudulent Statements or Related Acts. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement for which this contract work is being performed. In addition to other penalties that may

be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the federal U.S. Government may reserve the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on Contractor to the extent the U.S. Government deems appropriate. If Contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the U.S. Government under a contract connected with a project that is financed in whole or in part with federal funding under the authority of 49 USC 5307, the U.S. Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on Contractor, to the extent the U.S. Government deems appropriate.

7.28 Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Agreement:

- (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, Contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age.
- (c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date written below:

NHC/OP, L.P.

Murfreesboro City Schools

Signature

Director of Schools

Date

Date

Printed Name

Approved as to form:

Title

Lauren Bush, Assistant City Attorney

PROFESSIONAL SERVICES AGREEMENT – APPENDIX A

This Appendix A (“Appendix”) outlines the specific terms and conditions of compensation for the contractor as agreed upon by both parties. It includes a detailed breakdown of payment structures, encompassing hourly rates, fixed fees, and any additional reimbursements for expenses. This Appendix is intended to ensure a clear and mutual understanding of all compensation under the Professional Services Agreement between Murfreesboro City Schools and NHC/OP, L.P. (“Agreement”). All compensation outlined herein is subject to the general provisions and conditions stipulated in the Agreement and this Appendix.

A. Provider Responsibilities

- a. Provider's speech therapy duties with respect to this Agreement shall be as follows:
 - i. Provide speech therapy services, evaluations, consultations for the students of the District as set forth in the Professional Services Agreement.
 - ii. Provide the District with necessary documentation to establish and maintain a current speech therapy-related service section of the student's individualized educational program in accordance with federal and state requirements. Providing documentation includes attending special education and related meetings when feasible, and if unable to attend, submitting the necessary recommendations and draft of goals. It also includes documentation of student progress and recording on IEP report per nine-week period. Documentation may also be in the form of developing school and home programs for the benefit of the student to succeed in the student's educational environment.
 - iii. Provide in-service training for the school system teachers and educational assistants as requested in advance by the Agency and agreed to by the Provider.

- b. Provider's occupational therapy duties with respect to this Agreement shall be as follows:
 - i. Provide direct occupational therapy services, evaluations, consultations for the students of the District as set forth in the Professional Services Agreement.
 - ii. Provide the District with necessary documentation to establish and maintain a current occupational therapy-related service section of the student's individualized educational program in accordance with federal and state requirements. Providing documentation includes attending IEP meetings when feasible, and if unable to attend, submitting the necessary recommendations and draft of goals. It also includes documentation of student progress and recording on IEP report per nine-week period. Documentation may also be in the form of developing school and home programs for the benefit of the student to succeed in his educational environment.

B. Contractor Compensation

- a. The District agrees to compensate Contractor as follows:
 - i. Seventy-three dollars (\$73.00) per hour for services rendered under this Agreement by a licensed physical therapist;
 - ii. Sixty-eight dollars (\$68.00) per hour for services rendered under this Agreement by a licensed physical therapist assistant;
 - iii. Sixty-nine dollars (\$69.00) per hour for services rendered under this Agreement by a registered occupational therapist;
 - iv. Sixty-one dollars (\$61.00) per hour for services rendered under this Agreement by a certified occupational therapist assistant;
 - v. Sixty-five dollars (\$65.00) per hour for services rendered under this Agreement by a speech language pathologist.
- b. Compensation will be provided for the following services:
 - i. Speech therapy services, direct occupational therapy services, direct physical therapy services, evaluations, consultations, participation in multidisciplinary team meetings, training/educating school personnel, phone consultations, development of student's school and home programs related to achievement in the educational setting and documentation time;
 - ii. In-service preparation time and training for teachers and educational assistants;
 - iii. Travel time between school buildings and/or district facilities. Travel mileage between school buildings will be reimbursed at \$0.655 cents per mile. This mileage rate is subject to change if modified by the District.
- c. All services must be documented on an itemized invoice submitted on a monthly basis to the District pursuant to the Agreement. The following District employees are identified as individuals to receive all invoices pursuant to this Agreement:

Angela Fairchild
2552 South Church Street
Murfreesboro, TN 37127
angela.fairchild@cityschools.net

Kim Creager
2552 South Church Street
Murfreesboro, TN 37127
kim.creager@cityschools.net

Invoices may be mailed to Murfreesboro City Schools or e-mailed to the individuals listed above.

- d. The total amount of this Agreement shall not exceed one hundred and fifty-thousand dollars (\$150,000.00), unless a prior written approval is received by the Director of Schools and this Agreement is amended to include the additional payment amount.
- e. The rates set forth above will remain unchanged unless an amendment to the Agreement is duly executed by both parties.

Agenda Item Title: Approve contract with Institutional Wholesale Co. for produce for the 2024-2025 school year that will be provided to the School Nutrition Program

Board Meeting Date: July 23, 2024

Department: School Nutrition

Presented by: Trey Duke

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board must approve contracts exceeding \$50,000.00. The School Nutrition Department issued an Invitation for Bids for produce and had 3 respondents. Institutional Wholesale Co. was the lowest responsive, responsible bidder.

Staff Recommendation

Approve contract with Institutional Wholesale Co. for produce provided to the School Nutrition Program

Fiscal Impact

The total cost of the contract will be dependent on the type and number of produce items purchased; however, the cost of the contract will not exceed the budget provided for this line item. Funding for this contract will be sourced from the federal Nutrition budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

INSTITUTIONAL WHOLESALE CO., INC.
535 DRY VALLEY ROAD
COOKEVILLE, TN 38506

Invitation for Bid and Contract

This document contains a bid solicitation and contract for the furnishing of produce for the nonprofit school food service program(s) for the period beginning July 23, 2024, and ending June 30, 2025, and sets forth the terms and conditions applicable to the procurement. Upon acceptance, this document shall constitute the contract between the bidder and the school food authority (SFA). The bidder shall not plead misunderstanding or deception because of such estimate of quantities, or of the character, location, or other conditions pertaining to the bid solicitation/contract. Produce prices must be quoted as if no USDA Foods will be received.

Total Estimated Amount of Bid**:\$ 446,424.40

***All totals must be carried out to the second decimal place and must not be rounded.*

Name of bidder: Institutional Wholesale Co., Inc.

Street address: 535 Dry Valley Road

City: Cookeville

State: Tennessee

Zip code: 38501

By submission of this bid, the bidder certifies that, in the event the bidder receives an award under this solicitation, the bidder shall operate in accordance with all applicable current program regulations. This agreement shall be in effect for the period specified, not to exceed one year, and may be renewed by mutual agreement for four additional one-year contract terms.



Bidder Signature

Contract Sales Manager

Title

July 11, 2024

Date

Acceptance of Contract

School food authority (SFA): Murfreesboro City Schools

SFA Signature

Title

Date

Vendor: Institutional Wholesale Co.

Produce	Estimated Usage	Price Each	Price Extension
Broccoli Snack Pack (50-1/2 cup)	450	\$25.48	\$11,466.00
Cucumber (5#)	25	\$6.48	\$162.00
Cucumber Snack Pack (50-1/2 cup)	45	\$18.83	\$847.35
Carrots, Sticks (4/5# bags)	25	\$46.30	\$1,157.50
Carrots, Baby Snack Pack (100-1/2 cup)	1450	\$21.18	\$30,711.00
Romaine, Chopped (6/2# case)	250	\$28.33	\$7,082.50
Tomato, Grape (10#)	50	\$17.48	\$874.00
Tomato, Grape & Green Pepper Snack Pack (50-1/2 cup)	50	\$28.83	\$1,441.50
Tomato, Cherry (12 pints)	27	\$19.48	\$525.96
Tomato, Medium (20#)	75	\$16.93	\$1,269.75
Tomato, Grape Snack Pack (50-1/2 cup)	50	\$26.48	\$1,324.00
Broccoli Florets Snack Pack (50-1/2 cup)	171	\$25.48	\$4,357.08
Cabbage, Green Chunk (4/5#)	150	\$18.21	\$2,731.50
Cabbage, Diced with Shredded Carrots (20#)	60	\$18.88	\$1,132.80
Potato, Baking (110 count)	50	\$14.73	\$736.50
Squash, Yellow Sliced (5#)	250	\$15.83	\$3,957.50
Squash, Zucchini Sliced (5#)	575	\$14.93	\$8,584.75
Cauliflower, Florets Snack Pack (50-1/2 cup)	50	\$29.93	\$1,496.50
Pears (90, 100,110, 125 count) (Year-round rotation of different varie	250	\$30.48	\$7,620.00
Grapefruit, Red (40/48 ct)	25	\$34.48	\$862.00
Apple, Sliced Snack Pack (100-1/2cup)	1750	\$30.21	\$52,867.50
Bananas (40# case)	900	\$18.73	\$16,857.00
Oranges (113/125/138 count)	300	\$31.48	\$9,444.00
Apple, Variety (113/125/138 count)(Year-round rotation of different v	250	\$28.43	\$7,107.50
Cantaloupe Snack Pack (50-1/2 cup)	100	\$34.83	\$3,483.00
Fruit Mix 4 Way (5# Tray)	975	\$18.81	\$18,339.75
Orange Wedge Snack Pack (50-1/2 cup)	2500	\$25.43	\$63,575.00
Grapes, White (18#)	125	\$41.48	\$5,185.00
Grapes, Red Snack Pack (50-1//2 cup)	2700	\$24.48	\$66,096.00
Grape, Red (5# Tray)	100	\$20.29	\$2,029.00
Pineapple, Chunk (5# Tray)	125	\$21.18	\$2,647.50
Pineapple Chunk Snack Pack (50-1/2 cup)	75	\$39.83	\$2,987.25
Strawberries - (8/1 # - flat)	225	\$17.23	\$3,876.75
Apple & Grape Buddies Snack Pack (50-1/2 cup)	500	\$24.93	\$12,465.00
Red & Green Apple Sliced Snack Pack (50-1/2 cup)	600	\$18.63	\$11,178.00
Red Grape & Cantaloupe Snack Pack (50-1/2 cup)	2750	\$26.83	\$73,782.50
Honeydew, Cut (10#)	75	\$19.33	\$1,449.75
Blueberries (12 pint)	75	\$25.48	\$1,911.00
Watermelon, Seedless (1 each)	70	\$6.48	\$453.60
Kiwi (36 count)	47	\$25.98	\$1,221.06
Peaches (25#)	35	\$32.23	\$1,128.05
TOTAL			\$446,424.40

8/ 7/12/24
8/ 7/12/24

INSTITUTIONAL WHOLESALE CO., INC.
535 DRY VALLEY ROAD
COOKEVILLE, TN 38506

ATTACHMENT B

CERTIFICATION REGARDING LOBBYING

Applicable to Grants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by Section 1352, title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Undersigned certifies, to the best of his or her knowledge and belief, that:

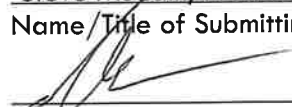
1. No federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of a federal contract, the making of a federal grant, the making of a federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with the instruction, as currently amended.
3. The Undersigned shall require that all language of this certification be included in the awarded documents for all covered subawards exceeding \$100,000 in federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Institutional Wholesale Co., Inc.

Name/Address of Organization

Steve McCain, President

Name/Title of Submitting Officer


Signature

July 11, 2024

Date

INSTITUTIONAL WHOLESALE CO., INC.
535 DRY VALLEY ROAD
COOKEVILLE, TN 38506

ATTACHMENT C

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND
VOLUNTARY EXCLUSION—LOWER-TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549 and 12689, Debarment and Suspension, Title 7 CFR, § 3017, Subpart C, Responsibilities of Participants Regarding Transactions. The regulations were published as Part IV of the January 30, 1989, *Federal Register* (pages 4722-4733) and Part II of the November 26, 2003, *Federal Register* (pages 66533-66646). Copies of the regulations may be obtained by contacting the United States Department of Agriculture (USDA).

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT/SUSPENSION

1. By signing and submitting this form, the prospective lower-tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower-tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower-tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower-tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which the transaction originated.
6. The prospective lower-tier participant further agrees by submitting this form that it will include this clause titled *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower-Tier Covered Transactions*, without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith that certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

SIGNATURE

2. The prospective lower-tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower-tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Institutional Wholesale Co., Inc
Organization/Supplier Name

July 11, 2024
Signature Date


Steve McCain, President
Name(s) and Title(s) of Authorized Representative(s)

Name of SFA
Official Title of Official

INSTITUTIONAL WHOLESALE CO., INC.
535 DRY VALLEY ROAD
COOKEVILLE, TN 38506

ATTACHMENT D

NON-KICKBACK AFFIDAVIT

STATE OF Tennessee)
) SS
COUNTY OF Putnam)

The undersigned, (architect, contractor, supplier, or engineer) of lawful age, being first duly sworn, on oath says that this contract (purchase order) is true and correct. Affiant further states that the (work, service or materials) will be (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that he or she has made no payment directly or indirectly, to any elected official, officer or employee of the SFA or technology center SFA, of money or any other thing of value to obtain or procure the contract or purchase order.

Melissa Hammock
(Supplier Signature)

Institutional Wholesale Co., Inc.
(Supplier/Company Name)

Attested to before me this 11th day of July, 2024.

Mark G. Welte
(Notary Public)

Commission Expires: 7/24/24



INSTITUTIONAL WHOLESALE CO., INC.
535 DRY VALLEY ROAD
COOKEVILLE, TN 38506

ATTACHMENT E

“Buy American” Certification

We require that suppliers comply with the “Buy American” provision in all program meals and:

- 1) certify that the products they are offering are domestic; or
- 2) request permission to provide an alternative item when domestic is not available or is priced substantially higher than the non-domestic item.

Requests for alternatives or exceptions should be made as a last resort. However, if you do not have a domestic item to provide for any line item specification on this bid, we will entertain a request for exception at the time of bid. Requests for exceptions during the bid period must be made in writing using this same form. All requests must be submitted at least () days prior to the scheduled delivery date.

Item as specified (include Supplier number)	Reason for exception (check one: “Limited or lack of availability” or “Price”)		Alternative substitute item (include Supplier number)	Price of specified item	Price of alternative item	
	Limited or lack of availability	Price				
Item # 6851 Cucumber 5 lb	Limited	N/A	N/A	\$6.48	N/A	US, MX, DO
Item # 6007 Tomato Grape	Limited	N/A	N/A	\$17.48	N/A	US, MX
Item # 9400 Tomato Cherry	Limited	N/A	N/A	\$19.48	N/A	US, MX
Item # 6842 Tomato Medium 20 lb	Limited	N/A	N/A	\$16.93	N/A	US, MX
Item # 9404 Bananas 40 lb case	Lack	N/A	N/A	\$18.73	N/A	HN

In all cases, the school food authority is the determining official that makes the decision to accept non-domestic items. Unless a specific exception has been granted, non-domestic items may not be shipped.

I/We Institutional Wholesale Co., Inc. certify that all food items on this bid have at least 51 percent U.S. content and were processed in the U.S., except for those listed above.

Supplier Certification

Melissa Hammock
Authorized signature

July 11, 2024
Date

Melissa Hammock, Contract Sales Manager

INSTITUTIONAL WHOLESALE CO., INC.
 535 DRY VALLEY ROAD
 COOKEVILLE, TN 38506

ATTACHMENT E

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Item as specified (include Supplier number)	Reason for exception (check one: “Limited or lack of availability” or “Price”)		Alternative substitute item (include Supplier number)	Price of specified item	Price of alternative item	
	Limited or lack of availability	Price				
Item # 6877 Grapes White 18 lb	Limited	N/A	N/A	\$41.48	N/A	US,CL, PE
Item # 7289 Blueberries 12 pt	Limited	N/A	N/A	\$25.48	N/A	US,DO, CL
Item # 6019 Watermelon Seedless	Limited	N/A	N/A	6.48	N/A	US,MX
Item # 9923 Kiwi 36 ct	Limited	N/A	N/A	\$25.98	N/A	US,NZ, IT
Item # 6062 Peaches 25 lb	Limited	N/A	N/A	32.23	N/A	US, CL

In all cases, the school food authority is the determining official that makes the decision to accept non-domestic items. Unless a specific exception has been granted, non-domestic items may not be shipped.

I/We Institutional Wholesale Co., Inc. certify that all food items on this bid have at least 51 percent U.S. content and were processed in the U.S., except for those listed above.

Supplier Certification


 Authorized signature

July 11, 2024
 Date

Melissa Hammock, Contract Sales Manager

Civil Rights Assurance Statement

Supplier Name:

By indication of the authorized signature below, the Supplier does hereby make certification and assurance of the Supplier's compliance with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d etseq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 etseq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 etseq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.



Melissa Hammock, Contract Sales Manager July 11, 2024

SUPPLIER Signature and Date

SUPPLIER BID-RIGGING CERTIFICATION

Supplier Name: Institutional Wholesale Co., Inc.

Authorized Agent: Melissa Hammock, Contract Sales Manager

Phone: 931-537-4282 E-mail: mhammock@goiwc.com

In connection with the submission of a bid to provide goods and/or services to Murfreesboro City Schools, the undersigned Supplier certifies, represents, and warrants that:

1. Non-Collusion:
 - a. The bid submitted has been drafted independently and without consultation, communication, or agreement with any other bidder or potential bidder.
 - b. No attempt has been made or will be made to induce another individual or entity to submit or refrain from submitting a bid for the purpose of restricting competition.
 - c. No kickbacks, bribes, gifts, or anything of value have been offered, given, or promised to any employee or representative of Murfreesboro City Schools in connection with this bid.
2. No Bid-Rigging:
 - a. The bid has not been disclosed to any other Supplier or potential Supplier before the official opening of the bids.
 - b. The undersigned Supplier has not participated in any scheme or arrangement with other Suppliers that would involve bid rotation, complementary bidding, or any other form of bid manipulation.

I, the undersigned, hereby acknowledge that I have read and understand the contents of this certification. I further certify that I am an authorized representative of the Supplier and that the statements contained herein are true and correct to the best of my knowledge and belief.

Signature: Melissa Hammock

Title: Contract Sales Manager Date: July 11, 2024

2. A.1) c. MISCELLANEOUS FEES AND CHARGES

Additional fees/charges for "hot shot" deliveries? Yes No

If yes, how much per delivery per site?

\$ 0.00

Extra charge for more than one delivery per site, per week? Yes _____ No X

If yes, how much per delivery per site?

\$
0.00

Fuel Surcharge per drop (Flat fee only, if any)

*Specify trigger index or method.

\$ 0.00

Murfreesboro City Schools total expenditures for fresh produce is approximately \$ 450,000. Projected quantities and or dollar volume may vary due to availability of similar USDA commodity products.

Murfreesboro City Schools Board reserves the right to reject any or all proposals and to waive informalities or minor irregularities or technicalities in any proposal.

I have read, understand, and agree to all statements in this request for proposal and to the terms and conditions stated herein:

Institutional Wholesale Co., Inc.

Company Name

931-537-4282

Phone Number

931-537-4209

Fax Number

535 Dry Valley Road, Cookeville, TN 38506

Address

Melissa Hammock

Authorized Signature

Melissa Hammock

Name

7/11/2024

Date

Melissa.Hammock@goiwc.com

Email Address

INSTITUTIONAL WHOLESALE CO., INC.
 535 DRY VALLEY ROAD
 COOKEVILLE, TN 38506

LOCAL PRODUCE AVAILABLE FOR SOURCING FROM PROPOSER

Please check which produce you will be able to provide (at any point of the year) from a local source at Level 1-grown within the State of Tennessee, or Level 2-grown within a region of 250 miles from the Nashville area. Also provide the name of the farm or Farmer, and the location of the farm. This information will be used to evaluate the points counted towards local produce in awarding the bid.

Produce	Check if can provide this produce locally Level 1	Check if can provide this produce locally Level 2	Name of Farm or Farmer	Location of Farm Nearest city or township
Apples	Seasonal Oct - Nov		Wooden Apple House	Dayton TN or Pikeville TN
Strawberries				
Cabbage		Seasonal - Mostly Summer	Allen Co Produce	Scottsville, KY
Peaches				
Carrots				
Tomatoes		June - July	Allen Co Produce	Scottsville KY
Tomatoes, Cherry				
Watermelon		July - August	Allen Co Produce	Scottsville KY
Other: Pepper Green		June - August	Allen Co Produce	Scottsville KY
Other:				
Other:				
Other:				

INSTITUTIONAL WHOLESALE CO., INC.
535 DRY VALLEY ROAD
COOKEVILLE, TN 38506

SUPPLIER'S TECHNICAL RESPONSE

Any or all of the information may be used in the evaluation of this proposal.

**SUPPLIER'S QUALIFICATIONS: SIZE, CAPACITY, SERVICE
CAPABILITIES, PLANT/FACILITY, PERSONNEL,
INSURANCE, OTHER RELATED FACTORS**

SECTION I.

Company Name: Institutional Wholesale Co., Inc.
Principal Owner/Parent
Company: US Foods Inc

Principal Place of Business: 535 Dry Valley Road, Cookeville TN 38506

PACA License #: 19690374

Address of Distribution Plant: 535 Dry Valley Road, Cookeville TN 38506

Total Refrigerated Square Feet w/in local plant:	75,000	Refrigerated Units Inspection and Maintenance Plan (Frequency of PM checks):	Quarterly
Total Full-time Employees (FTE) at local plant:	220	Number of fully operational refrigerated trucks (local plant):	59
Number of FTE delivery drivers: (Local Plant)	60	Delivery drivers' average number of years' experience with your company:	7.5 Years
List and describe any recent production, performance, efficiency, or quality awards your company and/or the local plant has received.	N/A		
Describe your company's employee training program for drivers and plant workers.	Drivers and selectors go through a 4-6 week training on Safety, Customer Service, and Production.		
How do you track prices and brands of produce purchased daily?	Price Sheets are emailed from Vendors, but brands depend on the shipper.		
Would the SFA be permitted to audit the daily pricing and brands?	Yes, Produce pricing is done on a weekly basis.		
What were your company's total gross produce sales for the fiscal year 2024?	We are currently in fiscal year 2024. The gross produce sales for fiscal year 2023 was \$10,440,432.	What is your fiscal year period?	1/1/23 - 12/31/23
What methods do you use to alert customers on the availability of seasonal produce?	Emails are usually sent to the SFA.		

INSTITUTIONAL WHOLESALE CO., INC.
535 DRY VALLEY ROAD
COOKEVILLE, TN 38506

Section II.

Safety and Sanitation Programs

The pest control program is designed to eliminate various pests such as birds, rodents, reptiles, and insects. It includes both physical and chemical controls to prevent the entry, harborage, and infestation of pests, as well as provide a way to monitor, detect, and eradicate pests. The application of chemical controls is carried out by a licensed pest control operator, Cook's Pest Control. The inspections are done on a weekly basis.

Describe your current insect & Pest control program (frequency of inspections and treatment plan):

Describe your plant's garbage removal program and frequency.

Garbage is removed 3 times a week

Describe how your packaging and containers meet or exceed Federal regulations for safe use with food.

Our packaging is inspected upon delivery to check for temperature, damage, insects, or rodent signs before it is placed in storage.

How are locally produced produce tracked and identified, e.g. identification of containers?

First by product and PO. Cases are marked with Lot # from growers.

Do you have a written and implemented current HACCP for the local plant?

	When was the last revision of the plan made?	
Yes		2/26/2024

When were the local plant personnel last trained on the HACCP Plan?

December 18, 2023

In the last 60 days, how many inspections has your plant received and what were the results of the inspection?

Last inspection was July 2023 Please furnish a copy of the last three (3) Health department inspections.

How is produce tracked and traced as it moves through the supply chain to the customer?

Produce is tracked upon receiving with a received date and PO number. The product is scanned into our database for selection and then

How many OSHA Recordable accidents did you have at your local plant during the last 12 months?

40

How many lost workdays did your local plant have during the last 12 months?

142 Days

INSTITUTIONAL WHOLESALE CO., INC.
535 DRY VALLEY ROAD
COOKEVILLE, TN 38506

Section III.

References & Performance

School District Customers: List 2 current Customers	Cumberland Co Schools / Kathy Hamby Putnam Co Schools / Jennifer Mitchell
What is your plant's average turn-around time for produce (received and then shipped to customer)?	Apples & Potatoes on average have a turn around time of 7-28 days. All other items on average have a turn around time of 7-14 days.
What are the limits of your company's product liability coverage?	\$2,000,000
What methods, programs, promotional materials or resources does your company offer to promote the local produce program?	Seasonal Items, Example: Tennessee Crunch Day
How is locally grown produce kept separate or separated at your plant?	Apples have separate Item # and slot locations. Other items are seasonal, and we use for all customers.

Section IV.

Pricing Terms

What is your company's return and credit policy for poor quality produce?	Fresh produce should be inspected, refused and returned at the time of delivery. However, if reported within 24 hours with picture and information, we will review and evaluate.
Describe how your company will invoice for partial cases?	Most produce items are sold only by case. However, on a select number of items we do break case, but there is a small processing fee added.

Section V.

Local Farmers

In the spaces provided below, please include a list of local produce items offered to customers in the past calendar year.

Green Peppers - From June to August

Watermelons - From June - August

Apples - For Tennessee Crunch Day

Cabbage - Season Summer

Tomatoes - June - July

List names of the farms and the products that you sourced from them.

Farm

Produce

Allen County Produce

Peppers, Watermelon, Tomatoes, Cabbage (Seasonal)

Wooden Apple House

Apples (Seasonal)

INSTITUTIONAL WHOLESALE CO., INC.
535 DRY VALLEY ROAD
COOKEVILLE, TN 38506

REFERENCES

You must furnish three (3) customer references of customers who: (1) have been customers for at least three years; (2) have an annual purchase volume of at least \$200,000 or more; (3) have five (5) or more delivery locations serviced by the same local plant.

Customer Name:	<u>Cumberland Co Schools</u>	Contact's Name:	<u>Kathy Hamby</u>
Customer's Address:	<u>368 Fourth Street Crossville, TN 38555</u>	Contact's Phone Number:	<u>931-484-6722</u>
Contact's Title	<u>School Nutrition Supervisor</u>	Length of contract:	<u></u>
Contact's Email Address:	<u>khamby@ccschools.k12tn.net</u>		

Customer Name:	<u>Putnam County Schools</u>	Contact's Name:	<u>Jennifer Mitchell</u>
Customer's Address:	<u>3860 Phifer Mountain Road Cookeville, TN 38506</u>	Contact's Phone Number:	<u>931-528-1847</u>
Contact's Title	<u>School Nutrition Supervisor</u>	Length of contract:	<u></u>
Contact's Email Address:	<u>jennifer.mitchell@pcsstn.com</u>		

Customer Name:	<u>Hamilton Co Schools</u>	Contact's Name:	<u>Kristen Nauss</u>
Customer's Address:	<u>2501 Dodds Ave Chattanooga TN 37407</u>	Contact's Phone Number:	<u>423-498-6699</u>
Contact's Title	<u>School Nutrition Director</u>	Length of contract:	<u></u>
Contact's Email Address:	<u>Nauss_K@HCDE.ORG</u>		

Agenda Item Title: Discovery Education Techbooks contract for the 2024-2025 school year

Board Meeting Date: July 23, 2024

Department: Instruction & Curriculum

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board must approve contracts exceeding \$50,000.00. This contract for Discovery Education Techbooks is presented to the Board for approval for the 2024-2025 school year. This contract will provide highly engaging digital textbooks to our students for the upcoming school year. Discovery Education is our adopted science curriculum, and this is a continuation of services.

Staff Recommendation

Approve contract for Discovery Education Techbooks for the 2024-2025 school year

Fiscal Impact

The total cost of the contract is \$136,435.00 and funding will be provided by the general purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City Schools
2252 South Church Street, Murfreesboro TN 37127
Phone (615) 893-2313 **Fax** (615) 893-2352
cityschools.net



FY2025 CONTRACT REVIEW FORM

Requesting Department/School: Instruction and Curriculum

Contract: Discovery Education - Science Techbook Bundle

Vendor: Discovery Education

Contract Term: 7/1/24-6/30/25 Contract Identifier: 2025-CUR-007

Is there a contract renewal option? Yes No Cost: \$136,435.00

Contract monitoring required? Yes No Date of Biannual Review: 1/15/25

Is Board approval required: Yes No Board Meeting Date: 7/23/24

Is the contract issued pursuant to a grant agreement? Yes No

Is the contract issued pursuant to an ITB/RFP? Yes No ITB/RFP No.: _____

Does the contract require student information? Yes No

Legal Review

Are any amendments to the contract required? Yes No

Brief description of amendments and/or other comments:

Addendum added and approved by vendor

Legal Approval:  Date: 7/16/24

Finance Review

Budget Account Number: 141-71100-449

Funding Source: General Purpose Federal Other: _____

Other comments:

We budgeted \$649,760 in this line.

Finance Approval:  Daniel Owens (Jul 16, 2024 13:52 CDT) Date: 07/16/24



ORDER FORM


Subscriber: MURFREESBORO CITY SCHOOL DISTRICT
Address: 2552 S CHURCH ST STE 100 MURFREESBORO, TN 37127-7135
Term: 7/1/2024 to 6/30/2025

Services	Start Date	End Date	Qty - Unit of Measure	Price	Total
Discovery Education Science Techbook, Bundle (Per Site)	7/1/2024	6/30/2025	13 - Site	\$9,000.00	\$117,000.00
Mystery Science	7/1/2024	6/30/2025	13 - Site	\$1,495.00	\$19,435.00
TOTAL:					\$136,435.00

This Order Form and the Discovery Education Standard Terms of Services and License available at discoveryeducation.com/terms-and-conditions ("Standard Terms") constitute the entire agreement between Subscriber and Discovery Education, Inc. for the Services. By signing below, the Subscriber and Discovery Education, Inc. agree to be bound by this Order Form and the Standard Terms as of the date of last signature below.

MURFREESBORO CITY SCHOOL DISTRICT

Discovery Education, Inc.

By: _____ **By:**  _____
(Signature Required) (Signature Required)

Title: _____ **Title:** Global Head of operations

Printed Name: _____ **Printed Name:** Megan Haller

Date: _____ **Date:** July 10, 2024

Please return Exhibits A & B with the signed Order Form.



**EXHIBIT A
LICENSED PRODUCTS**

Discovery Education Science Techbook, Bundle (Per Site)		
SCHOOLS	START DATE	END DATE
BLACK FOX ELEMENTARY SCHOOL - 1753 S RUTHERFORD BLVD, MURFREESBORO, TN. 37130-5957	07/01/2024	06/30/2025
BRADLEY ACADEMY OF ARTS - 511 MERCURY BLVD, MURFREESBORO, TN. 37130-4814	07/01/2024	06/30/2025
CASON LANE ACADEMY - 1330 CASON LN, MURFREESBORO, TN. 37128-6795	07/01/2024	06/30/2025
DISCOVERY SCHOOL - 1165 MIDDLE TENNESSEE BLVD, MURFREESBORO, TN. 37130-5075	07/01/2024	06/30/2025
ERMA SIEGEL ELEMENTARY SCHOOL - 135 W THOMPSON LN, MURFREESBORO, TN. 37129-1223	07/01/2024	06/30/2025
HOBGOOD ELEMENTARY SCHOOL - 307 S BAIRD LN, MURFREESBORO, TN. 37130-4599	07/01/2024	06/30/2025
JOHN PITTARD ELEMENTARY SCHOOL - 745 DEJARNETTE LN, MURFREESBORO, TN. 37130-9160	07/01/2024	06/30/2025
MITCHELL NEILSON ELEMENTARY SCHOOL - 711 W CLARK BLVD, MURFREESBORO, TN. 37129-2499	07/01/2024	06/30/2025
NORTHFIELD ELEMENTARY SCHOOL - 550 W NORTHFIELD BLVD, MURFREESBORO, TN. 37129-1531	07/01/2024	06/30/2025
OVERALL CREEK ELEMENTARY SCHOOL - 429 OTTER TRL, MURFREESBORO, TN. 37128-4088	07/01/2024	06/30/2025
REEVES - ROGERS ELEMENTARY SCHOOL - 1807 GREENLAND DR, MURFREESBORO, TN. 37130-3199	07/01/2024	06/30/2025
SALEM ELEMENTARY SCHOOL - 3400 Saint Bernard Way, MURFREESBORO, TN. 37128	07/01/2024	06/30/2025
SCALES ELEMENTARY SCHOOL - 2340 SAINT ANDREWS DR, MURFREESBORO, TN. 37128-5882	07/01/2024	06/30/2025

Mystery Science		
SCHOOLS	START DATE	END DATE
BLACK FOX ELEMENTARY SCHOOL - 1753 S RUTHERFORD BLVD, MURFREESBORO, TN. 37130-5957	07/01/2024	06/30/2025
BRADLEY ACADEMY OF ARTS - 511 MERCURY BLVD, MURFREESBORO, TN. 37130-4814	07/01/2024	06/30/2025
CASON LANE ACADEMY - 1330 CASON LN, MURFREESBORO, TN.	07/01/2024	06/30/2025



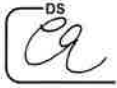
37128-6795		
DISCOVERY SCHOOL - 1165 MIDDLE TENNESSEE BLVD, MURFREESBORO, TN. 37130-5075	07/01/2024	06/30/2025
ERMA SIEGEL ELEMENTARY SCHOOL - 135 W THOMPSON LN, MURFREESBORO, TN. 37129-1223	07/01/2024	06/30/2025
HOBGOOD ELEMENTARY SCHOOL - 307 S BAIRD LN, MURFREESBORO, TN. 37130-4599	07/01/2024	06/30/2025
JOHN PITTARD ELEMENTARY SCHOOL - 745 DEJARNETTE LN, MURFREESBORO, TN. 37130-9160	07/01/2024	06/30/2025
MITCHELL NEILSON ELEMENTARY SCHOOL - 711 W CLARK BLVD, MURFREESBORO, TN. 37129-2499	07/01/2024	06/30/2025
NORTHFIELD ELEMENTARY SCHOOL - 550 W NORTHFIELD BLVD, MURFREESBORO, TN. 37129-1531	07/01/2024	06/30/2025
OVERALL CREEK ELEMENTARY SCHOOL - 429 OTTER TRL, MURFREESBORO, TN. 37128-4088	07/01/2024	06/30/2025
REEVES - ROGERS ELEMENTARY SCHOOL - 1807 GREENLAND DR, MURFREESBORO, TN. 37130-3199	07/01/2024	06/30/2025
SALEM ELEMENTARY SCHOOL - 3400 Saint Bernard Way, MURFREESBORO, TN. 37128	07/01/2024	06/30/2025
SCALES ELEMENTARY SCHOOL - 2340 SAINT ANDREWS DR, MURFREESBORO, TN. 37128-5882	07/01/2024	06/30/2025



EXHIBIT B

Discovery Education Science Techbook, Bundle (Per Site)		
Product Bundle Includes	Quantity	Unit of Measure
Discovery Education Experience	13	Site
Discovery Education Science Techbook	13	Site

DS
MD



**ADDENDUM TO
STANDARD TERMS OF SERVICE AND LICENSE
BETWEEN
MURFREESBORO CITY SCHOOLS
AND
DISCOVERY EDUCATION, INC.**

This Addendum (herein "Addendum") amends the Standard Terms of Service and License pursuant to Order Form Ref. No. Q-416170, and all attachments, exhibits, (all of which are herein "Agreement") between Discovery Education, Inc. (herein "Contractor") and Murfreesboro City Schools (herein "District," "School" or "Customer"). In consideration of using Contractor's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

1. **Precedence.** Notwithstanding any other provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions, or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control.
2. **Indemnity, Limitation of Liability and Disclaimer of Warranty.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring Customer to indemnify or hold harmless Contractor or any other person or entity and any limitation of liability in favor of Contractor is deleted. No provision of this Agreement shall act or be deemed a waiver by Customer of any immunity, including its rights or privileges afforded by the Tennessee Constitution or state law including but not limited to any provision of the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 et seq. Because Tennessee law may not allow Customer to agree to the disclaimer of warranties any such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law, and Customer reserves all rights afforded to local governments under law for all general and implied warranties.
3. **Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq., are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, Customer must, upon proper request, release public documents and records as defined by T.C.A. §10-7-503 et seq., including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Contractor or provide Contractor with notice or the time to obtain a protective order. Customer does not have the burden of establishing

that information is not confidential information or that its release is authorized to release the records. This section 3 serves to meet such burden and authorization of disclosure.

4. **Termination for Convenience.** District or Contractor may terminate the Agreement and use of the service at any time for any reason. However, termination shall not take effect until 60 days after written notice is delivered by the party terminating the agreement to the other party. Such termination will not be deemed a breach of contract by either party. Should District exercise this provision, District will compensate Contractor for all services pursuant to Order Form Ref. No. Q-416170 up to the termination date, and Contractor will refund to District any funds paid by District in excess of such amount. Upon such termination, Contractor will not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Notices to the Customer shall be sent to:

Director of Schools
Murfreesboro City Schools
2552 South Church Street
Murfreesboro, TN 37127

5. **Name and Logo.** Customer does not consent to the use of its name or logo in any advertising or promotional material or distributions or other commercial use by Contractor other than in connection with any events promoted through or for which tickets are sold through Contractor's services.
6. **Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.
7. **Selection of Jurisdiction, Waiver of Jury Trial, Venue, Service of Process.** Pursuant to the Constitution and Laws of the State of Tennessee, Customer is a sovereign entity subject only to those courts with jurisdiction over District. If a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state courts in Murfreesboro, Tennessee, or the Federal court for the Middle District of Tennessee. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. The parties hereby consent to the mandatory and exclusive venue and jurisdiction of the state court located in Murfreesboro, Tennessee, or the Federal court for the Middle District of Tennessee. Service of process on Customer shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and Customer does not agree to any other service of process procedure.
8. **Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision.

This prohibition extends to contractual provisions for the payment of attorney's fees. In the event of litigation between Customer and Contractor each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure.

9. **Non-appropriation.** Contractor acknowledges that Customer is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event Client fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, upon sixty (60) days notice prior to the start of the new fiscal year, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to District, such termination shall not be a breach of this Agreement, and any unused payment made to Contractor shall be returned to District. Furthermore, this provision shall extend to any and all obligations imposed upon Customer to reimburse Contractor for any reimbursements, refunds, chargebacks, penalties, fees, or other financial obligations which exceed the funds tendered to Contractor, FPPs, or Payment Processing Partners in relation to any event.
10. **No Taxes.** As a tax-exempt entity, Customer shall not be responsible for sales or use taxes incurred for products or services. Customer shall supply Contractor with its Sales and Use Tax Exemption Certificate upon Contractor's request.
11. **Warranty.** Contractor warrants that the products purchased herein when used in accordance with the documentation shall operate in all material respects in conformity with the written representations of Contractor. If it does not perform as warranted, Contractor shall use commercially reasonable efforts to correct the products so that it operates in all material respects in conformity with the written representations of Contractor. If it cannot correct the products within a reasonable period of time, Contractor shall refund the purchase price of the products.
12. **Amendment.** This Addendum and the Agreement shall not be modified or altered other than by written agreement executed by both parties.
13. **Survival.** This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.
14. **No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.

15. Counterparts. This Addendum may be executed in one or more counterparts by Customer and Contractor. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.

16. FERPA Compliance. For purposes of carrying out this Agreement, Contractor will perform an institutional service or function for which the District would otherwise use employees, and is hereby designated by District as a school official having a legitimate educational interest in accessing, using, and tracking student education records, as permitted by the Family Educational Rights and Privacy Act, (FERPA) (34 CFR Part 99.3).

- A. Contractor understands and agrees to comply with FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) in that the storage and use of student education records by Contractor will comply with all FERPA requirements.
- B. Contractor understands and agrees that that it remains under direct control of District with respect to the use and maintenance of the education records. Contractor understands that the use of educational records is limited in scope and purpose. To access education records there must be a legitimate educational interest and must be essential to complete a function or task under this agreement.
- C. Contractor understands and agrees that it is prohibited from re-disclosing any personally identifiable information from the education records at any time or for any purpose whatsoever.
- D. Any failure to comply with applicable FERPA requirements by Contractor or any of its employees will be immediately reported to District by Contractor.

17. Data Ownership. In supplementation and not in limitation of the foregoing, the District retains and reserves the ownership of, and all rights, title, and interest in any and all data provided by the District to the Contractor under or in connection to this Agreement. The Contractor shall not destroy or permit the destruction of any District data, except upon the prior written consent of the District. On the expiration of or earlier termination of the Term of this Agreement, the Contractor shall promptly, and in no event not later than sixty (60) calendar days after request by the District, destroy and dispose of any remaining copies of the data in its possession or in the possession of any subcontractor.

18. Materials Harmful to Minors. The Contractor verifies that the technology services rendered do not violate Tenn. Code Ann. 49-1-221. The Contractor shall filter, block, or otherwise prevent access to pornography or obscenity through any student use of Contractor's services and prevent a user from sending, receiving, viewing, or downloading materials that are harmful to minors as defined by Tenn. Code Ann. 39-17-901.

- A. If contacted by District, the Contractor shall remove access to online materials for ages or audiences for which the District has determined the material to be age- or audience-inappropriate.
- B. Upon receipt of notice by the District of inappropriate material, the Contractor shall remove access to the online material within one (1) business day of the

notice, unless the deadline for removal is extended by mutual consent of the contracting parties.

19. Effective Date. This Addendum shall be effective immediately after the Agreement is effective.

Discovery Education, Inc.

Murfreesboro City Schools

DocuSigned by:
Megan Haller
D661C3CCF083464

Signature

Bobby N. Duke, III
Director of Schools

July 10, 2024

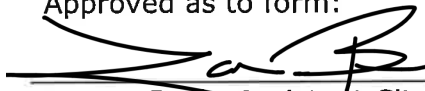
Date
Megan Haller

Date

Printed Name

Global Head of Operations
Title

Approved as to form:


Lauren Bush, Assistant City Attorney






Discovery Education- Techbooks

Final Audit Report

2024-07-16

Created:	2024-07-16
By:	Lauren Bush (lbush@murfreesborotn.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAALkzxZRVc4pkVluKoupSHDsjlUrQVTWs

"Discovery Education- Techbooks" History

-  Document created by Lauren Bush (lbush@murfreesborotn.gov)
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-  Agreement completed.
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Agenda Item Title: Open Up Resources curriculum bundles contract for the 2024-2025 school year

Board Meeting Date: July 23, 2024

Department: Instruction and Curriculum

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board must approve contracts exceeding \$50,000.00. This contract for Open Up Resources curriculum bundles is presented to the Board for approval for the 2024-2025 school year. This contract will provide EL Education textbook bundles for grades K-6. EL Education is the district's adopted curriculum. This is a continuation of services.

Staff Recommendation

Approve contract for Open Up Resources curriculum bundles for the 2024-2025 school year

Fiscal Impact

The total cost of the contract is \$259,765.00 and will be funded through the general purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City Schools
2252 South Church Street, Murfreesboro TN 37127
Phone (615) 893-2313 **Fax** (615) 893-2352
cityschools.net



FY2025 CONTRACT REVIEW FORM

Requesting Department/School: Instruction and Curriculum

Contract: Open Up Partnership Proposal - Q-44320

Vendor: Open Up Resources

Contract Term: Complete upon delivery Contract Identifier: 2025-CUR-006

Is there a contract renewal option? Yes No Cost: \$259,765.00

Contract monitoring required? Yes No Date of Biannual Review: _____

Is Board approval required: Yes No Board Meeting Date: 7/23/24

Is the contract issued pursuant to a grant agreement? Yes No

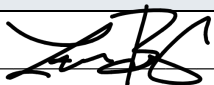
Is the contract issued pursuant to an ITB/RFP? Yes No ITB/RFP No.: _____

Does the contract require student information? Yes No

Legal Review

Are any amendments to the contract required? Yes No

Brief description of amendments and/or other comments:

Legal Approval:  Date: 7/16/24

Finance Review

Budget Account Number: 141-71100-449

Funding Source: General Purpose Federal Other: _____

Other comments:

We budgeted \$649,760 in this line.

Finance Approval: 
Daniel Owens (Jul 16, 2024 15:16 CDT) Date: 07/16/24



Proposal for Partnership

Quote Number	Q-44320	Created Date	06/26/2024
Account Name	Murfreesboro City School District (TN)	Expiration Date	07/31/2024
Primary Contact	Rhonda Gore	Prepared By Email	Keylea Garrison keylea.garrison@openup.org
Bill To	Rhonda Gore 2552 S Church St Ste 100 Murfreesboro, TN 37127	Ship To	Rhonda Gore Ship to schools Murfreesboro, TN 37127-7135

Introduction

Open Up Resources is pleased to submit this proposal for partnership. We are poised to deliver a best-in-class solution that suits your approach to teaching and learning.

The following quote outlines pricing for the requested materials and services; please contact us should your needs change. We will confirm this order upon receipt of your purchase order(s).

Thank you!

Product	Product Code	Description	Unit Price	Qty.	Total Price
OUR EL GK LANG ART SDNT COURSE	9781683623670	OUR EL Education, Grade K: Language Arts & Labs. Student Full Course Bundle (Updated)	\$22.00	1330	\$29,260.00
OUR EL G1 LANG ART SDNT COURSE	9781683623687	OUR EL Education, Grade 1: Language Arts & Labs. Student Full Course Bundle (Updated)	\$32.00	1260	\$40,320.00
OUR EL G2 LANG ART SDNT COURSE	9781683623694	OUR EL Education, Grade 2: Language Arts & Labs. Student Full Course Bundle (Updated)	\$32.00	1430	\$45,760.00
OUR EL G3 LANG ART SDNT COURSE	9781683623762	OUR EL Education, Grade 3: Language Arts. Student Full Course Bundle (Updated)	\$32.00	1435	\$45,920.00
OUR EL G4 LANG ART SDNT COURSE	9781683623779	OUR EL Education, Grade 4: Language Arts. Student Full Course Bundle(Updated)	\$32.00	1285	\$41,120.00
OUR EL G5 LANG ART SDNT COURSE	9781683623786	OUR EL Education, Grade 5: Language Arts. Student Full Course Bundle (Updated)	\$32.00	1355	\$43,360.00

OUR EL G6 LANG ART SDNT COURSE	9781643119410	OUR EL Education, Grade 6: Language Arts. Student Full Course Bundle (Second Edition)	\$51.00	275	\$14,025.00
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Subtotal: \$259,765.00

Standard Shipping Subtotal: FREE*

Total: \$259,765.00

Terms & Conditions

Pricing Information:

- All prices are in US dollars and valid for 30 days from the date of this proposal. After this time period, prices, products, and services are subject to change without notice.
- Note: This is a cost proposal, not a formal contract.

Shipping and Handling Charges:

- **All orders for Alaska and Hawaii will be charged shipping based on weight and distance.**
- Standard orders will be shipped via ground carrier, standard delivery.
- Books are packed in cartons labeled with Grade and Unit Number. Pallets will be organized by the receiving school or district to aid in distribution to the appropriate locations. To minimize the number of pallets shipped per school, materials for more than one grade level may appear on a single pallet.
- *Additional charges may apply for expedited shipments or exceptionally large orders; please contact your field specialist if you have special shipping or delivery requirements. Requests for shipping or product order changes after submission of your order will be accommodated whenever possible, though fees for re-direction may apply.

Ordering Information:

Please submit your official purchase order, with authorized signature(s), electronically to your field specialist. Include:

- Your complete billing address.
- A primary contact name, email address, phone number, title, school, district, street address, city, state, and zip code.
- A copy of this proposal.
- Any additional special requirements for delivery.

Payment Information:

- We kindly request payment within 30 days. Open Up Resources is a 501C3 not-for-profit organization.
- A 3% service charge will be applied for credit card payments.
- After 90 days, a fee of 1.5% per month will be charged on unpaid balances

Shortages and Damaged Materials

Please inventory your materials upon receipt. Open Up Resources will replace damaged, missing, or incorrect materials from an order at no cost to the customer if notified within 30 days of the shipment arrival date.

Return requests for any other reason must be made within 30 days of the shipment arrival date and will be considered by Open Up Resources on a case-by-case basis.

The following materials are not refundable:

- Custom trade book bundles and their bins
- Lab Materials Kits

Warranty:

- Open Up warrants to the District that for one year from the date of purchase (the 'Warranty Period'), all printed textbooks provided by Open Up pursuant to this RFP ('Textbooks') will be free from material manufacturing defects in material and workmanship that render such Textbooks unusable. To the extent that a material manufacturing defect that makes any Textbook unusable is discovered during the Warranty Period, Open Up will provide the District with a functionally equivalent replacement Textbook at no additional cost to the District. EXCEPT FOR THE WARRANTY SET FORTH ABOVE, OPEN UP MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE TEXTBOOKS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. THIS WARRANTY DOES NOT APPLY TO LAB MATERIALS KITS.
- The District must make best efforts to inspect books for material defects within 60 days of receipt to ensure timely replacement.
- Issues requiring warranty support may be directed to support@openup.org.






Open Up Resources Partnership Proposal

Final Audit Report

2024-07-16

Created:	2024-07-16
By:	Lauren Bush (lbush@murfreesborotn.gov)
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-  Agreement completed.
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Agenda Item Title: Upland Software contract for use of the Filebound software program

Board Meeting Date: July 23, 2024

Department: Student Support Services

Presented by: Trey Duke

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Pursuant to Board Policy 2.808, the Board must approve contracts exceeding \$50,000.00. This contract with Upland Software for use of the Filebound software program is presented to the Board for approval. The school district uses Filebound to store and maintain confidential student records. This is an on-going product used in the district, and it is not a new service.

Staff Recommendation

Approve contract with Upland Software for use of the Filebound software program

Fiscal Impact

The total cost of the contract is \$81,969.00 and funding will be provided by the general-purpose budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success



MASTER SERVICES AGREEMENT
UPLAND SOFTWARE

This Master Services Agreement, including each Schedule and attachment hereto (collectively, the “MSA”), is between Customer (as identified in a Sales Order made subject to this MSA) and Upland Software and its Affiliates (“Upland”), and sets forth the general terms and conditions applicable to the Applications and Services provided by Upland to Customer. The details of Customer’s purchase of specific Applications and/or Services shall be set forth in a Sales Order referencing this MSA, and upon execution by the parties, each such Sales Order shall be made subject to this MSA (each Sales Order together this MSA, an “Agreement”). The Agreement is effective as of the date the first such Sales Order was agreed to by the parties (the “Effective Date”). By agreeing to a Sales Order made subject to this MSA, Customer and Upland agree to be bound by the terms of the Agreement.

TERMS AND CONDITIONS

1. DEFINITIONS

1.1. “**Affiliate**” means any person or entity that controls, is controlled by, or is under common control with a party to this MSA. The term “control” as used in the immediately preceding sentence means the right to exercise, directly or indirectly, more than fifty percent of the voting rights attributable to the shares, partnership interests, membership shares, or similar evidences of ownership of an entity. Where identified in a Sales Order made subject to this MSA, Upland’s “Affiliates” shall mean: (1) Upland Software Inc. (*Logiciels Upland*), a corporation registered in Canada, (2) Upland Software UK Limited, a limited company registered in the United Kingdom, and (3) any other wholly-owned subsidiary of Upland Software, Inc., a Delaware corporation. Additional terms regarding each party’s Affiliates are detailed in Section 13.2 (*Affiliates*), below.

1.2. “**Agreement Term**” has the meaning set forth in Section 5.1, below.

1.3. “**Application**” means any software program, platform, solution suite supplied by Upland and identified in the applicable Sales Order. Where so indicated in the applicable Schedule, “Application” includes Upland Content and other information, technology, methods, processes, specifications, solutions, utilities, graphics and data made available by Upland to Customer on a per-User basis pursuant to the Agreement.

1.4. “**Customer Data**” means the data, information or other content, in any form, that is loaded into an Application by or on behalf of Customer, its Affiliates and/or any Users (or generated by the Application based on such information, data or content) for storage in Customer’s Instance. For the avoidance of doubt, Customer Data includes, without limitation, the following: (a) all data that is the output of Processing; (b) any copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, or otherwise derived from any Customer Data; (c) any Personal Data forming part of the Customer Data; and (d) any Customer Data generated or supplied by Customer’s subscribers, customers, or partners.

1.5. “**Documentation**” means documentation provided by Upland which describes the principles of the operation or functionality of the applicable Application, including, but not limited to, any such files that are embedded within such Application (e.g., help files).

1.6. “**Enhanced Support Services**” has the meaning set forth in the applicable Schedule.

1.7. “**Entitlements**” means the license or usage metrics and other restrictions or scope limitations applicable to Customer’s rights to any Application or Services, as detailed in this MSA and the applicable Sales Order (e.g., numbers of Users, volume of messages, the Subscription Term, etc.).

1.8. “**Intellectual Property Rights**” means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

1.9. “**Instance**” means any database provided by Upland in connection with the Services for Customer to store and manage the Customer Data.

1.10. “**Personal Data**” means any information relating to an identified or identifiable natural person.

1.11. “**Process**” or “**Processing**” means any operation or set of operations which is performed on Customer Data or on sets of Customer Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.12. “**Professional Services**” means consulting and support services provided by Upland, or its agents, including, but not limited to, software implementation, training, configuration, data migration, consulting and professional services performed by or on behalf of Upland for Customer subject to the terms this MSA and as detailed in a Sales Order.

1.13. “**Sales Order**” means any mutually agreed, written sales order, statement of work or similar document referencing and made subject to this MSA, executed on behalf of Upland and Customer, including its exhibits and addenda, detailing the Services, fees, and any special terms for using the Services that Customer has ordered. Each Sales Order becomes effective when executed by both Upland and Customer and is made subject to this MSA as detailed in the preamble, above.

1.14. “**Schedule**” means the document attached hereto and identified as a “Schedule” which supplements this MSA and sets forth additional terms and conditions specific to the particular Application(s) or other Services to be provided by Upland. Such additional terms and conditions are incorporated into this MSA as if such terms were fully set forth herein.

1.15. “**Services**” means Upland’s provision of any Application, Subscription Services, Support Services and/or Professional Services, collectively.

1.16. “**Statement of Work**” or “**SOW**” means a Sales Order for purchases of Professional Services, as may be executed by the parties from time to time.



1.17. **“Subscription Fees”** means any fees relating to Subscription Services (including fees for exceeding the Entitlements).

1.18. **“Subscription Services”** means the Services offerings to which Customer subscribes during a Subscription Term, otherwise subject to the Entitlements.

1.19. **“Subscription Term”** means the period of time in which Customer has the right to use or receive Subscription Services as detailed in the applicable Sales Order.

1.20. **“Support Services”** means availability, ongoing maintenance and technical support services provided by Upland for the applicable Application or Service in accordance with the maintenance and support terms detailed in the applicable Schedule.

1.21. **“Users”** means individuals authorized by Customer to use the applicable Application or Services subject to the Entitlements and who have been supplied Upland-issued user identifications and passwords by Customer. “Users” may include, but is not limited to, Customer’s, and any Customer’s Affiliate’s, employees, consultants, contractors and agents.

1.22. **“Virus”** means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, corrupt, destroy, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user. This definition includes, without limitation, self-propagating programming instructions commonly called viruses, trojans or worms. This definition expressly excludes code contained within any Application which: (i) is authored by Upland; and (ii) functions to deactivate a User’s ability to access and/or use the Application upon the expiration, suspension or termination of a Subscription Term.

2. **OWNERSHIP**

2.1. **The Services.** Except for the rights and licenses provided hereunder, as between Upland and Customer, Upland and its licensors retain all right, title, and interest to: (i) all software, products, works, and other intellectual property created, used, or provided by Upland for the purposes of the Agreement, including, but not limited to, each Application, the Services and all Documentation; and (ii) all modifications, adaptations and derivatives of, and improvements to, each Application, the Services and all Documentation. Customer shall and hereby makes all assignments necessary to provide Upland such ownership rights. Customer’s sole right to the Services is as set forth in the Agreement.

2.2. **Customer Data.** All rights, title and interest in and to Customer Data are and shall remain the property of Customer. Customer understands that certain of Upland’s Applications will not function absent Customer Data, and as such, Customer shall provide Upland, in the form and format and on the schedule specified by Upland, Customer Data and other information reasonably required for Upland’s performance of its obligations under the Agreement. Subject to the terms of the Agreement, Customer hereby grants to Upland throughout the term of the Agreement (and after the term solely as reasonably necessary for the performance of Upland’s post-termination obligations to Customer) the rights to use, reproduce, store, distribute, modify, cache, and transmit Customer Data via the applicable Application solely to the extent necessary for Upland to provide the Services or otherwise perform its obligations under the Agreement.

2.3. **Improvements Feedback.** If Customer provides any feedback to Upland concerning the functionality and performance of any Application or Services (including identifying potential errors and improvements) (the **“Improvement Feedback”**),

Customer hereby assigns to Upland all right, title, and interest in and to such Improvement Feedback, and Upland is free to use that Improvement Feedback without payment or restriction and it shall be deemed to be a derivative work of the Application or Services. Improvement Feedback expressly excludes Customer Data. Additionally, Upland may use Customer’s and its Users’ Services usage history, statistics and telemetry (**“Enhancement Data”**) solely for Upland’s internal analytical purposes related to its provision of Services, including to improve and enhance the Services. Upland may make information derived from its analysis of Enhancement Data available to its service providers on an aggregated and anonymized basis, provided that such information does not contain any Personal Data. For the sake of clarity, aggregated and anonymized data is not Confidential Information of Customer.

3. **PROFESSIONAL SERVICES**

3.1. **Scope.** For an additional fee, Customer may elect to purchase Professional Services, which may include, with respect to the Application, training, customization, on-site support and maintenance, and/or consulting services. For each request for Professional Services hereunder, the parties may execute a Sales Order specifying the fees, scope of work and/or specific terms of the project(s) or Professional Services to be provided.

3.2. **Travel Expenses.** Any travel related expenses incurred in the provision of Services must be pre-approved by Customer (**“Travel Expenses”**). Travel Expenses, including, but not limited to, transportation, lodging and meal expenses will be reimbursed by Customer and are in addition to the specified Services fees. If Customer cancels or reschedules a visit less than seven (7) days prior to the scheduled visit, Customer shall pay all of Upland’s travel (such as hotel, flight) cancellation and change fees related to such visit. Upland, in its sole discretion, may waive some or all of such cancellation or rescheduling fees.

4. **PAYMENT AND FEES**

4.1. **Sales Orders; Fees.** Customer shall pay Upland the fees specified in the applicable Sales Order, taxes, and any other amounts owing under the Agreement in the currency specified in the applicable Sales Order. Except as otherwise expressly provided in this MSA or the applicable Sales Order, all amounts payable to Upland under the Agreement are: (i) subject to the Entitlements; and (ii) non-cancellable and non-refundable. With regard to Subscription Services, Customer shall not be entitled to any refund of fees paid or relief from fees due if the volume of Entitlements actually used by Customer is less than the Entitlements purchased, and Customer may not carry over any of the unused Entitlements to a subsequent Subscription Term. Fees for Professional Services paid by Customer to Upland and remaining unused at the end of twelve (12) months from the date such Professional Services are invoiced shall expire and be retained by Upland.

4.2. **Modifications to Entitlements.** Customer may, from time to time during the Agreement Term elect to purchase rights to exceed some or all of the Entitlements (e.g., increases to the number of Users, purchases of additional messaging volume, etc.) by providing Upland with a purchase order issued against and referencing the then-current Sales Order, or, upon Upland’s request, by entering into a supplemental Sales Order with Upland; provided, however, that Customer acknowledges that certain Applications may not allow an increase of some or all elements of the Entitlements.

4.3. **Invoices and Payment Terms.** Subject to Section 4.4 (***Disputed Invoices***), Customer shall pay all amounts due within thirty (30) days of the date of the applicable invoice. Unless otherwise specified in a Sales Order, fees for Services shall be invoiced annually and in advance. Further, Customer



acknowledges and agrees that fees for renewals of Subscription Services are due on the first day of the renewing Subscription Term and shall be invoiced in advance as set forth above. Fees for additional Services or modifications to the Entitlements shall be invoiced upon Upland's receipt of Customer's request for such purchase. Subject to Section 4.2 (*Modifications to Entitlements*), where modifications to Entitlements to Subscription Services are purchased by Customer during an active Subscription Term, such fees shall be pro-rated for the remainder of such Subscription Term. Customer may provide Upland with a purchase order number or contract control number ("**Order Number**") for invoicing for Services purchased under the Agreement. Where Customer provides such Order Number, Upland agrees that it will provide the Order Number on each invoice and that no invoice will be considered validly submitted under this Agreement without such Order Number. Whenever a purchase order is issued by Customer as provided herein, the parties agree that any such issuance is for convenience of the Customer and the terms and conditions of any such purchase orders, if any, are superseded by this MSA.

4.4. Disputed Invoices. If Customer reasonably and in good faith disputes all or any portion of any invoice, Customer shall notify Upland in writing of its objection within twenty (20) days from the date of the applicable invoice, providing a detailed description of the reasons for the objection, and shall pay the portion of the invoice, if any, which is not in dispute. If Customer does not object in a timely manner, the amount invoiced shall be conclusively deemed correct by the parties.

4.5. Late Payments. Upland shall notify Customer in writing, which may be by email, of any undisputed invoice which is thirty (30) or more days past due. In the event Customer has not promptly cured such default, then Upland may, on not less than five (5) business days' prior written notice to Customer, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of Upland's obligations to provide Services under the Agreement. In the event of Customer's default in the payment of any undisputed invoice(s) for a period in excess of sixty (60) days past due, Upland may, upon not less than ten (10) business days' prior written notice to Customer, declare the entire principal sum payable under the Agreement immediately due and payable. Further, Customer shall reimburse any costs or expenses (including, but not limited to, collection agency fees, reasonable legal fees and court costs) incurred by Upland to collect any undisputed amount past due. Amounts due to either party under the Agreement may not be withheld or offset by either party for any reason.

4.6. Taxes. Customer shall be responsible for any applicable sales, value-added, use and similar taxes, together with all customs and import duties, and similar levies and impositions ("**Taxes**") payable with respect to its acquisition of Services, or otherwise arising out of or in connection with the Agreement, other than taxes based upon Upland's personal property ownership or net income. Unless expressly specified otherwise in any Sales Order, all fees, rates and estimates exclude Taxes. If Customer has tax-exempt status, Customer shall provide written evidence of such status with its Sales Order(s) or upon request by Upland.

5. TERM, RENEWAL AND TERMINATION

5.1. Agreement Term. This MSA shall commence upon the Effective Date and continue until each Sales Order has expired or is otherwise terminated in accordance with the Agreement (the "**Agreement Term**").

5.2. Subscription Term. Where Customer elects to purchase Subscription Services, the Subscription Term for such Subscription Services shall commence on the subscription start date specified in the applicable Sales Order and shall continue for

the period(s) specified therein. In the event such start date or period is not specified in the Sales Order, the Subscription Term shall be one (1) year from the date of execution of such Sales Order.

5.3. Termination for Breach. In the event of a material breach of the Agreement by either party, the non-breaching party may elect to terminate the Agreement, any Sales Order (or portion thereof) affected by the breach by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. If the breach has not been cured within the period ending thirty (30) days after such notice, and if the non-breaching party provides written notice of termination to the breaching party ("**Termination Notice**"), then the Agreement, or any such Sales Order, shall terminate within the time period specified in the Termination Notice. If Customer terminates the Agreement or any Sales Order for breach in accordance with this Section 5.3, then Upland shall refund to Customer a pro-rata amount of any affected Subscription Services fees prepaid to Upland and applicable to the unutilized portion of the Agreement Term for the terminated Agreement, and any affected unutilized Professional Services fees prepaid to Upland. For the avoidance of doubt, Customer's failure to pay any overdue, undisputed fees within thirty (30) days of Upland notifying Customer of the overdue payment shall constitute a material breach of the Agreement.

5.4. Termination for Convenience. The parties acknowledge and agree that Subscription Services are priced based on upon minimum commitments throughout the applicable Subscription Term and, notwithstanding anything to the contrary in the Agreement, may not be terminated for the convenience of either party.

5.5. Suspension for Critical Threats. If Upland, acting reasonably in the circumstances then known to Upland, determines that Customer's or any of its Users' use of the Services poses an imminent threat to: (i) the security or integrity of any Customer Data or the data of any other Upland customer; or (ii) the availability of the Application to Customer or any other Upland customer (each, a "**Critical Threat**"), then Upland shall immediately notify Customer in writing, which may be by email. Upland may suspend Customer's and its Users' use of the Application until the Critical Threat is resolved. Upland shall cooperate with Customer to promptly restore access to the Services once it verifies that Customer has resolved the condition giving rise to the suspension.

5.6. Transition Assistance. Following the termination or expiration of a Sales Order, provided Customer makes a written request within fourteen (14) days prior to the date of termination or expiration, subject to the then-current Professional Services fees on a time and materials basis, Upland shall offer transition assistance (which may include, to the extent practicable, an export of Customer Data from the applicable Application or Instance). To the extent Upland makes available to Customer an API or other means to assist with such transition, the API shall be Upland's Confidential Information (as defined in Section 6.1, below), and Customer is granted a personal, non-sublicensable, non-exclusive, non-transferable, limited license to use the API solely for Customer's internal use for exporting Customer's content from Upland to the new Customer system. Customer shall not (a) copy, rent, sell, disassemble, reverse engineer or decompile (except to the limited extent expressly authorised by applicable statutory law), modify or alter any part of the API, or (b) otherwise use the API on behalf of any third party. The API license shall automatically terminate in the event Customer breaches this Section 5.6 or immediately upon notice from Upland.

5.7. Survival. Sections 2 (Ownership), 4.1 (Fees), 4.3 (Invoices and Payment Terms), 4.5 (Late Payments), 4.6 (Taxes), 5.6 (Transition Assistance), 5.7 (Survival), 6 (Confidentiality), 8.5 (Bugs and Abatement; Scope), 8.6 (Disclaimer of Implied



Warranties), 9 (Indemnification), 10 (Limitations and Exclusions of Liability), 11 (Dispute Resolution), 12 (Publicity) and 13 (General) shall survive the termination or expiration of the Agreement.

6. CONFIDENTIAL INFORMATION

6.1. Restrictions on Use and Disclosure. Neither Upland nor Customer shall disclose to any third party any information provided by the other party pursuant to or in connection with the Agreement that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential (such information, "**Confidential Information**"), and shall make no use of such Confidential Information, except under and in accordance with the Agreement. The receiving party shall take reasonable precautions (using no less than a reasonable standard of care) to protect the disclosing party's Confidential Information from unauthorized access or use. Each party may disclose Confidential Information to its Affiliates and service providers, and its Affiliates and service providers may use such information, in each case solely for purposes of the Agreement. Each party shall be liable for any breach of its obligations under this Section 6 that is caused by an act, error or omission of any such Affiliate or service provider. Confidential Information includes information disclosed by the disclosing party with permission from a third party, and combinations of or with publicly known information where the nature of the combination is not publicly known. Upland's Confidential Information includes information regarding Application, Upland's processes, methods, techniques and know-how relating to identity management, user authentication or user authorization, Documentation, product roadmaps, pricing, marketing and business plans, financial information, information security information, Upland's certifications, and Personal Data of Upland personnel. Customer's Confidential Information includes its proprietary workflows and processes, systems architecture, marketing and business plans, financial information, information security information, information pertaining to Customer's other suppliers, and Personal Data of Customer's personnel. This Section 6 does not apply to Upland's obligations regarding use and protection of Customer Data; those obligations are specified in Section 7 (*Data Protection*).

6.2. Exclusions. Except with respect to Personal Data, Confidential Information does not include information that the receiving party can establish: (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party; or (iv) has been independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

6.3. Disclosure Required by Law. If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party's Confidential Information (a "**Disclosure Order**") then, unless otherwise required by the Disclosure Order, the receiving party shall promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party's efforts to protect its Confidential Information. Following such notification, the receiving party shall cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information.

6.4. Independent Development. The terms of confidentiality under the Agreement shall not limit either party's right to independently develop or acquire products, software or services

without use of or reference to the other party's Confidential Information.

6.5. Return or Destruction. Following any termination or expiration of the Agreement or any Sales Order, each party shall: (i) immediately cease use of any Confidential Information of the other communicated for the purposes of the Agreement or such Sales Order, and (ii) within thirty (30) days of such termination or expiration, return or destroy (and, upon request, certify destruction of) all copies of any Confidential Information of the other party disclosed under the Agreement, subject to each party's customary backup and archival processes.

7. DATA PROTECTION

7.1. Regulatory and Compliance Matters. In respect of Personal Data provided to Upland by Customer in connection with the Agreement, Upland shall comply, and shall ensure that its personnel comply, with the requirements of state, federal and national privacy laws and regulations governing such Personal Data in Upland's possession or under its control and applicable to Upland's provision of Services. Customer is solely responsible for ensuring Customer's, and its Users', compliance with any legal, regulatory or similar restrictions applicable to the types of data Customer elects to Process with the Application.

7.2. Regulator Inquiries and Court Orders. If any regulator, or any subpoena, warrant or other court or administrative order, requires Upland to disclose or provide Customer Data to a regulator or to any third party, or to respond to inquiries concerning the Processing of Customer Data, Upland shall promptly notify Customer, unless prohibited by applicable law. Following such notification, Upland shall reasonably cooperate with Customer in its response, except to the extent otherwise required by applicable law.

7.3. Audits and Security Assessments. Upland shall maintain compliance with industry standards and applicable governing frameworks such as Statement on Standards for Attestation Engagements (SSAE) and The International Organization for Standardization (ISO) (e.g., SSAE 16, ISO 27001 and ISO 27018) throughout the Agreement Term. Upland shall make available to Customer, annually and upon request, all information necessary to demonstrate compliance with its obligations. Upland shall allow for and contribute to audits conducted by Customer, or third-party auditor mandated by Customer, under the following parameters: (i) the Customer may elect to conduct an audit not more than once within any 12-month period at no cost to Customer. Any additional audits within the same 12-month period shall be subject to a reasonable fee; (ii) third-party auditors mandated by Customer shall enter into confidentiality agreements with Upland that are no less restrictive than those set out in this MSA; (iii) Customer provides reasonable prior notice of such request for an audit; (iv) Customer ensures such audit shall not be unreasonably disruptive to Upland's business; and (v) neither Customers nor its auditors shall be permitted to make unaccompanied site visits or to logically access Upland's IT systems.

7.4. Data Security. Upland shall implement and maintain commercially reasonable technical and organizational security measures designed to meet the following objectives: (i) ensure the security and confidentiality of Customer Data in the custody of and processed by Upland; (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Data; (iii) protect against unauthorized access to or use of such Customer Data; and (iv) ensure that Upland's return or disposal of such Customer Data is performed in a manner consistent with Upland's obligations under items (i)-(iii).

7.5. Breach Notification. Upland shall notify Customer, without undue delay, of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of,

or access to Customer Data in Upland's possession or under its control (a "**Data Breach**"). Each party shall reasonably cooperate with the other with respect to the investigation and resolution of any Data Breach including, in the case of Upland, prompt provision of the following, to the extent then known to Upland: (i) the possible cause and consequences of the Data Breach; (ii) the categories of Customer Data involved; (iii) a summary of the possible consequences for the relevant Users; (iv) a summary of the unauthorized recipients of the Customer Data; and (v) the measures taken by Upland to mitigate any damage. Upon confirmation of any vulnerability or breach of Upland's security affecting Customer Data in Upland's custody and control, Upland shall modify its processes and security program, as necessary, to mitigate the effects of the vulnerability or breach upon such Customer Data.

7.6. Personal Data Collection, Processing and Transfer. Customer is solely responsible for obtaining, and represents and covenants that it has obtained or will obtain, prior to Processing by Upland, all necessary consents, licenses and approvals for the Processing, or otherwise has a valid legal basis for the Processing of, any Personal Data provided by Customer or its Users in connection with the Services. Customer may select the Personal Data it elects to input into and Process using the Application in its sole discretion; Upland has no control over the nature, scope, or origin of, or the means by which Customer acquires Personal Data Processed by the Application. If any User requests Upland to provide them with information relating to Processing of their Personal Data, or to make changes to their Personal Data, Upland shall promptly notify Customer of the request, unless otherwise required by applicable law. Customer may make changes to User data using the features and functionality of the Application. Upland shall not make changes to User data except as agreed in writing with Customer. Upland shall Process Customer Personal Data only as necessary to provide the Services, and in accordance with Customer's written instructions. This Agreement, and Customer's use of the Application's features and functionality, are Customer's instructions to Upland in relation to the Processing of Customer Personal Data. With respect to Personal Data that is transferred from the European Economic Area to the United States, Upland represents that Upland is certified under the EU-US Privacy Shield Framework and warrants that it shall maintain such certification and abide by its principles during the currency of the program or the Agreement Term, whichever is shorter.

7.7. Data Retention, Export and Deletion. Customer is solely responsible for its data retention obligations with respect to Customer Data. Customer may export Customer Data from the Application at any time during the Agreement Term, using the Application's then existing features and functionality, at no additional charge. Upland's obligations to return Customer Data upon termination of the Agreement may be fulfilled by permitting Customer to export Customer Data as specified above. Customer may delete Customer Data on its Instances at any time. Upland shall delete Customer's Instances (and any data remaining on such Instances) upon termination or expiration of the Agreement.

7.8. Sub-Processors. Customer consents to Upland's use of sub-Processors to provide aspects of the Services, and to Upland's disclosure and provision of Customer Personal Data to those sub-Processors. Upland shall be responsible for the performance of its sub-Processors. Upland shall ensure sub-Processors are subject to contractual obligations which are the same as or equivalent to those imposed on Upland with regard to Processing of Customer Personal Data. Upland maintains a list of its sub-Processors on its company website under the Privacy page. Upland shall inform the Customer of any intended changes concerning the addition or replacement of any sub-Processor within a reasonable time prior to implementation of such change. In the event of the Customer objecting to such change, Upland shall make reasonable efforts to address the Customer's concerns

(including making reasonable efforts to find an alternative sub-Processor).

8. WARRANTIES

8.1. Mutual Warranties. Each party represents and warrants to the other that:

- 8.1.1. the Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms;
- 8.1.2. no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of the Agreement; and
- 8.1.3. it shall comply with all applicable laws in connection with the performance of its obligations arising hereunder.

8.2. Upland Additional Warranties.

8.3. Upland represents and warrants to Customer that:

- 8.3.1. *Non-Infringement.* The Services, in the form and manner provided by Upland to Customer, shall not infringe, violate, or misappropriate the Intellectual Property Rights of any third party. Upland warrants that it has and shall maintain all necessary licenses, consents and permissions necessary for the performance of its obligations under the Agreement;
- 8.3.2. *Performance Warranty.* During any active Subscription Term (or such other period to which the parties may agree as detailed in a Sales Order), the Application, in the form provided by Upland, shall conform in all material respects to its applicable specifications set forth in the Documentation;
- 8.3.3. *Viruses.* Upland shall use commercially reasonable efforts, using applicable current industry practices, to ensure that the Application, in the form provided by Upland to Customer under the Agreement, contains no Virus, or other similar malicious code;
- 8.3.4. *Professional Services.* Upland shall provide the Professional Services by qualified individuals in a good, professional and workmanlike manner, consistent with applicable industry standards; and
- 8.3.5. *Compliance with Law.* The Services, in the form provided or made available to Customer by Upland, shall comply with all laws applicable to Upland and its provision of Services.

8.4. Performance Remedy. Subject to Upland's Support Services obligations detailed in the applicable Schedule, if the Application fails to conform to the warranty set forth in Section 8.3.2 and Customer provides written notice of the non-conformance to Upland, then, as Customer's exclusive remedy and Upland's sole obligation: Upland shall either repair or, at its option, replace the non-conforming Application or, if Upland is unable to correct the non-conformance within thirty (30) days of receipt of such written notice from Customer, Customer may terminate the applicable Services, and Upland shall refund to Customer a pro-rata amount of any Services fees prepaid to Upland and applicable to the unutilized portion of the Subscription Term for the terminated Services.

8.5. Bugs and Abatement; Scope. Without limiting the express warranties in this Section 8 or any express warranties specified elsewhere in the Agreement, Upland does not warrant: (i) that the Application or Services are completely free from all bugs, errors, or omissions, or will ensure complete security; (ii) that the Customer's use of the Services will be uninterrupted or error-free;

or (iii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements. Upland shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over the Customer's or public communications networks and facilities, including the internet, and the Customer acknowledges that the Services and may be subject to limitations, delays and other problems inherent in the use of such communications facilities. The warranties in the Agreement are for the sole benefit of Customer and may not be extended to any other person or entity.

8.6. Disclaimer of Implied Warranties. Neither party makes any representation or warranty in connection with the Services, except as expressly warranted in the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY WARRANTED IN THIS SECTION 8, EACH PARTY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR IMPLIED OBLIGATION TO INDEMNIFY FOR INFRINGEMENT, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, AND ANY STATUTORY REMEDY.

9. INDEMNIFICATION

9.1. Infringement Indemnification. Upland shall defend, indemnify, save and hold harmless Customer and its officers, agents and employees, against any costs, expenses, damages finally awarded and reasonable attorneys' fees incurred in connection with any claim, demand, suit, or proceeding made or brought by a third party (a "**Third-Party Claim**") against Customer alleging that the use of any Application or Service as permitted in the Agreement infringes or misappropriates the Intellectual Property Rights of a third party.

9.2. Exclusions from Obligations. Upland shall have no obligation under Section 9.1 (*Indemnification by Upland*) for any infringement or misappropriation to the extent that it arises out of or is based upon: (a) use of an Application or Service in combination with other products or services not provided by, or authorized in writing by, Upland if such infringement or misappropriation would not have arisen but for such combination; (b) use of an Application or Service by Customer in violation of the terms of the Agreement; (c) Customer's failure to use an Application or Service in accordance with the Documentation (or other written instructions) provided by Upland, if the infringement or misappropriation would not have occurred but for such failure; or (d) any modification of an Application or Service not made by or authorized in writing by, Upland where such infringement or misappropriation would not have occurred absent such modification.

9.3. Mitigation of Infringement Action. If Customer's use of any Application or Service is, or in Upland's reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 9.1 (*Infringement Indemnification*) then Upland shall either: (a) procure the continuing right of Customer to use the Application or Service; (b) replace or modify the Application or Service in a functionally equivalent manner so that it no longer infringes; or if, despite its commercially reasonable efforts, Upland is unable to do either (a) or (b), Upland shall (c) terminate the Agreement and refund to Customer the pro-rata amount of any fees prepaid to Upland which are applicable to the unutilized or undelivered portions of the Subscription Services and/or Professional Services.

9.4. Limited Remedy. This Section 9 states Upland's sole and exclusive liability, and Customer's sole and exclusive remedy, for Upland's actual or alleged breach of Section 8.3.1 (Non-

Infringement), and any other actual or alleged infringement or misappropriation of third-party Intellectual Property Rights by any Application or Service.

9.5. Indemnification by Customer. Customer shall defend save and hold harmless Upland against any Third-Party Claim made or brought against Upland by a third party alleging that Customer Data or Customer's use of the Services in violation of this MSA, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Upland for any damages finally awarded against, and for reasonable attorney's fees incurred by, Upland in connection with any such Third-Party Claim.

9.6. Relief from Obligations. An indemnifying party's obligations arising under this Section 9 are expressly conditioned upon the indemnified party: (a) promptly gives the indemnifying party written notice of the Third-Party Claim; (b) providing the indemnifying party sole control of the defense and settlement of the Third-Party Claim (provided that indemnifying party may not settle any Third-Party Claim unless the settlement unconditionally releases the indemnified party of all liability); and (c) provides to indemnifying party all reasonable assistance, at indemnifying party's expense. Further, an indemnifying party shall be relieved of its responsibilities under this Section 9 for any Third-Party Claims arising solely from the actions or omissions of indemnified party, its officers, employees or agents.

9.7. Classification of Amounts. Any amounts payable by an indemnified party to a third party pursuant to a judgment, liability for which falls within the indemnifying party's indemnification obligations under the Agreement, shall be deemed direct damages.

9.8. Contributory Negligence. If the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the parties gives rise to damages for which either party is entitled to indemnification under this MSA, then such damages shall be allocated between the parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such damages and such indemnification shall be adjusted accordingly.

10. LIMITATIONS AND EXCLUSIONS OF LIABILITY

10.1. Exclusion of Certain Claims. SUBJECT TO SECTION 10.3, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ANY SOFTWARE, PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER THIS AGREEMENT, ANY RELATED AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT.

10.2. Limitation of Liability. Subject to Section 10.3, neither party's maximum aggregate liability arising out of the Agreement or any related agreement shall in any event exceed the fees paid to Upland under the Sales Order giving rise to the claim during the twelve-month (12-month) period immediately preceding the aggrieved party's first assertion of any claim against the other, regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

10.3. Exceptions.



10.3.1. Sections 10.1 and 10.2 do not apply to either party's (i) willful misconduct or gross negligence, (ii) infringement or misappropriation of any of the other party's Intellectual Property Rights, (iii) personal injury (including death) or damage to real or tangible property caused by either party's negligent act or omission, (iv) liability or loss which may not be limited by applicable law.

10.3.2. Section 10.2 does not apply to (i) each party's defense and indemnification obligations, (ii) Customer's obligations to pay fees and expenses when due and payable under the Agreement, nor (iii) either party's obligations under Section 6 (Confidential Information) and/or Section 7 (Data Protection), provided, however, that except to the extent of willful misconduct or gross negligence of Upland, Upland's maximum aggregate liability under Section 7 shall not exceed three times (3X) the fees paid by Customer to Upland under the affected Sales Order in the twelve-month (12 month) period immediately preceding Customer's first assertion of its claim.

10.4. General. Each party agrees that these exclusions and limitations apply even if the remedies are insufficient to cover all of the losses or damages of such party or fail of their essential purpose and that without these limitations the fees for the Services would be significantly higher. Neither party may commence any action or proceeding under the Agreement more than two years after the occurrence of the applicable cause of action.

11. DISPUTE RESOLUTION

11.1. Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the internal laws of the states or countries specified in the table below, without regard to conflicts of laws principles. In the event of any controversy or claim arising out of or relating to the Agreement, or its breach or interpretation, the parties shall submit to the exclusive jurisdiction of and venue in the applicable courts specified in the table below. Each party waives all defenses of lack of personal jurisdiction and inconvenient forum.

If the Customer's address in the Sales Order is in:	The governing law is that of:	The courts having exclusive jurisdiction are:
The USA, Mexico, or any country in Central or South America or the Caribbean	Texas, USA, and controlling United States federal law	Courts located in Austin, Texas, USA
Canada	Ontario, Canada, and controlling Canadian federal law	Courts located in Toronto, Ontario, Canada
Any country in Europe, the Middle East, Africa, Asia or the Pacific Region	England and Wales	Courts located in London, England

11.2. Legal Expenses. If any proceeding is brought by either party to enforce or interpret any term or provision of the Agreement, the substantially prevailing party in such proceeding shall be entitled to recover, in addition to all other relief arising out

of the Agreement, its reasonable attorneys' and other experts' (including without limitation accountants) fees and expenses.

12. PUBLICITY

Neither party shall use the other party's name, trademark, or logo without the other party's prior written permission in each case. Notwithstanding the foregoing, either party shall be permitted to disclose any details regarding this relationship to the extent required by law.

13. GENERAL

13.1. Relationship. Upland shall be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of its obligations under the Agreement.

13.2. Affiliates. This MSA sets forth the general terms and conditions under which Upland will provide Services to Customer and its Affiliates. Sales Orders may be entered into under this MSA by Upland Software, Inc. or any Upland Affiliate (as identified in Section 1.1, above), and by either the entity designated above as "Customer" or any of Customer's Affiliates. In such event, the entity executing a Sales Order in the position of the Services provider shall be considered "Upland" and the Services recipient shall be considered "Customer" for all purposes of the resulting Agreement; and such Agreement shall be considered a two-party agreement between "Upland" and such "Customer".

13.3. Compliance with Laws. Each party shall comply with all laws and regulations applicable to it, including export control laws and embargoes. Neither party shall have any liability to the other for any non-performance of their obligations under the Agreement to the extent that the non-performance is mandated by applicable law. Each party represents and warrants to the other that neither it nor its Affiliates, nor any of its or their users, officers or directors, are persons, entities or organizations with whom the other party is prohibited from dealing (including provision of software, products or services) by virtue of any applicable law, regulation, or executive order.

13.4. U.S. Government Rights. To the extent applicable, Upland provides the Services for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in the Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Upland to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

13.5. Equitable Relief. Each of Customer and Upland acknowledges that damages may be an inadequate remedy if the other violates the terms of the Agreement pertaining to protection of a party's Intellectual Property Rights, Confidential Information or Personal Data. Accordingly, each of them shall have the right, in addition to any other rights each of them may have, to seek in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in the Agreement.

13.6. Assignability. Neither party may assign performance of the Agreement or any of its rights or delegate any of its duties under the Agreement without the prior written consent of the other party; provided, however that either party may assign its rights and



obligations under the Agreement to any of its Affiliates, or to any entity into or with which it is merged, or that acquires all or substantially all of its assets, upon notice to the other party. Subject to the foregoing restriction on assignment, the Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

13.7. Insurance. Each party shall, at its own cost and expense, procure and maintain in full force and effect during the Agreement Term, policies of insurance, of the types and in the minimum amounts reasonably necessary and appropriate in its industry to perform its respective obligations under the Agreement, with responsible insurance carriers duly qualified in those states (locations) where the Services are to be performed or used. Upon a party's request, the other party shall provide its certificate of insurance.

13.8. Notices. Any notice or report required or permitted to be given or made under the Agreement by either party shall be in English, in writing and be deemed to have been fully given and received (i) when delivered personally; (ii) when sent by confirmed facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of such receipt; or (v) to the extent expressly permitted in the Agreement, one (1) day after being sent via email. Notices shall be sent to the parties at the addresses set forth in this MSA or such other address as a party may specify in writing to the other. All notices to Upland must be made to the address(es) listed below and all notices to Customer must be made to the mailing or email address of Customer's primary contact with Upland.

Upland notice address:
ATTN: General Counsel
401 Congress Ave., Suite 1850
Austin, TX, U.S. 78701
legal@uplandsoftware.com

To inform Customer of changes to the Services, or for other matters of importance (e.g., notifications regarding upcoming scheduled maintenance), Upland may broadcast messages through the Application or post messages on Upland's web site. In each such event, Upland shall inform Customer of the broadcast by e-mail.

13.9. Business Continuity and Disaster Recovery. During any Subscription Term, Upland shall comply with its then current applicable Business Continuity and Disaster Recovery Plans. Upland shall test such plans at least once a year. Upland shall provide Customer with summaries of such plans and test results upon written request. Upland may not modify such plans to provide materially less protection to Customer without Customer's prior written consent, which may not be unreasonably conditioned or withheld.

13.10. Force Majeure. If the performance of the Agreement is adversely restricted or if either party is unable to conform to any warranty or obligation by reason of any Force Majeure Event then, except with respect to obligations to pay any fees or expenses and to obligations under Section 13.9 above (*Business Continuity and Disaster Recovery*), the party affected, upon giving prompt written notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected shall use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties shall proceed whenever such causes are removed or cease. "**Force Majeure Event**" means any

failure or delay caused by or the result of causes beyond the reasonable control of a party or its service providers that could not have been avoided or corrected through the exercise of reasonable diligence, including natural catastrophe, internet access or related problems beyond the demarcation point of the party's or its applicable infrastructure provider's facilities, state-sponsored malware or state-sponsored cyber-attacks, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war, or other similar occurrence. If a party fails to perform its obligations as a result of such restriction for a period of more than thirty (30) days, then the other party may terminate the affected Services without liability.

13.11. Waiver. The waiver by either party of any breach of any provision of the Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with the Agreement shall not be a waiver of such party's right to demand strict compliance in the future, nor shall the same be construed as a novation of the Agreement.

13.12. Severability. Should any term and condition of the Agreement be declared illegal or otherwise unenforceable, it shall be severed from the remainder of this MSA, or the relevant portion of the Agreement, without affecting the legality or enforceability of the remaining portions of the Agreement.

13.13. Counterparts. Each portion of the Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing the Agreement, a facsimile copy or a ".pdf" image delivered via email of an executed copy of any such portion of the Agreement signed by an authorized signatory (manuscript signature or using electronic signature) shall be deemed an original.

13.14. Entire Agreement. This MSA, together with the Sales Order, constitutes the entire agreement between the parties hereto regarding Customer's use of each Application and receipt of all Services and supersedes and replaces all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the provision and use of the Services. In the event of a conflict between the terms and conditions of this MSA and any Sales Order, the terms and conditions of this MSA shall prevail except to the extent the conflict pertains to product or service description (e.g., type, quantity, usage volume) or pricing information, in which case the terms of the Sales Order shall prevail. No usage of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement, or alter the terms of the Agreement. The Agreement may be changed only by a written agreement signed by an authorized signatory of the party against whom enforcement is sought; any additional, supplementary or conflicting terms supplied by either party (whether in hard copy or electronic form), including those contained on or within any invoice, purchase order, or standard terms of purchase, or any click-through license agreement or terms of use, are specifically and expressly rejected by each party.

13.15. Anti-Corruption. Each party agrees and acknowledges that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees, contractors or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If either party learns of any violation of the above restriction, such party shall use reasonable efforts to promptly notify the other party.



13.16. Third Parties. Except as expressly set forth in the Agreement, no provisions of the Agreement are intended nor shall be interpreted to provide or create any third-party beneficiary rights or any other rights of any kind in any other party. If the law

governing the Agreement is English law, then a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.



ON- PREMISE PERPETUAL LICENSE SCHEDULE
UPLAND SOFTWARE

This On-Premise Perpetual License Schedule, together with its exhibits reference herein, supplements the Master Services Agreement to which this Schedule is attached and sets forth additional terms and conditions subject to which Upland will make available certain Services and Applications and Customer will be permitted to use such Services and Applications. This Schedule shall apply only where a Sales Order made subject to this MSA expressly indicates that Customer has purchased licenses to an Application made available by Upland on a perpetual basis.

SUPPLEMENTAL TERMS AND CONDITIONS

1. PROVISION OF THE SERVICES

1.1. General. Upland shall make the Application available and provide Support Services to Customer and its Users as detailed herein.

1.2. Use of the Application and Documentation. Subject to the Entitlements and otherwise in accordance with the terms of the Agreement, Upland hereby grants to Customer and each of its Users a perpetual, non-exclusive, non-transferable (except as otherwise provided in the Agreement), non-sublicensable, royalty-free, worldwide, license to install and use licensed copies of the Application solely in connection with Customer's internal business operations in ordinary course of Customer's business. Upland reserves all other rights not expressly granted in the Agreement.

1.3. Use Limitations. Customer agrees that it shall not exceed the Entitlements. Without limiting the generality of the foregoing, where the Sales Order indicates that an Application is provided on a per-User basis, Customer agrees that: (i) the maximum number of Users authorized to access and use each such Application shall not exceed the number of User subscriptions purchased; and (ii) it shall not allocate (or share) any User subscription among more than one individual User unless such User subscription has been reassigned in its entirety to another individual User

1.4. Usage Audit. Upon reasonable notice to Customer, during the term of this Agreement and for three years thereafter, Customer will keep current, complete, and accurate records regarding the reproduction, distribution, and use of the Application. Customer will provide such information to Upland and certify that it has paid all fees required under this Agreement within five business days of any written request, so long as no more than two requests are made each year. Customer shall permit Upland to audit Customer's use of the Application. Such audit may be conducted no more than once per quarter, at Upland's expense, and this right will be exercised with reasonable prior notice, in such a manner as not to interfere with Customer's normal conduct of business. If any of the audits referred to herein reveal that Customer has underpaid any fees to Upland in connection with the Application, Customer shall pay to Upland an amount equal to such underpayment within 10 business days of the date of the relevant audit. This Section 1.4 shall survive the termination or expiration of the Agreement for a period of one (1) year.

1.5. Delivery. An Application will be presumed delivered once Upland has provided Customer with instructions permitting Customer to proceed with downloading the applicable Application or has otherwise delivered the applicable Application to Customer. In the event the Application requires a license activation key, Customer is obligated to request a license activation key corresponding to the quantity of licenses it has purchased. Any delay in the request process due to Customer shall not affect determination of delivery.

2. MAINTENANCE AND SUPPORT SERVICES

In connection with Customer's purchases of Application licenses, Customer may elect to purchase Support Services to be provided by Upland on a subscription basis. In such event, Upland shall provide such Support Services to Customer as further detailed in

the Subscription-Based Maintenance and Support Schedule attached to the MSA and the applicable Sales Order.

3. CUSTOMER'S RESPONSIBILITIES

3.1. Compliance and Use. Customer shall:

- 3.1.1. be solely responsible for maintaining the status of its User base and shall safeguard all User authentication credentials and account information within its possession or under its control;
- 3.1.2. be solely responsible for its Users' compliance with the Agreement and the acts or omissions of its Users relating to the Agreement to the same extent as if they were Customer's own;
- 3.1.3. be solely responsible for the accuracy, quality, integrity and legality of Customer Data provided to Upland and of the means by which such Customer Data was acquired;
- 3.1.4. use commercially reasonable efforts to prevent unauthorized access to or use of each Application, apply all relevant Virus protection updates and all Documentation and immediately notify Upland in writing of any such unauthorized access or use or violation by Customer or its Users of the Agreement;
- 3.1.5. use each Application only in accordance with the Documentation;
- 3.1.6. cooperate and assist Upland as reasonably necessary to prevent or terminate unauthorized use of the Application or Documentation.

3.2. Use Restrictions. Except as (i) otherwise expressly provided in the Agreement, or (ii) may be allowed by applicable law which is incapable of exclusion by agreement between the parties, Customer and Customer's Users shall not, and shall not permit or authorize third parties to:

- 3.2.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application or Documentation in any form or media or by any means; or
- 3.2.2. attempt to reverse compile, disassemble, reverse engineer, or attempt to discern the source code or otherwise reduce to human-perceivable form all or any part of the Application;
- 3.2.3. access all or any part of the Application or Documentation in order to build a product or service that competes with the Application, Services or the Documentation;
- 3.2.4. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Application, Services or Documentation, (e.g., as a service bureau) or otherwise knowingly make the Application or Documentation available to anyone other than the Users;



- 3.2.5. attempt to gain unauthorized access to the Application, Upland systems or networks, or otherwise circumvent or disable any security or other technological features or measures of the Application;
- 3.2.6. attempt to probe, scan, penetrate or test the vulnerability of an Upland system or network absent Upland's prior express written consent in each case;
- 3.2.7. use the Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or store or transmit material in violation of third-party privacy rights;
- 3.2.8. knowingly use the Application to store or transmit Viruses or other malicious code;
- 3.2.9. knowingly interfere with or disrupt the integrity or performance of the Application; or

3.2.10. alter or remove any copyright notice or other proprietary rights notices that may appear on the Application or Documentation.

3.3. Product-Specific Terms. If Customer uses an Application that has additional terms and conditions specific to such Application, such product-specific terms and conditions, if any, shall be set forth as **Exhibit A**, attached hereto and incorporated herein by reference, and the parties shall comply with such additional terms and conditions. For the avoidance of doubt, where Exhibit A is not attached to this Schedule, no such additional terms and conditions shall apply.

3.4. Survival. This Section 3 shall survive the termination or expiration of the Agreement for so long as Customer and/or its Users retain access rights and/or use of the Application (*e.g.*, as may be reasonably required in connection with either party's performance of its post-termination or transition assistance obligations).



EXHIBIT A
Product-Specific Terms

These Product-Specific Terms are made a part of and incorporated into the terms of the On-Premise Perpetual License Schedule to which this Exhibit A attached. All capitalized terms not defined herein shall have the meaning ascribed to them elsewhere in the Agreement.

UPLAND RIGHTANSWERS APPLICATION:

Where Customer enters into a Sales Order for the purchase Upland's RightAnswers Application, the following additional terms and conditions shall govern such use:

1. **Third Party Licenses.** The Application includes certain third party and other code, including, but not limited to, free and open source software (collectively, "Other Code") covered by other licenses ("Third Party Licenses"), as identified in the Third Party and Open Source Code License Terms available at <https://uplandsoftware.com/rightanswers/rightanswers-license-agreements/>, all as may be revised by Upland from time to time. Customer's license to the Other Code is subject to the terms of this MSA. Upland agrees to update the list of Other Code on the Website as required from time to time.
2. **Authorization.** Upland may, in its sole discretion, provide links in the Application to other sites on the Internet for the convenience of its users. These sites have not been reviewed by Upland and are maintained by third parties over whom Upland exercises no control and, accordingly, Upland expressly disclaims any responsibility for the content, the accuracy of the information, and/or quality of products or services provided or advertised on such site and for Customer's usage of such content. Upland is not responsible for the availability of such sites and does not endorse such sites.



SUBSCRIPTION-BASED MAINTENANCE AND SUPPORT SCHEDULE
UPLAND SOFTWARE

This Subscription-Based Maintenance and Support Schedule, supplements the Master Services Agreement to which this Schedule is attached and sets forth additional terms and conditions subject to which: (1) Upland will make available subscription-based Support Services for Upland Applications which Upland has licensed to Customer on a perpetual basis; and (2) Customer will be permitted to access and use such Support Services. This Schedule shall apply only where a Sales Order made subject to this MSA expressly indicates that Customer has purchased Support Services on a subscription basis.

SUPPLEMENTAL TERMS AND CONDITIONS

1. DEFINITIONS

1.1. "Defect" means a failure of the Application to substantially conform to the functional specifications set forth in the Documentation.

1.2. "Updates" means a subsequent release of the Application that Upland makes generally available to its supported customers, as indicated by a version number increase to the right of the first decimal point (e.g., 2.1 to 2.2). Updates shall not include any other releases of the Application (e.g., 2.5 to 3.0) or any other products that Upland, in its sole discretion, licenses separately for an additional fee.

1.3. "Workaround" means a modification or "patch" for a particular version of the Application, which may be of a temporary or interim nature, to help cure or avoid a Defect.

2. SERVICE LEVELS

2.1. Standard Support Services. During the Subscription Term detailed on the applicable Sales Order and otherwise subject to Customer's compliance with the Agreement, Upland shall provide Support Services to Customer as detailed in Section 3 (Standard Maintenance and Support Terms), below.

2.2. Enhanced Support Services. For certain of Upland's Applications, Customer may request to purchase rights to enhanced or upgraded Support Services to be provided by Upland on a subscription basis (the "Enhanced Support Services") by contacting Customer's account representative. The fees, Subscription Term and description of the Enhanced Support Services to be provided by Upland shall be detailed on a Sales Order, and upon the parties' execution of such Sales Order, the Standard Maintenance and Support Terms set forth in Section 3 shall be supplemented accordingly. Where Enhanced Support Services are purchased by Customer during an active Subscription Term, fees for such Enhanced Support Services shall be pro-rated for the remainder of such Subscription Term.

2.3. Customization Support. To the extent Upland develops and provides to Customer any customizations, integrations, or custom reports, Upland shall maintain and support any such customizations, integrations, or custom reports in accordance the Standard Maintenance and Support Terms and Conditions detailed in Section 3, subject to additional fees as agreed by the parties in a Sales Order.

3. STANDARD MAINTENANCE AND SUPPORT TERMS

3.1. Annual Application Maintenance. Upland shall use commercially reasonable efforts to maintain the Application so that it operates without Defects.

3.2. Updates. Upland shall supply Customer with Updates for the Application that is released to the general customer base during the Subscription Term. Such Updates may be accessed by Customer at no additional charge. Except for Updates, Customer shall not be entitled to any other software as part of any level of maintenance and support.

3.3. Bulletins. From time to time, at its sole discretion, Upland may publish bulletins containing information about Updates and other Upland news.

3.4. Application Support.

3.4.1. "Support" Defined. Support shall consist of internet assistance to Customer with respect to use of the Application and to resolve Defects through access to a website that may include any of the following: a knowledge base, online case tracking, frequently asked questions, Updates, and Documentation. Support will be available from 9:00 am to 6:00 pm, U.S. Eastern Time, Monday through Friday, excluding holidays. Unless otherwise designated by Upland, Customer should access the website described on the Sales Order.

3.4.2. Submission of Issues for Resolution. Customer shall submit to Upland the following information: (a) Customer contact information; (b) Application version; and (c) a complete description of the Defect and Customer-specific Application environment. If applicable, Customer shall also provide access to the Customer's Application environment so the Defect may be replicated.

3.4.3. Problem Definition. Customer shall record the following information for reference and provide it to Upland: (a) error messages and indications that Customer received when the malfunction occurred; (b) what the user was doing when the malfunction occurred; (c) what steps Customer has taken to reproduce the malfunction; (d) what steps Customer may have already taken to solve the problem; and (e) system logging

3.5. Severity Classification. Defects in the Application are classified according to severity of impact on the use of the Application, according to the chart below. All disputes regarding severity classification will be resolved by Upland in its sole discretion.

Table with 2 columns: Severity and Impact. Severity 1: Production system Defect that prevents business critical work from being done, no Workaround exists, and Defect impacts most Users; or Defect causes a material loss of Customer Data in production system; or Security-related Defect. Severity 2: Production system Defect that prevents business critical work from being done and a Workaround exists; or Defect violates the material specifications in the Documentation and impacts Customer's production system. Severity 3: All other Defects.

3.6. Response Time Goals. Upland agrees to use commercially reasonable efforts to (i) acknowledge Defects reported to Upland by Customer on Upland's problem reporting form (which, in the event of a Severity 1, such acknowledgement will occur within one business day of receipt of the notice of the Defect and categorization of the Defect as a Severity 1) and (ii) provide Workarounds. Acknowledgements will be sent to Customer via email. The following response time goals will be in effect:

3.6.1. Severity 1. If a Severity 1 Defect occurs during normal operating hours (9:00 am to 6:00 pm U.S. Eastern Time weekdays), Upland will begin immediate and continuous efforts to reproduce and resolve the Defect and will carry out those efforts until the Defect is resolved. Upland will use reasonable efforts to resolve all Severity 1 Defects in the shortest time possible and will review status with Customer on a daily basis or more frequently, if requested.

3.6.2. Severity 2. If the Defect is a Severity 2 issue, Upland will begin efforts to reproduce the problem no later than the opening of the next business day after receipt of the issue by Customer. Upland will use reasonable efforts to resolve Severity 2 problems as rapidly as practical, but no later than the next Update after reproduction of the Defect.

3.6.3. Severity 3. Severity 3 Defects will be addressed in Upland's normal Update.

3.7. Inclusion. For the avoidance of doubt, the parties acknowledge and agree that each Workaround and Update shall be deemed to be a derivative work of the Application.

2. ADDITIONAL SERVICES.

2.1. Coverage. For an additional fee, Customer may elect to receive certain additional services, including, with respect to the Application, training, customization, on-site support and maintenance, and consulting services related to defects caused by issues other than the Application. Fees related to such services will be described in a Sales Order signed by both parties and will be provided by Upland at the fee stated therein, or if no fee is stated, at Upland's standard rate for equivalent services in effect at the time such Sales Order is executed. For the avoidance of doubt, where any additional services are explicitly included in the maintenance and support service level selected by Customer on the applicable Sales Order, then such additional services do not require payment of additional fees.

2.2. Out-of-Pocket Expenses. Customer shall pay all reasonable out-of-pocket expenses incurred by Upland, including costs for meals, lodging and travel related to additional support services.

3. OBLIGATIONS OF CUSTOMER.

3.1. First Level Support/Single Point of Contact. All communications relating to the Support Services shall be supervised, coordinated, and undertaken by no more than two designated contact persons per Customer work-shift who shall act as a single point of contact between Customer and Upland. Each contact must possess or, at Customer's expense, acquire the necessary expertise and training to diagnose and resolve Defects with direction by Upland.

3.2. Pre-Call Procedures. Prior to requesting support from Upland, Customer shall comply with all published operating and troubleshooting procedures for the Application. If such efforts are unsuccessful in eliminating the Defect, Customer shall then promptly notify Upland of the Defect. Customer shall confirm that the following conditions are true before contacting Upland for support:

3.2.1. Reproduction. If possible, the situation giving rise to the Defect is reproducible in a single supported Application;

3.2.2. Support Representative. The Customer contact has the technical knowledge regarding the Application and any other software or hardware systems involved, and in the facts and circumstances surrounding the Defect;

3.2.3. Access. The entire system, including all software and hardware, is available to the Customer contact without limit during any telephone discussions with Upland support personnel; and

3.2.4. Cooperation. The Customer contact will follow the instructions and suggestions of Upland's support personnel when servicing the Application.

3.3. Remote Connection. If appropriate, Customer will cooperate with Upland to allow and enable Upland to perform support services via remote connection using standard, commercially available remote connection software. Customer shall be solely responsible for instituting and maintaining proper security safeguards to protect Customer's systems and data.

3.4. Updates. Customer acknowledges and agrees that Updates provided by Upland pursuant to this Subscription Support Schedule may, in Upland's sole discretion, require additional training of Customer's personnel. Such training shall be performed in accordance with Section 3 (*Professional Services*) of the MSA.

3.5. Disclaimer. Upland shall not be responsible to provide the Support Services, Updates, or any other maintenance and support to the extent that Defects arise because Customer (a) misuses, improperly uses, misconfigures, alters, or damages the Application; (b) uses the Application with any hardware or software not supplied or supported by Upland; (c) uses the Application at any unauthorized location; (d) fails to access an Update to the Application if such Update would have resolved the Defect; or (e) otherwise uses the Application in a manner not in accordance with the Subscription Support Schedule or the applicable license agreement.

4. LIMITATIONS ON MAINTENANCE AND SUPPORT SERVICES.

4.1. Customer Defects. If Customer notifies Upland of a problem and Upland correctly determines that the problem is due to Customer's incorrect or improper use of the Application or failure to comply with the terms of this Subscription Support Schedule or the applicable license agreement (as opposed to a Defect in the Application), the resolution of such problem is not covered by the Support Services. However, Upland may provide Professional Services to correct the problem pursuant to Section 3 (*Professional Services*) of the MSA.

4.2. Release Support Period. Upland shall support a release of the Application if such release (a) was made generally available during the previous twelve months; and (b) is no more than one major release (e.g. 2.0 to 3.0) behind the most current release of the Application. Major release upgrades are not included in the Fee and must be purchased separately. Other versions of the Application will not be supported unless Upland and Customer mutually agree otherwise in writing. Customer acknowledges that Upland's obligations hereunder apply only to production versions of the Application.

4.3. Third Party Products. The parties acknowledge and agree that the Support Services shall not support with regard to the operation or use of: (i) third-party hardware or software; or (ii) the Application, as modified by any party other than Upland; or (iii) the Application, as used in any manner in violation of the MSA,



the applicable license agreement, or inconsistent with the Documentation.

5. MISCELLANEOUS.

5.1. Customer Facilities. To the extent required by Upland, Customer will, upon request, promptly make available to Upland certain of its facilities, computer resources, software programs,

networks, personnel, and business information as are required to perform any service or obligation hereunder. Upland agrees to comply with Customer's rules and regulations regarding safety, security, and conduct, provided Upland has been made aware of such rules and regulations.



SOFTWARE-AS-A-SERVICE SCHEDULE
UPLAND SOFTWARE

This Software-as-a-Service Schedule, together with its exhibits, supplements the Master Services Agreement to which this Schedule is attached and sets forth additional terms and conditions subject to which Upland will make available certain Services and Applications and Customer will be permitted to access and use such Services and Applications. This Schedule shall apply only where a Sales Order made subject to this MSA expressly indicates that Customer has purchased rights to a Software-as-a-Service (or “SaaS”) Application made available by Upland on a subscription basis.

SUPPLEMENTAL TERMS AND CONDITIONS

1. PROVISION OF THE SERVICES

1.1. General. Upland shall make the Application available and provide Support Services to Customer and its Users as detailed herein.

1.2. Use of the Application and Documentation. Subject to the Entitlements and otherwise in accordance with the terms of the Agreement, Upland hereby grants to Customer and each of its Users a non-exclusive, non-transferable (except as otherwise provided in the Agreement), non-sublicensable, royalty-free, worldwide, subscription license, to: (i) access via a web-based interface, execute and otherwise use the Application provided by Upland on a hosted basis, solely for Customer's operations in its ordinary course of business; and (ii) use reproduce, modify, and distribute and display the applicable Documentation, in each case solely for Customer's operations in its ordinary course of business. Upland reserves all other rights not expressly granted in the Agreement.

1.3. Use Limitations. Customer agrees that it shall not exceed the Entitlements. Without limiting the generality of the foregoing, where the Sales Order indicates that an Application is provided on a per-User basis, Customer agrees that: (i) the maximum number of Users authorized to access and use each such Application shall not exceed the number of User subscriptions purchased; and (ii) it shall not allocate (or share) any User subscription among more than one individual User unless such User subscription has been reassigned in its entirety to another individual User.

2. MAINTENANCE AND SUPPORT SERVICES

2.1. Standard Support Services. During the Subscription Term and otherwise subject to Customer's compliance with Agreement, Upland shall provide Support Services to Customer in accordance with the Standard Maintenance and Support Terms and Conditions set forth in Exhibit A, below.

2.2. Enhanced Support Services. For certain of Upland's Applications, Customer may request to purchase rights to enhanced or upgraded Support Services to be provided by Upland on a subscription basis (the “**Enhanced Support Services**”) by contacting Customer's account representative. The fees, Subscription Term and description of the Enhanced Support Services to be provided by Upland shall be detailed on a Sales Order, and upon the parties' execution of such Sales Order, the Standard Maintenance and Support Terms and Conditions set forth in Exhibit A shall be supplemented accordingly. Where Enhanced Support Services are purchased by Customer during an active Subscription Term, fees for such Enhanced Support Services shall be pro-rated for the remainder of such Subscription Term.

2.3. Customization Support. To the extent Upland develops and provides to Customer any customizations, integrations, or custom reports, Upland shall maintain and support any such customizations, integrations, or custom reports in accordance with the Standard Maintenance and Support Terms and

Conditions set forth in Exhibit A, subject to additional fees as agreed by the parties in a Sales Order.

3. CUSTOMER'S RESPONSIBILITIES

3.1. Compliance and Use. Customer shall:

- 3.1.1. be solely responsible for maintaining the status of its User base and shall safeguard all User authentication credentials and account information within its possession or under its control;
- 3.1.2. be solely responsible for its Users' compliance with the Agreement and the acts or omissions of its Users relating to the Agreement to the same extent as if they were Customer's own;
- 3.1.3. be solely responsible for the accuracy, quality, integrity and legality of Customer Data provided to Upland and of the means by which such Customer Data was acquired;
- 3.1.4. use commercially reasonable efforts to prevent unauthorized access to or use of each Application, apply all relevant Virus protection updates and all Documentation and immediately notify Upland in writing of any such unauthorized access or use or violation by Customer or its Users of the Agreement;
- 3.1.5. use each Application only in accordance with the Documentation;
- 3.1.6. cooperate and assist Upland as reasonably necessary to prevent or terminate unauthorized use of the Application or Documentation.

3.2. Use Restrictions. Except as (i) otherwise expressly provided in the Agreement, or (ii) may be allowed by applicable law which is incapable of exclusion by agreement between the parties, Customer and Customer's Users shall not, and shall not permit or authorize third parties to:

- 3.2.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application or Documentation in any form or media or by any means; or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application;
- 3.2.2. access all or any part of the Application or Documentation in order to build a product or service that competes with the Application, Services or the Documentation;
- 3.2.3. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Application, Services or Documentation, (e.g., as a service bureau) or otherwise knowingly make the Application or Documentation available to anyone other than the Users;



- 3.2.4. attempt to gain unauthorized access to the Application or related systems or networks or otherwise circumvent or disable any security or other technological features or measures of the Application;
- 3.2.5. attempt to probe, scan, penetrate or test the vulnerability of an Upland system or network absent Upland's prior express written consent in each case;
- 3.2.6. use the Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material;
- 3.2.7. upload, transmit or otherwise process and Protected Health Information (PHI) or any other regulated data or information in violation of any applicable law or regulation;
- 3.2.8. upload, transmit or otherwise process and Payment Card Information (PCI) in violation of any Payment Card Information Security Standards or other similar requirements;

3.2.9. knowingly use the Application to store or transmit Viruses or other malicious code;

3.2.10. knowingly interfere with or disrupt the integrity or performance of the Application.

3.3. Product-Specific Terms. If Customer uses an Application that has additional terms and conditions specific to such Application, such product-specific terms and conditions, if any, shall be set forth as **Exhibit B**, attached hereto, and the parties shall comply with such additional terms and conditions. For the avoidance of doubt, where Exhibit B is not attached to this Schedule, no such additional terms and conditions shall apply.

3.4. Survival. This Section 3 shall survive the termination or expiration of the Agreement for so long as Customer and/or its Users retain access rights and/or use of the Application (*e.g.*, as may be reasonably required in connection with either party's performance of its post-termination or transition assistance obligations).



EXHIBIT A
STANDARD MAINTENANCE AND SUPPORT TERMS AND CONDITIONS

These Standard Maintenance and Support Terms and Conditions are made a part of and incorporated into the terms of the Software-as-a-Service Schedule to which this Exhibit A attached. All capitalized terms not defined herein shall have the meaning ascribed to them elsewhere in the Agreement.

1. Response Times and Commitments:

Upland attempts to respond to and resolve all issues in a timely manner, however issues impacting Customer's production systems take priority and are classified by Severity Level in accordance with the following:

Severity Level	Definition	Response Time	Commitment
Cloud Incident ("Outage")	Upland's cloud service is unavailable and/or inaccessible for all Users.	1 Hour (24/7/365)	(24/7/365) triage with hourly status updates; Immediate and continuous effort to restore service;
1 – Urgent	Production system Defect that prevents business critical work from being done, no Workaround exists, and Defect impacts most Users; Defect causes a material loss of Customer Data in production system; or Security-related Defect.	1 Business Hour	Business Hour triage with daily status updates (M-F); Immediate and continuous effort within business hours to resolve the Defect or provide a Workaround;
2 – High	Production system Defect that prevents business critical work from being done and a Workaround exists; or Defect violates the material specifications in the Documentation and impacts Customer's production system.	4 Business Hours	Business Hour triage with regular status updates (M-F); Upland shall use reasonable efforts to resolve the Defect as rapidly as practical, but no later than the next Update after reproduction of the Defect.
3 – Normal	All other Defects.	1 Business Day	Business Hour triage with regular status updates (M-F); Defects shall be addressed in Upland's normal Update

2. Upland Support Services Scope & Availability:

- i. **Support Services Defined.** Support Services shall consist of assistance to Customer with respect to:
 - a. Guidance regarding proper use of the Application;
 - b. Application Defect verification, reporting, tracking and resolution; and
 - c. Application licensing assistance.
- ii. **Support Services Availability.** Unless otherwise agreed upon in writing, Support Services shall be available:
 - a. Service Outage: 24/7/365 via phone and online community (email excluded); and
 - b. Severity 1/2/3: Unless otherwise agreed by the parties in a signed writing, 9:00 am to 6:00 pm, Eastern Time, Monday through Friday, excluding holidays (the "**Business Hours**") via phone, email and online community.

3. Upland Support Limitations:

- i. **Support Limitations.** Support Services do not include:
 - a. Application training, design or configuration assistance;
 - b. Support for applications, hardware and dependent technology not supplied by Upland;
 - c. Support for issues resulting from Customer's negligence or failure to use the Application per Upland's instructions or recommendations;
 - d. Development support for API/SDK usage;
 - e. Support of custom development not supplied by Upland; or
 - f. Product installation and upgrade assistance.
- ii. **Customer Defects.** If Customer notifies Upland of a problem and Upland correctly determines that the problem is due to Customer's incorrect or improper use of the Application or failure to comply with the Standard Support Terms or the MSA (as

opposed to a Defect in the Application), the resolution of such problem is not covered by Upland's Support Services. However, Upland may provide Professional Services to address or cure the problem in accordance with the terms of the Agreement.

- iii. **Release Support Period.** Upland shall support a release of the Application if such release (a) was made generally available during the previous twelve months; and (b) is no more than one major release (e.g. 2.0 to 3.0) behind the most current release of the Application. Other versions of the Application shall not be supported unless Upland and Customer mutually agree otherwise in writing. Major release upgrades are not included in the standard fees and must be purchased separately. Customer acknowledges that Upland's obligations hereunder apply only to production versions of the Application.
 - iv. **Third Party Products.** Support Services do not cover the operation or use of third-party hardware or software or an Application modified by any party other than Upland or used in any manner in violation of the MSA or inconsistent with the Documentation.
4. **Customer Obligations:**
- i. **First Level Support/Single Point of Contact.** All communications relating to Support Services shall be supervised, coordinated, and undertaken by no more than two designated contact persons per Customer work-shift who shall act as a single point of contact between Customer and Upland. Each contact must possess or, at Customer's expense, acquire the necessary expertise and training to diagnose and resolve Defects with direction by Upland.
 - ii. **Pre-Call Procedures.** Prior to requesting Support Services from Upland, Customer shall comply with all published operating and troubleshooting procedures for the Application. If such efforts are unsuccessful in eliminating the Defect, Customer shall then promptly notify Upland of the Defect. Customer shall confirm that the following conditions are met prior to contacting Upland for Support Services:
 - a. **Reproduction.** If possible, the situation giving rise to the Defect is reproducible in a single supported Application;
 - b. **Support Representative.** The Customer contact has the technical knowledge regarding the Application and any other software or hardware systems involved, and in the facts and circumstances surrounding the Defect;
 - c. **Access.** Customer's system, including all software and hardware, is available to the Customer contact without limit during any telephone discussions with Upland support personnel; and
 - d. **Cooperation.** The Customer contact shall follow the instructions and suggestions of Upland's support personnel when servicing the Application.
 - iii. **Remote Connection.** If appropriate, Customer shall cooperate with Upland to allow and enable Upland to perform support services via remote connection using standard, commercially available remote connection software. Customer shall be solely responsible for instituting and maintaining proper security safeguards to protect Customer's systems and Customer Data.
 - iv. **Updates.** Customer acknowledges and agrees that Updates provided by Upland pursuant to these Standard Support Terms may, in Upland's sole discretion, require additional training of Customer's personnel. Such training shall be performed in accordance with the terms of the Agreement.
 - v. **Disclaimer.** Upland shall not be responsible to provide Support Services, Updates, or any other maintenance and support to the extent that Defects arise because Customer (a) misuses, improperly uses, misconfigures, alters, or damages the Application; (b) uses the Application with any hardware or software not supplied or supported by Upland; (c) uses the Application at any unauthorized location, if any; (d) fails to access an Update to the Application if such Update would have resolved the Defect; or (e) otherwise uses the Application in a manner not in accordance with the Documentation, these Standard Support Terms or the MSA.
5. **Software as a Service Availability:**
- i. **Availability Requirement.** Upland shall make the Application Available, as measured on a 24 hours per calendar day basis over the course of each calendar month during the Initial Term and each Renewal Term and any additional periods during which Upland does or is required to provide the Application (each such calendar month, a "Service Period"), at least 99.9% of the time, excluding only the time the Application is not Available solely as a result of one or more Exceptions (the "Availability Requirement"). "Available" means the Application is available and operable for access and use by Customer and its Users over the Internet.
 - ii. **Exceptions.** No period of Application degradation or inoperability shall be included in calculating Availability if such downtime or degradation is directly caused by any of the following ("Exceptions"):
 - a. Customer's or any of its Users' use of the Application in a manner inconsistent with the Documentation;
 - b. failures of Customer's or its Users' Internet connectivity not caused by Upland;
 - c. Internet or other network traffic problems other than problems arising in or from networks actually provided or controlled, or required to be provided or controlled, by Upland; or
 - d. Scheduled Downtime.
 - iii. **Scheduled Downtime.** Upland shall notify Customer and its Users with whom Upland has communicated at least 72 hours in advance of all scheduled downtime of the Application in whole or in part ("Scheduled Downtime") (a) not be scheduled between the hours of 8 a.m. and 9 p.m., Eastern Time, Monday-Friday (unless otherwise agreed by the parties in a signed writing), and (b) occur more frequently than 15 hours per calendar month.



iv. **Recovery Objectives.** Upland shall maintain a recovery time objective of 24 hours and recovery point objective of 4 hours.

6. **Definitions:**

- i. **"Defect"** means a failure of the Application to substantially conform to the functional specifications set forth in the Documentation (as defined in the MSA entered into between Customer and Upland).
- ii. **"Updates"** means a subsequent release of the Application that Upland makes generally available to its supported customers, as indicated by a version number increase to the right of the first decimal point (e.g., 2.1 to 2.2). Updates shall not include any other releases of the Application (e.g., 2.5 to 3.0) or any other products that Upland, in its sole discretion, licenses separately for an additional fee.
- iii. **"Workaround"** means a modification or "patch" for a particular version of the Application, which may be of a temporary or interim nature, to help cure or avoid a Defect.
- iv. **"Service Level"** means the certain level of Support Services (Standard, Gold or Platinum) that has been selected by the Customer on the Sales Order



EXHIBIT B
Product-Specific Terms

These Product-Specific Terms are made a part of and incorporated into the terms of the Software-as-a-Service Schedule to which this Exhibit B attached. All capitalized terms not defined herein shall have the meaning ascribed to them elsewhere in the Agreement.

UPLAND BLUEVENN APPLICATION:

Where Customer enters into a Sales Order for the purchase of Upland's BlueVenn Application or related Services, the following additional terms and conditions shall apply in respect of Customer's use:

1. **Definitions.** As used in this Exhibit B and as may be used in any Sales Order made subject to the terms of this MSA:
 - 1.1. "Unique Contacts" means those individuals whose details are stored in the Application and who have transacted with Customer or its Affiliates at any time within the previous thirty-six (36) calendar months;
 - 1.2. "Unique Contact Records" or "UCRs" means the total number of unique contacts in the Application comprising Unique Contacts and Unique Prospective Contacts, where the ratio of Unique Contacts and Unique Prospective Contacts to Unique Contact Records is as set out in the Sales Order;
 - 1.3. "Unique Prospective Contacts" means those individuals whose details are stored in the Application, but do not otherwise meet the definition of a Unique Contact, as provided in Section 1.1, above; and
 - 1.4. "Source System" means the software program, platform or database containing Customer Data, and which is (i) specified by Customer, and (ii) connected to the Application for the purpose of enabling the Application to perform data management operations upon such Customer Data.
2. **Source Systems.** In respect of any Source System which is not provided by Upland, Customer acknowledges that the Application needs to be compatible with such Source System in order to perform at maximum functionality. Upland shall not be held liable if such Source System fails to function with the Application. Customer acknowledges that it is responsible for ensuring that Customer's use of the Application does not cause the Customer to breach the terms agreed between Customer and any third party supplying such Source System. Customer shall indemnify Upland in full against all loss, damages, costs, expenses and other liability suffered or incurred by Upland in relation to Customer's breach of such terms.
3. **Additional Use Restrictions.** In respect of Customer's use of the Application, Customer shall:
 - 3.1. implement appropriate controls to ensure that the Application is not being used or operated in contravention of any applicable laws or codes of practice, codes of conduct, guidance or notices issued by any regulatory body with authority over, or which issue guidance in respect of, any aspect of the Services from time to time (including, without limitation, any operator of a public communications system);
 - 3.2. notify Upland immediately upon Customer's becoming aware of any complaint in relation to Customer's or its Users' use of all or part of the Application and provide such information and assistance as Upland and its licensors reasonably require in relation to the same; and
 - 3.3. ensure that, in relation to any email solution forming part of the Application, all return path emails (including bounce-back emails) pass through the relevant part of the Application for processing. Further, Customer shall not and shall ensure that none of its Users shall not do or permit anything to be done which causes such return path emails to be routed other than through the relevant part of the Application.

UPLAND CLICKABILITY APPLICATION:

Where Customer enters into a Sales Order for the purchase of rights to access and use Upland's Clickability Application, the following additional terms and conditions shall govern such use:

1. **Tracking; Cookies.**
 - 1.1. Customer acknowledges that, while the Services do not utilize cookies to track visitors, the Services do track the IP address and associated usage date (pages visited, time on site, etc.) of visitors to Customer's site(s) supported by the Services.
 - 1.2. Customer may place its own or third-party cookies on the site, which may transmit data back to the Services.
2. **Privacy Policy.**
 - 2.1. Customer represents, warrants and covenants that it has and will continue to have a privacy policy on the supported site(s) which accurately reflects the data usage, processing and storage practices on the site, including those performed by Supplier in accordance with provision of the Services.
 - 2.2. Customer will indemnify, defend and hold harmless Supplier in accordance with Customer's breach of Section 2.1, immediately above.



UPLAND CXM APPLICATIONS:

Where Customer enters into a Sales Order for the purchase of rights to access and use Upland's Adestra, Hipcricket, Mobile Commons, PostUp, Rant & Rave, Upland Mobile Messaging or Waterfall Applications (each, a "CXM Application") the following additional terms and conditions shall govern Customer's use:

1. ACCEPTABLE USE POLICY.

1.1. Customer Responsibilities. Customer shall comply with all statutory and regulatory obligations and relevant codes of practice relating to the use of any CXM Application, including but not limited to the following:

1.1.1. all communications sent by the Customer through any CXM Application (each, a "Message") shall be sent only to recipients (each, a "Message Recipient") who have given the Customer their consent to receive such Messages or where the Customer has another valid legal basis under applicable law to send the Message;

1.1.2. the Customer shall use an unsubscribe and/or suppression system to comply with an opt-out request from Message Recipients who do not wish to receive Messages from or on behalf of the Customer.

The Customer is entitled to use either its own or Upland's unsubscribe and/or suppression system(s) for the purposes of complying with this Section 1.1, and the system that Customer wishes to use shall be expressly agreed by the Parties from time to time in writing, provided that nothing in this Section 1.1 shall (in the absence of any obligation imposed on the Customer by law) require compliance by the Customer in respect of communications with its own employees.

1.2. Use Restrictions. Customer shall not use or cause or allow to be used any CXM Application:

1.2.1. for the transmission of any material that might be deemed defamatory, libelous, pornographic, obscene or immoral;

1.2.2. in violation of (i) applicable law, (ii) telecommunication carrier rules and regulations, or (iii) aggregator rules and regulations; or

1.2.3. in a manner which, alone or in association or in conjunction with any other service (i) breaches any third-party rights (including, without limitation, Intellectual Property Rights, rights of privacy and rights in relation to Personal Data); or (ii) harms (or is reasonably likely to harm) the reputation and good standing of Upland.

1.3. Blacklists; Complaints. In the event that any short code, long code, IP address, range of IP addresses or domain associated with a CXM Application, or the operation of such CXM Application, is blacklisted or a complaint is received by either Upland or Customer in respect of use of a CXM Application, the Customer shall provide Upland with all information it reasonably requires in respect of the collection of the Message Recipient's email address, telephone number and/or other data (including, for each Message Recipient concerned, the date and time and source of collection of the Message Recipient's email address and proof of what permissions were obtained from the Message Recipient as regards receipt of Messages from or on behalf of the Customer) within twenty-four (24) hours of notification of such blacklisting or complaint. For the protection of each party, Upland reserves the right to suspend access to the CXM Application until the Customer has provided such information.

1.4. Health Insurance Portability and Accountability Act & Health Information Technology for Economic and Clinical Health Act (collectively, "HIPAA"). Customer is responsible for ensuring that all personal health information ("PHI") provided to Upland has been collected in accordance with HIPAA, and that sufficient notice and consent has occurred to allow Upland to perform its obligations under the Agreement.

1.5. Telephone Consumer Protection Act ("TCPA"). Customer is responsible for ensuring that all phone numbers and other personal information provided to Upland has been collected in accordance with the TCPA, for ensuring that sufficient notice and consent has occurred to allow Upland to perform its obligations under the Agreement, and for the preparation and distribution of all messages, content, and other materials provided to be included in Messages delivered to the Message Recipients by and through any CXM Application.

1.6. Carriers & Aggregators. Customer acknowledges that Upland's ability to perform its obligations under the Agreement are dependent on carriers and aggregators and that the Services may be interrupted in the event of an aggregator or carrier failure.

1.7. Payment Card Industry Data Security Standard ("PCI DSS"). Customer acknowledges that the Messages are not secure methods by which to transmit information subject to PCI DSS. Accordingly, Customer represents and warrants that it will not provide any such information to Upland.

1.8. Programs. Customer shall be responsible for ensuring that all programs (including contests, drawings, raffles, lotteries, etc.), including the administration thereof, comply with all applicable laws, rules and regulations ("Programs"). Customer shall be responsible for any and all liabilities resulting from such Programs, and, without prejudice to all other remedies of Upland, the Customer shall defend, indemnify and hold harmless Upland, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial or otherwise), expenses and costs directly or indirectly arising out of or in connection with any breach of this Acceptable Use Policy by the Customer or by any third party acting on behalf of or under the authority of the Customer.



UPLAND INGENIUS APPLICATION:

Where Customer enters into a Sales Order for the purchase Upland's InGenius Application, as delivered on a SaaS basis, the following additional terms and conditions shall govern such use:

1. **SalesForce OrgID.** Customer acknowledges and agrees that where the InGenius Application is configured to enable Customer's Users to interact with Customer's instance of Salesforce.com, then Customer shall promptly provide its Salesforce OrgID (the "OrgID") to Upland, together with any other related information reasonably requested by Upland in connection with such configuration. For the avoidance of doubt, Upland shall use such information for the sole purpose of disclosing Customer's OrgID to Salesforce.com, as required for Upland's performance of its contractual obligations owed to Salesforce.com. Customer agrees that such disclosure in accordance with this Section 1 shall not be considered a breach of Upland's confidentiality or security obligations arising elsewhere in the Agreement, or otherwise in connection with the Agreement.

UPLAND LOCALYTICS APPLICATION:

Where Customer enters into a Sales Order for the purchase Upland's Localytics Application, the following additional terms and conditions shall govern such use:

1. **Definitions.** The following terms, when used in this Exhibit B, shall have the following meanings:
 - 1.1. "App" means Customer's proprietary software within which the Client Libraries are installed (e.g., Customer's mobile, web-based, or desktop applications).
 - 1.2. "App User Data" means all data and information transmitted to the Localytics Application from Customer's App(s) via the Client Libraries. For the avoidance of doubt, the term "Customer Data", as used in the Agreement and herein, includes App User Data.
 - 1.3. "Client Libraries" means the Localytics Application-specific client libraries provided by Upland and installed within Customer's App(s) for the purpose of collecting App User Data and sending such App User Data to Customer's Instance.
 - 1.4. "Data Point" means a session start, session stop or individual recording of a single event occurring within an App using the Client Libraries.
 - 1.5. "Device and IP Information" means any information used to identify a mobile device (such as GAID, IDFA, etc.) or the internet protocol address assigned to a mobile device.
 - 1.6. "Monthly Active User" means each individual installation of Customer's App that transmits App User Data during the applicable billing period.
 - 1.7. "Results" means the work product resulting from Customer's use of the Localytics Application, to the extent based on the Customer Data.
2. **License Rights in the Client Libraries.** In addition to the rights granted to Customer under Section 1 of the Software-As-A-Service Schedule to which this Exhibit B is attached, subject to the Entitlements and otherwise in accordance with the terms of the Agreement, Upland hereby grants to Customer and each of its Users a non-exclusive, non-transferable (except as otherwise provided in the Agreement), non-sublicensable, royalty-free, worldwide rights to download, install and use the Client Libraries in connection with Customer's use of the Localytics Application.
3. **Customer Representations: Localytics Application Use Restrictions.**
 - 3.1. Customer represents and warrants that it owns all right, title and interest, or possesses sufficient license rights, in and to the App User Data provided to Localytics as may be necessary to permit the use of the App User Data as contemplated under the Agreement and within applicable Documentation.
 - 3.2. Customer agrees to the following restrictions regarding its use of the Localytics Application and related Services:
 - 3.2.1. If Customer's usage exceeds an average of 150 Data Points per Monthly Active User in a month, a fee of \$100 per one million additional Data Points shall be applied (it being agreed that in the event a different Data Point limit and/or fee for exceeding such limit is set forth in a Sales Order, the limit/fee set forth on the Sales Order shall apply);
 - 3.2.2. Customer shall not, in configuring the Client Libraries to track Data Points for transmission to the Localytics Application, use unique values or a continuous set of values as inputs to event attributes.
4. **Privacy and Data Protection.** With the limited exception of Device and IP Information (to the extent any of the same qualifies as Personal Data), Customer and its Users shall not transmit to the Localytics Application any Personal Data, unless Upland expressly agrees to receive such information in a signed writing, and then solely as necessary in connection with Customer's use of the Localytics Application. Customer is responsible for any Personal Data that Customer does provide to Upland. Customer shall have in place a privacy policy regarding its use of Personal Data and shall comply with all applicable laws relating to the collection and use of Personal Data and other App User Data.



5. **Customer Indemnity.** Customer shall: (i) defend, save and hold harmless Upland against any claim made or brought against Upland that results from or arises out of (a) any breach by Customer of any of its representations, warranties and obligations in Section 2.3.1 or Section 2.4 of this Exhibit B, or (b) any violation of any third party's (including any App end user's) privacy rights arising out of Customer's use of the Localytics Application; and (ii) indemnify Localytics for any damages finally awarded against, and for reasonable attorneys' fees incurred by, Upland in connection with any such claim. Customer's obligations arising under this Section 2.5 are expressly conditioned upon Upland: (a) promptly providing Customer with written notice of the claim; (b) providing Customer sole control of the defense and settlement of such claim (provided Customer may not settle any claim unless the settlement unconditionally releases Upland of all liability); and (c) provides to Customer all reasonable assistance, at indemnifying party's expense. Further, Customer shall be relieved of its responsibilities under this Section 2.5 for any claim arising solely from the actions or omissions of Upland, its officers, employees or agents.
6. **Customer Data and App User Data.** Customer shall own all right, title and interest (including all intellectual property and other proprietary rights) in and to the Results, App User Data and Customer Data. Customer shall be solely responsible for all App User Data collected from any end users of Customer's App(s) as a result of Customer's use of the Localytics Application, including the accuracy and completeness of such information. Customer hereby grants Upland a nonexclusive, royalty-free right and license to access, use, copy, process and store the App User Data solely for the purpose of providing the Localytics Application. Customer agrees that the Localytics offering depends on the availability of the App User Data. Except for the limited rights and licenses expressly granted in the Agreement, no other license is granted, no other use is permitted, and Customer shall retain all right, title and interest (including all intellectual property and proprietary rights embodied therein) in and to the Results, and App User Data.
7. **General Learning; Aggregate Data.** Customer agrees that Upland is free to: (i) collect, use and create derivative works of data regarding usage and performance of Customer's applications derived from the Results; (ii) aggregate such data with other data to create compilations and analysis of such data (the "Localytics Aggregated Data"); and (iii) use, copy, modify, create derivative works of, publish and disclose such Localytics Aggregated Data in a manner that does not directly or indirectly identify Customer or any individual person. Localytics shall own all right, title and interest to the Localytics Aggregated Data and any derivative works thereof.

UPLAND RIGHTANSWERS APPLICATION:

Where Customer enters into a Sales Order for the purchase of rights to access and use Upland's RightAnswers Application, as delivered on a SaaS basis, the following additional terms and conditions shall govern such use:

1. **Third Party Licenses.** The Application includes certain third party and other code, including, but not limited to, free and open source software (collectively, "Other Code") covered by other licenses ("Third Party Licenses"), as identified in the Third Party and Open Source Code License Terms available at <https://uplandsoftware.com/rightanswers/rightanswers-license-agreements/>, all as may be revised by Upland from time to time. Customer's license to the Other Code is subject to the terms of this MSA. Upland agrees to update the list of Other Code on the Website as required from time to time.
2. **Authorization.** Upland may, in its sole discretion, provide links in the Application to other sites on the Internet for the convenience of its users. These sites have not been reviewed by Upland and are maintained by third parties over whom Upland exercises no control and, accordingly, Upland expressly disclaims any responsibility for the content, the accuracy of the information, and/or quality of products or services provided or advertised on such site and for Customer's usage of such content. Upland is not responsible for the availability of such sites and does not endorse such sites.

UPLAND PANVIVA APPLICATION:

Where Customer enters into a Sales Order for the purchase of Upland's Panviva Application, the following additional terms and conditions shall govern such use:

1. **Third Party Content.** The Customer acknowledges that as part of providing the Application, Panviva utilizes enabling technology, and in some instances, those license arrangements require Panviva to include certain additional terms and conditions on the end user. Where applicable these additional terms are set out at www.panviva.com/terms-of-use/tps, or such other URL as may be provided by Upland to Customer from time to time, and are hereby incorporated into the Agreement. Further, the Application includes open source software programs that are made available by Panviva and other third parties under their respective open source licenses ("Open Source Licenses"). Certain Open Source Licenses and/or certain relevant provisions of such Open Source Licenses are set out at www.panviva.com/terms-of-use/oss, or such other URL as may be provided by Upland to Customer from time to time. Customer is obligated to comply with the applicable Open Source Licenses related to such open source software programs. Open source software programs are governed solely by such Open Source Licenses, including without limitation warranty and indemnification, which will prevail over these Terms.
2. **Panviva API Supplementary Agreement.** Upland's Panviva application programming interface(s) (the "Panviva APIs") may be used for a broad range of purposes, including facilitating real-time interaction between information residing in the Panviva Application and other applications or systems to be used by the Customer. Where Customer wishes to procure rights and licenses for use of the Panviva APIs, the parties acknowledge that the terms and conditions applicable to such purchase shall be set forth in a supplement to the Agreement, the terms of which shall be agreed prior to Upland's provision of any such rights and licenses.
3. **Regulated Data.** Customer acknowledges and agrees that the Application and Services are not designed for use with data that may be classified as highly sensitive, personal and/or otherwise subject to information privacy regulations, including without limitation any data subject to laws governing the storage and transmission of personally identifiable information, protected health information or information subject to the Payment Card Industry Data Security Standard (collectively, "Regulated Data"). Customer agrees that it shall



not provide Regulated Data to Upland as Customer Data. Customer agrees to indemnify, defend and hold harmless Upland and its shareholders, directors, officers, employees, suppliers and licensors (each, a "Upland Indemnified Party") from all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, brought against any Upland Indemnified Party arising out of or relating to Customer's failure to comply with this Section 3.

UPLAND SECOND STREET APPLICATION:

Where Customer enters into a Sales Order for the purchase Upland's Second Street Application(s) and related services, the following additional terms and conditions shall govern such use:

1. **Additional Terms of Use.** Customer's Users' (and, as applicable, any third party's) access to the Application(s) to or through the Second Street Application website ("Site") will be subject to such additional guidelines, restrictions, or rules applicable to such Site, including, without limitation, any technical specifications that Upland may provide from time to time. Customer shall post links to its privacy policy (the "Customer Privacy Policy"), and Customer's terms of use (the "Customer Terms of Use") as part of its Customer Data, and where applicable, a link to either (i) Upland Second Street's official rules for contests, sweepstakes and promotions conducted and administered by Upland (the "Official Rules"); or (ii) if not an Upland Second Street administered promotion, promotion terms and conditions or official rules provided by Customer (collectively, the "Links"). Customer is responsible for maintaining a Customer Privacy Policy that accurately describes its data collection, use, sharing and retention practices and otherwise complies with all applicable federal, state and local laws, rules and regulations. When in Customer's control, the Links shall be placed in conspicuous locations. In addition, Customer agrees to act diligently, as reasonably necessary, to obtain or maintain any protection afforded under the Digital Millennium Copyright Act, as amended.
2. **Customer Additional Warranties.** Customer represents and warrants to Upland that: (i) Customer Data and Customer's use of any Application or Service will not violate the rights of any third party. With respect to Customer Data, without limiting any rights or remedies available to Upland, Upland reserves the right to remove from the Application or Service infringing Customer Data or Customer Data that otherwise violates the terms of this Agreement; and (ii) Customer use of the Services shall comply with all applicable laws, rules and regulations.
3. **Links.** Upland and Customer each hereby acknowledge and agree that although the Application(s) and other transactions contemplated by the Agreement may provide for third party resources and third-party links on the websites of both parties, any such website links that may be provided are done so solely as a convenience and do not represent an endorsement by either party of the content, advertising or business practices (including the terms of use or privacy policies) of the third party. Each party also acknowledges and agrees that the other party will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on the content, advertising or business practices of such third-party or other linked third-party sites.
4. **Survival.** Customer agrees that its obligation to complete and fulfill any contest, sweepstakes or other promotion in accordance with the terms or official rules of the contest, sweepstakes or other promotion will survive any termination or expiration of this Agreement or a Sales Order.
5. **E-Commerce Application Use; Restrictions.**
 - a. **E-Commerce Applications.** Where Customer enters into a Sales Order for the purchase of any Upland Second Street "E-Commerce Application" the terms and conditions set forth in this Section 5 shall apply.
 - b. **Customer Responsibilities.** Without limiting the generality of any other provision in the Agreement or the applicable Sales Order, Customer's use of the E-Commerce Application(s) is limited to the purpose of transacting an online fundraising event or fundraiser ("Fundraiser"), for the purpose of offering local services, shopping, travel, gift card, ticketed events and other deals and offerings to consumers, with the use of Payment Processors (defined below), may accept monetary payment, including but not limited to monetary contributions ("Donation(s)" and collectively "Payment(s)") from individuals or entities ("Payees") and for the purpose of managing consumer data collected in the above processes. With respect to the E-Commerce Applications, Customer represents, warrants and covenants that (i) any activities with respect to such Application ("Marketplace Activities") will comply with all applicable federal, state, and local laws, including any dealing with gift cards and gift certificates, tickets sales, raising funds for a charitable purpose, co-marketing a Fundraiser, and any financial reporting obligations as defined by applicable law, including but not limited to laws and regulations relating to registration, political contributions, tax reporting and asset disclosure for a Fundraiser and organization, if applicable, (ii) any Marketplace Activities do not and will not violate any third party rights including, without limitation, intellectual property rights, (iii) any Marketplace Activities do not and will not violate any laws regarding false advertising and laws regarding gift cards, ticket sales, co-marketing and fundraising activities, as applicable, (iv) all Payments, including Donations contributed to any Fundraiser, will be used as described in the content Customer posts and as Customer describes the Fundraiser and will not be used for any other purpose, (v) if Donations are to be matched, Customer will be responsible for providing such matching funds or ensuring that the matching funds are otherwise obtained and related obligations met. With respect to any goods sold, gift cards sold, tickets sold or Fundraisers conducted, Customer shall undertake responsibility with respect to such Marketplace Activities, to include but not be limited to (u) creating and reviewing the requirements regarding Payees conduct, including with respect to any recurring payments, and posting of the same to ensure compliance with all applicable laws and the filing of any and all documents required under applicable laws; (v) having appropriate bonds secured, with the assistance of any co-marketer to fulfill state requirements if any, (w) supervising the selection of beneficiaries of any Fundraiser and distribution of Donations, (x) sending applicable tax notification (as applicable), (y) taking appropriate action with respect to unclaimed property laws and gift cards or gift certificates and (z) take all appropriate action regarding setting ticket prices, rescheduling events, refunding Payments or issuing credits regarding ticketed events. Customer

shall be responsible for any written disclosures required by any federal, state or local agencies, including any tax authorities. Furthermore, Customer acknowledges and agrees that Upland is not a payment processor and will not be holding any funds or issuing any tickets, gift cards or gift certificates. Customer acknowledges that any Payments and the Fees under the applicable Sales Order to be paid by/to Second Street will be subject to the Payment Processor's terms and procedures, including those for chargebacks and account holds. Customer shall be responsible for making any decisions regarding the elements of any Fundraisers and beneficiaries of such Fundraisers. Customer should consult with its own financial, tax, legal or other professional advisers, as appropriate. Customer shall be responsible for the use of any Donations or other disposition of Donations. Upland shall have no obligations or liability with respect to any Payments received by Customer and no liability to any Users or third parties with respect to funds received by Customer or refunds due from Customer. Customer shall undertake responsibility for Marketplace Activities. Upland shall have no obligations or liability with respect to any Customer Marketplace Activities. Customer shall be responsible for any federal, state local or any other taxes based on Customer's income or gross receipts, if any. Customer agrees to determine what, if any, taxes apply to the Payments received through use of the E-Commerce Applications, including but not limited to Donations, and to assess, collect, report and remit the appropriate amount of tax, if any to the appropriate tax authority. Customer acknowledges and recognizes that Upland will make third party payment processing partners available to Customer to process and funds to be received and the decision to use such processing partners ("Payment Processor(s)") is in the sole discretion of Customer. Furthermore, Customer acknowledges and agrees that using Payment Processors is an integral component of the E-Commerce Application and that Upland shares and otherwise exchanges information submitted through the E-Commerce Applications with Payment Processors in order to fulfill its obligations to the Customer. Customer will be responsible for industry standard type fees that apply pursuant to the terms of the applicable Payment Processor and shall obtain such terms from such Payment Processor.

- c. Upland Representations and Disclaimers. Upland provides no financial, tax, legal, or other professional advice in providing the E-Commerce Application. No content is intended to provide financial, tax, legal or other professional advice. By offering the E-Commerce Application, you acknowledge and agree that Upland is merely providing the platform and technology to allow Customer to reach and connect with potential Payees and potential Payments, including Donations. The existence of the E-Commerce Application is not a solicitation of Donations and/or Payees or advice or consultation regarding Donations and/or Payees. Upland shall not be responsible for the use of any Payments, including Donations, or any tax treatment regarding the same. Upland cannot and does not guarantee that any Fundraiser will obtain a certain amount of Donations or ticket sales for a ticketed event. Upland does not endorse any Fundraiser or cause or the accuracy of any information posted by a Customer or its Users. Upland is not a payment processor, broker, agent, ticket reseller, ticket agent, promoter, financial institution, 501(c)(3) or other nonprofit entity. Upland is not responsible for any required communications to Users or third parties, or for any failure to communicate to such Users or third parties.
- d. Programs. Customer shall be responsible for ensuring that all programs administered through the E-Commerce Applications and related Services comply with all applicable laws, rules and regulations ("E-Commerce Programs"). Customer shall be responsible for any and all liabilities resulting from such E-Commerce Programs, and, without prejudice to all other remedies of Upland, the Customer shall defend, indemnify and hold harmless Upland, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial or otherwise), expenses and costs directly or indirectly arising out of or in connection with: (i) any breach or alleged breach of this Section 5(d) by the Customer or by any third party acting on behalf of or under the authority of the Customer; and (ii) any claim by any federal, state, local or other tax authority in connection with any Fundraiser, any Payments, including Donations, except with respect to Upland's treatment of any fees paid from the Payments.

6. Contests & Interactive Content Application Use; Restrictions.

- a. Contests & Interactive Content Applications. Where Customer enters into a Sales Order for the purchase of any Upland Second Street Contests & Interactive Content ("C&IC") Application, the terms and conditions set forth in this Section 6 shall apply.
- b. Upland Responsibilities; Nationally-Managed Promotions. If selected on the applicable Sales Order, Upland may provide a national grand prize for the nationwide Site visitor who is randomly selected through a drawing or who most correctly picks the winning game(s), score(s) or team(s) of a particular promotion using the Second Street "UPICKEM" Applications, as determined by Upland in its sole discretion and in accordance with the applicable promotion official rules. Upland represents, warrants and covenants that any contest, sweepstakes, or other promotion conducted by Upland in furtherance of a national grand prize provided by Upland pursuant to an applicable Sales Order hereof (collectively, "Second Street Promotion Activities") will be administered in accordance with all applicable federal and state laws, rules and regulations as the same are interpreted as of the start of the applicable contest, sweepstakes or other promotion. Upland's representation, warranty and covenant set forth in this Section 6(b) is void if Customer modifies, edits or revises the Second Street Contest Activities official rules or other materials generated for the Second Street Contest Activities. To the extent that Customer modifies, edits or revises the Second Street Promotion Activities official rules or other materials generated for the Second Street Contest Activities, such modification shall be deemed a Customer Promotion Activity pursuant to Section 6(c), below.
- c. Customer Responsibilities. Customer shall undertake responsibility for all Customer Promotion Activities, to include (a) creating and reviewing the Customer Promotion Activities (defined below) official rules through counsel expert in the area to confirm compliance with all applicable federal, state, and local laws, rules and regulations and the filing of any and all documents, registrations, and reports required under applicable federal, state, and local laws, rules and regulations; (b) if applicable, creating, printing and local shipping of tear pad forms containing the promotion official rules to Upland, (c) having appropriate bonds secured to fulfill state requirements and insurance to cover prize fulfillment, (d) supervising the selection and verification of the winners, (e) supervising and ensuring the fulfillment and handling of all prize claims and consumer inquiries; (f) sending affidavits/releases, or causing affidavits/releases to be sent, and signed by prize winners, verifying eligibility and providing for the release of Customer and Upland from all liability in connection with the Customer Promotion Activities and prize redemption and use prior to the award of prizes; and (g) sending

applicable tax forms to winner and applicable tax authorities (as applicable). Customer represents, warrants and covenants that any contest, sweepstakes, or other promotion, other than any Second Street Promotion Activities (collectively, "Customer Promotion Activities"), and all related advertising and marketing of any Customer Promotion Activities or Customer-created advertising and marketing of Second Street Promotion Activities will comply with all applicable federal, state and local laws, rules and regulations and will not violate any third party rights including, without limitation, intellectual property rights and rights of publicity and privacy. Without limiting the generality of any other provision in the Agreement, Customer may not use the Second Street Application with respect to any illegal contest, promotion, gambling activity, or collection of consumer information. Upland shall have no obligations or liability with respect to any Customer Promotion Activities. Without prejudice to all other remedies of Upland, the Customer shall defend, indemnify and hold harmless Upland, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial or otherwise), expenses and costs directly or indirectly arising out of or in connection with a Customer Promotion Activity or any breach or alleged of this Section 6 by the Customer or by any third party acting on behalf of or under the authority of the Customer.

7. Email Application Use; Restrictions.

- a. **Email Applications.** Where Customer enters into a Sales Order for the purchase of any Upland Second Street Email Application the terms and conditions set forth in this Section 7 shall apply.
- b. **Restrictions.** Without limiting the generality of any other provision in the Master Agreement, Customer: (i) shall not use the eBlast Applications in violation of applicable federal, state, or local law, rule or regulation or to otherwise distribute illegal promotions, pyramid schemes, nudity, obscene content, gambling related content, pharmaceutical related content, illegal software, viruses, chain letters or multi-level marketing campaigns; and (ii) shall only import, access or otherwise use lists for which all listed parties have consented to receive commercial emails from Customer or has another valid legal basis under applicable law to send commercial emails. Customer acknowledges that a listed party's agreement to participate in a survey is not consent to receive correspondence from Customer. Customer shall not utilize the eBlast Applications to send any commercial electronic mail message (as that term is defined in the CAN-SPAM Act of 2003, as amended from time to time and any successor law (the "CAN-SPAM Act")) to any person who has opted out or otherwise objected to receiving such messages from you or another sender on whose behalf you may be acting. Customer shall not mail to distribution lists, newsgroups, or spam or unsolicited email addresses. Customer shall follow the rules of all applicable laws, rules and regulations, including, without limitation, the CAN-SPAM Act. At a minimum, all e-mails sent by Customer using eBlast shall: (iii) contain a one-click unsubscribe link; (iv) contain non-Internet contact information of the sender (such as Customer's address and phone number); (v) state the reason the recipient is receiving the message, (vi) accurately and in a non-deceptive manner identify your organization, your Application or your service in the "from" line; (vii) not contain any deceptive, misleading or illegal content in the "subject" line regarding the overall subject matter of the email message; and (viii) not include any incentives (e.g., coupons, discounts, awards) that encourage a recipient to forward the email message to another recipient.
- c. **Disclaimers.** It is understood that Upland makes no guarantee that HTML messages will be rendered properly on all recipients' e-mail programs due to the wide variety of HTML generation tools available. Although Upland will use commercially reasonable efforts so that e-mail messages sent through Upland's Second Street Application servers follow e-mail standards, Upland cannot guarantee and is not responsible for ensuring that messages will look consistent across all e-mail platforms due to the number of different HTML composition tools available. Customer further acknowledges and agrees that not all email messages sent through use of the eBlast Applications will be received by their intended recipients, and email messages that are sent through using the eBlast Applications may generate abuse complaints from recipients. Customer is responsible for ensuring that email campaigns do not generate a number of abuse complaints in excess of industry norms. Upland, in its sole discretion, shall determine whether the level of abuse complaints is within industry norms, and its determination shall be final, binding and conclusive for all purposes under this Agreement. Upland reserves the right to terminate the applicable Sales Order upon written notice to Customer, without penalty, if Upland determines the level of complaints exceeds industry norms.
- d. **Customer Acknowledgments and Covenants.** Customer acknowledges and agrees that, as between Upland and Customer, Customer is the sole or designated "sender" (as such term is defined in the CAN-SPAM Act) of any email message sent using the eBlast Applications. Customer further acknowledges and agrees that Customer is responsible for maintaining and timely honoring any unsubscribe requests during the Subscription Term or following termination of the applicable Sales Order or the Agreement.
- e. **Programs.** Customer shall be responsible for ensuring that all programs administered, or products or services advertised through the Email Applications and related Services comply with all applicable federal, state and local laws, rules and regulations ("**Email Programs**"). Customer shall be responsible for any and all liabilities resulting from such Email Programs, and, without prejudice to all other remedies of Upland, the Customer shall defend, indemnify and hold harmless Upland, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial or otherwise), expenses and costs directly or indirectly arising out of or in connection with any breach or alleged of this Section 7 by the Customer or by any third party acting on behalf of or under the authority of the Customer.

8. **Reimbursements for Returns/Refunds.** To the extent that any payments are received by Upland as part of Upland's obligations under any Agreement, if any, Customer shall reimburse Upland in full for any and all returns or refunds of any kind processed by Upland for the benefit of any User or third party.



ON-PREMISE TERM LICENSE SCHEDULE
UPLAND SOFTWARE

This On-Premise Term License Schedule, together with its exhibits reference herein, supplements the Master Services Agreement to which this Schedule is attached and sets forth additional terms and conditions subject to which Upland will make available certain Services and Applications and Customer will be permitted to access and use such Services and Applications. This Schedule shall apply only where a Sales Order made subject to this MSA expressly indicates that Customer has purchased a term license to install and use an Application (e.g., an on-premise deployment of Upland's InGenius Application) made available by Upland on a subscription basis.

SUPPLEMENTAL TERMS AND CONDITIONS

1. PROVISION OF THE SERVICES

1.1. General. Upland shall make the Application available and provide Support Services to Customer and its Users as detailed herein.

1.2. Use of the Application and Documentation. Subject to the Entitlements and otherwise in accordance with the terms of the Agreement, Upland hereby grants to Customer and each of its Users a non-exclusive, non-transferable (except as otherwise provided in the Agreement), non-sublicensable, royalty-free, worldwide, license to install and use licensed copies of the Application solely in connection with Customer's internal business operations in ordinary course of Customer's business. Upland reserves all other rights not expressly granted in the Agreement.

1.3. Use Limitations. Customer agrees that it shall not exceed the Entitlements. Without limiting the generality of the foregoing, where the Sales Order indicates that an Application is provided on a per-User basis, Customer agrees that: (i) the maximum number of Users authorized to access and use each such Application shall not exceed the number of User subscriptions purchased; and (ii) it shall not allocate (or share) any User subscription among more than one individual User unless such User subscription has been reassigned in its entirety to another individual User

1.4. Usage Audit. Upon reasonable notice to Customer, during the term of this Agreement and for three years thereafter, Customer will keep current, complete, and accurate records regarding the reproduction, distribution, and use of the Application. Customer will provide such information to Upland and certify that it has paid all fees required under this Agreement within five business days of any written request, so long as no more than two requests are made each year. Customer shall permit Upland to audit Customer's use of the Application. Such audit may be conducted no more than once per quarter, at Upland's expense, and this right will be exercised with reasonable prior notice, in such a manner as not to interfere with Customer's normal conduct of business. If any of the audits referred to herein reveal that Customer has underpaid any fees to Upland in connection with the Application, Customer shall pay to Upland an amount equal to such underpayment within 10 business days of the date of the relevant audit. This Section 1.4 shall survive the termination or expiration of the Agreement for a period of one (1) year.

1.5. Delivery. An Application will be presumed delivered once Upland has provided Customer with instructions permitting Customer to proceed with downloading the applicable Application or has otherwise delivered the applicable Application to Customer. In the event the Application requires a license activation key, Customer is obligated to request a license activation key corresponding to the quantity of licenses it has purchased. Any delay in the request process due to Customer shall not affect determination of delivery.

2. MAINTENANCE AND SUPPORT SERVICES

2.1. Standard Support Services. During the Subscription Term and otherwise subject to Customer's compliance with Agreement, Upland shall provide Support Services to Customer in accordance with the Standard Maintenance and Support Terms and Conditions set forth in Exhibit A, below.

2.2. Enhanced Support Services. For certain of Upland's Applications, Customer may request to purchase rights to enhanced or upgraded Support Services to be provided by Upland on a subscription basis (the "**Enhanced Support Services**") by contacting Customer's account representative. The fees, Subscription Term and description of the Enhanced Support Services to be provided by Upland shall be detailed on a Sales Order, and upon the parties' execution of such Sales Order, the Standard Maintenance and Support Terms and Conditions set forth in Exhibit A shall be supplemented accordingly. Where Enhanced Support Services are purchased by Customer during an active Subscription Term, fees for such Enhanced Support Services shall be pro-rated for the remainder of such Subscription Term.

2.3. Customization Support. To the extent Upland develops and provides to Customer any customizations, integrations, or custom reports, Upland shall maintain and support any such customizations, integrations, or custom reports in accordance with the Standard Maintenance and Support Terms and Conditions set forth in Exhibit A, subject to additional fees as agreed by the parties in a Sales Order.

3. CUSTOMER'S RESPONSIBILITIES

3.1. Compliance and Use. Customer shall:

- 3.1.1. be solely responsible for maintaining the status of its User base and shall safeguard all User authentication credentials and account information within its possession or under its control;
- 3.1.2. be solely responsible for its Users' compliance with the Agreement and the acts or omissions of its Users relating to the Agreement to the same extent as if they were Customer's own;
- 3.1.3. be solely responsible for the accuracy, quality, integrity and legality of Customer Data provided to Upland, if any, and of the means by which such Customer Data was acquired;
- 3.1.4. use commercially reasonable efforts to prevent unauthorized access to or use of each Application, apply all relevant Virus protection updates and all Documentation and immediately notify Upland in writing of any such unauthorized access or use or violation by Customer or its Users of the Agreement;
- 3.1.5. use each Application only in accordance with the Documentation;

- 3.1.6. cooperate and assist Upland as reasonably necessary to prevent or terminate unauthorized use of the Application or Documentation.
- 3.2. Use Restrictions. Except as (i) otherwise expressly provided in the Agreement, or (ii) may be allowed by applicable law which is incapable of exclusion by agreement between the parties, Customer and Customer's Users shall not, and shall not permit or authorize third parties to:
- 3.2.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application or Documentation in any form or media or by any means; or
 - 3.2.2. attempt to reverse compile, disassemble, reverse engineer, or attempt to discern the source code or otherwise reduce to human-perceivable form all or any part of the Application;
 - 3.2.3. access all or any part of the Application or Documentation in order to build a product or service that competes with the Application, Services or the Documentation;
 - 3.2.4. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Application, Services or Documentation, (e.g., as a service bureau) or otherwise knowingly make the Application or Documentation available to anyone other than the Users;
 - 3.2.5. attempt to gain unauthorized access to the Application or related systems or networks or otherwise circumvent or disable any security or other technological features or measures of the Application;
 - 3.2.6. attempt to probe, scan, penetrate or test the vulnerability of an Upland system or network absent Upland's prior express written consent in each case;
 - 3.2.7. use the Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or store or transmit material in violation of third-party privacy rights;
 - 3.2.8. knowingly use the Application to store or transmit Viruses or other malicious code;
 - 3.2.9. knowingly interfere with or disrupt the integrity or performance of the Application; or
 - 3.2.10. alter or remove any copyright notice or other proprietary rights notices that may appear on the Application or Documentation.
- 3.3. Product-Specific Terms. If Customer uses an Application that has additional terms and conditions specific to such Application, such product-specific terms and conditions, if any, shall be set forth as **Exhibit B**, attached hereto and incorporated herein by reference, and the parties shall comply with such additional terms and conditions. For the avoidance of doubt, where Exhibit B is not attached to this Schedule, no such additional terms and conditions shall apply.
- 3.4. Survival. This Section 3 shall survive the termination or expiration of the Agreement for so long as Customer and/or its Users retain access rights and/or use of the Application (e.g., as may be reasonably required in connection with either party's performance of its post-termination or transition assistance obligations).

EXHIBIT A
STANDARD MAINTENANCE AND SUPPORT TERMS AND CONDITIONS

These Standard Maintenance and Support Terms and Conditions (the “**Standard Support Terms**”), are made a part of and incorporated into the terms of the On-Premise Term License Schedule to which this Exhibit A attached. All capitalized terms not defined herein shall have the meaning ascribed to them elsewhere in the Agreement.

1. Response Times and Commitments:

Upland attempts to respond to and resolve all issues in a timely manner, however issues impacting Customer’s production systems take priority and are classified by Severity Level in accordance with the following:

Severity Level	Definition	Response Time	Commitment
1 – Urgent	Production system Defect that prevents business critical work from being done, no Workaround exists, and Defect impacts most Users; Defect causes a material loss of Customer Data in production system; or Security-related Defect.	1 Business Hour	Business Hour triage with daily status updates (M-F); Immediate and continuous effort within business hours to resolve the Defect or provide a Workaround;
2 – High	Production system Defect that prevents business critical work from being done and a Workaround exists; or Defect violates the material specifications in the Documentation and impacts Customer’s production system.	4 Business Hours	Business Hour triage with regular status updates (M-F); Upland shall use reasonable efforts to resolve the Defect as rapidly as practical, but no later than the next Update after reproduction of the Defect.
3 – Normal	All other Defects.	1 Business Day	Business Hour triage with regular status updates (M-F); Defects shall be addressed in Upland’s normal Update

2. Upland Support Services Scope & Availability:

- i. **Support Services Defined.** Support Services shall consist of assistance to Customer with respect to:
 - a. Guidance regarding proper use of the Application;
 - b. Application Defect verification, reporting, tracking and resolution; and
 - c. Application licensing assistance.
- ii. **Support Services Availability.** Unless otherwise agreed by the parties in a signed writing Support Services shall be available from 9:00 am to 6:00 pm, U.S. Eastern Time, Monday through Friday, excluding holidays (the “**Business Hours**”).

3. Upland Support Limitations:

- i. **Support Limitations.** Support Services do not include:
 - g. Application training, design or configuration assistance;
 - h. Support for applications, hardware and dependent technology not supplied by Upland;
 - i. Support for issues resulting from Customer’s negligence or failure to use the Application per Upland’s instructions or recommendations;
 - j. Development support for API/SDK usage;
 - k. Support of custom development not supplied by Upland; or
 - l. Product installation and upgrade assistance.
- ii. **Customer Defects.** If Customer notifies Upland of a problem and Upland correctly determines that the problem is due to Customer’s incorrect or improper use of the Application or failure to comply with the Standard Support Terms or the MSA (as opposed to a Defect in the Application), the resolution of such problem is not covered by Upland’s Support Services. However, Upland may provide Professional Services to address or cure the problem in accordance with the terms of the Agreement.
- iii. **Release Support Period.** Upland shall support a release of the Application if such release (a) was made generally available during the previous twelve months; and (b) is no more than one major release (e.g. 2.0 to 3.0) behind the most current release of the Application. Other versions of the Application shall not be supported unless Upland and Customer mutually agree

otherwise in writing. Major release upgrades are not included in the standard fees and must be purchased separately. Customer acknowledges that Upland's obligations hereunder apply only to production versions of the Application.

- iv. **Third Party Products.** Support Services do not cover the operation or use of third-party hardware or software or an Application modified by any party other than Upland or used in any manner in violation of the MSA or inconsistent with the Documentation.
- v. **Data.** If Customer has a license to use and host an on-premise Application, Customer is encouraged to backup data often and to always do so prior to accessing any Update. Upland shall have no responsibility for loss of or damage to Customer's data, regardless of the cause of any such loss or damage.

4. **Customer Obligations:**

- i. **First Level Support/Single Point of Contact.** All communications relating to Support Services shall be supervised, coordinated, and undertaken by no more than two designated contact persons per Customer work-shift who shall act as a single point of contact between Customer and Upland. Each contact must possess or, at Customer's expense, acquire the necessary expertise and training to diagnose and resolve Defects with direction by Upland.
- ii. **Pre-Call Procedures.** Prior to requesting Support Services from Upland, Customer shall comply with all published operating and troubleshooting procedures for the Application. If such efforts are unsuccessful in eliminating the Defect, Customer shall then promptly notify Upland of the Defect. Customer shall confirm that the following conditions are met prior to contacting Upland for Support Services:
 - a. **Reproduction.** If possible, the situation giving rise to the Defect is reproducible in a single supported Application;
 - b. **Support Representative.** The Customer contact has the technical knowledge regarding the Application and any other software or hardware systems involved, and in the facts and circumstances surrounding the Defect;
 - c. **Access.** Customer's system, including all software and hardware, is available to the Customer contact without limit during any telephone discussions with Upland support personnel; and
 - d. **Cooperation.** The Customer contact shall follow the instructions and suggestions of Upland's support personnel when servicing the Application.
- iii. **Remote Connection.** If appropriate, Customer shall cooperate with Upland to allow and enable Upland to perform support services via remote connection using standard, commercially available remote connection software. Customer shall be solely responsible for instituting and maintaining proper security safeguards to protect Customer's systems and Customer Data.
- iv. **Updates.** Customer acknowledges and agrees that Updates provided by Upland pursuant to these Standard Support Terms may, in Upland's sole discretion, require additional training of Customer's personnel. Such training shall be performed in accordance with the terms of the Agreement.
- v. **Disclaimer.** Upland shall not be responsible to provide Support Services, Updates, or any other maintenance and support to the extent that Defects arise because Customer (a) misuses, improperly uses, misconfigures, alters, or damages the Application; (b) uses the Application with any hardware or software not supplied or supported by Upland; (c) uses the Application at any unauthorized location, if any; (d) fails to access an Update to the Application if such Update would have resolved the Defect; or (e) otherwise uses the Application in a manner not in accordance with the Documentation, these Standard Support Terms or the MSA.

5. **Definitions:**

- i. **"Defect"** means a failure of the Application to substantially conform to the functional specifications set forth in the Documentation (as defined in the MSA entered into between Customer and Upland).
- ii. **"Updates"** means a subsequent release of the Application that Upland makes generally available to its supported customers, as indicated by a version number increase to the right of the first decimal point (e.g., 2.1 to 2.2). Updates shall not include any other releases of the Application (e.g., 2.5 to 3.0) or any other products that Upland, in its sole discretion, licenses separately for an additional fee.
- iii. **"Workaround"** means a modification or "patch" for a particular version of the Application, which may be of a temporary or interim nature, to help cure or avoid a Defect.
- iv. **"Service Level"** means the certain level of Support Services (Standard, Gold or Platinum) that has been selected by the Customer on the Sales Order.



EXHIBIT B
PRODUCT-SPECIFIC TERMS FOR UPLAND INGENIUS

These Product-Specific Terms for Upland's "InGenius" Application are made a part of and incorporated into the terms of the On-Premise Term License Schedule to which this Exhibit B attached. All capitalized terms not defined herein shall have the meanings ascribed to them elsewhere in the Agreement.

UPLAND INGENIUS APPLICATION:

Where Customer enters into a Sales Order for the purchase Upland's InGenius Application, the following additional terms and conditions shall govern such use:

1. **SalesForce OrgID.** Customer acknowledges and agrees that where the InGenius Application is configured to enable Customer's Users to interact with Customer's instance of Salesforce.com, then Customer shall promptly provide its Salesforce OrgID (the "**OrgID**") to Upland, together with any other related information reasonably requested by Upland in connection with such configuration. For the avoidance of doubt, Upland shall use such information for the sole purpose of disclosing Customer's OrgID to Salesforce.com, as required for Upland's performance of its contractual obligations owed to Salesforce.com. Customer agrees that such disclosure in accordance with this Section 1 shall not be considered a breach of Upland's confidentiality or security obligations arising elsewhere in the Agreement, or otherwise in connection with the Agreement.
2. **License Keys.** A temporary license key shall be issued upon receipt of approval of Customer's Sales Order, and the expiration date of such license key shall be extended through the remainder of the applicable Subscription Term upon Upland's receipt of payment in full for such InGenius Application license keys.
3. **Third-Party Software.** As used herein, "**Third-Party Software**" means any software components or other material that is provided or downloaded with the InGenius Application (including any modification, translation or adaptation or any other improvement or development of the foregoing) as identified in the installed Application directory, through a URL link, Documentation and/or web site and which are distributed as "free software", "open source software" or under a similar licensing or distribution model (including but not limited to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL) and the Apache License). Third-Party Software is subject to the applicable Third-Party Software licenses, and Customer acknowledges and agrees that it may be bound by such licenses.



ON-PREMISE CONTENT LICENSE SCHEDULE
UPLAND SOFTWARE

This On-Premise Content License Schedule, together with its exhibits, if any, referenced herein, supplements the Master Services Agreement to which this Schedule is attached and sets forth additional terms and conditions subject to which Upland will make available certain Services and Upland Content (defined below) to Customer on a subscription basis and Customer will be permitted to use such Services and Upland Content. This Schedule shall apply only where a Sales Order made subject to this MSA expressly indicates that Customer has purchased a term license to Upland Content (e.g., Upland's "RightAnswers Knowledge-Paks", or "KPAKS" content) which is made available by Upland on a subscription basis.

SUPPLEMENTAL TERMS AND CONDITIONS

1. PROVISION OF THE SERVICES

1.1. Upland Content; General. As used in this Schedule, "Upland Content" means Upland's RightAnswers searchable knowledge base of information, which is segmented into collections relating to a particular product (or group of products) and such other information, technology, methods, processes, specifications, solutions, utilities, graphics and data made available by Upland to Customer in connection with such knowledge base. For the avoidance of doubt, Upland Content is deemed to be an "Application", as such term is used elsewhere in this Agreement. Upland shall make the Upland Content available and provide Support Services to Customer and its Users as detailed herein.

1.2. Use of the Upland Content and Documentation. Subject to the Entitlements and otherwise in accordance with the terms of the Agreement, Upland hereby grants to Customer and each of its Users a non-exclusive, non-transferable (except as otherwise provided in the Agreement), non-sublicensable, royalty-free, worldwide, license to download, reproduce and use licensed copies of the Upland Content solely in connection with Customer's internal business operations in ordinary course of Customer's business. Upland reserves all other rights not expressly granted in the Agreement.

1.3. Use Limitations. Customer agrees that it shall not exceed the Entitlements. Without limiting the generality of the foregoing, where the Sales Order indicates that the Upland Content is provided on a per-User basis, Customer agrees that: (i) the maximum number of Users authorized to access and use the Upland Content shall not exceed the number of User subscriptions purchased; and (ii) it shall not allocate (or share) any User subscription among more than one individual User unless such User subscription has been reassigned in its entirety to another individual User.

1.4. Usage Audit. Upon reasonable notice to Customer, during the term of this Agreement and for three years thereafter, Customer will keep current, complete, and accurate records regarding the reproduction, distribution, and use of the Upland Content. Customer will provide such information to Upland and certify that it has paid all fees required under this Agreement within five (5) business days of any written request, so long as no more than two (2) requests are made each year. Customer shall permit Upland to audit Customer's use of the Upland Content. Such audit may be conducted no more than once per quarter, at Upland's expense, and this right will be exercised with reasonable prior notice, in such a manner as not to interfere with Customer's normal conduct of business. If any of the audits referred to herein reveal that Customer has underpaid any fees to Upland in connection with the Upland Content, Customer shall pay to Upland an amount equal to such underpayment within ten (10) business days of the date of such audit. This Section 1.4 shall survive the termination or expiration of the Agreement for a period of one (1) year.

1.5. Delivery. The Upland Content will be presumed delivered once Upland has provided Customer with instructions permitting Customer to proceed with downloading the Upland Content or has otherwise delivered the Upland Content to Customer. In the event the Upland Content requires a license activation key, Customer is obligated to request a license activation key corresponding to the quantity of licenses purchased. Any delay in the request process due to Customer shall not affect determination of delivery.

2. MAINTENANCE AND SUPPORT SERVICES

2.1. Standard Support Services. During the Subscription Term and otherwise subject to Customer's compliance with Agreement, Upland shall provide Support Services to Customer in accordance with the Standard Maintenance and Support Terms and Conditions set forth in Exhibit A, below.

3. CUSTOMER'S RESPONSIBILITIES

3.1. Compliance and Use. Customer shall:

- 3.1.1. be solely responsible for maintaining the status of its User base and shall safeguard all User authentication credentials and account information within its possession or under its control;
- 3.1.2. be solely responsible for its Users' compliance with the Agreement and the acts or omissions of its Users relating to the Agreement to the same extent as if they were Customer's own;
- 3.1.3. be solely responsible for the accuracy, quality, integrity and legality of Customer Data provided to Upland, if any, and of the means by which such Customer Data was acquired;
- 3.1.4. use commercially reasonable efforts to prevent unauthorized access to or use of the Upland Content, apply all relevant Virus protection updates and all Documentation and immediately notify Upland in writing of any such unauthorized access or use or violation by Customer or its Users of the Agreement;
- 3.1.5. use the Upland Content only in accordance with the Documentation;
- 3.1.6. cooperate and assist Upland as reasonably necessary to prevent or terminate unauthorized use of the Upland Content or Documentation.

3.2. Use Restrictions. Except as (i) otherwise expressly provided in the Agreement, or (ii) may be allowed by applicable law which is incapable of exclusion by agreement between the parties, Customer and Customer's Users shall not, and shall not permit or authorize third parties to:

- 3.2.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the

Upland Content or Documentation in any form or media or by any means; or

- 3.2.2. access all or any part of the Upland Content or Documentation in order to build a product or service that competes with the Upland Content or the Documentation;
 - 3.2.3. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Upland Content or Documentation (e.g., as a service bureau), or otherwise knowingly make the Upland Content or Documentation available to anyone other than the Users;
 - 3.2.4. modify or use the Upland Content as to contain infringing, libelous, or otherwise unlawful or tortious material, or to contain material in violation of third-party privacy rights; or
 - 3.2.5. alter or remove any copyright notice or other proprietary rights notices that may appear on the Upland Content or Documentation.
- 3.3. Third-Party Sites. For the convenience of its Users, the Upland Content may contain links to third-party websites or other

third-party materials made available on the internet. These sites are maintained by third parties over whom Upland exercises no control and, accordingly, Upland expressly disclaims any responsibility for the content, the accuracy of the information, and/or quality of products or services provided or advertised on such sites and for Customer's use, if any, of such third-party sites or any content appearing therein. Further, Upland is not responsible for the availability of such third-party sites and does not endorse such sites.

3.4. Return or Destruction; Survival. Following any termination or expiration of the Agreement, Customer shall: (i) immediately cease all use of the Upland Content, and (ii) within five (5) days of such termination or expiration, return or destroy (and, upon request, certify destruction of) any and all copies of Upland Content provided under the Agreement. This Section 3 shall survive the termination or expiration of the Agreement for so long as Customer and/or its Users retain access rights and/or use of the Upland Content (e.g., as may be reasonably required in connection with either party's performance of its post-termination or transition assistance obligations).



EXHIBIT A
STANDARD MAINTENANCE AND SUPPORT TERMS AND CONDITIONS

These Standard Maintenance and Support Terms and Conditions are made a part of and incorporated into the terms of the On-Premise Content License Schedule to which this Exhibit A attached. All capitalized terms not defined herein shall have the meaning ascribed to them elsewhere in the Agreement.

1. Response Times and Commitments:

Upland attempts to respond to and resolve all issues in a timely manner, however issues impacting Customer's production systems take priority and are classified by Severity Level in accordance with the following:

Severity Level	Definition	Response Time	Commitment
1 – Urgent	Production system Defect that prevents business critical work from being done, no Workaround exists, and Defect impacts most Users; Defect causes a material loss of Customer Data in production system; or Security-related Defect.	1 Business Hour	Business Hour triage with daily status updates (M-F); Immediate and continuous effort within business hours to resolve the Defect or provide a Workaround;
2 – High	Production system Defect that prevents business critical work from being done and a Workaround exists; or Defect violates the material specifications in the Documentation and impacts Customer's production system.	4 Business Hours	Business Hour triage with regular status updates (M-F); Upland shall use reasonable efforts to resolve the Defect as rapidly as practical, but no later than the next Update after reproduction of the Defect.
3 – Normal	All other Defects.	1 Business Day	Business Hour triage with regular status updates (M-F); Defects shall be addressed in Upland's normal Update.

2. Upland Support Services Scope & Availability:

- iii. **Support Services Defined.** Support Services shall consist of assistance to Customer with respect to:
 - a. Guidance regarding proper use of the Upland Content; and
 - b. Defect verification, reporting, tracking and resolution; and
 - c. Upland Content licensing assistance.
- iv. **Support Services Availability.** Unless otherwise agreed by the parties in a signed writing Support Services shall be available from 9:00 am to 6:00 pm, U.S. Eastern Time, Monday through Friday, excluding holidays (the "**Business Hours**").

3. Upland Support Limitations:

- vi. **Support Limitations.** Support Services do not include:
 - m. Training, design or configuration assistance;
 - n. Support for applications, hardware and dependent technology not supplied by Upland;
 - o. Support for issues resulting from Customer's negligence or failure to use the Upland Content per Upland's instructions or recommendations;
 - p. Development support for API/SDK usage;
 - q. Support of custom development not supplied by Upland; or
 - r. Product installation and upgrade assistance.
- vii. **Customer Defects.** If Customer notifies Upland of a problem and Upland correctly determines that the problem is due to Customer's incorrect or improper use of the Upland Content or failure to comply with the Standard Support Terms or the Agreement (as opposed to a Defect in the Upland Content), the resolution of such problem is not covered by Upland's Support Services. However, Upland may provide Professional Services to address or cure the problem in accordance with the terms of the Agreement.
- viii. **Third Party Products.** Support Services do not cover the operation or use of third-party hardware or software or the Upland Content modified by any party other than Upland or used in any manner in violation of the Agreement or inconsistent with the Documentation.

- ix. **Data.** Customer is encouraged to backup data often and to always do so prior to accessing any Update. Upland shall have no responsibility for loss of or damage to Customer's data, regardless of the cause of any such loss or damage.

4. **Customer Obligations:**

- vi. **First Level Support/Single Point of Contact.** All communications relating to Support Services shall be supervised, coordinated, and undertaken by no more than two designated contact persons per Customer work-shift who shall act as a single point of contact between Customer and Upland. Each contact must possess or, at Customer's expense, acquire the necessary expertise and training to diagnose and resolve Defects with direction by Upland.
- vii. **Pre-Call Procedures.** Prior to requesting Support Services from Upland, Customer shall comply with all published operating and troubleshooting procedures for the Upland Content. If such efforts are unsuccessful in eliminating the Defect, Customer shall then promptly notify Upland of the Defect. Customer shall confirm that the following conditions are met prior to contacting Upland for Support Services:
 - a. **Reproduction.** If possible, the situation giving rise to the Defect is reproducible in a single supported Upland Content;
 - b. **Support Representative.** The Customer contact has the technical knowledge regarding the Upland Content and any other software or hardware systems involved, and in the facts and circumstances surrounding the Defect;
 - c. **Access.** Customer's system, including all software and hardware, is available to the Customer contact without limit during any telephone discussions with Upland support personnel; and
 - d. **Cooperation.** The Customer contact shall follow the instructions and suggestions of Upland's support personnel when servicing the Upland Content.
- viii. **Remote Connection.** If appropriate, Customer shall cooperate with Upland to allow and enable Upland to perform support services via remote connection using standard, commercially available remote connection software. Customer shall be solely responsible for instituting and maintaining proper security safeguards to protect Customer's systems and Customer Data.
- ix. **Updates.** Customer acknowledges and agrees that Updates provided by Upland pursuant to these Standard Support Terms may, in Upland's sole discretion, require additional training of Customer's personnel. Such training shall be performed in accordance with the terms of the Agreement.
- x. **Disclaimer.** Upland shall not be responsible to provide Support Services, Updates, or any other maintenance and support to the extent that Defects arise because Customer (a) misuses, improperly uses, misconfigures, alters, or damages the Upland Content; (b) uses the Upland Content with any hardware or software not supplied or supported by Upland; (c) uses the Upland Content at any unauthorized location, if any; (d) fails to access an Update to the Upland Content if such Update would have resolved the Defect; or (e) otherwise uses the Upland Content in a manner not in accordance with the Documentation, these Standard Support Terms or the Agreement.

5. **Definitions:**

- v. **"Defect"** means a failure of the Upland Content to substantially conform to the functional specifications set forth in the Documentation.
- vi. **"Updates"** means a subsequent release of the Upland Content that Upland makes generally available to its supported customers, as indicated by a version number increase to the right of the first decimal point (e.g., 2.1 to 2.2). Updates shall not include any other releases of the Upland Content (e.g., 2.5 to 3.0) or any other products that Upland, in its sole discretion, licenses separately for an additional fee.
- vii. **"Workaround"** means a modification or "patch" for a particular version of the Upland Content, which may be of a temporary or interim nature, to help cure or avoid a Defect.
- viii. **"Service Level"** means the certain level of Support Services (Standard, Gold or Platinum) that has been selected by the Customer on the Sales Order.

Upland Software, Inc.
 401 Congress Ave Suite 1850 Austin
 TX
 78701-3788
 United States
 Phone:855-944-PLAN (7526)
www.uplandsoftware.com

Quote Number: Q-44373-1
Quote Date: 6/9/2022
Quote Expires On: 6/30/2022
Proposed By: Kelly Refshauge
Email: krefshauge@uplandsoftware.com

Customer and Billing Details

Customer:	Murfreesboro City School District		
Customer Number:	C-21044		
Ship To	Bill To	Primary Contact:	April Zavisa
Murfreesboro City School District	Murfreesboro City School District	Primary Phone:	(615) 893-2313
2552 S Church St.	2552 S Church Street	Billing Currency:	U.S. Dollar
Murfreesboro, TN 37127	Murfreesboro, TN 37127-7135		
United States	United States		

Purchase Details

Start Date: 7/1/2022 **End Date:** 6/30/2025 **Product Billing Frequency:** Annual
Payment Terms: Net 30

License and Product Details

Description	Quantity Unit of Measure	Term (Months)	Annual Amount	Extended Price for Full Term
FileBound: FileBound Capture Subscription - included with subscription	10 Each	36.00	\$ 0.00	\$ 0.00
FileBound: Importer Pro Subscription - included with subscription	1 Each	36.00	\$ 0.00	\$ 0.00
API: OptiView PDF Parser - Cloud	1 Units Per Year	36.00	\$ 2,520.00	\$ 7,560.00
FileBound: Other Maintenance	1 Units Per Year	36.00	\$ 18,144.00	\$ 54,432.00
FileBound: Setup, Cloud Site Setup - 1,000,000 Enterprise	1 Units Per Month	36.00	\$ 6,659.00	\$ 19,977.00
Total:			\$ 27,323.00	\$ 81,969.00

Quote Total Amount

Total:	USD 81,969.00
---------------	---------------

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TX
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United States
Phone:855-944-PLAN (7526)
www.uplandsoftware.com

Quote Number: Q-44373-1
Quote Date: 6/9/2022
Quote Expires On: 6/30/2022
Proposed By: Kelly Refshauge
Email: krefshauge@uplandsoftware.com

Terms and Conditions

1. **Binding Effect.** Customer and Upland are entering into this sales order or quote ("Sales Order") subject to the terms of the Master Services Agreement ("MSA") currently in effect between the parties as of the date this Sales Order is signed (this Sales Order together with the MSA, the "Agreement"). In the event there is no MSA currently in effect, then the applicable terms and conditions of the Master Services Agreement hosted at <http://www.uplandsoftware.com/terms-of-service.pdf> shall control. Capitalized terms not defined in this Sales Order have the meaning ascribed to them elsewhere in the Agreement.
2. **Non-Waiver.** For record-keeping purposes and the convenience of its Customers, in advance of the expiry of this Sales Order Upland may provide Customer with an updated Sales Order detailing the Services to be supplied by Upland upon renewal. For the avoidance of doubt, the parties acknowledge and agree that Upland's provision of such an updated Sales Order shall not constitute Upland's notice of (i) its intention not to renew the Agreement, or (ii) its intention to terminate the Agreement.
3. **Fees.** Customer agrees to pay any and all fees provided herein. All subscription fees hereunder shall be invoiced in advance and are due and payable in accordance with the Payment Terms set forth above. Customer acknowledges that fees for renewal periods shall be invoiced in advance and are due on or before the start date of such renewal period.
4. **Professional Services Fees.** Fees prepaid for Professional Services become non-refundable and are earned upon the earlier of: (i) the date the Professional Services are delivered (on a *pro-rata*, ongoing basis); or (ii) one year from the date of the applicable invoice.

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Quote Number: Q-44373-1
Quote Date: 6/9/2022
Quote Expires On: 6/30/2022
Proposed By: Kelly Refshauge
Email: krefshauge@uplandsoftware.com

BY AFFIXING THE SIGNATURE OF THE AUTHORIZED REPRESENTATIVE OF THE CUSTOMER TO THIS QUOTE, BY HAND OR ELECTRONICALLY, CUSTOMER IS AGREEING TO BE BOUND BY THE TERMS OF THE AGREEMENT

Name (Print): _____ Date: _____

Title: _____ Signature: _____

Customer: Murfreesboro City School District

If a Purchase Order is required for the purchase or payment of the items on this Sales Order, please complete the following:

PO Number: *{PO_Number}*

PO Amount: *{PO_Amount}*

Upland Signature

Name (Print): _____ Date: _____

Title: _____ Signature: _____

THANK YOU FOR YOUR BUSINESS!

Agenda Item Title: Approve changes to Board Policy 1.800 on first reading

Board Meeting Date: July 23, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Changes to Board Policy 1.800 are made to align with the TSBA model policy, which emphasizes the statutory and regulatory requirements for the annual creation and approval of the school calendar.

Staff Recommendation

Approve changes to Board Policy 1.800 on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in August	Descriptor Term: School Calendar	Descriptor Code: 1.800	Issued Date: 05/13/14
		Rescinds:	Issued:

1 No later than the end of the school year, the Board will adopt, upon the recommendation of the
2 Director of Schools, an official school calendar for the succeeding school year. The calendar will
3 identify holidays, vacation days, summer sessions, and other extensions of the school year. The
4 calendar may be revised by the Board, upon recommendation of the Director of Schools, due to
5 inclement weather or other factors. Consideration shall be given to coordinating holidays and breaks
6 with the Rutherford County School district.

7 The regular school year shall be 200 days¹ and scheduled as follows:

- 8 • A minimum of 180 student attendance days;
- 9 • A minimum of five (5) days in-service education for all certificated personnel;
- 10 • One (1) day for parent-teacher conferences;
- 11 • Ten (10) days paid vacation for all certified personnel; and
- 12 • Four (4) discretionary days

13 The calendar shall be distributed to the school staff at the opening of the school term.

14 STUDENT ATTENDANCE DAYS

15 When schools are closed due to emergencies or unforeseen circumstances such as epidemics or
16 inclement weather, the time lost shall be made up to the required minimum unless otherwise approved
17 by the State Department of Education.¹

18 IN-SERVICE EDUCATION

19 Each day of in-service education included in the school calendar shall be equivalent to not less than six
20 (6) hours of planned activities.³

21 DISCRETIONARY DAYS

22 Four (4) discretionary days shall be included in the calendar and may be designated by the Board as
23 student attendance days, in-service days, or administrative days which may be used by administrators,
24 faculty, and staff for preparation for commencement of classes, record keeping, grading examinations,
25 parent-teacher conferences, and other classroom functions.¹

~~By law, a standard school year for students shall consist of a minimum of 180 days of instruction
exclusive of all vacations as may be approved by the Board in the annual traditional calendar.~~

~~The Director of Schools shall annually present a calendar for the coming school year for approval by the Board. The calendar shall make provision for the opening and closing of school, reflect the inservice education schedule, and designate other days assigned by the Board during the school year. Consideration should be given to coordinating holidays and fall/spring break with the Rutherford County School System. Before final adoption, the proposed calendar May be distributed among school employees for suggestions.~~

Legal References

1. [TCA 49-6-3004\(a\)\(1\)-\(6\)](#)
2. [Public Acts of 2024, Chapter No. 573](#)
3. [TN Dept. of Education, *Guidelines for Planning Approvable In-Service Education Activities*](#)

Cross References

Board Member Development Opportunities 1.204
Reporting Student Progress 4.601
Compensation Guides and Contracts 5.110
In-Service and Professional Learning Opportunities 5.113
Attendance 6.200

Agenda Item Title: Approve Board Policy 3.301, Use of Cellular Phones, on first reading

Board Meeting Date: July 23, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Board Policy 3.301 is a new policy that is recommended to provide clear guidelines on the provision and use of district cell phones, with the goal of safeguarding district information, maintaining legal compliance, and managing district resources efficiently.

Staff Recommendation

Approve Board Policy 3.301, Use of Cellular Phones, on first reading

Fiscal Impact

No change to current procedures or budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in October	Descriptor Term: Use of Cellular Phones	Descriptor Code: 3.301	Issued Date: Click here to enter a date.
		Rescinds:	Issued:

1 Cellular phones shall be provided to a limited number of employees when essential to the operation of
2 the school system. The assignment of cellular phones shall be approved by the Director of
3 Schools/designee. The Board shall be financially responsible for the customary minimum monthly bills
4 for pre-approved cellular phones.

5
6 In lieu of receiving a cellular phone assignment, an employee may elect to receive a stipend to use their
7 personal phone for work-related communication, subject to the discretion and approval of the Director
8 of Schools. The stipend amount will be determined annually based on the standard cost of a plan charged
9 to the district by the district's designated provider and will be paid monthly as part of the employee's
10 regular paycheck. Personal phone use should comply with all relevant school policies, including those
11 related to confidentiality, data security, and appropriate use of technology.

12 Cellular phones provided to employees are for official school board business and should not be used for
13 personal purposes except in cases of emergencies. If the monthly bill reflects charges greater than the
14 customary minimum monthly bill, the excess portion shall become the responsibility of the employee to
15 whom the cellular phone has been issued. If the employee wishes to dispute the portion of the monthly
16 bill for which s/he is responsible, the employee may request and become financially responsible for
17 obtaining a listing for phone use during the disputed period of time.

18 The Director of Schools/designee shall develop procedures for assignment and use of phones, billing
19 disputes and lost or damaged cellular phones. These procedures shall be provided to every employee
20 prior to the assignment of a district-provided cell phone.

Agenda Item Title: Approve Board Policy 6.406, Student Psychological Services, on first reading

Board Meeting Date: July 23, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

- Consent Agenda
- Action Item
- Reports and Information

Requires City Council Approval: Yes No

Summary

Board Policy 6.406 is a new policy drafted to comply with State Board of Education rules that require each local education agency to adopt a policy addressing the provision of student psychological services. This policy requires the Director of Schools to develop procedures to ensure that psychological services are available to all students.

Staff Recommendation

Approve Board Policy 6.406, Student Psychological Services, on first reading

Fiscal Impact

Murfreesboro City Schools employs nine school psychologists. These positions are found in our FY25 GP Budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in April	Descriptor Term: Student Psychological Services	Descriptor Code: 6.406	Issued Date: Click here to enter a date.
		Rescinds:	Issued:

- 1 The Director of Schools shall develop procedures for making psychological services available to all students.¹ This program may coordinate with community agencies in consultative screening and
- 2 assessment services.
- 3
- 4 No school personnel shall conduct any mental health screenings, except as provided by law.²

Legal References

1. TRR/MS 0520-1-03-.08(1)(c)
2. TCA 49-2-124

Agenda Item Title: Approve Board Policy 6.407, Student Social Services, on first reading

Board Meeting Date: July 23, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Board Policy 6.407 is a new policy drafted to comply with State Board of Education rules that require each local education agency to adopt a policy addressing the provision of student social services.

Staff Recommendation

Approve Board Policy 6.407, Student Social Services, on first reading

Fiscal Impact

MCS employs six school social workers in our FY25 budget.

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in April	Descriptor Term: Student Social Services	Descriptor Code: 6.407	Issued Date: Click here to enter a date.
		Rescinds:	Issued:

1 Each school shall provide a social service program for all students through the cooperative efforts of
2 the principal, teachers, and school social workers.¹

3 School social workers are a vital part of the educational team working collaboratively with school
4 administration, teachers, support staff, and community stakeholders to address barriers to academic
5 success, address social and personal competencies, provide crisis intervention, and serve as a link
6 between families, school, and community resources. School social workers shall adhere to the School
7 Social Worker Association of America (SSWAA), and the National Association of Social Workers
8 (NASW) Supplemental Ethical Standards for School Social Work Practice, including: ethical
9 responsibilities, student autonomy and parent involvement, confidentiality, consent for services,
10 advocacy, knowledge of laws and policies, evidence-based practice, contributions to the profession,
11 and ethical decision making.

12 **School Social Work Services**

13 Services provided by the school social worker shall include:

- 14 1. Serve as a liaison between students and their families and community agencies as needed to
15 assist in the provision of appropriate services to eligible students.
- 16 2. Provide information and/or consultation to school staff and parents regarding social/emotional
17 needs of students.
- 18 3. Help parents access resources available outside the school setting (public health department,
19 mental health clinics, SSI, respite care, food pantries, etc.).
- 20 4. Assist school staff in crisis counseling and intervention.
- 21 5. Connect families with community resources and establish relationships with community
22 partners.
- 23 6. Provide direct individual and small group school-based counseling to eligible students.
- 24 7. Conduct home visits when appropriate and in the best interest of the student and family.
- 25 8. Help identify, locate, and evaluate all children with disabilities ages 3-21 in need of special
26 education services and assist parents in navigating the special education process.
- 27 9. Attend and participate in interdisciplinary team meetings to address barriers to student success.

28 The principal and school social worker shall develop a program of social services which shall include
29 such services and activities as:

- 30 1. Orientation of parents/guardians and student to the school program when necessary;
- 31 2. Student referral and/or welfare provisions;
- 32 3. Compile educational and resource information for use by students, parents and teachers;
- 33 4. Conflict resolution techniques; and

- 1 5. Referral information and/or outlets for referral for drug abuse counseling, pregnancy
- 2 counseling, and psychological services.

- 3 School administrators are authorized to work with recognized community providers and agencies who
- 4 may furnish special services to students. The intended purpose of such groups shall be reported to the
- 5 Director of Schools.

Legal References

1. TRR/MS 0520-1-3-.08(1)(d)

Agenda Item Title: Approve changes to Board Policy 6.500, Special Education Students, on first reading

Board Meeting Date: July 23, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Changes are recommended to Board Policy 6.500 to comply with intervention and reporting requirements of the Special Education Behavioral Supports Act. This policy incorporates requirements from current Board Policy 6.501.

Staff Recommendation

Approve changes to Board Policy 6.500, Special Education Students, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in May	Descriptor Term: Special Education Students	Descriptor Code: 6.500	Issued Date: Reviewed 05/26/20 05/28/19
		Rescinds: STU 52	Issued: 06/01/03

1 Special education students between the ages of three (3) and twenty-one (21), inclusive, shall receive the
2 benefit of a free appropriate public education. These students shall be educated with the general student
3 population to the maximum extent appropriate and should be placed in separate or special classes only
4 when the severity of the disability is such that education in regular classes, even with the use of
5 supplementary aids and services, cannot be accomplished satisfactorily.¹

6 Eligibility standards and options of service for special education services shall be based upon the
7 criteria specified in state regulations.²

8 Students receiving special education services shall not be restrained except as permitted by state law
9 and regulations.^{3,4} The Director of Schools shall develop administrative procedures to govern the
10 following:

- 11 1. Personnel authorized to use isolation and restraint;
12 2. Training requirements for personnel working with special education students; and
13 3. Incident reporting procedures.⁴

Legal References

1. TCA 49-10-103(c), (e)
2. TRR/MS 0520-01-09-.01
3. TCA 49-10-1301, et seq.
4. TRR/MS 0520-01-09-.23

Agenda Item Title: Approve retirement of Board Policy 6.501, Special Education Behavioral Support, on first reading

Board Meeting Date: July 23, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Language to address the requirements of the Special Education Behavioral Supports Act is now included in Board Policy 6.500. As a result, it is recommended that Board Policy 6.501 be retired to avoid replication of requirements.

Staff Recommendation

Approve retirement of Board Policy 6.501, Special Education Behavioral Support, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in May	Descriptor Term: Special Education Behavioral Support	Descriptor Code: 6.501	Issued Date: 05/23/23
		Rescinds: 6.501	Issued: 08/24/21

1 ~~Recommend retirement~~ The Murfreesboro City school district shall comply with the Tennessee
2 Department of Education restraint and isolation regulations and guidelines pursuant to the Special
3 Education Behavioral Support Act for all students in grades Pre-K—6th.¹ Maintaining a school
4 environment that is conducive to student learning requires that the environment be orderly and safe.
5 The primary technique used to de-escalate any situation is verbal in nature; however, if the situation
6 warrants physical holding restraint, then physically restraining a student may be necessary. Students in
7 the district are protected by law from the unreasonable, unsafe and unwarranted use of isolation and
8 physical restraint. Murfreesboro City Schools policy has an emphasis on positive behavioral support,
9 prevention and de-escalation, which reduces the risk of injury to both students and program staff. The
10 emphasis is always on the care, safety and wellbeing of our students and staff.

11 **Definitions**

- 12 1. ~~“Behavior intervention training program” means a training program in evidence-based positive~~
13 ~~behavioral supports, evidence-based crisis intervention, and evidence-based techniques for the~~
14 ~~safe use of restraint and isolation;~~
- 15 2. ~~“Chemical restraint” means a medication that is prescribed to restrict a student's freedom of~~
16 ~~movement for the control of extreme violent physical behavior. Chemical restraints are~~
17 ~~medications used in addition to, or in replacement of, a student's regular drug regimen to~~
18 ~~control extreme violent physical behavior. The medications that comprise the student's regular~~
19 ~~medical regimen, including PRN medications, are not considered chemical restraints, even if~~
20 ~~their purpose is to treat ongoing behavioral symptoms;~~
- 21 3. ~~“Emergency situation” means that a child's behavior poses a threat to the physical safety of the~~
22 ~~student or others nearby;~~
- 23 4. ~~“Isolation” or “seclusion” (A) means the confinement of a student alone, with no other~~
24 ~~students, staff, or persons present, in a room with or without a door, or other enclosed area or~~
25 ~~structure pursuant to § 49-10-1305(g) where the student is physically prevented from leaving~~
26 ~~because a door, object, or school personnel is blocking the student's exit.~~
27 ~~a. Unlocked and incapable of being locked;~~
28 ~~b. Free of any condition that could be a danger to the student;~~
29 ~~c. Well ventilated and temperature controlled;~~
30 ~~d. Sufficiently lighted for the comfort and well-being of the student;~~
31 ~~e. Where school personnel are in continuous direct visual contact with the student at all~~
32 ~~times;~~

- 33 f. ~~At least forty square feet (40 sq. ft.); and~~
34 g. ~~In compliance with all applicable state and local fire, health, and safety codes.~~

35 5. ~~Isolation or seclusion does not include time-out, a behavior management procedure in which~~
36 ~~the opportunity for positive reinforcement is withheld, contingent upon the demonstration of~~
37 ~~undesired behavior; provided, that time-out may involve the voluntary separation of an~~
38 ~~individual student from others;~~

39 6. ~~Isolation room” means any space, structure, or area pursuant to § 49-10-1305(g) used to isolate~~
40 ~~a student.~~

41 7. ~~“Mechanical restraint” means the application of a mechanical device, material or equipment~~
42 ~~attached or adjacent to the student's body, including ambulatory restraints, which the student~~
43 ~~cannot easily remove and that restrict freedom of movement or normal access to the student's~~
44 ~~body. Mechanical restraint does not include the use of restraints for medical immobilization,~~
45 ~~adaptive support, or medical protection; or the use of a seat belt or other device, including, but~~
46 ~~not limited to, a belting system or harness, to secure a child with a disability during transit on a~~
47 ~~bus or vehicle operated by an LEA or a provider contracted to serve the LEA's transportation~~
48 ~~needs;~~

49 8. ~~“Noxious substance” means the use of any defense spray or substance as defined by~~
50 ~~departmental rule;~~

51 9. ~~“Physical holding restraint” means the use of body contact by school personnel with a student~~
52 ~~to restrict freedom of movement or normal access to the student’s body, except for:~~

- 53 a. ~~The holding of a student by an adult in order to calm or comfort the student in the~~
54 ~~absence of an emergency;~~
55 b. ~~Contact necessary to physically escort a student from one area to another in the absence~~
56 ~~of an emergency;~~
57 c. ~~Assisting a student in completing a task or response if the student does not resist or if~~
58 ~~the resistance is of minimal intensity or duration;~~
59 d. ~~Physically redirecting a student if the student does not resist or if the resistance is of~~
60 ~~minimal intensity or duration; or~~
61 e. ~~School personnel blocking a student's exit or elopement by physically placing~~
62 ~~themselves in front of the student;~~

63 10. ~~“Positive behavioral supports” means a systematic approach using evidence-based practices to~~
64 ~~improve school environments, and to prevent and respond to problem behavior that:~~

- 65 —
66 a. ~~Is proactive and instructional, rather than reactive and punitive;~~
67 b. ~~Operates on the following three (3) levels:~~
68 i. ~~Individual;~~
69 ii. ~~Group or classroom; and~~
70 iii. ~~The whole school;~~
71 c. ~~Includes a system of continual data collection;~~

- d. Utilizes data-based decision-making;
- e. Applies research-validated positive behavioral interventions; and
- f. Improves academic and social outcomes for all students, including those with the most complex and intensive behavioral needs.

11. "Restraint" means a chemical restraint, mechanical restraint, or physical holding restraint;

12. "School personnel" means an individual employed on a full-time or part-time basis by a public school

Implementation of Restraint

Only the principal, or the principal's designee, may authorize the use of isolation or restraint. For a student receiving special education services, as defined in § 49-10-102, isolation or a physical holding restraint may only be used in emergency situations. Individualized education programs that provide for the use of isolation or a physical holding restraint for certain behavior must contain a data-driven functional behavior assessment and a plan for modification of the behavior developed and implemented by a qualified team of professionals. Trained school staff may use physical holding restraint only:

1. When non-physical interventions have been ineffective and the student's behavior poses threat of imminent, serious harm to self and/or others and when the student's behavior is more dangerous than the danger of using physical restraint; or
2. Pursuant to a student's IEP or other written plan developed in accordance with state and federal law and approved by the school and parent or guardian. Physical holding restraint will be practiced in strict accordance with all applicable laws.

School personnel shall remain in the physical presence of any restrained student and shall continuously observe a student who is in time-out, isolation, or being restrained to monitor the health and wellbeing of such student.

Prohibited Forms of Restraint

The following forms of restraint are prohibited:

1. Administering a chemical restraint to a student receiving special education services is prohibited; provided, that nothing in this policy shall prohibit the administration of a chemical restraint when administered for therapeutic purposes under the direction of a physician and with the child's parent or guardian's consent to administer such chemical restraint.
2. Administering a noxious substance to a student receiving special education services is prohibited.
3. The use of any mechanical restraint on any student receiving special education services is prohibited.

110
111 ~~4. Any form of life-threatening restraint, including restraint that restricts the flow of air into a~~
112 ~~person's lungs, whether by chest compression or any other means, to a student receiving~~
113 ~~special education services is prohibited.~~

114
115 ~~5. The use of isolation or physical holding restraint as a means of coercion, punishment,~~
116 ~~convenience or retaliation on any student receiving special education services is prohibited.~~

117
118 ~~6. Removing or disabling any equipment or device that a student requires, including, but not~~
119 ~~limited to, a power wheelchair, brace, augmentative communication device, or walker, as a~~
120 ~~means of coercion, punishment, convenience, or retaliation on any student receiving special~~
121 ~~education services is prohibited.~~

122
123 ~~7. The use of a locked door, or any physical structure, mechanism, or device that substantially~~
124 ~~accomplishes the function of locking a student in a room, structure, or area, is prohibited.~~

125 ~~Authorized Forms of Restraint~~

126 ~~The use of physical holding restraint in the following circumstances is permitted. The school is not~~
127 ~~required to notify the student's parent or guardian in any of the circumstances listed below:~~

- 128 ~~1. The brief holding by an adult in order to calm or comfort;~~
129 ~~2. The minimum contact necessary to physically escort a student from one area to another;~~
130 ~~3. Assisting a student in completing a task or response if the student does not resist, or resistance~~
131 ~~is minimal in intensity or duration; or~~
132 ~~4. Holding a student for a brief time in order to prevent any impulsive behavior that threatens the~~
133 ~~student's immediate safety.~~

134 ~~Actions undertaken by school personnel to break up a fight or to take a weapon from a student are not~~
135 ~~prohibited; however, these acts shall be reported in accordance with administrative procedures~~
136 ~~developed by the Director of Schools.~~

137 ~~Staff Training~~

138 ~~Physical restraint should only be used by faculty and staff who have received specific district-approved~~
139 ~~crisis intervention training in the use of physical restraint procedures and non-violent crisis~~
140 ~~intervention.~~

141 ~~Other school personnel may use physical restraint only in rare and clearly unavoidable emergency~~
142 ~~circumstances when fully trained school personnel are not immediately available. Untrained staff~~
143 ~~should request assistance from trained staff as soon as possible. The school must identify specific staff~~
144 ~~to serve as school-wide resources to assist in ensuring proper administration of physical restraint.~~
145 ~~These individuals must participate in in-depth training with respect to restraint and implementation.~~

146 ~~Reporting Requirements and Follow-Up~~

~~The building administrator or designee must receive a written report documenting the circumstances of the incident. School personnel authorized by MCS shall see and evaluate the student's condition within a reasonable time after the intervention. The student's parent or guardian shall be notified orally and in writing the same day the isolation or restraint was used. School personnel shall be held harmless for failure to notify if reasonable effort has been made to notify the student's parent or guardian.~~

~~A student receiving special education services may be restrained or isolated only if such restraint or isolation is provided for in the student's IEP, or in emergency situations, if necessary to assure the physical safety of the student or others nearby. If the student's IEP does not provide for the use of isolation or restraint for the behavior precipitating such action or if school personnel are required to use isolation or restraint over an extended period of time, an IEP meeting shall be convened within ten (10) days following the use of such isolation or restraint. If the behavior precipitating such action also warrants a change of placement, the child will have all rights provided under applicable state and federal law.~~

~~School personnel who have used isolation or restraint shall provide a written report to the school principal or the principal's designee on the form developed by the Tennessee State Department of Education. A copy of the report form must be provided to the Special Education Supervisor who, after review of the report, will maintain statistics related to the student and the school's use of isolation and/or restraint and discuss findings with the Director of Schools and school principals. Documentation of each incident of restraint and/or isolation will be forwarded immediately to the Special Education Department, who will be responsible for completing the Easy IEP portion of documentation.~~

Required Reports

~~Each school shall maintain all records of isolation and restraint. On a semi-annual basis, using existing student level data collection systems to the extent feasible, each school shall submit a report to the LEA that includes:~~

- ~~1. The number of incidents involving the use of isolation and restraint since the previous semi-annual report;~~
- ~~2. The number of instances in which the school personnel imposing physical restraint or isolation were not trained and certified;~~
- ~~3. Any injuries, deaths, or property damage that occurred;~~
- ~~4. The timeliness of parental notification;~~
- ~~5. Demographic information to determine whether disproportionate use of these interventions exists.~~

~~The LEA shall use the information obtained from records of isolation and restraint in developing its behavior intervention training program. The LEA shall submit information to the Tennessee Department of Education each year on the use of isolation and restraint in the school district.~~

Legal References

1. TCA 49-10-1301 through 1307

Agenda Item Title: Approve Board Policy 6.505, Students in Foster Care, on first reading

Board Meeting Date: July 23, 2024

Department: Legal

Presented by: Lauren Bush

Board Agenda Category:

Consent Agenda

Action Item

Reports and Information

Requires City Council Approval: Yes No

Summary

Board Policy 6.505, Students in Foster Care, is a new policy adopted from the TSBA model policy that outlines State and federal law requirements for services and supports provided to students in foster care. This policy outlines and codifies our current practices.

Staff Recommendation

Approve Board Policy 6.505. Students in Foster Care, on first reading

Fiscal Impact

No fiscal impact

Connection to MCS's Five-Year Strategic Plan

- Known:** Every student will be *known* through whole-child programs and support.
- Safe:** Every student will be *safe* through equitable access to buildings, facilities, and infrastructure that meets their needs.
- Challenged:** Every student will be *challenged* by learning from highly effective educators and employees.
- Empowered:** Every student will be *empowered* through academic success

Murfreesboro City School Board

Monitoring: Review: Annually, in April	Descriptor Term: Students in Foster Care	Descriptor Code: 6.505	Issued Date: Click here to enter a date.
		Rescinds:	Issued:

1 Murfreesboro City Schools shall provide all students in foster care, to include those awaiting foster
2 care placement, with a free and appropriate public education.

3 **Enrollment**

4 Students in foster care, to include those awaiting foster care placement, shall be immediately enrolled,
5 even if the student is unable to produce records normally required for enrollment (i.e. academic
6 records, immunization records, health records, proof of residency), or missed the district's application
7 or enrollment deadlines.¹

8 **Placement**

9 The District and the child welfare agency shall determine whether placement in a particular school is in
10 a student's best interest. Other parties, including the student, foster parents, and biological parents (if
11 appropriate), shall be consulted. If the student has an IEP or a Section 504 plan, then the relevant
12 school staff members shall participate in the best interest decision process. This determination shall be
13 made as quickly as possible to prevent educational disruption.

14 Placement shall be determined based on the students' best interest. At all times, a strong presumption
15 that keeping the student in the school of origin is in the student's best interest shall be maintained.²
16 For the purposes of this policy, school of origin shall mean the school in which the student was
17 enrolled, including a preschool/pre-k program, at the time of placement in foster care or at the time of a
18 placement change if the student is already placed in foster care.³

19 When determining placement, student-centered factors including, but not limited to, the following shall
20 be considered:

- 21 1. Preference of the student;
- 22 2. Preference of the student's parent(s) or education decision-maker(s);
- 23 3. The student's attachment to the school, including meaningful relationships with staff and
24 peers;
- 25 4. Placement of the student's siblings;
- 26 5. Influence of the school climate on the student, including safety;
- 27 6. The availability and quality of the services in the school to meet the student's educational need;
- 28 7. History of school transfers and how they have impacted the student;
- 29 8. How the length of the commute would impact the student;

- 30 9. Whether the student is receiving special education and related services, and if so, the
31 availability of those required services in a school other than the school of origin; and
32 10. Whether the student is an EL and is receiving language services, and, if so, the availability of
33 those required services in a school other than the school of origin.

34 Transportation costs should not be considered when determining a student's best interest.

35 If it is not in the student's best interest to attend the school of origin, the Director or his/her designee
36 shall provide a written explanation of the reasons for the determination. The written explanation shall
37 include a statement regarding the right to appeal the placement decision. If the placement decision is
38 appealed, the district shall refer the student to the Assistant Superintendent of Student Support
39 Services, who shall carry out the dispute resolution process as expeditiously as possible and in
40 accordance with the law.² Until the dispute is resolved, to the extent feasible, the student shall remain
41 in their school of origin.²

42 **Transportation⁴**

43 The District shall collaborate with the local child welfare agency to develop and implement clear and
44 written procedures governing how transportation to a student's school of origin shall be provided,
45 arranged, and funded. This transportation will be provided for the duration of the students' time in
46 foster care.

47 The Director of Schools shall develop administrative procedures to provide for transportation of
48 students in foster care.⁵ These procedures must ensure that:

- 49 1. Students in foster care needing transportation to their schools of origin will promptly receive
50 that transportation in a cost-effective manner and in accordance with federal law; and
51 2. If there are additional costs incurred in providing transportation to the school of origin, the
52 District will provide such transportation if the local child welfare agency agrees to reimburse
53 the district for the cost of such transportation.⁴

54 The District will ensure that a student in foster care, including a student awaiting foster care placement,
55 remains in his/her school of origin while any disputes regarding transportation costs are being
56 resolved.

Legal References

57

1. ESSA (Pub.L.114-95) § 1111(g)(1)(E)(ii)-(iii)
2. ESSA (Pub.L.114-95) § 1111(g)(1)(E)(i)-(iv)
3. ESSA (Pub.L.114-95) § 1111(g)(1)(E)
4. ESSA (Pub.L.114-95) § 1112(c)(5); §475(4)(A) of the Social Security Act, 42 U.S.C. § 675(4)(A)
5. ESSA (Pub.L.114-95) § 1112(c)(5)(B)(i)