

**Participating Addendum
to NASPO ValuePoint Master Agreement No. PO-10700-00012991 (Office Supplies)
Between Staples Contract & Commercial LLC and Texas Comptroller of Public Accounts
(State of Texas Contract No. 615-C1 General Office Supplies)**

1. Scope. This Participating Addendum is entered into by and between **Staples Contract & Commercial LLC** (the “Contractor”) and **Texas Comptroller of Public Accounts** (the “state” or “Participating Entity”) and covers participation in the Office Supplies Master Agreement led by the State of Oregon (the “Master Agreement”), for use by state agencies and other entities located in Texas, which are authorized to utilize state contracts with the prior approval of the state’s Chief Procurement Officer. Only those services, goods and accessories listed on the Contractor page of the NASPO ValuePoint website are included in and may be provided pursuant to this Participating Addendum. The scope of this Participating Addendum is limited to office supplies. The exclusions specified in the Exhibits and Attachments to this agreement apply only to this Participating Addendum.
2. Participation. This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the state’s Chief Procurement Officer.
3. Term. This Participating Addendum is effective on the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
4. Primary Contacts. The following (or their named successors) are the primary contacts for this Participating Addendum:

CONTRACTOR:

Contact:	Adam Moriarty
Address:	500 Staples Drive, Framingham, MA 01702
Telephone:	508-253-2531
Email:	adam.moriarty@staples.com

PARTICIPATING ENTITY:

Contact:	Texas Comptroller of Public Accounts, Statewide Procurement Division
Address:	Comptroller of Public Accounts, Statewide Procurement Division, 1711 San Jacinto Blvd., Austin, TX 78711-3186
Telephone:	512-463-3034, option 3
Email:	spd.cmo@cpa.texas.gov

5. Participating Entity Modifications to the Master Agreement. This Participating Addendum incorporates all terms and conditions of the Master Agreement, as amended, subject to the following limitations, modifications, and additions:
- a. Governing Law. The laws of the state of Texas shall govern this Participating Addendum.
 - b. Exhibits and Attachments. The Texas Comptroller of Public Accounts Cooperative Contract (COOP) Terms and Conditions (Exhibit A), Addendum to Exhibit A, COOP Vendor Checklist (Exhibit B) and Texas SmartBuy Catalog are attached to this agreement and incorporated by reference.
 - c. Order of Precedence. In the event of conflict between this Participating Addendum, the Exhibits and Attachments to this agreement enumerated in Section 5(b), and the Master Agreement, the conflict shall be resolved in the following order of priority:
 - i. Addendum to Exhibit A;
 - ii. COOP Terms and Conditions (Exhibit A);
 - iii. COOP Vendor Checklist (Exhibit B);
 - iv. This Participating Addendum;
 - v. Master Agreement; and
 - vi. "Product Documents" are found at <https://www.naspovaluepoint.org/portfolio/office-supplies-2022-2027/staples-contract-commercial-llc/>
 - d. "Product Documents". The product documents found at <https://www.naspovaluepoint.org/portfolio/office-supplies-2022-2027/staples-contract-commercial-llc/> are subject to the provisions of this Participating Addendum. Any contradiction between this Participating Addendum and any product documents shall be resolved in favor of this Participating Addendum.
 - e. "Texas SmartBuy Catalog." The Texas SmartBuy catalog consists of items and pricing submitted and agreed upon by the Participating Entity and Contractor. Categories 14, 18, 32, 40 and 49 of the Master Agreement's Exhibit 3 (Description of Goods and Discount Rates) are excluded from this Participating Addendum. Any excluded items or categories are not permitted to be sold under this Participating Addendum and may not be added at any time during the life of this agreement. Modifications to these items will be in accordance with Section 2(c) of the COOP Terms and Conditions (Exhibit A).
6. Orders. Any order placed by Participating Entity or a Purchasing Entity in the state of Texas for services or goods offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing and other terms and conditions of, the Master Agreement and this Participating Addendum unless the parties to the order agree in writing that another contract or agreement applies to the order.

The parties have executed this Participating Addendum.

**TEXAS COMPTROLLER
OF PUBLIC ACCOUNTS****STAPLES CONTRACT & COMMERCIAL LLC
(CONTRACTOR)**

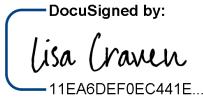
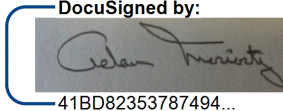
Signature:  11EA6DEF0EC441E...	Signature:  41BD82353787494...
Name: Lisa Craven	Name: Adam Moriarty
Title: Deputy Comptroller	Title: General Manager – SLED
Date: 8/31/2023 3:02 PM CDT	Date: 8/28/2023 3:34 PM CDT

Exhibit A

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS



STATEWIDE PROCUREMENT DIVISION

COOPERATIVE CONTRACT TERMS AND CONDITIONS

STATE OF TEXAS
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
COOPERATIVE CONTRACT TERMS AND CONDITIONS

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1. BACKGROUND

Contractor has entered into a contract with a governmental entity, which was awarded using a competitive process (the “Base Contract”). This Contract modifies the Base Contract to comply with state and federal law and incorporates it into CPA’s schedule of cooperative contracts, as authorized by Texas Government Code Chapter 2156, Subchapter D. The purpose of this Contract is to make items and pricing in the Base Contract available to customers authorized to purchase from CPA statewide contracts, including CPA.

2. CONTRACT DOCUMENTS

- (a) List of Documents. This Contract consists of: (1) this Cooperative Terms and Conditions document, (2) the Texas Cooperative Contract Vendor Checklist and Certifications, (3) the Base Contract and any participating agreement between CPA and the base contracting entity, (4) the Texas SmartBuy Catalog approved by CPA, and (5) the Participating Addendum executed by both parties.
- (b) Base Contract. This Contract incorporates the entire Base Contract, including all documents incorporated by reference into the Base Contract. Such documents may include the solicitation, the Contractor’s response, catalogs, and price lists.
- (c) Base Contract Modifications. Modifications of the Base Contract are not automatically incorporated into this Contract. CPA may adopt such modifications in its sole discretion and shall notify the Contractor of any modification it adopts.
- (d) Entire Agreement. This Contract is intended as a final, complete, and exclusive expression of the agreement between CPA and Contractor about the subjects it contains. There are no restrictions, promises, warranties or undertakings related to this agreement, other than those stated or referred to in this Contract.
- (e) Amendments. This Contract may be amended only by written agreement between CPA and Contractor.

3. INTERPRETATION OF BASE CONTRACT

- (a) Order of Precedence. To the extent there are conflicts between the Base Contract and other Contract documents, the Base Contract is superseded by the other documents.
- (b) All rights and obligations of Contractor to the awarding governmental entity under the Base Contract are obligations are owed by the Contractor to CPA under this Contract. All rights and obligations of Contractor to an entity receiving goods and services under the Base Contract are owed by the Contractor to the state of Texas, CPA, and Customers under this Contract.
- (c) If the Base Contract requires Contractor to notify the awarding governmental entity of information affecting the Base Contract, Contractor shall provide the same notices to CPA.
- (d) If the Base Contract is modified or terminated, Contractor shall notify CPA within 30 days.

4. CUSTOMERS

- (a) In this Contract, “Customer” is defined as any entity authorized by law or by CPA to purchase goods and services under this Contract, or an entity that is purchasing or has purchased goods or services under this Contract.
- (b) Customers have the same rights and remedies of the state of Texas and CPA under this Contract including indemnification, as to their own purchase orders under this Contract.
- (c) Customers may not modify or waive any provision of this Contract.

5. TEXAS SMARTBUY CATALOG

- (a) **Contractor's Catalog.** Contractor shall submit a Texas SmartBuy Catalog (the "Catalog") to CPA for upload to the Texas SmartBuy online ordering system. Contractor shall not include in the Catalog any goods or services that are not included in the Base Contract. All goods and services included in the Catalog must be verifiable using the Base Contract or Contractor's website. At its sole discretion, CPA may exclude goods and services on the Base Contract from the Catalog. CPA will provide the final Texas SmartBuy catalog upon award.
- (b) **Base Price Changes.** Contractor shall notify CPA of any decrease in prices offered under the Base Contract within 30 working days and offer such pricing under this Contract. If Contractor fails to notify CPA of a Base Contract price decrease, Contractor shall refund any overpayment to Customers.
- (c) **Price Negotiation.** Catalog Prices are the maximum prices allowed under this Contract. A customer may negotiate a lower price for goods and services with the Contractor.
- (d) **Pricing and related information not confidential or proprietary.** CPA intends to publish pricing and related information Texas SmartBuy. Contractor agrees that the information it has submitted to CPA is not confidential or proprietary. Contractor consents to the publication of Contractor's pricing and related information on Texas SmartBuy or in any other format.

6. PURCHASE ORDERS

- (a) **Effect.** A purchase order constitutes an agreement between Contractor and a Customer. Contractor will look solely to the Customer for performance, including but not limited to, payment, and will hold CPA harmless with regard to such orders.
- (b) **Customer-specified Terms and Conditions.** Customers other than CPA do not have the authority to modify this Contract; however, Customers may add terms and conditions that do not conflict with this Contract and are acceptable to Contractor in a purchase order. In the event of a conflict between a purchase order and this Contract, this Contract controls. If Contractor cannot honor terms specified on a purchase order, it shall notify the Customer without delay.
- (c) **Off-contract Items.** Other than incidental items expressly allowed under this Contract, Contractor may not sell and Customers may not purchase goods or services under this Contract that are not included in the Catalog for this Contract. Therefore, to the extent the Base Contract contains terms which allow additional items to be purchased such as blanket purchase agreements and contractor team arrangements, those terms are excluded from to this Contract.
- (d) **Incidental Items.** A Customer may purchase incidental items that are not included in the Catalog for this Contract if they are necessary for product integration or project completeness, subject to the following conditions. The Customer must determine that the quoted price is determined to be fair and reasonable, and the purchase represents best value to the state. The purchase must not conflict with applicable laws, rules, and regulations. Only products or services listed in the Base Contract may be purchased from this Contract. Incidental items must be clearly labeled as "Incidental." These incidental items may not exceed the lesser of \$5,000, or 50% of the total purchase order value. CPA may review incidental purchases and may decide whether to allow them to proceed through Texas SmartBuy. If incidental purchases do not meet these requirements, the purchase order may be void.
 - (i) **Online ordering.** The Texas SmartBuy system allows Customers to search for goods and services, compare prices, and place orders online. Contractor will receive SmartBuy POs at the email address it has specified. If Contractor observes any apparent irregularities or suspicious content in emails from the SmartBuy system, it shall notify CPA without delay.

- (ii) **Offline sales prohibited.** Contractor may only accept orders for items on this Contract through Texas SmartBuy. Contractor shall not accept offline orders, defined as orders placed outside the Texas SmartBuy system, from any Customer for any goods or services available on this Contract.

7. TEXAS SMARTBUY ADMINISTRATIVE FEE

- (a) Texas SmartBuy Administrative Fee. Contractor shall pay a 1.5% administrative fee to CPA on all Contract sales. If Contractor wishes to recover this fee from Customers, Contractor may charge up to 1.5% more for goods and services under the Contract than it does under the Base Contract. Contractor must make any price adjustment permitted by this section before submitting the Texas SmartBuy Catalog to CPA.
 - (i) CPA will invoice Contractor each month for the prior month's sales. Payment is due upon receipt of the invoice.
 - (ii) The administrative fee payment should be identified as "Texas SmartBuy Admin Fee" and made payable to "**Texas Comptroller of Public Accounts.**" Contractor may remit payment by check to: Texas Comptroller of Public Accounts, Attn: Texas SmartBuy Administrative Fee, P.O. Box 13106, Austin, TX 78711-3106. If Contractor prefers to pay by ACH debit, it must request instructions from CPA.
 - (iii) The Texas SmartBuy administrative fee is subject to change at the sole discretion of CPA. CPA will provide Contractor with written notice of any increase to the Texas SmartBuy administrative fee.
- (b) Warrant hold for unpaid fees or rebates. Tex. Gov't Code § 403.055 generally prohibits the state treasury from making payments to anyone indebted to the State of Texas. Payments to Contractor may be held and applied to the Contractor's debt.

8. MISCELLANEOUS PROGRAM REQUIREMENTS

- (a) New Items. Contractor shall only supply new (unused) goods and replacement parts.
- (b) Statewide Coverage. Contractor shall serve all Customers and all locations throughout the state of Texas.
- (c) Warranty. Contractor shall provide a warranty for goods sold under the Contract. At a minimum, the warranty period will begin on the date the equipment is accepted by the Customer and will continue in effect for a continuous period of (i) one year from that date, or (ii) the duration of the manufacturer's standard warranty, whichever is longer. If no time or specific protocol for acceptance is specified elsewhere in the Contract or the Customer purchase order, items are presumed accepted ten working days after receipt. The warranty will apply to any warranty service or repair requested by Customer during the warranty period by contacting the Contractor's authorized warranty service provider with such request, regardless of the amount of time required to complete the requested warranty service or repair. Contractor's warranty obligations will survive the termination of this Contract.
- (d) Warranty Shipment. Contractor shall pay for shipment of goods under warranty. Contractor may not require a Customer to pay for shipping in order to obtain warranty repairs or replacement.
- (e) Risk of Loss. Contractor shall bear the risk of loss or damage of goods during shipment. Any attempt by Contractor to shift this risk without the express approval of CPA will have no effect.
- (f) Contractor Addresses. The ordering and payment addresses under this Contract are those stated on the Texas Cooperative Contract Vendor Checklist and Certifications.

- (g) Time Zone. All references to time of day are Central Time, including times in the Base Contract that designate another time zone.
- (h) Travel. Any travel required by Contractor to perform its obligations under this Contract will be at Contractor's expense. Any additional travel shall not exceed limitations applicable to Texas employees.
- (i) Independent Contractor. In performing this Contract, Contractor and Contractor's employees, representatives, agents and any subcontractors are not employees of the state of Texas, CPA, or Customers.
- (j) Subcontracts. If Contractor subcontracts any part of the performance of this Contract, the state of Texas, CPA, and Customers will have no obligation to any subcontractor. Contractor shall ensure that subcontracts are performed in compliance with this Contract.
- (k) Professional Services. This Contract specifically excludes professional services as defined by Tex. Gov't Code Chapter 2254, Subchapter A. Contractor may not sell any professional services under this this Contract.
- (l) Consulting Services. This Contract specifically excludes consulting services as defined by Tex. Gov't Code Chapter 2254, Subchapter B. Contractor may not sell any consulting services under this Contract.
- (m) Information Technology. CPA will work with the Texas Department of Information Resources and Contractor to identify information technology commodity items as defined in Tex. Gov't Code § 2157.068 and exclude them from the Texas SmartBuy Catalog for this Contract. CPA lacks authority to include these items in cooperative contracts, and any purchases of these items through this Contract may be void.
- (n) Intellectual Property. "Work Product" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by Contractor. In the event that this Contract or the Base Contract is terminated for any reason, or upon the expiration of either this Contract or the Base Contract, Customers shall retain ownership of all associated Work Product and documentation obtained from Contractor under the Base Contract through this Contract. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to Customers, Contractor shall grant to Customers an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses.

9. DEALERS

- (a) Upon CPA approval, Contractor may designate one or more dealers to provide goods or services under this Contract on behalf of Contractor. To designate a dealer, Contractor must submit the Letter of Authorization in the format provided by CPA. Contractor shall submit a separate Letter of Authorization for each designated dealer.
- (b) The Letter of Authorization must be on Contractor's official letterhead, signed by an authorized representative, and addressed to the attention of the CPA Statewide Procurement Division Director. The Letter of Authorization must include a Letter of Acceptance from the dealer and all supporting documentation. By submitting a Letter of Authorization, Contractor represents and agrees to the following:

- (i) The dealer has been given a copy of this Contract (and all incorporated documents), a duly authorized representative of the dealer has agreed in writing to be bound by the terms and conditions of this Contract, and such agreement specifies that it is for the benefit of the state of Texas, CPA, and Customers, as well as Contractor.
 - (ii) Contractor agrees to be liable for any breach of this Contract by the dealer. Contractor shall pay all fees and rebates to CPA for sales by the dealer.
 - (iii) Customers will pay the dealer for goods and services ordered from the dealer. Customers will have no obligation to pay the Contractor for goods and services ordered from the dealer.
 - (iv) Contractor's Letter of Authorization shall remain effective until CPA receives written notification from Contractor, signed by an authorized representative of Contractor, that it is withdrawn.
- (c) The Letter of Acceptance must be signed by an authorized representative of the dealer, in a format provided by CPA, and addressed to the attention of Contractor. In the Letter of Acceptance, the dealer must represent and warrant that it has been given a copy of this Contract and the Base Contract, it agrees to be bound by the terms and conditions of this Contract and the Base Contract, as both may be amended from time to time, and such agreement specifically provides that it is for the benefit of the state of Texas, CPA, and Customers, as well as Contractor.
- (d) CPA may reject a Letter of Authorization that does not comply with this Contract, or that CPA chooses in its sole discretion not to approve.

10. UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)

In accordance with Tex. Gov't Code Chapter 2161 and 34 Texas Administrative Code (TAC) §§20.281 *et seq.*, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services and commodities contracts. Contractors are urged to utilize HUBs as defined in Tex. Gov't Code § 2161.001 or small businesses as defined in Tex. Gov't Code § 2155.505(a) to sell or provide services under the Cooperative Contract. A Contractor's failure to make a good faith effort to use HUBs and small businesses may result in exclusion of Contractor from participation in this contract. A list of Certified Texas HUB Vendors can be accessed on CPA's website.

11. INVOICE REQUIREMENTS

- (a) In order to request payment, Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. The invoice must include the following:
- (i) Name and address of Contractor as designated in this Contract.
 - (ii) Contractor's Federal Employer Identification Number (FEIN).
 - (iii) Contractor's payment address as designated in this Contract.
 - (iv) The purchase order number.
 - (v) A description of what Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the goods and services.
 - (vi) If the invoice is for a lease, Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of Contractor's information.

- (c) If an invoice does not meet this section's requirements, Customer will send Contractor written notice to the Contractor. The notice will contain a description of the defect or impropriety and any additional information Contractor needs to correct the invoice.
- (d) Customer may, in its sole discretion, request additional documentation to support payment. Contractor shall respond to any such requests within five calendar days of receipt. Customer is required to make payments only upon receipt of a correct invoice, including all of the required supporting documentation.

12. AUDIT REQUIREMENTS

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by state or federal law or regulation. Those additional requirements will be included on the purchase order for that particular order.

13. PUBLIC INFORMATION

Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to Tex. Gov't Code Chapter 552 (the "Public Information Act"). In accordance with Tex. Gov't Code § 2252.907, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

14. CONFIDENTIALITY AND SECURITY

Any information Contractor receives, compiles, or creates as a result of this Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Contractor shall establish a method to secure the confidentiality of records and other information relating to Customers in accordance with applicable federal and state laws, rules, and regulations. The obligations of Contractor under this Confidentiality and Security section shall survive this Contract and shall be included in all subcontracts.

15. RECORDS RETENTION

Contractor shall maintain and retain all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Respondent for a period of seven years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

16. DISCLOSURE OF INTERESTED PARTIES

If CPA determines that Tex. Gov't Code § 2252.908 may apply to this Contract, CPA will advise Contractor of its obligation to disclose interested parties to the Texas Ethics Commission (TEC) and CPA as specified in the statute.

Upon receiving instruction from CPA, Contractor shall submit the required disclosures to TEC by completing TEC Form 1295, Certificate of Interested Parties.

TEC Form 1295 is an online form available at TEC's website:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Contractor shall submit the completed form online to TEC and then print the completed form that includes the Certificate Number automatically assigned by TEC. Contractor's authorized agent must sign the printed form and submit it to CPA.

17. INSURANCE

Contractor represents and warrants that it will obtain and maintain for the term of this Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. Contractor represents and warrants that all required insurance policies are issued from a company or companies with a Financial Strength Rating of "A-" or better and a Financial Size Category of VIII or larger from AM Best. CPA may consider other sources of information and reserves the right to determine whether an insurer is acceptable in its sole discretion. Contractor shall furnish proof of insurance upon request to a Customer or CPA.

Contractor shall insure all motor vehicles used to fulfill its duties under the Contract. Under Texas Transportation Code § 601.072, such insurance shall comply with all statutory requirements of all states in which Contractor performs under this Contract.

If performing work in a Customer facility, Contractor shall maintain commercial general liability of at least \$1,000,000 per occurrence, employer's liability of at least \$1,000,000 per accident, and umbrella liability of at least \$1,000,000 per occurrence.

If Contractor takes possession of Customer personal property, Contractor shall maintain insurance in types and amounts sufficient to replace such property if it is destroyed.

If it has employees in the state of Texas, Contractor shall obtain worker's compensation insurance in Texas.

18. TAXES

Customers may be exempt from certain taxes. Customers will furnish proof of tax-exempt status to Contractor upon request. Contractor shall pay all taxes resulting from this Contract and the Base Contract. Customers will not reimburse Contractor's tax liability related to this Contract.

19. TERM AND TERMINATION

This Contract shall become effective when it has been signed by all parties. This Contract will expire on the sooner of (1) five years from the effective date, or (2) the expiration of the Base Contract. Purchase orders issued during the term of this Contract shall survive cancellation or termination of this Contract.

(a) Termination for Convenience. CPA may terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice. CPA may terminate the Contract for convenience if it has low sales over time, for example.

(b) Termination for Cause.

(i) If Contractor fails to perform under this Contract or fails to comply with any of the terms or conditions of this Contract, or its conduct reflects a lack of business integrity, CPA may issue a written notice of default to Contractor and immediately terminate all or any part of this Contract. For example, sale of non-contract items, other than authorized incidental items, may be cause for termination.

- (ii) CPA may exercise any other remedy which may be available to it under law, including seeking damages. The exercise of any remedies will not constitute a termination of this Contract. Contractor shall remain liable for all covenants and indemnities under this Contract and the Base Contract. Contractor shall be liable for all costs and expenses, including court costs, incurred by CPA to enforce any contractual remedy.
- (c) Change in Federal or State Requirements. If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either CPA or Contractor cannot reasonably fulfill this Contract the parties may agree to an amendment that would allow for continuation of this Contract. Otherwise, CPA may terminate the Contract by issuing a notice invoking this clause.
- (d) Non-appropriation of Funds.
 - (i) CPA and Customer Obligations Contingent. All obligations of CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to this Contract. Contractor acknowledges that the ability of Customers to make payments under this Contract is contingent upon the continued availability of funds. CPA and the Customers will use reasonable efforts to ensure that such funds are available.
 - (ii) Termination due to non-appropriation. In the event of a reduction in funding, CPA may terminate this Contract, either in whole or in part, and a Customer may terminate a pending purchase order under this Contract, either in whole or in part.
- (e) No Liability Upon Termination. If this Contract is terminated for any reason, the State of Texas, CPA, and Customers shall not be liable to Contractor for any damages arising from or related to the termination. The sole and maximum obligation of the State of Texas, CPA, and Customers shall be to pay for goods and services ordered under the Contract, performed in accordance with all requirements of this Contract and delivered and accepted prior to termination.
- (f) Survival of Terms. Termination of this Contract or the Base Contract for any reason shall not release Contractor from any liability or obligation set forth in this Contract or the Base Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
- (g) Lack of Contract Sales. If the Contract has a limited amount of sales over a period of 12 consecutive months, the Contract may be subject to termination in CPA's sole discretion. CPA may, upon written notice to Contractor, immediately terminate the Contract.

20. FORCE MAJEURE

CPA, a Customer, or Contractor will not be responsible for failure or delays in performance under the Contract due to an act of war, order of legal authority, act of God, disaster, or other unavoidable cause not attributable to its own fault or negligence. A party may be excused from performance for as long as such circumstances prevail and it continues to use commercially reasonable efforts to perform. Each party shall immediately notify other affected parties by telephone and confirm in writing within five calendar days that it is invoking this provision and its reasons for doing so.

21. VENDOR PERFORMANCE

CPA may use vendor performance to analyze whether a vendor is eligible for a Contract. CPA may conduct reference checks with other entities regarding past performance both prior to awarding a contract and during the entire term of the Contract. Under Tex. Gov't Code § Section 2155.089, CPA or state agency Customers may review Contractor's performance under this Contract. These reviews and any resulting classification grades may be posted online.

22. DELIVERIES

All deliveries for orders placed under this Contract shall be F.O.B. Destination. If delivery delay is foreseen, Contractor shall give written notice to the Customer. Customer has the right to extend delivery or service date if reasons appear valid. Contractor shall keep Customer advised at all times of the status of the order. Default in promised delivery (without accepted reasons), service date, or failure to meet specifications, authorizes the Customer to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to Contractor.

23. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall comply with all federal and state laws regarding equal employment opportunity.

24. DRUG-FREE WORKPLACE ACT

Contractor shall comply with the applicable provisions of the Drug-Free Workplace Act.

25. AMERICANS WITH DISABILITIES ACT

Contractor shall comply with the requirements of the Americans with Disabilities Act (ADA).

26. CIVIL RIGHTS

Contractor shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

27. IMMIGRATION

Contractor shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.).

28. INDEMNIFICATION

(a) Acts or Omissions

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR

MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

(b) Infringements

- (i) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, AND CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**
- (ii) CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) CUSTOMER'S USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY CONTRACTOR PURSUANT TO CUSTOMER'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO CUSTOMER, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY CUSTOMER THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.**
- (iii) IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR CUSTOMER PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST CUSTOMER, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE CUSTOMER THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT CUSTOMER'S USE IS NON-INFRINGEMENT.**

(c) Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

- (iv) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, CPA, AND/OR THE CUSTOMER SHALL**

NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

- (v) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

29. REPRESENTATIONS AND CERTIFICATIONS

- (a) Base Contract Documents. Contractor represents and certifies that the Base Contract documents submitted to CPA are genuine and complete.
- (b) Base Contract Representations and Certifications. Contractor represents and certifies that the representations and certifications it made in the Base Contract are true.
- (c) Anti-Fraud Policy of CPA. Contractor represents and warrants that it has read and understood and will comply with Comptroller's Anti-Fraud Policy as such Policy currently reads and as it is amended throughout the term of the Contract. The policy can be found at <https://www.comptroller.texas.gov/about/policies/ethics.php>
- (d) Antitrust. The Contractor represents and warrants that, in accordance with Tex. Gov't Code § Section 2155.005, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Texas Cooperative Contract Vendor Checklist and Certifications to any competitor or any other person engaged in the same line of business as Contractor.
- (e) Buy Texas Affirmation. To the extent applicable, in accordance with Tex. Gov't Code § 2155.4441, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- (f) Dealings with Public Servants Affirmation. Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or the Base Contract.

- (g) Financial Participation Prohibited Certification. Pursuant to Tex. Gov't Code § 2155.004(a), Contractor certifies that neither Contractor nor any person or entity represented by Contractor has received compensation for participation in the preparation of specifications for this Contract. Under Tex. Gov't Code § 2155.004(b), Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
- (h) Former or Retired CPA Employees. In accordance with Tex. Gov't Code § 2252.901, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the CPA during the twelve (12) month period immediately prior to the date of execution of the contract.
- (i) Executive Head of a State Agency Affirmation. Pursuant to Tex. Gov't Code § 669.003, relating to contracting with an executive head of a state agency, Contractor represents that no person who served as an executive of CPA, in the past four (4) years, was involved with or has any interest in the contract. If Contractor employs or has used the services of a former executive of CPA, then Contractor shall provide the following information to be considered for award: name of the former executive, name of the state agency, date of separation from the state agency, position held with Contractor, and date of employment with Contractor.
- (j) COVID-19 Vaccine Passport Prohibition. Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.
- (k) Energy Company Boycotts. If Contractor is required to make a verification pursuant to Tex. Gov't Code § 2274.002, Contractor verifies that Contractor does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Contractor does not make that verification, Contractor must so indicate in its offer and state why the verification is not required.
- (l) Foreign Terrorist Organizations. Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Tex. Gov't Code § 2252.152.
- (m) Entities that Boycott Israel. If Contractor is required to make a certification pursuant to Tex. Gov't Code § 2271.002, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the Contract. If Contractor does not make that certification, Contractor must inform CPA and state why the certification is not required.
- (n) Critical Infrastructure Affirmation. Pursuant to Tex. Gov't Code § 2274.0102, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Tex. Gov't Code § 2274.0103, or (2) headquartered in any of those countries.
- (o) Legal and Regulatory Actions. Contractor represents and warrants that it is not aware of and has not received notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Texas Cooperative Contract Vendor Checklist and Certifications within the five (5) calendar years immediately preceding the submission of the Texas Cooperative Contract Vendor Checklist and Certifications that would or could impair Contractor's performance under the Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Texas Cooperative Contract Vendor Checklist and Certifications a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would

or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to CPA's consideration of the Texas Cooperative Contract Vendor Checklist and Certifications. In addition, Contractor represents and warrants that it shall notify CPA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update CPA shall constitute breach of contract and may result in immediate termination of the Contract.

- (p) No Felony Criminal Convictions. Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised CPA of the facts and circumstances surrounding the convictions. Contractor has a continuing duty to amend, supplement, or correct this representation and warranty not later than ten days after discovering additional information relating to felony criminal convictions of Contractor or any of its employees. Contractor will not allow any employee convicted of a felony criminal offense to perform tasks related to the contract without such disclosure and express permission from CPA.
- (q) Prior Disaster Relief Contract Violation. Tex. Gov't Code § 2155.006 and 2261.053 prohibit state agencies from awarding a contract that involves financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Tex. Gov't Code § 418.004, occurring after September 24, 2005. Under Tex. Gov't Code § 2155.006, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (r) Firearm Entities and Trade Associations Discrimination. If Contractor is required to make a verification pursuant to Tex. Gov't Code § 2274.002, Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the Contract against a firearm entity or firearm trade association. If Contractor does not make that verification, Contractor must so indicate in its Texas Cooperative Contract Vendor Checklist and Certifications and state why the verification is not required.
- (s) Human Trafficking Prohibition. Under Tex. Gov't Code § 2155.0061, Contractor certifies that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (t) Abortion Funding Limitation. Contractor represents and warrants that this Contract is not a taxpayer resource transaction prohibited by Tex. Gov't Code § 2273.003, and that payments made by CPA to Contractor and Contractor's receipt of appropriated funds under the Contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.
- (u) Professional Sports Teams – National Anthem Verification. If the Contractor is a professional sports team as defined by Section 2004.002 of the Texas Occupations Code, Contractor will play the United States national anthem at the beginning of each team sporting event held at the Contractor's home venue or other venue controlled by Contractor for the event. Failure to comply with this obligation constitutes a default of this Contract, and immediately subjects Contractor to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Contractor may be debarred from contracting with the State. CPA or the Attorney General may strictly enforce this provision.
- (v) Prohibition on Lobbying. Contractor certifies that payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Tex. Gov't Code § 556.005 or 556.008.

- (w) Deceptive Trade Practices; Unfair Business Practices. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for any such practices in such proceedings.
- (x) Debts and Delinquencies Affirmations. Contractor agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed the state of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
- (y) Suspension and Debarment. Contractor certifies that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment or similar ineligibility determined by any federal, state or local governmental entity. Contractor further certifies Contractor is in compliance with the state of Texas statutes and rules relating to procurement and that Contractor does not have a designated exclusion on SAM, which can be accessed at: <https://www.sam.gov/>.
- (z) Excluded Parties. Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- (aa) Terminated Contracts. Contractor certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five years nor is it currently prohibited from contracting with a governmental agency. If the Contractor does have such a terminated contract, Contractor must identify each and provide an explanation for the termination.
- (bb) Conflicts of Interest. Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into this Contract will not reasonably create an appearance of impropriety.
- (cc) Competitively Awarded Contract. Contractor certifies that the Base Contract was awarded using a competitive process by a governmental entity in compliance with Section 2155.502 of the Texas Government Code.
- (dd) Certifications Apply to Customer Purchase Orders. Contractor agrees that all affirmations and certifications in this Contract apply to and are for the benefit of Customers. Furthermore, Contractor agrees that by accepting an order under this Contract, Contractor certifies to the Customer that all affirmations and certifications are true and correct.

30. NO DEBT AGAINST THE STATE

This Contract does not create any debt by or on behalf of the State of Texas.

31. COMPLIANCE WITH LAWS

Contractor shall comply with all laws, regulations, requirements, and guidelines applicable to a Contractor providing goods and services to the State of Texas as these laws, regulations, requirements, and guidelines currently exist and as they are amended throughout the term of this Contract.

32. CYBERSECURITY TRAINING

Contractor shall comply with the requirements of Tex. Gov't Code § Section 2054.5192 relating to cybersecurity training and required verification of completion of the training program when Contractor or a subcontractor, officer, or employee of Contractor has access to a state computer system or database. When required, the cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the Contract and during any renewal period. Contractor shall verify to the Customer completion of the program by each such officer, employee, or subcontractor."

33. COOPERATION

Contractor shall cooperate with CPA and Customers for purposes relating to the administration of this Contract. Contractor shall cooperate with CPA's contractors, subcontractors, and third-party representatives as requested by CPA.

34. ASSIGNMENT AND OTHER ORGANIZATIONAL CHANGES

Contractor shall not assign its rights under this Contract or delegate the performance of its duties under this Contract without prior written approval from CPA. Any attempted assignment in violation of this provision is void and without effect.

Contractor must provide CPA with written notification of all name changes and organizational changes relating to Contractor no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name (if applicable), provide the new Tax Identification Number (if applicable), and describe how the change will impact its ability to perform this Contract. If the change entails personnel changes for personnel performing the responsibilities of this Contract for Contractor, Contractor shall identify the new personnel. CPA may request other information about the change and its impact on this Contract and Contractor shall supply the requested information within five (5) working days of receipt of CPA's request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor, to maintain its status as a party to this Contract.

35. PUBLICITY

Contractor shall not issue news releases, advertisements, or any other public statement about this Contract without CPA's written consent. Contractor may not send unsolicited electronic mail or facsimile transmissions to CPA or Customers for any reason.

36. COMMUNICATION

Unless otherwise specified, Contractor, CPA, and Customers may communicate, send notices, or transmit documents by email to an address associated with the party and its staff identified with this Contract, or bymail or messenger to the addresses below.

(a) The mailing address for Contractor will be the address specified on Contractor's offer packet.

(b) The address for CPA is:

For Overnight or Express Mail:

Texas Comptroller of Public Accounts

Statewide Procurement Division

Attn: Statewide Contract Management

1711 San Jacinto Blvd.

Room 174-A (CPA mailroom, N.E. Back Door)

Austin, TX 78701

For Other U.S. Mail:

Texas Comptroller of Public Accounts

Statewide Procurement Division

Attn: Statewide Contract Management

P.O. Box 13186 Austin, TX 78711-3186

Either party may change its mailing address by written notification to the other party.

37. DISPUTE RESOLUTION

Disputes under this Contract are subject to Tex. Gov't Code Chapter 2260.

The dispute resolution process provided for in Chapter 2260 and applicable CPA rules shall be used by CPA and Contractor to resolve any dispute arising under this Contract. To initiate the process, Contractor shall submit written notice to the Deputy Comptroller or their designee, and to the Director of the Statewide Procurement Division.

CPA and Contractor shall first attempt to resolve any contract dispute outside the scope of Chapter 2260 through the procedure for negotiation and mediation of contract disputes specified in CPA rules. Those rules are incorporated into this Contract.

Contractor shall continue to perform its Contract obligations during the dispute resolution process.

38. SOVEREIGN IMMUNITY

CPA and Contractor expressly agree that no provision of the contract is in any way intended to constitute a waiver by CPA or the state of Texas of any immunities from suit or from liability that CPA or the state of Texas may have by operation of law.

39. LIMITATION OF AUTHORITY

Contractor shall have no authority to act for or on behalf of the state of Texas, CPA, or Customers except as expressly provided for in this Contract; no other authority, power, use, or joint enterprise is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the state of Texas, CPA, or Customers.

40. LIMITATION OF LIABILITY

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL THE STATE OF TEXAS, CPA, OR CUSTOMERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

41. HEADINGS

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

42. GOVERNING LAW AND VENUE

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a state statute which directly names or otherwise identifies its applicability to CPA.

43. SEVERABILITY

If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

[remainder of page intentionally left blank]

Addendum to Exhibit A

1. To the extent there are conflicts between the NASPO ValuePoint Master Agreement (“Base Contract” or “Master Agreement”) (between Contractor and the State of Oregon, acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services, as the Lead State, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities, dated effective January 5, 2023) and the Texas Comptroller of Public Accounts Cooperative Contract Terms and Conditions (“COOP Terms and Conditions”), the COOP Terms and Conditions control, including the following stipulations:
 - a. Notwithstanding any terms and conditions in the Base Contract providing otherwise, payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment. Leasing and financing are not available under this Contract.
 - b. COOP Terms and Conditions Section 12 (Audit Requirements) and Section 15 (Records Retention) control over the Base Contract’s Section 14.1.1 (Records Administration and Audit).
 - c. COOP Terms and Conditions Section 19 (Term and Termination) controls over the Base Contract’s Section 14.6 (Cancellation), all rights to terminate this Contract are governed by COOP Terms and Conditions Section 19.
 - d. COOP Terms and Conditions Section 28 (Indemnification) controls over the Base Contract’s Section 14.2.3 (Injunctive Relief) portion that limits Contractor’s liability.
 - e. The written notice of default described in the Base Contract’s Section 14.8.4 will not be required and will not limit this Contract’s termination rights.
 - f. COOP Terms and Conditions Section 13 (Public Information) controls over the Base Contract’s Section 14.2.6 (Public Information).
 - g. COOP Terms and Conditions Section 34 (Assignment and other organizational changes) controls over the Base Contract’s Section 14.3 (Assignment/Subcontracts).
 - h. COOP Terms and Conditions Section 42 (Governing Law and Venue) controls with respect to this Contract.
 - i. All disputes shall be governed by COOP Terms and Conditions Section 37 (Dispute Resolution).
2. Contractor and CPA further agree to amend the COOP Terms and Conditions as follows:
 - a. COOP Terms and Conditions Section 29(w) (Representations and Certifications) is replaced with the following:
 - (w) Deceptive Trade Practices; Unfair Business Practices. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that, to the best of its knowledge, it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for any such practices in such proceedings.

**STATEWIDE PROCUREMENT DIVISION****Texas Cooperative Contract
Vendor Checklist and Certifications****Texas Cooperative Contract Requirements**

Vendor must meet the following requirements to be considered for a Texas Cooperative Contract (Co-op) award:

1. Submission of a base contract ("Base Contract") from an entity that facilitates [cooperative] agreements for the purchase of goods or services with a minimum of one year remaining. See [here](#) for Base Contracts Not Accepted. *Staples has provided.*
2. The Base Contract must be suitable for general use by Texas Comptroller of Public Accounts ("CPA") customers and not specific to a geographical location or limited in use to a specific entity. *Staples agrees.*
3. Submission of a Texas SmartBuy ("TSB") Catalog Template. The catalog must mirror the Base Contract's items/services. The catalog shall comply with Co-op template requirements and contain verifiable pricing. CPA requires all orders under Co-op contracts to be placed through the Texas SmartBuy online ordering system unless Vendor submits a request for offline sales and accompanying detailed justification for evaluation by CPA's Statewide Procurement Division ("SPD"). Offline sales are sales not specifically ordered through the TSB online ordering system. SPD has sole discretion to decide whether to authorize offline sales. *Staples has provided.*
4. Co-op will not accept Free on Board ("FOB") Origin shipping terms for contracts for goods. Vendor agrees to FOB Destination terms and retains risk of loss of the goods (and is therefore responsible for replacing damaged or lost goods) until the goods have reached their final destination. *Staples agrees.*
5. Texas Secretary of State registration or registration in Vendor's formation state. *Staples has provided.*
6. Active Franchise Tax registration with CPA. *Not applicable.*
7. A Vendor's past performance may affect a potential award and will be considered during evaluation of the Texas Cooperative Contract Vendor Checklist and Certifications document. Vendor may be required to provide references for a contract in similar size and scope. *Staples agrees.*

SPD may request additional information during the evaluation.

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS



STATEWIDE PROCUREMENT DIVISION

Vendor Information**Vendor Information** (All fields are required)

Vendor's Full Legal Business Name	Staples Contract & Commercial LLC
Base Contract Description (awarded title)	NASPO ValuePoint Master Agreement
Base Contract Number	PO-10700-00012991
Current Base Contract Expiration	December 31, 2024
Base Contract Renewal Terms Remaining	3 years
Previous SPD Contract Number (if applicable)	TXMAS 20-7502
Texas/Federal EIN	04-3390816
Mailing Address	500 Staples Drive, Framingham, MA 01702
Physical Address (if different)	N/A
Business Address (if different)	N/A
Authorized Vendor Representative (AR)	Mike Guon (Authorized Signatory)
AR Title	Vice President, Sales
AR Phone No. & Email	(714) 868-4141 Mike.Guon@Staples.com
Alternative Contact (AC)	Patricia Cano, Area Vice President
AC Phone No. & Email	(512) 426-3074 Patricia.Cano@Staples.com
Purchase Order Email	Support@StaplesAdvantage.com
Accounts Payable Email(s) (For receipt of invoices)	CSAccountsReceivable@Staples.com

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS



STATEWIDE PROCUREMENT DIVISION

Required Documents (Label Accordingly)

The Co-op Packet consists of the following required documents. Incomplete Co-op Packets are subject to rejection. All required documents must be submitted by email to: TXCD-COOP@cpa.texas.gov.

	YES	NO
• Signed Co-op Checklist (this document)	☒	☐
• Base Contract Original Award Notice, signed (for non-GSA base contract)	☒	☐
• Base Contract Original Solicitation (for non-GSA base contract)	☒	☐
• Base Contract Response to Solicitation (for non-GSA base contract)	☒	☐
• Base Contract Terms and Conditions	☒	☐
• Base Contract Amendments / Modifications (GSA SF30)	☐	☒
• Base Contract Renewal / Extension Documents (if applicable)	☐	☒
• Base Contract Exceptions (if applicable)	☐	☒
• Current Base Contract Price List	☒	☐
• Completed Texas Smartbuy Catalog Template	☒	☐
• Certificate of Insurance (meeting requirements of the Base Contract and the Co-op Terms and Conditions), if applicable	☒	☐
○ Does Vendor employ anyone in the state of Texas?	☒	☐
○ Would Vendor work in a Customer facility?	☐	☒
○ Would Vendor use a company vehicle to fulfill contractual obligations?	☒	☐

Exceptions

Vendor requests exceptions to the Co-op Terms and Conditions

☒ YES ☐ NO

Vendor must identify any requested exceptions on company letterhead or in a Microsoft Excel® spreadsheet using the below format. Vendor must clearly identify each exception taken, noting the specific section number and title, detailed description of exception taken and Vendor's proposed alternative language.

Section	Section Title	Exception	Proposed Language
Please see our attached exceptions.			

CPA may reject an incomplete exception without consideration. ***Exceptions are discouraged and rarely granted.***

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS



STATEWIDE PROCUREMENT DIVISION

Dealers

Vendor must identify dealers used on the potential Co-op contract. The Dealer Authorization and Acceptance forms will be sent separately to Vendor after award and must be completed for each authorized dealer.

Vendor is requesting Dealer Authorization forms ☐ YES ☒ NO

FOB Destination

Vendor agrees to FOB Destination. For base contracts with both commodities and services please indicate below for the commodities.

- ☒ Yes – Freight included in pricing
- ☐ Yes – Freight added as a separate line item
- ☐ N/A – Services-only contract

Child Support Obligation Certification [Not Applicable](#)

Pursuant to Section 231.006(d) of the Texas Family Code, regarding child support, Vendor certifies that the individuals or business entity named in this Texas Cooperative Contract Vendor Checklist and Certifications document are not ineligible to receive the specified payment and acknowledges that an awarded Contract may be terminated and payment may be withheld if the certification is inaccurate.

Furthermore, any Vendor subject to Section 231.006 of the Texas Family Code must provide in its Texas Cooperative Contract Vendor Checklist and Certifications document the names and the LAST 4 DIGITS of the social security numbers of each person with at least 25% ownership of the business entity submitting the Texas Cooperative Contract Vendor Checklist and Certifications document. This information must be provided to CPA in writing signed by Vendor’s duly authorized representative with its Offer Packet. Submission of a Texas Cooperative Contract Vendor Checklist and Certifications document without the required identity disclosures pursuant to Section 231.006(d) of the Texas Family Code constitutes a certification by Vendor that no individual or sole proprietor or partner, shareholder, or owner has an ownership interest of at least 25% of the business entity identified as Vendor. Vendors meeting the ownership criteria must complete the following:

Name	XXX-XX- Social Security Number
Name	XXX-XX- Social Security Number
Name	XXX-XX- Social Security Number
Name	XXX-XX- Social Security Number

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**STATEWIDE PROCUREMENT DIVISION**

**Execution of Texas Cooperative Contract Vendor Checklist
and Certifications Document**

By submitting this Texas Cooperative Contract Vendor Checklist and Certifications document, Vendor represents and warrants that the individual submitting the Texas Cooperative Contract Vendor Checklist and Certifications document is authorized to sign such documents on behalf of and bind Vendor. Vendor certifies the information and documentation provided in its Texas Cooperative Contract Vendor Checklist and Certifications document are current, accurate, and complete. Vendor has reviewed and agrees to the Co-op Terms and Conditions with a revision date of June 2023 and takes no exceptions unless otherwise stated in the Texas Cooperative Contract Vendor Checklist and Certifications document. Vendor certifies that the items/services submitted do not conflict with a pre-existing Department of Information Resources (DIR) contract. This certification constitutes a binding offer. In exchange for being considered by CPA for a contract, Vendor gives CPA the right to accept this offer until withdrawn by Vendor or at CPA's sole discretion. Failure to sign and date the Texas Cooperative Contract Vendor Checklist and Certifications document where indicated below will result in rejection.

Signature – Authorized Representative: 

Jul 31, 2023

Printed Name: Mike Guon, Vice President, Sales

Date: 7/31/2023