

SUPPLY AGREEMENT FOR TEST KITS

This Supply Agreement for Test Kits ("**Agreement**") is made and entered into as of 1/5/2022 ("**Effective Date**") between Office Depot, LLC, a Delaware limited liability company, located at 6600 North Military Trail, Boca Raton, FL 33496 ("**Office Depot**") and Morgan Hill Unified School District, located at 15600 Concord Circle, Morgan Hill, Ca 95037 ("**Customer**").

WHEREAS, Customer seeks to purchase certain COVID-19 test kits ("**Test Kits**") from Office Depot;

WHEREAS, entering into this Agreement constitutes an essential part of Office Depot's decision to sell Test Kits to Customer; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. **Products & Pricing.** Office Depot agrees to supply to Customer those Test Kits set forth in **Exhibit A** attached hereto and incorporated herein by reference at the prices set forth therein. Customer shall purchase the exact quantities of the Test Kits as specified on **Exhibit A**, and shall do so at the prices also set forth on **Exhibit A**. The parties acknowledge that this is a one-time purchase of the Test Kits by Customer and to the extent Customer desires to purchase additional quantities of the Test Kits, or any other products sold by Office Depot, a separate written agreement between the parties is required. Sales of Test Kits shall not be included as part of any incentives or rebates.

2. **Delivery.** Office Depot will arrange to have the Test Kits drop shipped directly from the manufacturer. Additional freight charges may apply for items exceeding certain attributes regarding weight and/or dimensions, Hawaii, Alaska and Puerto Rico orders, special orders and/or rush deliveries.

3. **Payment Terms.** Invoices are due twenty (20) days from the date of invoice. Invoices not paid within twenty (20) days shall bear interest at the rate of 1.5% per month or the maximum amount allowed under law, whichever is less, from the due date of the invoice. Customer's credit limit shall be established by Office Depot, which reserves the right to lower Customer's credit limit or refuse to ship any orders if at any time: (a) Customer is delinquent in making payments to Office Depot or is otherwise in breach of this Agreement; or (b) Customer's credit standing becomes impaired or reasonably unsatisfactory to Office Depot.

In certain instances, orders may be paid using a credit card; provided, however, if Customer elects to use a credit card as a form of payment, payment is due at the time of purchase.

4. **Returns.** No returns or exchanges of the Test Kits are permitted, and the parties acknowledge that Office Depot shall not be required to accept any returns of the Test Kits. Customer shall be responsible for disposing of the Test Kits in accordance with all applicable federal, state, county and local law and regulations, including environmental rules and regulations.

5. **Indemnification and Hold Harmless.** Customer hereby waives, releases, relinquishes, discharges and agrees to defend, indemnify, protect and hold harmless Office Depot, its subsidiaries and affiliates and their respective officers, agents and employees, of and from any and all claims, demands, liabilities, costs and expenses in any way related to the Test Kits, including any injury to persons, including death caused by, growing out of or happening in connection with COVID-19.

6. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN ANY OTHER AGREEMENTS BETWEEN THE PARTIES, OFFICE DEPOT'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE TEST KITS AND THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO OFFICE DEPOT FOR THE TEST KITS. In no event shall Office Depot be liable for any indirect, incidental, special, punitive or consequential damages, including without limitation damages for lost profits, even if advised as to the possibility of such damages.

7. **Disclaimer of Warranty.** TEST KITS ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT THE TEST KITS ARE FREE OF DEFECTS, MERCHANTABILITY, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE TEST KITS IS WITH CUSTOMER AND IN NO EVENT WITH OFFICE DEPOT. SHOULD ANY TEST KITS BE MISUSED OR PROVE DEFECTIVE IN ANY RESPECT, REGARDLESS OF WHETHER THE USE OR MISUSE IS BY CUSTOMER, AN END USER, OR OTHERWISE, CUSTOMER ASSUMES ANY AND ALL ENSUING COSTS, DAMAGES AND EXPENSES. NO USE OF ANY TEST KITS IS AUTHORIZED EXCEPT UNDER THIS DISCLAIMER.

- 8. Assignment.** Customer may not assign this Agreement without the prior written consent of Office Depot.
- 9. Force Majeure.** Office Depot shall be excused from performance and not be considered in default in the performance of its obligations to the extent that the performance of any such obligation is prevented or delayed by any cause that is beyond its reasonable control.
- 10. Notices.** All notices, requests, demands and other communications under this Agreement shall be given in writing and sent to the mailing addresses set forth on the signature page of this Agreement.
- 11. Confidentiality.** "Confidential Information" shall mean all information obtained by one party from the other party that is not generally known to the public and that a reasonable business person would deem confidential. The receiving party will treat Confidential Information as confidential and proprietary and, until two (2) years after expiration or earlier termination of this Agreement, will: (a) use the Confidential Information solely for the purposes set forth in this Agreement; (b) take suitable measures to maintain the confidentiality of the Confidential Information; and (c) not disclose or otherwise furnish the Confidential Information to any third party other than employees or independent contractors of the recipient who have a need to know the Confidential Information to perform its obligations.
- 12. Choice of Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida, without regard to conflict of laws principles.
- 13. Terms and Conditions.** The terms and conditions located at www.business.officedepot.com are incorporated by reference. In the event of any conflict, the terms and conditions of this Agreement shall govern with respect to the Test Kits.
- 14. Severability Clause.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.
- 15. Entire Agreement.** Each party hereby objects to and rejects the provisions of any purchase order, acceptance or acknowledgment, agreement or other document which are inconsistent with or in addition to the provisions of this Agreement. This Agreement is the complete and exclusive contract between the parties with respect to the Test Kits and may be modified only in writing signed by authorized representatives of each party. No prior proposals, quotations, statements, forecasts, course of dealing, or usage or trade will be part of the Agreement between the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

OFFICE DEPOT, LLC

CUSTOMER

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: Kirsten Perez
 Title: Deputy Superintendent
 Date: _____

EXHIBIT A

Products and Pricing

SKU:	Description:	Vendor Number:	Sell Price:	Order Quantity:
7090695	HOME, COVID-19, TEST, IHEALTH	71054001	\$18.99	15,120 *

* Order Quantity is a minimum of 7,560 boxes and is required to be a multiple of 7,560.