

# Summary of Changes to Proposed CSP Contract from Prior CSP Contract

## General Changes

- Contract effective date January 1, 2021
- Changed term “volunteer seller” to “CSP-compensated Seller”

## Section A – Definitions

- A.2. – Reference changed to properly reflect “Streamlined Sales Tax Registration System (SSTRS)”
- A.8. – Added “digital goods” to definition of “Seller” used in the contract since many states now impose tax on digital goods.

## Section B – Scope of Services

- B.1. – Struck the words “all of” to recognize that for some sellers, especially those selling on marketplaces, the CSP will not be processing ALL the seller’s transactions because the marketplace may be processing some of them.
- B.1. – Since a Seller is no longer required to register in every Streamlined State when using the SSTRS (i.e., they can pick and choose which states they want/need to be registered in), the CSP may not be providing CSP services in every member state. The CSP identifies those states for which they are providing CSP services by setting the allowance indicator in the SSTRS to a “Y” which indicates the seller is a volunteer/CSP-compensated Seller.
- B.1.(a) – Added language to clarify that the mapping process identifies the product being sold as well as the CSP’s product category to which it is mapped.
- B.1(b)(3) – Corrected numbering to make consistent with numbering in contract
- B.1.(c) – Added language to specify that in addition to compiling the required data, the CSP must also maintain that data.
- B.1.(f) – Puts in place a clear process for states to raise compliance issues related to a specific CSP. Provides a timeline that allows the CSP time to correct the issue and allows the Executive Committee to take possible action other than just finding the CSP has breached the contract as a whole. This is needed to address issues individual states, sellers or the Governing Board may have with a CSP not following or meeting certain requirements. This language makes it clear the Executive Committee’s action on the item may include loss of future CSP compensation relating to the specific state(s) and issue(s) until satisfactorily resolved. The goal when these types of issues are identified is to make sure the issue is clearly communicated to the CSP and then developing a plan to get it corrected as quickly as possible.
- B.1. – Revised language to describe the current process in place. Clarifies that if a Seller who does not qualify as a CSP-compensated Seller registers through the SSTRS in a member State and the CSP confirms they will be handling the Seller’s sales and use tax functions, the CSP is not entitled to any compensation under this contract. The CSP must notify Testing Central (SST) of this by setting the allowance indicator to N in the SSTRS.
- B.4 – Updated wording to properly refer to the Streamlined Sales Tax Registration System

## Section C – Contract Term

- C.1 - Made contract effective through December 31, 2023 (3-year period).

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## Section D - Compensation

- D.2.(a) - Added language to indicate this contract only applies to sales and use taxes covered by the SSUTA. (Note: If taxes other than sales and use taxes covered by the SSUTA, such as local lodging taxes, are eventually allowed to be reported on the SER, the compensation under this contract would not automatically apply.)
- D.2.(a) - Clarified that if an amended return is filed and the tax due increases, compensation is allowed “on the additional tax due” if the original return was timely filed and that tax was timely remitted.
- D.2(b)(1) – Removed language from current contract relating to sellers that registered with SST state prior to November 12, 2002. The CSP can be compensated for those sellers if they meet the definition of “CSP-Compensated Seller.” If those sellers do not meet the definition of CSP-Compensated Seller, they will not be eligible for CSP compensation.
- D.2.(b)(1)(f) – Struck the language from prior Section D.2.(b)(2)f. so that Sellers that previously would not have qualified as “volunteer sellers” solely because they were required to register to collect sales tax before they would be allowed to ship their product into the state, can qualify as CSP-compensated Sellers. An example of this is the direct to home wine shippers who were previously excluded in those states that required those sellers to register and collect the tax before they would be allowed to ship their product into the state.
- D.2.(b)(2) – Added language to provide that if a Seller who otherwise would qualify as CSP-compensated Seller has a related party under IRC Section 267(b) or 707(b) that does not qualify as a CSP-compensated Seller, that Seller will also not qualify as a CSP-compensated Seller if the related party (i) provides services to the Seller’s purchasers on behalf of the Seller, even if not acting as the Seller’s agent, including delivering the Seller’s products, accepting returns of the Seller’s products or resolving customer complaints of the Seller; or (ii) the Seller and related entity are structured or re-structured in whole or in part on or after the date the *Wayfair* decision was issued (June 21, 2018), so that the Seller can qualify for the CSP services paid for by the state. The primary purpose of this section is to prevent sellers from structuring/re-structuring their entities in whole or in part so that they qualify as CSP-compensated Sellers (i.e., splitting an entity into a brick and mortar and .com so that the .com qualifies as a CSP-compensated seller). At the same time, the Negotiating Team did not want to just broadly say that every entity that does not qualify as a CSP-compensated seller automatically “disqualifies” every one of its related entities. See the attached document titled “Related Parties Language and Examples” that was put together to illustrate the intent of this language. (Note: We are not aware of any current Model 1 Sellers doing this at this point and therefore are making it effective after the *Wayfair* decision, but wanted to address the issue in the contract before it comes up. Entities may have considered structuring/restructuring once the *Wayfair* decision came down so that is the reason for the June 21, 2018 date.)
- D.2(b)(3) – Added language to provide that sellers who meet the criteria in Section D.2.(b)(1) and are not excluded under Section D.2.(b)(2) qualify as CSP-compensated Sellers if they are only required to collect and remit a state’s taxes because they exceed the state’s economic nexus threshold.

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- D.2.(b)(4)a.(i) and b. – Added language to indicate that marketplace facilitators and multilevel marketing companies qualify as CSP-compensated Sellers if they otherwise meet the criteria contained in Sections D.2.(b)(1) and (2)
- D.2.(b)(4)a.(ii) – Added language to explain the responsibility of the CSP to ask sellers if they are MLM type entities and provide that information to Streamlined. Streamlined will send that information to the states so the state can check and see if the MLM has entered into any necessary agreement required by the state. If the seller hasn't entered into the necessary agreement, the state can contact the seller to have them complete the agreement. If the seller refuses, the state can challenge the requirement to pay compensation for that seller through the challenge process (See Section D.2.(b)(5) of the contract proposal) with the Executive Committee. If at the time the Executive Committee makes its determination the seller still has not entered into the required agreement with the state, the Executive Committee may determine that the CSP is not entitled to the compensation under this contract for that seller.
- D.2.(b)(4) – Removed language from current contract that precluded sellers who registered in the last 3 years before a state became a member due to an administrative or judicial decision from being “volunteer sellers.” Sellers that meet the definition of “CSP-compensated Seller” in the contract may qualify regardless of why or when they registered with the state.
- D.2.(b)(5) – Revised to add structure, a timeline and create a clear record through Testing Central related to questions by a State as to whether or not a Seller qualifies as a CSP-compensated Seller. Allows the CSP time to respond to these questions and provides additional response time if a state questions more than two unrelated sellers at the same time. If neither the State nor the CSP request the Executive Committee to issue a determination within the 60-day timeframe or the State changes the reason they are questioning the status of the Seller, a new challenge request must be submitted. Requires the Executive Committee to make its determination by the 1<sup>st</sup> day of the calendar month at least 90 days after the State or Contractor submits the written request for determination to the Executive Committee. If the State initially questioned the seller's status within 10 days of the Seller being registered and identified as a CSP-compensated Seller in the SSTRS, the State may recover any compensation paid under the contract for that Seller. If the State questions the Seller's status more than 10 days after the Seller is registered and identified as a CSP-compensated Seller and the State is successful on its challenge, the loss of compensation begins on the earlier of the first day of the calendar month following the Executive Committee's decision or the first day of the calendar month at least 90 days after the request for determination by the Executive Committee was submitted to the Executive Director, unless the State agrees to a later date. Language is included that provides that if the CSP requests additional time to provide information, the Executive Committee also gets that same amount of additional time to issue its determination, but it does not extend the date on which the adjustment to compensation is effective. See the attached document titled “Timeline and Example for Challenging Compensated Seller Status” for some illustrative examples of how this will work.
- Old D.2(b)(3) – Removed language which provided that sellers who become legally obligated to collect the tax solely because of state legislative action (i.e., economic nexus laws) or a final federal court decision remained volunteer sellers. Now that the *Wayfair* decision is final those sellers are being treated as CSP-Compensated Sellers under this proposal. If the seller meets the criteria/definition of a CSP-Compensated Seller, unless

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specifically excluded elsewhere in this contract, the CSP would be eligible for compensation under this contract on that seller.

- D.3. – Struck the language related to a seller losing its volunteer status if it becomes legally obligated to collect tax in the state. If this language is not removed, a seller that is only required to collect and remit a state’s taxes because it exceeds the state’s economic nexus threshold would lose its status as a CSP-compensated Seller. If the Seller meets the definition of CSP-compensated Seller contained in Section in D.2.(b), they will retain their CSP-compensated Seller status.
- D.4. - Added language to indicate that if a CSP does not obtain the annual representation from the seller to determine whether or not the seller continues to qualify as a CSP-compensated seller and it is later determined the seller is not a CSP-compensated Seller, the CSP may lose the compensation they received for that seller back to the later of when the CSP first failed to obtain the necessary information from that seller or when the seller actually lost its status as a volunteer seller. Any interest and/or penalties as provided in each state’s laws would also apply.
- D.5. – Revised the compensation formula so the compensation is calculated on a seller-by-seller and state-by-state basis each calendar year. The significantly simplifies the compensation calculation for the CSPs and makes it possible for the states to verify CSP compensation at the time the returns are filed for all sellers, except the small sellers that may be entitled to the additional compensation on the first \$8,000 of tax.
- D.5.(a) – Revised the language so the compensation is generally equal to 5% of the first \$500,000 of taxes and 2% of the taxes over \$500,000 for each CSP-compensated Seller in each Streamlined State.
- D.5.(b) – Added language to allow a higher compensation rate for those sellers that qualify as CSP-compensated Sellers if the Seller had less than \$100,000 in gross sales in the previous calendar year in the state. The \$100,000 in gross sales in the previous calendar year in the state was used to put in place a simple and uniform standard for all member states. These sellers would generally be true volunteer sellers (i.e., no collection and remittance requirement to being with). The proposal allows 6% of the first \$8,000 of Taxes Due in the state (6% times \$8,000 = \$480). After the initial \$8,000 of tax, the seller gets 5% up to \$500,000 in taxes and 2% of the taxes thereafter – which is consistent with other CSP-compensated Sellers. The reason the \$8,000 cap was put on is because if the seller exceeds \$8,000 in Taxes Due, they will also likely exceed the state’s economic nexus thresholds and have a collection and remittance obligation like other CSP-compensated sellers.
- D.5.(c) – Added language to allow a Streamlined state to enter into a contract or agreement directly with a CSP using a different rate structure that is mutually agreeable to the state and the CSP. This was added because some states have indicated they may want to negotiate directly with one or more of the CSPs to have them provide CSP services to sellers beyond those covered by this contract and we don’t want this contract to possibly prevent that from happening.
- Struck old Section D.6 – This Section is no longer needed since the CSP compensation is being proposed to be calculated on a state-by-state and seller-by-seller basis. Under the current contract, the level of compensation and tiers are calculated on an aggregated basis (i.e., the level of compensation depends on how much tax the seller collects and remit for all SST states in which they are a volunteer seller). This calculation required a uniform process

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to be in place to determine how much compensation could be claimed on each state's return as each of those tiers were reached. This made the compensation calculation difficult. The proposed contract language greatly simplifies the compensation calculation and allows a state to program their returns processing system (if it so chooses), to verify the proper compensation at the time the return is filed.

- D.6. (D.7 in the current contract) – Added language to make it clear that if the compensation provided in Section D.5.(b) applies to a seller, the rate can reset to that rate (6%) instead of the 5% rate each year, if the seller continues to be a CSP-compensated Seller and is under the gross sales threshold provided.
- Struck old Section D.8 – This provision required CSPs to aggregate the tax collected by affiliated sellers to determine when the seller reached the various tiers and the compensation rate was reduced. This currently affects very few sellers but takes significant work on the part of CSP to track between various registrations, determining who is affiliated and who is not, how much tax each has collected, how much tax is for the states in which they are volunteers, etc. Agreed to remove this aggregation process from this contract but may be reconsidered for next contract.
- Renumbered all remaining sections in D after D.6 and D.8 were deleted
- Struck Section D.10(c) from current contract. The process a State follows related to questioning whether a Seller is a CSP-compensated Seller is covered by Section D.2.(b)(5) of the proposed contract so this language is no longer needed in this section.
- Section D.10 (Section D.12 of current contract) – Struck part of this language. Some of this language is no longer needed since the CSP compensation is being calculated on a seller-by-seller and state-by-state basis. In addition, the language related to the format, frequency and due dates of the reports are already included in Appendix F of the SSTGB Rules and Procedures and the CSP must follow the requirements contained in Appendix F to be in compliance with the CSP contract.
- Section D.12 (Section D.14 of current contract) – Added “first day of calendar month that is at least” prior to the 15 business days related to the withdrawal or expulsion of a Streamlined State. The current language could have resulted in a CSP only being responsible for a seller's calculation for part of a month and could lead to logistical issues with multiple returns being due for the same month.
- Section D.13 (Section D.15 of the current contract) – Added language to clarify the CSP will not receive compensation from the Streamlined States for services beyond what are covered by this contract or provided to sellers that do not qualify as CSP-compensated Sellers. As currently drafted, this section could be read to mean the CSP cannot be compensated for services that are not within the Scope of Services provided in this contract – by anyone.

### **Section E – General Terms and Conditions**

- E.1 – Added “Except as otherwise provided in this contract” language to make it clear that even though taxes may be delinquent, in certain instances the CSP may still be entitled to the CSP compensation under this contract.
- E.2. – Revised language to clarify that if a Seller does not remit the taxes due to the CSP prior to the due date of the corresponding return so the CSP can remit them timely to the State, but does remit the taxes to the CSP within 10 days of the due date of the remittance and the CSP subsequently remits them to the state within 10 days of the due date of the

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remittance, the CSP is still entitled to their CSP comp and is not required to provide notice to the Executive Director as provided in Section E.2

- E.2. – Rewrote the language to make it clear that if a Seller does not remit the taxes due to the CSP within 10 days of the due date of the remittances and the CSP notifies the Executive Director of the seller’s failure to remit, the CSP is not responsible for the taxes, interest, penalties, etc. If the CSP timely filed the return (without payment) in these situations and the seller subsequently remits the taxes to the CSP within 60 days of the due date of that remittance and the CSP remits those taxes to the state(s) within 10 business days of receiving them from the seller, the CSP is still entitled to the CSP compensation. However, if the seller never remits the taxes or subsequently remits the taxes directly to the state instead of the CSP, the CSP would need to pursue the lost compensation directly from the seller.
- Section E.3.(b) – Added language to require “written” notification from an SST state regarding revisions needed to the CSP’s CAS. This makes the language consistent with how the change request process is currently handled through Testing Central.
- Section E.3.(c) – Split Governing Board and Streamlined States to make it clear that neither the GB nor the SST States are responsible for mapping the seller’s products. Added “individual” to help clarify that mapping is the classification of individual items or transactions to the CSP’s certified categories. Also changed “a” to “the” because the action or inaction would be by the particular seller – not just any seller.
- Section E.4.(b) – Added “the” and “request” to clarify it is the request with additional information that Testing Central will provide to the SST state.
- Section E.4.(d) – Revised internal references to the correct sections within the contract.
- Section E.20 – Revised to delete information related to facsimile transmissions. We do not communicate in that manner any longer. Also added language that for written communications or notifications required by the contract, the SSUTA or the SSTGB Rules that those communications go through Testing Central and the GB store those communications electronically and serve as the record of truth regarding those communications related to timing, meeting deadlines, etc., in the event there is a dispute between a State and the CSP. We already follow this process with respect to State and CSP Change Requests and the process works well. This will extend that process to other communications such as if a state challenges the status of a CSP-compensated Seller.
- Section E.21. – Struck “and facsimile” and replaced it with “and email address” since facsimiles are almost obsolete, and communication is usually by email.
- Section E.23 – Reworded the renegotiation process to make it clear the renegotiation process must start with 6 months as opposed to the current wording which makes it sound like the renegotiation must be completed within 6 months of the particular change, action or revision. It is always unclear as to how long the renegotiation process may take so no deadline as to when the renegotiation process must be completed is included.
- Section E.24. – Reworded to provide that if a CSP enters into a contract or other type of arrangement with a non-member state they must provide a copy of that to the Executive Director within 10 business days. In addition, except for the contract or agreement in place with PA as of January 1, 2020 and including any extension of that contract, but not including any revisions or modifications of that contract, if under the contract or arrangement the CSP agrees to provide sales tax calculation, return preparation, filing and making remittances and takes on the liability similar to what they provide under this contract for less compensation,

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the Governing Board has the option to just keep its current contract, renegotiate the current contract or may terminate this contract with 180 days notice. The Contractor also can terminate the contract in this case with 180 days notice.

- Section E.28 – Struck referenced to specific Rules and Procedures and just left reference to Rules and Procedures as a whole so that if new rules are adopted, the rules are renumbered, etc., the contract will not also need to be updated to correct the cross-reference. Also struck language related to delivery street level addressed since that is already a requirement in Appendix F so this is duplicative. Striking it here also makes it easier to change Appendix F, if needed, without having to also revise the contract.
- Section E.30 – Revised language related to the bank trust accounts. The Governing Board does not “approve” the financial institutions. The contract explains what the requirements are with respect to the financial institutions (FDIC insured, etc.). The language is revised so that the Contractor just needs to notify the Executive Director of the banking institution – since that is what actually happens.
- Section E.41 – Added language to make it clear either the Contractor/CSP or a Streamlined State can bring questions regarding its obligations under the contract as provided in the SSUTA Section 902 and 903.