

SCHOOL DISTRICT PARTICIPATION AGREEMENT

for the

FLORIDA EDUCATION PURCHASING CONSORTIUM

This School District Participation Agreement ("Agreement") is made and entered into by and between The Florida Education Purchasing Consortium ("Consortium"), an administrative entity acting on its own behalf and the behalf of all participating public agencies in the State of Florida, and the undersigned participating governmental entity ("Member").

I. RECITALS:

WHEREAS, the Member is authorized by, *inter alia*, Chapter 163, Florida Statutes, also known as the "Florida Interlocal Cooperation Act of 1969," ("the Act"), to exercise jointly with other local public agencies of this state the authority to provide administrative functions, which include purchasing; and

WHEREAS, the purpose of this Agreement is to facilitate compliance with state procurement requirements; to identify qualified vendors of commodities, goods and services; to assist individual Members with the responsibilities of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Members;

NOW, THEREFORE, in consideration of the mutual covenants, promises and obligations contained herein, the undersigned Member and the Consortium agree as follows.

II. TERMS AND CONDITIONS:

1. **Adopt Interlocal Agreement.** The Member, by the execution or acceptance of this Agreement, hereby adopts and approves the Florida Education Purchasing Consortium Organizational Interlocal Agreement, which established the Consortium as an administrative agency of its collective participants, pursuant to section 163.01(7)(a), Florida Statutes, effective January 1, 2009, which agreement is incorporated herein by reference.
2. **Term.** The term of this Agreement shall commence and be effective on the date fully executed, and shall remain in effect unless revised or terminated in accordance with the provisions of this Agreement.
3. **Termination.**
 - a. **By the Member.** A Member may terminate this Agreement at any time by giving thirty (30) days' prior written notice to the Consortium Board. If the Member terminates its participation under this Agreement or breaches this Agreement, or if the Consortium terminates participation of the Member, the Member shall bear the full financial responsibility for all of its purchases made from vendors under or through this

materials and services and inspections and acceptance of goods, materials and services ordered by the procuring Member shall be the exclusive obligation of the procuring Member, and not the Consortium or other Members. Furthermore, the Member is solely responsible for negotiating and securing any ancillary agreements from the vendor on such other terms and conditions, including provisions relating to insurance or bonding, that the Member deems necessary or desirable under state or local law, local policy or rule, or within its business judgment.

6. **Payment for Costs of Operation.** The parties agree that the costs associated with the establishment and operation of the Consortium will be paid in accordance with policies to be adopted by the Consortium Board. Such policies shall be designed insofar as possible in such a manner as to pay for the operations of the Consortium from Consortium Members' savings achieved through use of its programs or, as permitted by law, assessment of vendor fees. Such policies shall provide an incentive to a Consortium Member which serves as the lead district in obtaining a favorable bid which is made available to other Consortium Members and shall provide for payment of FSBA and FADSS for their sponsorship and promotion of the program and service as the Administrative Agent to the Consortium.

III. GENERAL PROVISIONS

1. **Amendment by Notice.** The Consortium's Board may amend this Agreement, provided that written notice is sent to the Member at least sixty (60) days prior to the effective date of any change described in such amendment and provided that the Member does not terminate its participation in the Consortium before the expiration of said sixty (60) day period.
2. **Authorization to Participate and Compliance with Local Policies.** The Member represents and warrants that its governing body has duly authorized its participation in the Consortium and that the Member will comply with all state and local laws and policies pertaining to purchasing of goods and services through its membership in the Consortium.
3. **Bylaws.** The Member agrees to abide by the Bylaws of the Consortium, which are incorporated herein by reference, as they may be amended, and any and all reasonable written policies and procedures established by the Consortium.
4. **Cooperation and Access.** The Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Consortium. The Consortium reserves the right to audit the relevant records of any Member, subject to the Florida public records laws. Any breach of this provision shall be considered material and shall make the Agreement subject to termination as above-described.
5. **Coordinator.** The Member agrees to designate a point of contact with the Consortium. The Member reserves the right to change the point of contact, from time to time, by giving written notice to the Consortium, in accordance with the provisions of this Agreement.

6. **Defense and Prosecution of Claims.** The Member authorizes the Consortium to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding, or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Consortium in any litigation, claim or dispute which arises from the services provided by the Consortium on behalf of its Members, collectively or individually. Neither this provision nor any other provision in this Agreement will create a legal duty for the Consortium to provide a defense or prosecute a claim; rather, the Consortium may exercise this right in its sole discretion and to the extent permitted or authorized by law. The Member shall reasonably cooperate and supply any information necessary or helpful in such prosecution or defense. Subject to specific revocation, the Member hereby designates the Consortium to act as a class representative on its behalf in matters arising out of this Agreement.
7. **Governance.** The Consortium's Board will govern the Consortium in accordance with its Bylaws and other written policies.
8. **Jurisdiction/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and venue for all disputes arising under this Agreement shall lie in Leon County, Florida.
9. **Legal Authority.** The Member represents and warrants to the Consortium the following:
 - a. It possesses the legal authority to enter into the Agreement and may allow this Agreement to automatically renew without subsequent action of its governing body.
 - b. Purchases made under this Agreement satisfy all procedural procurement requirements that the Member must meet under all applicable local policy, regulation, or state law.
 - c. All requirements—local or state—for a third party to approve, record, or authorize the Agreement have been met.
 - d. Records, meetings and actions. All activities, meetings, documents and records of the Consortium and its members shall be subject to and conducted as prescribed by F.S. 119, commonly known as the Government on the Sunshine Law. Compliance with this law includes the retention of any records of the Consortium, the Board of Directors, and the members shall be as specified in section 119.07, Florida Statutes.
10. **Disclaimer.** THE CONSORTIUM AND ITS ENDORSERS (INCLUDING, BUT NOT LIMITED TO, THE FLORIDA SCHOOL BOARDS ASSOCIATION, INC. AND THE FLORIDA ASSOCIATION OF DISTRICT SCHOOL SUPERINTENDENTS AND THEIR SUBCONTRACTORS) DO NOT WARRANT THAT THE OPERATION OR USE OF CONSORTIUM SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

THE CONSORTIUM, ITS ENDORSERS, AND SUBCONTRACTORS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. **Limitation of Liability.** Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties agree that:

- a. Neither party waives any immunity from liability afforded under law;
- b. In regard to any lawsuit or formal adjudication arising out of or relating to this Agreement, neither party shall be liable to the other under any circumstance for special, incidental, consequential, or exemplary damages;
- c. The maximum amount of damages recoverable will be limited to the amount of fees, if any, which the Consortium received as a direct result of the Member's purchase activity, within 24 months of when the lawsuit or action was filed; and
- d. In the event of a lawsuit or formal adjudication the prevailing party will be entitled to recover reasonable attorney's fees.

Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties further agree to limit the liability of the Consortium's servicing contractor, endorsers and sponsors up to the maximum amount each received from or through the Consortium, as a direct result of the undersigned Member's purchase activity, within 24 months of the filing of any lawsuit or action.

12. **Limitation of Rights.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.
13. **Merger/Entirety.** This Agreement, together with the Consortium's Bylaws and the Organizational Interlocal Agreement, represents the complete understanding of the Consortium and Member. To the extent there exists any conflict between the terms of this Agreement and that of prior agreements, the terms of this Agreement, the Organizational Interlocal Agreement, or the Bylaws shall control and take precedence to resolve such conflict.
14. **Notice.** Any written notice to the Consortium shall be made by first class mail, postage prepaid, and delivered to the Consortium Coordinator in care of the Florida School Boards Association, Inc., 203 South Monroe Street, Tallahassee, FL 32301. Notices to the Member shall be made by first class mail, postage prepaid, and delivered to the Member's board chairperson or chief executive officer (e.g., superintendent). Notices shall be effective only upon actual receipt.
15. **Severability.** If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.
16. **Signatures/Counterparts.** The failure of a party to provide an original, manually executed signature to the other party will not affect the validity, enforceability or binding effect of this Agreement because either party may rely upon a facsimile signature as if it were an original. Furthermore, this Agreement may be executed in several separate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

17. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

*****END OF PAGE*****

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of the date indicated.

TO BE COMPLETED BY THE CONSORTIUM:

THE FLORIDA EDUCATION PURCHASING CONSORTIUM, on behalf of participating Members

By: _____ Date:
Candace Lankford, Consortium Board Chairperson

TO BE COMPLETED BY THE MEMBER:

(Name of Local Government)

(Name of Designated Coordinator)

(Mailing Address)

(City)

(State)

(Zip Code)

(Email Address)

(Telephone)

(Fax)

By: _____ Date:
Signature of authorized representative of Member

Printed name and title of authorized representative