INSTRUCTIONS TO PROPOSERS

The Local Government Purchasing Cooperative (Cooperative), 12007 Research Blvd., Austin, Texas 78759 is a statewide purchasing cooperative for school districts, junior colleges, cities, counties, and other political subdivisions. The Cooperative was formed by the Texas Association of School Boards, Inc. (TASB), a non-profit corporation of the State of Texas, 12007 Research Blvd., Austin, Texas 78759, and includes the Texas Municipal League (TML), a Texas unincorporated not-for-profit association, 1821 Rutherford Lane, Austin, Texas 78754 and the Texas Association of Counties (TAC), a Texas not-for-profit association, 1204 San Antonio, Austin, Texas 78701 as sponsors.

The Cooperative’s contracts for commodities and services will be available to the members of TASB, TML, and TAC, and other local governmental entities that are members of the Cooperative eligible to purchase through a government purchasing cooperative or interlocal contract. TASB, the Cooperative’s administrator, provides the electronic commerce technology to the Cooperative to enable members’ purchasing to be accomplished electronically.

Unless a different time period is stated in the General Information document for this Proposal Invitation, questions, requests for information or clarification, or comments regarding this Proposal Invitation, including the specifications, must be submitted in writing, addressed as indicated below, and received by the Cooperative no later than the 10th business day before the Proposal Due Date. The Cooperative will respond only to written questions.

The Local Government Purchasing Cooperative
Attn: Procurement Director or Bid Administrator
12007 Research Blvd.
Austin, TX 78759
Phone: 512-467-0222
Fax: 800-211-5454
E-Mail: bids@buyboard.com

Sealed proposals are being solicited for the merchandise, supplies, services and/or equipment as set forth in this Proposal Invitation and are solicited on behalf of all present and future members of the Cooperative. There may be over 1,100 public school districts and junior colleges, over 1,000 municipalities, 254 counties, and numerous other political subdivisions (i.e. river authorities, special districts, public housing authorities, etc.) participating in the Cooperative at any given time.

Completed sealed proposals for Proposal No. 498-15 for Technology Equipment and Supplies, Software, Telecommunications Products, and Asset Disposal and Recovery must be mailed or delivered to The Local Government Purchasing Cooperative, 12007 Research Blvd., Austin, TX 78759, and must be received on or before 2:00 PM July 29, 2015. Late proposals will not be accepted and will be returned to the vendor unopened. Proposals must be submitted in a sealed envelope marked properly with the Proposal Invitation Number, Product Category, and Submittal Date. Do not fax or email your proposal. Faxed and/or email proposals are not acceptable and will not be considered.

Proposals may be withdrawn prior to the opening date and time, but only in accordance with section B.11 (Withdrawal or Modification of Proposal) of the General Terms and Conditions set out hereinafter in this Proposal Invitation.
GENERAL TERMS AND CONDITIONS

A. General Provisions

1. Statement of Inclusion/Applicability
   These General Terms and Conditions ("Terms and Conditions") apply to this Proposal Invitation and the proposing company’s response to this Proposal Invitation, and are an integral part of any contract which is awarded or purchase order which is issued in association with this Proposal Invitation.

2. Organization and Section Titles
   The provisions of these Terms and Conditions are generally organized according to the stages of the procurement process: proposal, evaluation, award and performance. This organization of and the section titles used in these Terms and Conditions are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document. Unless otherwise stated, any listing of factors or criteria in these Terms and Conditions does not constitute an order of preference or importance.

3. Definitions
   As used in this Proposal Invitation and associated documentation, the following terms have the meanings set out below unless the context requires otherwise, regardless of whether initial capitalization is consistently used. Words used in the singular include the plural, and words used in the plural include the singular. To the extent terms are defined or used differently in different Proposal Invitation documents, substance prevails over form:

   “BuyBoard®” means the internet-based electronic commerce technology provided by the Cooperative’s administrator, the Texas Association of School Boards, Inc. (TASB), to enable Cooperative members to purchase awarded goods and services electronically.

   “BuyBoard Administrator” means the Procurement Director identified in this Proposal Invitation (or his/her successor).

   “Contract” means the contract between the Cooperative and the successful proposer (vendor), which gives vendor the opportunity to serve Cooperative members based on the Cooperative’s acceptance of all or part of the proposer’s proposal, and is comprised collectively of the following:
   a) This Proposal Invitation;
   b) Proposer’s proposal;
   c) Notice of Award issued to Proposer by the Cooperative; and
   d) Purchase order between a Cooperative member and Proposer, and any additional terms, conditions, or instructions agreed to by Proposer, that are consistent with these Terms and Conditions.

   “Cooperative” means, collectively, The Local Government Purchasing Cooperative (which may also be referred to as "Texas Cooperative" herein) and its administrator, TASB, unless a distinction is made otherwise.

   “Cooperative member” or “member” means a local governmental entity (e.g., school district, city or county) or other governmental entity that is a member of the Cooperative and is eligible to purchase through a governmental purchasing cooperative or interlocal contract.
“Goods” or “Products” (which terms are used interchangeably) means the goods, products, equipment or other commodities that are the subject of this Proposal Invitation.

“Proposal Invitation” means this Proposal Invitation and all associated documentation, including without limitation, these Terms and Conditions and any amendments hereto, additional terms and conditions specific to this Proposal Invitation, instructions, exhibits or attachments, forms, agreements, certifications, item specifications, addenda, and supplements and/or clarifications.

“Proposal” means Proposer’s complete and correct response to this Proposal Invitation, including all information, forms, agreements, certifications and other documentation required by this Proposal Invitation, properly signed by Proposer’s duly authorized representative.

“Proposer” or “Vendor” means the company or firm that submits a Proposal or, depending on the context, the proposing company to which the Cooperative awards a contract under this Proposal Invitation. (For purposes of the forms associated with this Proposal Invitation, “you”, “your”, “I” or “my” refer to Proposer or Vendor, as applicable.)

“Purchase Order” means a Cooperative member’s fiscal form or other instrument which is used in making a purchase from Vendor under a BuyBoard contract.

B. Proposal Requirements

1. Specifications
   Unless otherwise specified, the specifications are intended to be non-proprietary, and should be construed as such. Catalog numbers, brand names, or manufacturer product or reference numbers used in the item specifications in this Proposal Invitation are intended to be descriptive, not restrictive. These references, as well as “approved brands and/or models” listed, are intended to identify and indicate the type of product being sought and establish the level of quality desired. If any conflict exists in the item specifications between the product descriptions and any brand names or model or reference numbers used, the product descriptions will override the brand names or model number references.

   In some cases, however, the Cooperative may find it advantageous in order to provide best value to Cooperative members to standardize equipment and/or supplies by manufacturer in order to achieve efficiencies in procurement, repair, and operation, to match existing stock, or to satisfy other requirements. In these limited cases, preference will be given to the specific products identified as “approved brands and/or models,” especially if all other evaluation factors are deemed to be equal. For this reason, where specific brands or models are identified, Proposer is encouraged to propose the exact item specified, in addition to an alternate brand or model with equal/equivalent functionality or features where appropriate or necessary.

   In all cases, Proposals must identify the manufacturer, brand, model, etc., of the item being offered. For Proposals on “equal/equivalent” items other than the specified “approved brand and/or model,” Proposer must supply a complete description and sufficient data for the Cooperative to properly analyze the product being proposed, including its functionality and features. In order to conduct such analysis, the Cooperative may request samples for items other than “approved brands and/or models.” If the specification identifies a specific brand or model for any item and Proposer fails to identify the manufacturer, brand, model, etc., for that item, the Cooperative will assume Proposer is proposing on the exact brand and model identified in the specification, and if awarded a contract, Vendor must furnish the exact brand name, model, etc., as specified. Substitutions will not be allowed after the contract is awarded, except as provided for in section E.8 (Substitutions) of these Terms and Conditions.
The apparent silence of the specifications as to any detail, or the apparent omission from any specification of a detailed description concerning any point, will be interpreted to mean that only the best commercial practices will prevail, and the specification will be construed accordingly.

**NOTE:** Unless a different time period is stated in the General Information document of this Proposal Invitation, if Proposer discovers or suspects an error in any item specification in this Proposal Invitation, including that the specification is proprietary where not intended, Proposer must notify the BuyBoard Administrator of the error in writing immediately, but in no event later than the tenth (10th) business day before the Proposal Due Date.

2. **Pricing**
A "Line Item" Proposal must be for a specific price for the unit of measure specified for that item. Proposer is responsible for clearly noting any differences in proposed packaging and/or units of measure as a deviation in accordance with section B.4 (Deviations from Item Specifications or General Terms and Conditions) of these Terms and Conditions.

If this Proposal Invitation requires "discount from catalog" pricing, Proposer must quote a single discount percentage to be applied to all items in Proposer’s published catalog. Proposer must submit the catalog or published pricelist with the Proposal, and is encouraged to submit the data in electronic format.

Proposer’s pricing must be "equal to or better” than pricing Proposer offers other similar customers. Pricing that is not considered equal or better could result in the Proposal being determined non-competitive and not considered for award.

Unless specified otherwise in this Proposal Invitation:

a) A "Cost Plus” Proposal will not be accepted;

b) Proposer will not include freight, transportation and delivery charges or costs or sales tax in Proposal pricing (freight, transportation and delivery charges are to be pre-paid by the awarded Vendor and, subject to section E.5 (Packaging, Transportation, and Delivery) of these Terms and Conditions, included as a separate item on the invoice to the ordering Cooperative member);

c) Proposal pricing must include the service fee due pursuant to section E.12 (Service Fee) of these Terms and Conditions; and

d) Proposal pricing must be firm for acceptance and the Cooperative's period for acceptance will be at least 120 calendar days from the proposal close (due) date.

3. **Quality**
Unless otherwise indicated in this Proposal Invitation, proposed products must be new and in first class condition, and must be warranted in the same manner and to the same extent as normally provided to other customers of Proposer. Additionally, proposed products must conform to the highest standards of manufacturing practice, including containers suitable for shipment and storage. Unless otherwise specified, “factory seconds,” “refurbished”, or otherwise inferior items are not acceptable.

4. **Deviations from Item Specifications or General Terms and Conditions**
Proposer must clearly note and explain in detail any and all limitations, exceptions, qualifications, special conditions, or other deviations (collectively "deviations") from these Terms and Conditions or any of the item specifications in the Proposal at the time the Proposal is submitted. The submission of any such deviation may place Proposer at a competitive disadvantage or otherwise prevent the Cooperative from considering the Proposal on the affected item(s).
The Cooperative may, in its sole discretion, seek clarification from and/or communicate with Proposee(s) regarding any submitted deviation, consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a proposal based upon any submitted deviation.

Other than any deviation submitted in writing with the Proposal and accepted by the Cooperative, the Cooperative will hold Proposer accountable to the Cooperative and Cooperative members to perform in strict accordance with these Terms and Conditions and the item specifications as written.

5. Addenda
Any interpretation, correction or change to this Proposal Invitation will be made by addendum, and updated information contained in an addendum will prevail over the information contained in the original Proposal Invitation or a previous addendum. The Cooperative is the sole authority for the issuance of any addendum, and any communication related to this Proposal Invitation that is not from the Cooperative is invalid. Although the Cooperative may provide electronic notification when an addendum has been issued and the changes will be flagged, it is Proposer’s responsibility to monitor the BuyBoard vendor website for possible addenda and incorporate any posted addendum into the Proposal. Proposer must acknowledge each addendum in accordance with the instructions accompanying the addendum.

6. Samples
The Cooperative may request a product sample. Proposer must furnish the requested sample at no cost to the Cooperative, and, unless otherwise specified, the Cooperative must receive the sample within 72 hours of the request. The submitted sample must be labeled with the Proposal Invitation Name and Number, Item Number, Product Identification Number, and Proposer’s name. Proposer’s failure to submit a sample when requested will result in the product in question not being considered for award to Proposer.

The Cooperative will retain samples for a sufficient length of time for proper evaluation. If not destroyed or consumed during examination or testing, the Cooperative will return samples to Proposer at Proposer's expense, provided that Proposer has included a written return request with the submitted samples. Notwithstanding the foregoing, the Cooperative may permanently retain samples submitted by awarded Proposers for the purpose of determining that the quality and workmanship of awarded products delivered to Cooperative members is comparable to the samples. The Cooperative is not liable for samples that are damaged, destroyed or consumed during examination or testing.

7. Proposal on All or Certain Items
Unless otherwise specified, Proposer may propose on any or all items. Proposer should answer all questions related to each item on which Proposer wishes to propose, and either leave the questions for other items unanswered (blank) or indicate “No Bid.” The Cooperative will consider items individually and make awards on each item independently, except for “related” items for which “compatibility” will be an element of consideration. In such cases, small groups of items will be considered as a unit.

8. “All or Nothing” Awards
Unless otherwise indicated in this Proposal Invitation, “all or nothing” Proposals are not acceptable and will be rejected. Proposer must be willing to accept a partial award for any combination of the items or services proposed, and must be willing to share the business with any other successful Proposers.

9. Confidential Information
Proposer must clearly identify information in the Proposal that Proposer considers proprietary or confidential by completing the Confidential/Proprietary Information Form. The Cooperative will treat such information as confidential to the extent allowable under the Texas Public Information Act (Chapter 552 of the Texas Government Code) or similar disclosure law.
If Proposer fails to properly identify the information, the Cooperative shall have no obligation to seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure laws. The Cooperative and its Administrator will not be responsible for Proposer’s failure to clearly identify information Proposer considers confidential or proprietary. Proposer will be notified of any third party request for information that Proposer has identified in the Confidential/Proprietary Information Form as proprietary or confidential.

10. Certain Professional Services Excluded
Neither this Proposal Invitation nor any contract includes services that are required to be procured under the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code), including without limitation architecture and professional engineering services.

11. Withdrawal or Modification of Proposal
Proposer may withdraw a submitted Proposal prior to the proposal close (due) date and time specified in this Proposal Invitation. A Proposal may be withdrawn only in strict accordance with this section.

Withdrawal of Proposals: Proposer must submit a written request to the Cooperative for authorization to withdraw a Proposal. The request, which must apply to the submitted Proposal in its entirety, must be manually signed in ink by an individual duly authorized to enter into contracts on Proposer’s behalf, and indicate the individual’s title. The Proposal may not be withdrawn after the specified close (due) date and time, and will not be considered for withdrawal if not submitted in accordance with the packaging and labeling instructions applicable to Proposal submissions.

If the BuyBoard Administrator has any question or doubt regarding Proposer’s identity or the identity of its Proposal, withdrawal will not be allowed. If the Cooperative decides to allow the withdrawal, Proposer’s duly authorized representative will be required to complete and sign a written receipt satisfactory to the BuyBoard Administrator before the proposal will be released. The decision of the BuyBoard Administrator relating to matters concerning withdrawal of a Proposal is final.

Proposer may resubmit the released Proposal, or submit a new Proposal, up until the close (due) date and time, provided any new submission meets the requirements of this Proposal Invitation. If Proposer resubmits a Proposal that was withdrawn and makes any change to any document in the proposal package, the change must be made in accordance with the Cooperative’s instructions for Proposal submissions, and Proposer will be deemed to have authorized such change.

Proposals that are in the Cooperative’s possession at the time proposals are due shall be deemed final, conclusive, and irrevocable; and no Proposal will be subject to withdrawal, amendment, or correction by a Proposer after the close (due) date and time specified in this Proposal Invitation. However, pursuant to section B.4 (Deviations from Item Specifications or General Terms and Conditions), the Cooperative reserves the right, in its sole discretion, to seek clarification, communicate and resolve issues around deviations that were submitted in a Proposal, consistent with general procurement principles of fair competition.

12. Certifications
Form A, which is fundamental to and incorporated into this Proposal Invitation, requires Proposer to certify to certain matters. Pursuant to and in accordance with such Form A, and in addition to the matters set forth therein, Proposer certifies to the following with respect to this Proposal Invitation, the Proposal, and any Contract awarded under this Proposal Invitation.
(a) Non-Collusion Certification
Proposer agrees and certifies to the following, and understands that the penalty for violating this non-collusion certification will be the immediate disqualification of Proposer's Proposal:

1) Neither Proposer nor any business entity represented by Proposer has received compensation for participation in the preparation of the item specifications or these Terms and Conditions related to this Proposal Invitation;

2) The proposal has been arrived at independently and is submitted without collusion with any other Proposer, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give any Proposer an unfair advantage over any other Proposer with respect to the Proposal;

3) Proposer has not accepted, offered, conferred, or agreed to confer, and will not in the future accept, offer, confer, or agree to confer, any benefit or anything of value to any person or entity related to the Cooperative or any of its members in connection with any information or submission related to the Proposal, any recommendation, decision, vote, or award related to the Proposal, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to the Proposal;

4) Neither Proposer, nor any business entity represented by Proposer, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of this State with regard to the Proposal, and the Proposal has not been knowingly disclosed, and will not be knowingly disclosed, to any other Proposer, competitor, or potential competitor prior to the opening of Proposals; and

5) No attempt has been or will be made to induce any other person or entity to submit or to not submit a Proposal.

(b) Certification Regarding Legal, Ethical, and Other Matters
Proposer agrees and certifies to the following:

1) Proposer has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with the Proposal;

2) Proposer has a high degree of integrity and business ethics, and a satisfactory record of performance;

3) Proposer is an authorized dealer, distributor, or manufacturer for the products or services offered in the Proposal;

4) Proposer has not been notified by any local, state, or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from submitting its Proposal and Proposer would in no other way whatsoever be disqualified to propose or receive any award or Contract related to this Proposal Invitation, and Proposer will comply with any reasonable request from the Cooperative to supply information sufficient to substantiate the foregoing representations;

5) Proposer has obtained, and will continue to maintain during the entire term of the Contract, all permits, approvals, or licenses necessary for lawful performance of its obligations under this Contract;

6) The prices, prompt payment discount terms, delivery terms, distribution allowances and the quality and/or performance (including warranties) of the products or services offered in the Proposal are and will remain the same or better than those offered Proposer's most favored customer under equivalent circumstances;

7) The Proposal complies with all federal, state, and local laws concerning these types of products or services, and Proposer will continue to comply with any applicable federal, state, and local laws related to Proposer's activities in connection with the Contract;

8) Proposer will comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon or state or local law, including Chapter 2258 of the Government Code;
9) Proposer will maintain, at Proposer’s expense, any insurance, including without limitation such workers’ compensation insurance as may be required by state or local law or policy, necessary to protect the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Proposer or its employees or its agents of any service under the Contract; however, the existence of such insurance does not relieve Proposer of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law; and

10) Any false statement contained in the Proposal is a material breach of contract which will void the Proposal or any resulting Contract, and subject Proposer to removal from all proposal lists, and possible criminal prosecution.

13. Proposal Signatures
Proposer must sign its Proposal in strict accordance with the Cooperative’s instructions, including having an officer duly authorized by Proposer execute the Proposal. By signing, the signatory warrants that he or she has read and agrees to the terms of the Proposal and is authorized to execute same as a legally binding act of Proposer.

14. No Reimbursement
Proposer understands and acknowledges the Cooperative will not reimburse or pay Proposer for any expenses Proposer incurs in preparing its Proposal or providing additional information required in connection with the Proposal.

C. Proposal Evaluation

1. General
A Proposal submitted in accordance with this Proposal Invitation will initially be considered for award; however, initial consideration of a Proposal will not constitute an assessment of its meeting the necessary qualifications, and a Proposal may be disqualified at any time during the evaluation process for failure to meet any other terms or conditions contained anywhere else in this Proposal Invitation.

2. Best Value Criteria
The Cooperative evaluates Proposals on the basis of best value to Cooperative members. In evaluating Proposals and determining best value for all Cooperative members, the Cooperative will consider the following criteria:
   a) Purchase price;
   b) Reputation of Vendor and of Vendor’s goods or services;
   c) Quality of Vendor’s goods or services;
   d) Extent to which the goods or services meet the needs of Cooperative members;
   e) Vendor’s past performance or relationship with Cooperative members;
   f) Total long-term cost to Cooperative members to acquire Vendor’s goods and or services; and
   g) Any other relevant factor listed in this Proposal Invitation that a public entity may consider in selecting a Vendor, which may include, but is not limited to, any of the following:
      1) Vendor’s principal place of business;
      2) Warranties offered, Vendor’s warranty service history, and the probability of continuous availability of the goods and/or services offered; and
      3) Packaging of the product (in some cases preference is given to a Vendor who provides all the components relative to the complete package).
In addition to the Best Value Criteria set forth above, the Cooperative’s evaluation will include Proposer’s responses to the forms and other attachments included or associated with this Proposal Invitation, including but not limited to Proposer’s responses to the Proposal Invitation Questionnaire. As a general matter, the Cooperative makes competitive and indefinite quantity awards to Proposers that give the same or better discounts/pricing than they give their best governmental clients. Proposers should provide competitive pricing that is the same or better than the pricing provided their best governmental clients. Each Proposal is evaluated on its own merit and determined to be fair and reasonable by comparing the price/discounts that Vendor offers other governmental clients.

If this Proposal Invitation requires discount pricing, discount practices are examined and evaluated based on historical data, sales information, discounts granted to other governmental clients, and other market research techniques. The Cooperative may award Contracts to multiple Proposers supplying comparable products or services, also known as a multiple award schedule, or award the Contract to a single Proposer.

The Cooperative’s decision to make multiple awards or a single award will be based upon the Cooperative’s sole discretion regarding the type of award that provides best value to all Cooperative members.

3. Cooperative Board Decision

The Cooperative reserves the right to waive any or all irregularities, formalities, or other technicalities and to be the sole and independent judge of quality and suitability of any products or services offered. The Cooperative may accept or reject a Proposal in its entirety, or may reject any part of a Proposal without affecting the remainder of that proposal, and may award the individual items in this Proposal Invitation in any combination or in any way that provides best value to Cooperative members based on the criteria set out in section C.2 (Best Value Criteria) of these Terms and Conditions.

The Cooperative may use all means at the collective disposal of the Cooperative and Cooperative members to evaluate Proposals. The final decision as to the best overall offer, both as to price and to suitability of the proposed products or services to meet the needs of and provide best value to Cooperative members, rests solely with the Cooperative’s Board of Trustees.

The Board’s decision may be protested only in accordance with the Board’s protest procedure policy, COOP-851, which is available from the BuyBoard Administrator upon request. Pursuant to COOP-851, a protest challenging the terms, conditions or form of notice of this Proposal Invitation and accompanying documentation must be received by the Cooperative no later than the fifth (5th) business day before the Proposal close (due) date, and a protest challenging an award decision no later than the fifth (5th) business day after the award is posted on the BuyBoard vendor website.

D. Contract Award

1. Notice of Award and Related Matters

A Proposal is an offer by Proposer to contract with the Cooperative and Cooperative members in accordance with this Proposal Invitation, including without limitation the item specifications, and these Terms and Conditions. A Proposal does not become a Contract unless and until the Proposal is accepted by the Cooperative through the issuance of a written Notice of Award to the successful Proposer, whereupon the Contract becomes binding and enforceable. The Contract is then utilized by a Cooperative member by the member issuing a signed purchase order for the awarded products or services. Vendor must honor all purchase orders issued by Cooperative members during the Contract term in accordance with these Terms and Conditions.
Cooperative members do not have the authority to modify these Terms and Conditions. However, a Cooperative member may add terms to a purchase order that are consistent with these Terms and Conditions and are acceptable to Vendor.

As provided for in detail in section E.11 (The BuyBoard) of these Terms and Conditions, all purchase orders must be processed through the BuyBoard. All deliveries and financial transactions related to the purchase order will occur directly between Vendor and the ordering Cooperative member.

The Cooperative may maintain Vendor's contract documents in electronic format for the duration of the Contract term.

A Cooperative member may require a performance and/or payment bond from Vendor as may be required by law or deemed necessary or appropriate. Additionally, a Cooperative member may require Vendor to carry and provide proof of such insurance as may be required by state or local law or policy.

Individual Cooperative members may in certain circumstances require background checks on Vendor employees who will have direct contact with students or staff, or for other reasons, and may require Vendor to pay the cost of obtaining criminal history record information.

An awarded Proposal will not be active on the BuyBoard until Vendor submits price sheets or catalogs to the Cooperative in proper format for posting to the BuyBoard website. If the award is based on "discount from catalog" pricing or industry or other "benchmark" pricing and Vendor did not submit a complete, updated electronic catalog and/or price list with the Proposal, Vendor must submit such electronic data for all awarded items within sixty (60) business days after the date of the Notice of Award. If the electronic data is not timely submitted, the Cooperative may inactivate Vendor's award from the BuyBoard pending receipt. Vendor may submit subsequent changes to the Proposal price list, to the extent changes are permitted by these Terms and Conditions, when they become available.

2. Piggyback Contract and Other Entity Clause
It is the Cooperative's intent that other governmental entities throughout the United States, as well as administrator's nonprofit entity BuyBoard subscribers, have the opportunity to purchase the goods or services awarded under the Contract at the same pricing and according to these Terms and Conditions, subject to applicable state law, through a piggy-back award or similar agreement. To the extent applicable, Vendor must offer and sell the awarded goods and services to such other organizations and entities in accordance with Vendor's Proposal, including without limitation the State Service Designation Form (Form J) and the National Purchasing Cooperative Vendor Award Agreement (Form K). If during the Contract term Vendor wishes to serve one or more states in addition to the state(s) listed in its Proposal, Vendor must execute a new Form J.

E. Contract Performance

1. Contract Term
The term of the Contract is for the initial term stated in this Proposal Invitation, which term begins on the date of the Notice of Award. Unless otherwise stated in this Proposal Invitation, the Contract may be renewed for two (2) additional one (1)-year terms as provided for in this section E.1. A reference to "Contract term" in these Terms and Condition means the initial term and any renewal term.
The Contract shall govern the Vendor's and the Cooperative member's rights and obligations with respect to any Purchase Order issued during the Contract term and afterwards, with respect to any Purchase Order or purchase bound by the Cooperative member for specified goods or services before the Contract award period ended.

Vendor has no right to or vested interest in a Contract renewal. The Cooperative will evaluate the Contract award prior to the expiration of the then current Contract term (initial or renewal), and reserves the right to not renew the Contract based on factors that may include, but are not limited to, the annual amount of business, Vendor's performance, and the continued provision of best value to Cooperative members. With respect to annual amount of business, Vendor must generate the minimum amount specified in the General Information document associated with this Proposal Invitation through the Contract, during both the initial and the first renewal term, or may not be offered a second renewal term. A renewal must be agreed to by the Cooperative and Vendor.

In the event the Contract term will expire before the Cooperative awards a successor contract for the categories of awarded products or services, the Contract may be extended beyond the expiration date on a month to month basis upon the agreement of the Cooperative and Vendor, provided that the awarded pricing does not increase during such extension.

2. Prevailing Wages, Bonding and Insurance Requirements
Vendor must comply with any applicable prevailing wage rate requirements under the federal Davis-Bacon or state or local law, including Chapter 2258 of the Texas Government Code.

Vendor must provide any applicable performance and payment bonds as required by law, including Chapter 2253 of the Texas Government Code, or as requested by a Cooperative member. Vendor must maintain appropriate and sufficient insurance, including without limitation such workers' compensation insurance as may be required by state or local law or policy, necessary to protect Vendor and the Cooperative and its members from all claims for bodily injury, death, or property damage that might arise from the performance by Vendor or its employees or agents of any service under the Contract; however, the existence of such insurance does not relieve Vendor of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided by law.

3. Conformity to Item Specifications and Contract Award
Vendor warrants that the products or services Vendor provides under the Contract conform to the item specifications and other requirements of this Proposal Invitation (except to the extent and as specifically noted as deviations in Vendor's Proposal), and are free from all defects in material, workmanship and title. If Vendor deviates from an item specification, including delivering a product other than the specific brand and model of the product awarded, the ordering Cooperative member may reject the product when delivered and terminate the purchase order, at no cost or penalty to the member. Vendor further warrants that all products provided under the Contract meet applicable OSHA standards and regulations, and that any electrical items bear the appropriate listing from US, FMRC, NEMA, or UL Laboratories.

If awarded products are chemicals or other products that customarily require Material Safety Data Sheets (MSDS), Vendor must include the MSDS with the first shipment of the product to a Cooperative member during the Contract term. Vendor must provide additional MSDSs to Cooperative members upon request, promptly and at no additional cost.

4. Awarded Pricing
Except as provided in this section E.4 or otherwise in this Proposal Invitation, Vendor shall hold its awarded pricing firm during the Contract term.
Vendor may submit manufacturer price increases that occur during the Contract term to the Cooperative, with such supporting manufacturer documentation as the Cooperative may require. The Cooperative will determine whether Vendor may pass any or all of an increase on to Cooperative members and notify Vendor of its determination in writing. The Cooperative reserves the right to accept or reject any or all of the requested price recalculation as it deems to be in the best interest of and to provide best value to Cooperative members.

In the event Vendor decreases the price of awarded products or services for any or all of its other customers in similar market circumstances below the Contract price, Vendor must offer such decreased pricing to Cooperative members.

During the Contract term, Cooperative members may negotiate with Vendor, through the BuyBoard request for quotes (RFQ) function or otherwise, to obtain lower prices for awarded products or services based on volume or other factors.

Unless specified otherwise in this Proposal Invitation, the service fee due pursuant to section E.12 (Service Fee) of these Terms and Conditions is included in the awarded pricing.

5. Packaging, Transportation, and Delivery

Unless otherwise provided for in this Proposal Invitation, all products must be packaged in containers that are new, appropriately designed for the product, and sturdy enough to protect the product during loading, transit, unloading, and storage, and be suitably packed to secure the lowest transportation costs. Products for which palletizing is appropriate must be delivered on standard 48” 4-way pallets in good, serviceable condition.

Vendor is responsible for paying all freight, delivery, handling and other charges incurred in transporting and delivering products to a Cooperative member, and for the risk of loss until the product is delivered to and accepted by the Cooperative member. Freight, delivery, handling and other charges incurred in transporting and delivering products to a Cooperative member are to be prepaid by Vendor. Vendor may collect the actual amount of such charges after delivery and acceptance, provided that the charges (a) were disclosed to the Cooperative member, if requested, and in all instances in which the charges exceed ten percent (10%) of the total cost of the order, prior to shipment; (b) are itemized and shown separately on the member’s invoice; and (c) are supported by appropriate documentation submitted with the invoice.

Except for items that have hidden defects or that do not meet specifications, title and risk of loss to products pass to a Cooperative member upon the member’s actual receipt and acceptance of the product at the point and time of delivery.

Unless otherwise noted in the proposal (as a deviation) or the purchase order, Vendor must deliver or provide awarded products or services within ten (10) business days after receipt of a Cooperative member’s purchase order. Vendor must immediately notify the Cooperative member’s primary contact of any anticipated or actual delay and document the notice in writing, and the member may extend the delivery time or cancel the order if the delay is unacceptable. If the Cooperative member has not received notice of the delay as required by this section, the member may, at its discretion, return to Vendor any items received after the due date, at Vendor’s expense and without liability or penalty to the member.
When the needs of a Cooperative member require immediate response, the right to pick up products on an "over the counter" basis must be available for the majority of the awarded products. In these circumstances, the Cooperative member's personnel may pick up the products at Vendor's warehouse location. Additionally, a Cooperative member may request emergency delivery, and Vendor must use its best efforts to comply with rush or emergency requests. If Vendor cannot fulfill the emergency delivery requirement, the member may procure the products or services from alternative sources without penalty. Time is of the essence in the performance of the Contract.

6. Packing Lists, Invoices and Payments

Packing lists or other suitable shipping documents must accompany each shipment and state: (a) Vendor’s name and address; (b) Cooperative member’s name and address or delivery location; (c) Cooperative member’s purchase order number; (d) descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, and total number of containers; and (e) copies of all product warranties for the item(s) delivered.

Vendor must submit separate invoices, in duplicate, on each purchase order after each delivery. Invoices must (a) contain the information stated above; (b) separately itemize any transportation and delivery charges, and include associated documentation; (c) include a properly signed copy of the delivery receipt; and (d) be mailed directly to the ordering Cooperative member. Unless specified otherwise in this Proposal Invitation, the service fee due pursuant to section E.12 (Service Fee) of these Terms and Conditions is included in the awarded pricing and must not be separately itemized in the invoice.

Payment is due after a Cooperative member’s receipt and acceptance of ordered products or services and the documentation identified above, including a complete and correct invoice, in accordance with the Prompt Payment Act (Chapter 2251 of the Texas Government Code.) A Cooperative member is not responsible for products delivered or invoiced without a valid purchase order number.

A Cooperative member’s obligation to Vendor is payable only and solely from funds available for the purpose of the purchase. Lack of funds will render a member’s purchase order null and void to the extent funds are not available and any delivered but unpaid product will be returned to Vendor. Neither the Cooperative nor TASB is liable or responsible for any payment owed Vendor by a Cooperative member under the Contract.

7. Product Inspection, Testing, and Defective Items

Products supplied under the Contract must be delivered in the best possible condition, be covered by the product warranties provided by Vendor and/or the product manufacturer to other customers, and are subject to inspection, testing, and approval by the Cooperative or a Cooperative member. Tests may be performed on samples taken from any regular shipment of the product. In the event a tested product fails to meet or exceed all requirements of the item specifications or these Terms and Conditions, Vendor must pay the cost of the samples and the testing. Upon receipt of notification from the Cooperative or Cooperative member, Vendor must pick up and replace the defective product within five (5) business days or on the next service date, whichever is sooner, without charge for the replacement or delivery. Additionally, the Cooperative or member may dispose of defective products that are not picked up and replaced by Vendor, without cost. Products damaged in shipment are considered defective for purposes of the foregoing.

Latent defects discovered after delivery and acceptance of any products may result in revocation of the acceptance of such products. The Cooperative must have access to Vendor's place of business during normal business hours for the purpose of inspecting any awarded product.
8. Substitutions
Except as provided in this section E.8, the Cooperative will not accept substitutions to any product(s) after a Notice of Award has been issued. If an awarded product is discontinued by the manufacturer and the same manufacturer offers an equivalent replacement product, Vendor may substitute the replacement product for the awarded product, provided that Vendor submits supporting documentation to the Cooperative and receives the Cooperative’s written authorization for the requested substitution in advance.

9. Product and Service Guarantees and Warranties
Vendor must not limit or exclude any implied warranties and shall extend such warranties on the awarded product as are normally provided to other customers of Vendor. Additionally, a minimum of a ninety (90)-day product guarantee or the manufacturer’s standard commercial warranty, whichever is greater, will apply to all awarded products. At a minimum, all product warranties must provide for replacement of defective merchandise, parts, and labor, and include pick-up of the defective merchandise from the location specified by the Cooperative member and delivery of the replacement(s) to the same location. The warranty period is effective from the date the Cooperative member accepts the product.

10. Multiple Distribution Centers and Single Point of Contact
If Vendor delivers products out of more than one warehouse or distribution center, all warehouses or distribution centers involved in the distribution plan must carry or have timely access to all awarded items and must be able to respond to orders in a timely manner. Unless otherwise specified in this Proposal Invitation, product substitutions are not allowed, and the involvement of multiple distribution centers does not alter the restriction against product substitution. The Cooperative and Cooperative members will have one Vendor contact person for overall contract management relative to the Contract or purchase order, even if Vendor uses multiple distribution centers, and the Cooperative and its members will not be required to deal with multiple Vendor contacts for overall contract management.

11. The BuyBoard
The awarded Contract will be posted on the BuyBoard website as an online electronic catalog(s). A Cooperative member that wishes to procure goods or services under the Contract will initiate a purchase order through the BuyBoard, which will be transmitted to Vendor. All purchase orders generated by or under the contract must be processed through the BuyBoard. Except as expressly authorized in writing by the BuyBoard Administrator, Vendor is not authorized to process a purchase order received directly from a Cooperative member.

Vendor must maintain the computer and telephone hardware necessary to provide for the electronic receipt of purchase orders, and pay such costs and fees as may be imposed by a supplier or service provider for the software, equipment and service required to use the BuyBoard.

12. Service Fee
 Vendor must pay the Cooperative the service fee specified in this Proposal Invitation and, unless this Proposal Invitation provides otherwise, the service fee is included in the awarded pricing. Vendor must remit the service fee to the Cooperative in Austin, Texas, promptly upon receipt of each service fee invoice. Vendor agrees to provide the Cooperative with copies of all purchase orders generated by or under the Contract that are received directly from Cooperative members, or such other documentation regarding those purchase orders as the BuyBoard Administrator may require, for the purpose of allowing the Cooperative to bill and collect the service fee, and for compiling required purchasing history. Additionally, the Cooperative has the right, upon reasonable written notice, to review Vendor’s records pertaining to purchases under the Contract with Cooperative members to verify the accuracy of service fees payable from Vendor.
13. Disclaimer of Warranty and Limitation of Liability
THE COOPERATIVE AND TASB (BOTH D/B/A BUYBOARD) DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE AVAILABILITY, ACCURACY, CONTENT OR ANY OTHER ASPECT OF ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED UNDER THE CONTRACT AWARD, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITH RESPECT TO ANY AND ALL CAUSES OF ACTION ARISING UNDER OR RELATED TO THE CONTRACT, NEITHER THE COOPERATIVE NOR TASB, NOR THEIR RESPECTIVE OFFICERS, BOARD MEMBERS, EMPLOYEES OR AGENTS, IS LIABLE TO VENDOR UNDER ANY CIRCUMSTANCES FOR LOST REVENUE, DATA OR PROFITS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, EVEN IF THE COOPERATIVE AND/OR TASB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY PROVIDED BY LAW, IN NO EVENT WILL THE COOPERATIVE AND/OR TASB’S TOTAL JOINT LIABILITY TO VENDOR EXCEED THE AMOUNT OF THE SERVICE FEE PAID BY VENDOR DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

Neither the Cooperative nor TASB is in any way liable to Vendor for a Cooperative member’s performance or nonperformance of the member’s obligations under the Contract or purchase order.

14. Sales Tax
Cooperative members are governmental entities which are generally exempt by law from the payment of state sales tax and federal excise tax. Vendor may request a Cooperative member to provide a Tax Exemption Certificate, or the member may establish its tax exempt status by including tax exemption information or tax exemption certificate with the purchase order as authorized under law. Vendor is responsible for collecting such taxes, if any, as may be due from a Cooperative member and remitting payment to the appropriate taxing authority.

15. Use of Logo and Trade Name
The BuyBoard trade name and logo are proprietary to TASB and have been specifically licensed by TASB to the Cooperative. Vendor may not use, display, or otherwise distribute the BuyBoard logo or trade name except in strict accordance with the Cooperative’s written guidelines posted on the BuyBoard website.

16. Indemnification
Vendor agrees to defend, indemnify, and hold harmless the Cooperative, TASB and Cooperative members, and their officers, board members, agents and employees, from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including court costs and attorney’s fees, arising out of or resulting from any acts or omissions of Vendor or its agents, employees, suppliers or contractors or subcontractors in the execution of or performance under the Contract or a purchase order, as applicable.

17. Intellectual Property Infringement
Without limiting the scope of section E.16 (Indemnification) of these Terms and Condition, if any claim is asserted, or action or proceeding brought against the Cooperative or a Cooperative member that alleges that all or any part of the products supplied by Vendor, in the form supplied or modified by Vendor, or its subcontractors pursuant to Vendor’s sole directions, infringes or misappropriates any United States intellectual property, intangible asset, or other proprietary right, title or interest (including, without limitation, any copyright or patent or any trade secret right, title, or interest), or violates any other contract, license, grant, or other proprietary right of any third party, the Cooperative, upon its awareness, shall give Vendor prompt written notice thereof. Vendor shall defend, and hold the Cooperative and the Cooperative member harmless, against any such claim or action and shall indemnify the Cooperative and Cooperative member against any liability, damages and costs resulting from such claim.
In addition, if, in any such suit arising from such claim, the continued use of the product for the purpose intended is enjoined by any court of competent jurisdiction, Vendor shall, at its expense and option, either (a) procure for the Cooperative member the right to continue using the product; (b) modify the product so that it becomes non-infringing; (c) replace the product or portions thereof so that it becomes non-infringing; or (d) allow the Cooperative member to return the product and refund the purchase price (less reasonable depreciation for use.)

18. Remedies for Default and Termination of Contract

Except as otherwise provided for in these Terms and Conditions, either party may terminate the Contract in whole or in part in the event of the other party's substantial failure to fulfill its obligations under the Contract through no fault of the terminating party; provided, however, that the defaulting party is given at least ten (10) business days prior written notice of the default and intent to terminate (delivered by certified mail, return receipt requested, or other method that similarly documents receipt), and a ten (10) business day opportunity to remedy the default to the satisfaction of the terminating party (or, in the event of default based on Vendor's failure to timely remit the service fee due the Cooperative, such longer cure period as may be established by Cooperative policy.)

At the Cooperative’s option and in addition to any other remedies it may have available, the Cooperative may terminate the Contract if Vendor fails to adhere to or violates any of the provisions of these Terms and Conditions, including the certifications. Without limiting the scope of the foregoing, one or more of the following constitute grounds for termination:

a) Delivery of product that fails to meet the item specifications;
b) Delivery of product that is defective or fails to pass product inspection;
c) Delivery of a product substitution, except as specifically authorized;
d) Failure to meet required delivery schedules;
e) Failure to timely supply the awarded products or services at the contract price;
f) Failure to timely remit any service fee due the Cooperative under the Contract or any other BuyBoard contract with Vendor;
g) Processing a purchase order received directly from a Cooperative member, without prior written approval from the BuyBoard Administrator;
h) Providing architectural or engineering services under the Contract that must be procured pursuant to the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code); or
i) Selling non-awarded goods or services under the Contract.

Notwithstanding any other provision of this section E.18, in the event of Vendor’s default under or breach of any provision in the Contract, the Cooperative reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of the Cooperative or necessary or appropriate to protect: or provide best value to Cooperative members. Without limiting the scope of the foregoing, the Cooperative or its administrator may temporarily inactivate (suspend) Vendor from the BuyBoard website and as a BuyBoard vendor, with or without prior notice to Vendor, if the Cooperative or its administrator determines that the nature of the breach warrants such action, and the temporary inactivation will remain in effect pending further action or termination of the Contract by the Cooperative or its administrator. Vendor remains liable for all obligations and responsibilities incurred prior to and during any temporary inactivation and prior to termination, as applicable.

In the event the Cooperative terminates the Contract, in whole or in part, the Cooperative reserves the right to award the terminated Contract, or any portion thereof, to the next Proposer the Cooperative determines to provide best value to Cooperative members.
A Cooperative member has no authority to terminate the Contract at the Cooperative level for default, but may terminate a purchase order or refuse to accept delivery as provided for in these Terms and Conditions or for Vendor's material breach of a term or condition included in a member purchase order or supplemental contract. Additionally, the Cooperative and Cooperative members may sue for breach of contract and specific performance and, in addition to contract damages, recover attorneys' fees and costs.

Neither the Cooperative nor a Cooperative member will be liable to Vendor for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Vendor's default or breach of contract.

If any delay or failure of performance is caused by a Force Majeure event as described in section E.19 (Force Majeure) of these Terms and Conditions, the Cooperative may, in its sole discretion, terminate the Contract in whole or part, provided such termination complies with the procedures set out above. Any Contract termination resulting from any cause other than a Force Majeure event will be deemed valid reason for not considering any future proposals from the defaulting Vendor.

In the event a Vendor's Contract is terminated under this section E.18, Vendor shall remain responsible for payment of all service fees to the Cooperative for products and services sold to Cooperative members prior to such termination.

19. Force Majeure
The term Force Majeure includes, but is not limited to, governmental restraints or decrees, provided they affect all companies in Vendor's industry equally and are not actions taken solely against Vendor; acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage.

The Cooperative, Cooperative members, and Vendor are required to use due caution and preventive measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred rests on the party seeking relief under this section E.19. The claiming party must promptly notify the other party in writing, citing the details of the Force Majeure event, use due diligence to overcome obstacles to performance created by the Force Majeure event, and resume performance immediately after the obstacles have been removed, provided the Contract has not been terminated in the interim.

Delay or failure of performance of the Contract or a purchase order caused solely by a Force Majeure event will be excused for the period of delay caused solely by the Force Majeure event, provided the party claiming the event promptly notifies the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure.

Neither the Cooperative nor a Cooperative member will be responsible for any cost incurred by Vendor because of the Force Majeure event unless the Cooperative member has requested, in writing, that Vendor incur such cost in connection with any delay or work stoppage caused by the Force Majeure event.

Notwithstanding any other provision of this section E.19, in the event Vendor's performance of its obligations under the Contract is delayed or stopped by a Force Majeure event, the Cooperative may, at its sole option, terminate the Contract in accordance with section E.18 (Remedies for Default and Termination of Contract) of these Terms and Conditions. This section E.19 does not limit or otherwise modify any of the Cooperative's rights as provided elsewhere in the Contract.
F. Miscellaneous

1. Assignment
Vendor may not sell, assign, transfer, convey or subcontract any responsibility or obligation created by the contract without the Cooperative's prior written consent. In determining whether to consent, the Cooperative will consider relevant factors, including whether the person to which the sale, assignment, transfer, conveyance or subcontract is proposed is bound to and will honor all obligations and responsibilities imposed on Vendor under the Contract, and the best interest of and value to Cooperative members. Vendor's attempted sale, assignment, transfer, conveyance or subcontracting of any part of the Contract except in compliance with this section F.1 is void and ineffective.

If Vendor ceases distribution of an awarded product for any reason during the Contract term and the Cooperative determines that continued availability of the product provides best value to Cooperative members, the Cooperative reserves the right to place the manufacturer of such product on the BuyBoard for the remainder of the Contract term, in which event Vendor's Contract for such product will be deemed assigned to the product manufacturer.

2. Notices
Unless otherwise provided for in this Proposal Invitation, any written notice or other communication required by the Contract or by law will be conclusively deemed to have been given and received on the third business day after such written notice has been deposited in the U.S. Mail, properly addressed, and with sufficient postage affixed thereto, provided that actual notice may also be given in any other manner used in commerce.

3. Equal Employment Opportunity (EEO) Disclosures
Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which Vendor's primary place of business is located. In accordance with such laws, regulations and executive orders, Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, disability or genetic information, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies.

4. Applicable Law, Venue and Dispute Resolution
The Contract is governed by and will be construed according to the laws of the State of Texas, including the Uniform Commercial Code (UCC) as adopted in the State of Texas as effective and in force on the date of the Contract. Venue for any litigation concerning the Cooperative or TASB lies in Austin, Travis County, Texas, and venue for any litigation between a Cooperative member and Vendor arising under the Contract lies in the home county of the member. The parties have the mutual affirmative duty to attempt to resolve any disputes that arise under the Contract in good faith at the least possible expense prior to the initiation of any type of judicial or administrative proceeding.

5. Waiver
No claim or right arising out of a breach of the Contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. A party's failure to require strict performance of any provision of the Contract does not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.
6. Interpretation – Parol Evidence
This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade is relevant to supplement or explain any terms used in the Contract. Acceptance or acquiescence in a course of performance rendered under the Contract is not relevant to and does not determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

7. Right to Assurance
Whenever the Cooperative in good faith has reason to question Vendor's intent to perform, the Cooperative may demand that Vendor give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the Cooperative may treat the failure as an anticipatory repudiation of the Contract.

8. Non-Affiliations Clause
Texas law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. A Cooperative member that is a governmental entity (a) reserves the right to rescind a multi-year purchase order or other agreement to purchase products or services under the Contract at the end of the member's fiscal year if it is determined that funding is not available to extend the agreement; and (b) will use its best efforts to attempt to obtain and appropriate funds for payment.

9. Invalid Term or Condition
If any term or condition of the Contract is held invalid or unenforceable, the remainder of the Contract will not be affected and will be valid and enforceable.

10. Remedies Cumulative
The remedies available to the Cooperative, a Cooperative member, or Vendor under this Contract are in addition to any other remedies that may be available under law or in equity.

11. Signatures
Except as required pursuant to section B.13 (Proposal Signatures) of these Terms and Conditions with respect to Proposals and related documentation or as otherwise specifically required in these Terms and Conditions, all notices, requests, amendments and other written documentation required or authorized under the Contract may be provided by facsimile or as an imaged document, and an electronic, facsimile or imaged signature shall be deemed an original.