

INTERLOCAL AGREEMENT
FOR EDUCATIONAL PURCHASING COOPERATIVE OF NORTH TEXAS

THIS INTERLOCAL AGREEMENT FOR THE EDUCATIONAL PURCHASING COOPERATIVE OF NORTH TEXAS (“EPCNT”) (the “Master Agreement”) is made and effective on the 1st day of January, 2004, by and among the independent school districts named on the attached Exhibit “A”.

DEFINITIONS

1. “EPCNT”: (i) is a local cooperative organization as such term is defined in Texas Local Government Code Section 271.001; (ii) is established and formed by the Members pursuant to this Master Agreement; (iii) shall be composed of the Members and Participants; and (iv) shall have no authority or power other than to enter into future Interlocal Participation Agreements (attached hereto as Exhibit “B”) with Participants pursuant to this Master Agreement in order to make Participants a party to this Master Agreement.
2. “Members” refers to the member independent school districts collectively, which are set out in attached Exhibit “A”.
3. “Participant” refers to any entity which may join the EPCNT after the execution of this Master Agreement.
4. “Parties” refers to the collective EPCNT membership which includes the Members, Participants and any other entity authorized to act as a party to this Master Agreement.
5. “Party” refers to an individual Member or Participant.

RECITALS

WHEREAS, as part of their respective governmental functions, Members purchase goods and services pursuant to laws and regulations of the State of Texas; and

WHEREAS, Members research and determine opportunities for the purchase of various goods and services to meet their respective needs; and

WHEREAS, it would be advantageous to the Members and Participants to cooperatively share information, training, research, procedures and opportunities for purchasing goods and services used by all Parties to this Master Agreement; and

WHEREAS, this Master Agreement sets out a method for the Parties to cooperate in fulfilling their purchasing needs in order to benefit the citizens served by the Parties; and

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WHEREAS, the Parties, in performing governmental functions or in paying for the performance of governmental functions or services hereunder shall make that performance or those payments from current revenues legally available to that Party,

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. AUTHORITY

This Master Agreement is entered into by the Members hereto pursuant to the authority contained in the Interlocal Cooperation Act, Texas Government Code Section 791 et seq. and in Subchapter F, of Chapter 271 of the Texas Local Government Code. The provisions of Chapter 791 of the Texas Government Code and the provisions of Subchapter F, of Chapter 271 of the Texas Local Government Code are incorporated in this Master Agreement and this Master Agreement shall be interpreted in accordance with those laws.

2. DUTIES OF THE MEMBERS

The Members agree to undertake the following, from time to time, as may be appropriate:

- a. Coordinate and host multi-governmental entity solicitations for purchase of goods and services from third party vendors, as may be determined from time to time to be cost effective and provide efficiencies as consolidated purchases.
- b. Make available specifications, documents, software, procedures and related items in connection with bidding and purchasing processes.
- c. Actively participate in and provide support to meetings and other activities conducted by the EPCNT for the purpose of promoting the services and carrying out the functions of the EPCNT.
- d. Maintain as confidential, subject to the Texas Public Information Act, information supplied by Parties to the EPCNT and deemed by the EPCNT to be confidential.

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3. EXPANSION OF MASTER AGREEMENT

- 3.1 The Members may, at their sole and exclusive discretion, extend this Master Agreement by agreeing to include other Participants. Additional Participants to this Master Agreement will only be those parties who may enter into interlocal agreements pursuant to Texas Government Code Chapter 791, and/or participate in cooperative purchasing programs pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code.
- 3.2. Participants may become a part of this Master Agreement by execution of a separate Interlocal Participation Agreement, which is attached hereto as Exhibit "B". The Members hereby establish and form by this Master Agreement EPCNT as a local cooperative organization; as such term is defined in Texas Local Government Code Section 271.001, for the sole purpose of entering into future Interlocal Participation Agreements with Participants. The separate Interlocal Participation Agreement is to be executed by the Authorized Representative of the EPCNT and the Participant. The Members hereby appoint the Officers of the North Texas Purchasing and Supply Management (NTPSM) as the Authorized Representatives of EPCNT for the sole purpose of executing the separate Interlocal Participation Agreement with Participants. The Participant and any additional Participants entering into an Interlocal Participation Agreement agree that the Participant shall be bound by the terms and conditions of the Master Agreement and the Interlocal Participation Agreement executed between the EPCNT and the Participant.

4. PURCHASING AUTHORITY

- 4.1. All district or cross-district contracts for the purchase of goods and services, regardless of whether formed as a result of EPCNT activity or interaction shall be directly between the Members or Participants or combinations of the Parties and Vendors providing goods and services to the associated governmental entities.
- 4.2. The EPCNT, in and of itself, shall not have any authority to make purchases of goods and services directly with vendors or contractually bind its Members or Participants to any third party agreements (except for the Interlocal Participation Agreement described in paragraph 3.2) for the purchase of products and services.

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5. GOVERNING LAW

This Master Agreement and all actions taken pursuant to this Master Agreement shall be governed by the laws of the State of Texas respecting independent school districts. Members specifically elect to be governed by the laws regarding purchasing found in Chapter 44 of the Texas Education Code. All action of this alliance shall be governed by the laws of the State of Texas and venue for any litigation regarding this Agreement or the Parties hereto shall be in Tarrant County.

6. FEES AND EXPENSES

Fees are to be established on an annual basis and are voted on by the membership.

7. INITIAL TERM; TERMINATION; AUTOMATIC RENEWAL

- 7.1. The term of the Master Agreement shall commenced on January 1, 2004 and extended for an initial period ending on December 31, 2004. In the event additional Participants become parties to this Master Agreement, the term for the additional Participants shall commence on the date the additional Participant becomes a Participant and shall end on August 31 following the Participant's initial membership date.
- 7.2. The Master Agreement shall automatically extend from September 1st to August 31st of each subsequent year under the terms and conditions then in effect for successive one (1) year periods from the initial period. Any Party to this Master Agreement or an Interlocal Participation Agreement may terminate their membership upon thirty (30) days prior written notice to the EPCNT.
- 7.3. The Members shall have the right to terminate the Master Agreement with any Member or any Interlocal Participation Agreement with any Participant during any term for the Party's failure to follow the terms and conditions of this Master Agreement, provided that the EPCNT gives the Party a fifteen (15) day written notice of the deficiencies and an opportunity to cure them.

8. ASSIGNMENT; SUBCONTRACT; NO THIRD-PARTY BENEFICIARIES; IMMUNITY

- 8.1. This Master Agreement is a privilege for the benefit of the Members and/or Participants and may not be assigned in whole or in part by the Party to any other person or entity. The Members may not assign this Master Agreement or subcontract any of its obligations hereunder. This Master Agreement is entered into for the sole benefit of the Parties. Nothing in this Master Agreement shall be construed as conferring any rights, benefits, remedies or claim upon any persons,

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firm, corporation or other entity.

- 8.2. Nothing in this Master Agreement, or in any exhibit or attachment hereto, shall be construed to affect, alter, or modify the immunity of the Parties under the Texas Civil Practice and Remedies Code § 101.001 et seq. It is expressly understood and agreed that in the execution of this Master Agreement, none of the Parties waives, nor shall be deemed to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

9. DEFAULT AND REMEDIES

If any Party fails to perform as required by any provision hereunder, and continues in such failure for fifteen (15) days after written notice has been sent by the EPCNT to the Party, the Party shall be deemed in default under this Master Agreement.

10. DISCLAIMER OF WARRANTIES

All Parties to the Master Agreement acknowledge and agree that the Members or the EPCNT are not the manufacturers of equipment, and that both the Members and the EPCNT hereby disclaim all representations and warranties, direct or indirect, express or implied, written or oral, in connection with the equipment or its function (whether purchased or leased by the Party from a Member sponsored contract or another), including but not limited to any and all express and implied warranties of suitability, durability, merchantability, and fitness for a particular purpose.

11. FORCE MAJEURE

The EPCNT and/or its Members do not assume and shall have no liability under this Master Agreement for failure in performance under this Master Agreement due directly or indirectly to causes beyond the control of the EPCNT or its Members or its Participants, including, but not restricted to, acts of God, acts of governmental entities, acts of the public enemy, strikes, or unusually severe weather conditions.

12. LIMITATIONS OF LIABILITY

EPCNT and/or its Members shall not be liable to the Parties or any other person for any loss or damage, regardless of cause. The Parties agree that EPCNT is a local cooperative organization that has been established merely to facilitate a cooperative purchasing arrangement by and among the Members and Participants. To the fullest extent permitted by law, Members and Participants agree that EPCNT shall not be liable for any damages of any nature caused to a Party by any failure, defect, or malfunction of any goods and services purchased through this Master Agreement, and

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to waive any claims, actions or causes of actions that it may accrue against EPCNT as result of purchasing goods and services through this Master Agreement.

13. AMENDMENT; WAIVER; SEPARABILITY; NOTICE

- 13.1. Amendments to or modification of this Master Agreement shall be in writing and signed by the authorized representatives of the Members and any Participants. Lack of enforcement of any right under this Master Agreement by any Party shall not constitute a waiver of that right or any other in the future. The terms and conditions of this Master Agreement supersede other agreements, written or oral, between the Parties regarding the subject of this Master Agreement. Should a court of competent jurisdiction find any part of this Master Agreement invalid or unlawful, the remainder of this Master Agreement shall remain in full force and effect, consistent with the original intent of the Parties. Without limiting the effect of the foregoing sentence, if EPCNT is ever determined by any court of competent jurisdiction, or by another competent governmental authority, not to be a properly formed and established local cooperation organization under Subchapter F, Chapter 271 of the Local Government Code, then this Master Agreement shall remain in full force and effect as an Interlocal Cooperation Agreement by and among the Members and Participants pursuant to Chapter 791 of the Texas Government Code.
- 13.2 Any notice, communication or demand required or permitted to be delivered hereunder must be in writing.

14. NO ORAL AGREEMENTS

The Parties agree that this Master Agreement and its exhibits along with any authorized Interlocal Participation Agreements contain all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Master Agreement and any other writings, understandings, oral representations or contracts shall be deemed to be terminated, void and ineffective. All Exhibits attached to this Master Agreement shall be incorporated herein for all purposes as if set forth at length.

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15. NO SEPARATE LEGAL EXISTENCE; NO JOINT ENTERPRISE; INSURANCE

- 15.1. It is not the intent of the Members that EPCNT will have a separate legal existence from the Members composing it, nor is it contemplated that EPCNT may sue or be sued. If EPCNT is named a party in a legal action, then each Member shall be responsible for an equal share of the costs. EPCNT shall not provide liability or any other types of insurance directly to its Members or Participants and all Parties shall only be provided insurance coverage to the extent authorized by their own sponsoring governing entity.
- 15.2. Notwithstanding anything in the Master Agreement to the contrary, nothing in this Master Agreement is intended to create a joint enterprise between or among the Members or any Participants. The purpose of this Master Agreement is to gain the advantage of economies of scale and the reduction of advertising, administrative, and overhead expenses relating to the purchasing of goods and services by allowing any participant in the EPCNT to enter into individual contracts with participating vendors. The only parties to those contracts will be the respective individual Party and the vendor. No other Party has any right of control over that contract. No other Party to this Master Agreement has the authority to enter into contracts or to assume any obligation for any other Party, nor to make warranties or representations on behalf of any other Party.

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Exhibit A
Master Agreement Member Acceptance

Executed to be effective the 1st day of January, 2004.

MEMBER DISTRICT:	MEMBER DISTRICT:
Allen ISD	Grapevine-Colleyville ISD
Azle ISD	Hurst-Euless-Bedford ISD
Birdville ISD	Irving ISD
Crowley ISD	Keller ISD
Carrollton-Farmers Branch ISD	Lewisville ISD
Cedar Hill ISD	Mansfield ISD
Coppell ISD	McKinney ISD
Dallas ISD	Mesquite ISD
DeSoto ISD	Plano ISD
Duncanville ISD	Richardson ISD
Frisco ISD	Rockwall ISD
Garland ISD	

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EXHIBIT “B”

INTERLOCAL PARTICIPANT AGREEMENT

This Interlocal Participant Agreement (“Participant Agreement”) is entered into by the Members of the Educational Purchasing Cooperative of North Texas (“Members”), acting on behalf of their school districts and McKinney Independent School District (“Participant”), a governmental entity authorized to enter into an Interlocal agreement pursuant to the authority contained in the Interlocal Cooperation Act, Texas Government Code Section 791, et seq., for the purpose of joining and participating in the Educational Purchasing Cooperative of North Texas.

In consideration of the foregoing and the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. PARTY TO INTERLOCAL AGREEMENT

- 1.1. Participant hereby becomes a party to the certain Interlocal Agreement for Educational Purchasing Cooperative of North Texas made and effective on January 1, 2004 (the “Master Agreement”) and agrees to be bound by all terms and conditions set out in the Master Agreement, as modified and amended herein and in any other additional Interlocal participant agreements.
- 1.2. Participant shall have all rights and duties as a founding Member except to the extent limited by the Master Agreement. The Master Agreement is attached hereto as Exhibit 1 and the terms and provisions of the Master Agreement are incorporated in this Participation Agreement.

2. TERM

- 2.1. Participant’s rights and duties under the Master Agreement shall commence on the effective date of this Participant Agreement. Participant recognizes and agrees that the Master Agreement provides an initial term of the Master Agreement and also provides for a uniform ending date applicable to all Parties and is automatically renewable.

3. DEFAULT, REMEDIES

- 3.1. In the event of default by Participant, as the term default is used in the Master Agreement, the Members shall have the remedies provided in the Master Agreement and shall also have the right to terminate Participant’s participation in

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the Master Agreement or suspend Participant's participation in the Master Agreement without terminating or otherwise affecting the Master Agreement and the other parties to the Master Agreement or other Participant Agreements.

4. **FEES**

Annual fees shall be assessed to each Member District and other Participants for participation in this Agreement as outlined in **Section 6. FEES AND EXPENSES**.

5. **NOTICE**

Any notice, communication or demand required or permitted to be delivered hereunder or under the Master Agreement must be in writing and shall be deemed to be delivered to Participant upon receipt at the following address and/or email:

Participant Name: McKinney Independent School District

Contact Name: Laura Duree

Address: #1 Duvall St.

City: McKinney

State: Texas Zip Code: 75495

Phone: 469-302-4009

E-Mail Address: purchasing@mckinneyisd.net

Any Party may, from time to time, designate any other address, phone and e-mail address for this purpose by written notice to the EPCNT without additional action required by EPCNT or its Member's governing Board.

6. **WARRANTY OF AUTHORITY AND DUE EXECUTION**

Participant warrants to the Members of the Educational Purchasing Cooperative of North Texas and other parties to the Master Agreement that Participant has the authority to enter into this Participant Agreement and the person executing this Agreement is duly authorized on behalf of the Participant's governmental entity to enter into this Participant Agreement and that Participant has agreed to be bound by the Participant Agreement, the Master Agreement and the duties and

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obligations of Participants set out in those agreements.

Dated to be effective this the _____ day of _____, 20__.

EDUCATIONAL PURCHASING COOPERATIVE OF NORTH TEXAS

By: _____
Signature

EPCNT Authorized Representative

Title: President

PARTICIPANT

By: _____
Signature

Name: _____

Title: _____

Sponsor Government Entity: _____