



Request for Proposals for CSCOPE Alignment/Correlation

Issued by:

The Texas Education Service Center Curriculum Collaborative
through their fiscal agent, Education Service Center Region XIII
5701 Springdale Road
Austin, Texas 78723

RFP: CSCOPE Alignment/Correlation

Submittal Deadline and Proposal Opening:

Friday, June 24, 2011 – 3:00 p.m. CST



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1.0 Introduction

The Texas Education Service Center Curriculum Collaborative (TESCCC), a non-profit provider of curriculum related content in the Texas K-12 education market, is seeking proposals from vendors who are interested in aligning/correlating their educational products with CSCOPE[®], an online curriculum management system developed and owned by TESCCC.

The purpose of this Request for Proposals (RFP) is to identify and select vendors to enter into agreements with TESCCC whereby the vendors align or correlate their product(s) with CSCOPE and be granted rights within the Texas educational market to use the CSCOPE name and mark in its marketing and selling efforts. The overriding objective of these alignments/correlations is to support more efficient and effective teaching practices that will in turn enhance student learning.

By aligning/correlating their product(s) with the K-12 CSCOPE curriculum system, the awarded vendor(s) will be allowed to market their aligned/correlated products to over 750 Texas school systems that are current CSCOPE customers.

If an arrangement desirable by TESCCC cannot be achieved, TESCCC is under no obligation to execute any agreement with any vendor. However, it is anticipated that TESCCC will select five to ten vendors through this RFP process.

2.0 Notice to Proposers

2.1 Proposal Submission

Interested vendors are invited to submit a total of two (2) complete and identical copies of the *entire* proposal in response to this RFP. Proposers should submit one (1) sealed hardcopy proposal and one (1) electronic copy, on CD or flash drive, of their response to the fiscal agent for TESCCC by 3:00 p.m. CST on Friday, June 24, 2011. The electronic copy of the proposal must be PDF format. If there are any differences between the hard copy proposal and the electronic copy, the hard copy proposal response will be used in the evaluation process.

Responses should be provided in a container clearly marked on the outside to:

Education Service Center Region XIII (fiscal agent for TESCCC)

RFP: CSCOPE Alignment

Attention: Frank Haby

5701 Springdale Road

Austin, Texas 78723

Proposals must be submitted **both electronically and in hardcopy**. No proposal will be accepted after this deadline. All proposals submitted after the deadline will be returned to the proposer unopened.



Faxed or emailed responses are not appropriate for submission and will ***not*** be accepted or considered.

Receipt of a proposal does not obligate the TESCCC to pay any expenses incurred by the provider in preparation of the proposal. Before submitting a proposal, the provider shall consider the amount and character of the work described herein and the complexities involved in its proper execution. Multiple providers may be selected for the alignment/correlation detailed in this RFP.

The TESCCC reserves the right to accept or reject any or all proposals, waive all minor formalities and to choose the proposal(s) that best serves the interests of the TESCCC and CSCOPE customers.

2.2 Proposal Validity Period

Each proposal must state that it will remain valid for a minimum of ninety (90) days after the submittal deadline to allow time for evaluation, selection, and any unforeseen delays.

2.3 Notice of Intent to Submit a Proposal

All prospective proposers should notify the TESCCC in writing of their intent to submit a proposal, **Attachment A** by Friday, May 27, 2011 to Education Service Center Region XIII, Attention: Frank Haby, Email: frank.haby@esc13.txed.net. Failure to notify the TESCCC of the intent to submit a proposal will not disqualify the proposer from submitting a proposal.

2.3 Questions

Proposers will direct all questions or concerns regarding this RFP to the following contact:

Frank Haby, Director of Administrative Services
Education Service Center Region XIII
Email: frank.haby@esc13.txed.net

All contact and questions regarding this RFP should be directed to the proposal contact via email. The proposal contact must receive all questions or concerns no later than 5:00 p.m. CST on Friday, June 3, 2011. All responses will be provided as a formally issued addendum no later than 5:00 p.m. CST on Friday, June 10, 2011. Responses to all written questions will be posted on CSCOPE's website at www.cscope.us.

Communications regarding this RFP with any other CSCOPE staff member, TESCCC board member, or ESC staff member is prohibited. Communications with Gibson Consulting Group, TESCCC's contractor involved in the evaluation process, is also prohibited.

2.4 Addenda

The TESCCC reserves the right to revise and amend the specifications outlined in this RFP prior to the date set for the opening. Revisions or amendments, if any, will be made by issuing an addendum. All RFP addenda will be posted on CSCOPE's website at www.cscope.us no later than June 17, 2011.



2.5 Schedule of Events

Event	Date
RFP Release	Friday, May 20, 2011
Intent to Bid (desired but not required)	Friday, May 27, 2011
RFP Questions Due	Friday, June 3, 2011 by 5:00 p.m. CST
RFP Bidders Conference	None
Responses to Questions	Friday, June 10, 2011 by 5:00 p.m. CST
Proposal Due Date	Friday, June 24, 2011 by 3:00 p.m. CST
Oral Presentation/Phone Interview	July 2011
Anticipated Contract Award Date	August 2011

Finalists may be requested to provide an oral presentation or phone interview.

3.0 Background

3.1 CSCOPE Background

TESCCC is a non-profit organization governed by a board representing 19 regional Education Service Centers in the state of Texas. CSCOPE is a comprehensive online curriculum management system developed and owned by TESCCC with content aligned to the Texas Essential Knowledge and Skills in all academic core subject areas. Education Service Center Region XIII is a member of this collaborative and serves as the fiscal agent for the TESCCC.

CSCOPE provides a curriculum framework for grades K-12 in all core academic subject areas, and is updated based on changes in state standards or any other relevant changes/interpretations of state standards that may apply. Additional information about CSCOPE, including sample materials, can be found at www.cscope.us.

CSCOPE is targeted for use primarily by teachers and administrators. It is not a system designed for direct student access. The online system is powered by “*Curriculum Developer*,” a software tool developed by National Education Resources (NER) and customized for CSCOPE.



3.2 CSCOPE Vendor Management Program

TESCCC has been approached by many vendors interested in aligning/correlating their product(s) with CSCOPE. This prompted the launch of a vendor management program in 2009. To date, TESCCC has received over 80 alignment/correlation inquiries from interested vendors.

TESCCC is seeking to add vendor alignment/correlation agreements through this RFP process. The alignment/correlation agreement does not provide for any purchasing arrangement, such as participation in a co-operative purchasing or a reseller arrangement. TESCCC will not resell a vendor's product(s).

TESCCC currently provides the CSCOPE curriculum system to over 750 Texas school district, charter school, and private school customers, representing more than 70 percent of the school systems in the state. CSCOPE is used to support the education of over 1.5 million students, or approximately one-third of Texas K-12 enrollment. In 2010, use of the CSCOPE system was listed as an effective way for school systems to save money in the Texas Comptroller of Public Accounts Financial Allocation Study for Texas (FAST).

4.0 Alignment/Correlation Information

4.1 Target Market Areas for Alignment/Correlation

TESCCC will evaluate vendor proposals and expect to select 5 to 10 vendors with whom they will work to develop alignment/correlation agreements. The target market areas prioritized for this selection are:

- Digital learning products
- Literature resources
- Assessment products and tools
- Content related equipment (such as science lab equipment, but not computers)

TESCCC will **not** consider aligning/correlating with any of the following:

- **Vendors who are competitors of CSCOPE.** TESCCC will not pursue an alignment/correlation with a vendor that provides the same or similar functionality as CSCOPE. TESCCC is interested in vendors who provide supplemental materials and tools for teacher or student use.
- **Vendors who are interested in hosting the CSCOPE system.** TESCCC's current technology services agreement with NER does not expire until June 30, 2012.



- **Vendor products that compete with the currently-aligned vendor (ETA Cuisenaire) that has a limited exclusive agreement with TESCCC.** ETA/Cuisenaire provides hands-on materials kits and supplemental products for science, social studies, mathematics and English/language arts for Kindergarten through grade 12.

4.2 Description of Alignment/Correlation

The primary benefit of aligning/correlating vendor product(s) with CSCOPE is to make it easier for CSCOPE customers to incorporate or utilize the vendor's product(s) with the CSCOPE curriculum management system.

CSCOPE's curriculum framework contains curricular, assessment, and instructional components. One applicable component for alignment/correlation would be the Year at a Glance, which provides a quick snapshot of the entire year's scope and sequence for a particular grade level/subject. The Instructional Focus Documents (IFDs) provide a deeper level of detail by bundling specific standards into logical sequences for instruction. At the most detailed level is the Exemplar Lessons, which provide customizable model lessons for each six (or nine) weeks of instruction. Examples of each of these can be found on CSCOPE's website (www.cscope.us/samples.html). TESCCC is seeking alignments/correlations no deeper than the IFD level through this RFP.

4.3 Description of Trademark License Agreement

In exchange for financial remuneration, a selected vendor will have the right to use the CSCOPE[®] name and mark in its marketing and selling efforts. CSCOPE is not seeking any reciprocal rights from vendors. **Attachment B** provides the TESCCC Standard Trademark License Agreement.

In order to provide the broadest level of alignment/correlation to its customers, TESCCC is seeking non-exclusive agreements for product alignment/correlation. Multiple vendors offering similar products may be selected through this RFP. However, in some situations and at the discretion of TESCCC, exclusive arrangements may be possible. Respondents must submit a financial proposal assuming non-exclusivity, and may also submit a second financial proposal assuming an exclusive arrangement.

5.0 Proposal Format

Proposers shall submit one (1) hardcopy proposal in a 3-ring binder with tabbed sections (including attachments). In addition, one (1) complete copy of the entire proposal shall be submitted on CD or flash drive in PDF format. All proposal submissions should follow the format outlined to follow and include the following information:

Cover Letter:

A cover letter signed by an officer of the company committing the company to the proposal content.



Section 1: Vendor Profile

The vendor profile should include the following information:

- Company Information (name, type of products offered, number of years company has been in business, web site, physical address)
- Contact Person Information (name, phone number, email address, physical address)
- Ownership information including the type of organization (e.g. corporation, LLC, etc.) and Federal Employer Identification Number (FEIN). Subsidiary companies of the same parent company may submit separate proposals.
- Gross annual revenues for the submitting entity for the past three years.
- Gross annual K12 revenues in Texas for the past three years.

Section 2: Product Description

The product description must provide details about the product(s) that would be aligned/correlated with CSCOPE. This should include:

- A one to two page narrative description of each product line. Narrative descriptions are not required for each grade level or each content area. The intent is to gather general information about the product capabilities. The narrative description should address how the product is used (in school or at home); who uses the product (the teacher or the student); whether the product is static or interactive in nature; whether it is intended to be a primary content source or a supplemental content source; whether it is part of a specific curricular framework or intended to be used with other curricular frameworks; and any other information that would provide a good understanding of the product.
- For each product line provide the following information:
 - Grade levels supported
 - Content/subject areas supported
 - Years product line has been in existence
 - Number of Texas school systems (not campuses) using the product line during the 2010-11 school year
 - Number of total U.S. school systems (not campuses) using the product line during the 2010-11 school year



Section 3: References

Three current customer references must be provided. Texas customers are preferred but not required. References must be employees of the school system, and may include teachers, school administrators and/or district administrators. Each reference should include the following information:

- Name of school system customer using the product
- Contact person at the school system (name, title, phone number and email address)
- Specific product line(s) being used
- Length of time product line has been used by the school system

Section 4: Alignments/Correlations

Vendors must provide the following for each product line they wish to align/correlate with CSCOPE:

- 1) Description of the alignment/correlation: A brief description of each product line alignment/correlation proposed must be provided. Alignments for each grade level or content area are not desired.
- 2) Sample alignment/correlation materials: Using the sample materials on the CSCOPE web site, vendors must provide three specific examples of alignment/correlation materials showing how their product line would align/correlate with CSCOPE. Sample IFDs can be found at www.cscope.us/samples.html.
- 3) Description of the alignment/correlation process: Vendors must provide a description of its alignment/correlation process for each product line. This should include a description of steps in the proposed process for creating and validating the alignment/correlation of its product line to CSCOPE IFDs. This should include steps taken by the vendor as well as expectations for CSCOPE staff involvement. It is the desire of TESCCC to rely on vendor alignment/correlation processes and validate alignments/correlations through sample testing of individual alignments/correlation. Vendors who demonstrate a structured and effective alignment/correlation process that reduces the amount of CSCOPE staff time in reviewing and approving the alignments/correlation are preferred. Benefits of the alignment/correlation to school systems using CSCOPE and the vendor product should be included.
- 4) Names, qualifications, and availability of vendor staff or other resources (such as a contracted third party) to support alignment/correlation efforts.



Section 5: Financial Proposal

The non-exclusive rights to use the CSCOPE name and mark in vendor advertising of aligned/correlation products are set forth in the standard **Attachment B**. Selected vendors will also have the opportunity to have exhibit space at the CSCOPE annual conference, which attracts 4,000 to 6,000 teachers and administrators. Only invited vendors are allowed to show their product lines – there is no other exhibit hall for other third party vendors. In exchange for these rights and privileges, vendors must submit a financial proposal to compensate TESCCC for CSCOPE alignment/correlation.

The financial proposal must include an amount paid by the vendor to TESCCC upon execution of the licensing and trademark agreement.

The financial proposal must also include annual amounts to be paid to TESCCC for each of the four years in the contract term.

The amounts to be paid to TESCCC may be based on a fixed fee payment, as a percentage of incremental sales, a percentage of total sales above a specified level, other proposed methods, or a combination of methods.

A second financial proposal may be submitted that assumes limited exclusive rights to use the CSCOPE name and mark in vendor marketing and advertising. Limited exclusive rights means that no other vendor will be allowed to align/correlate similar products or product lines to CSCOPE as those offered by the vendor. Currently, TESCCC has one limited exclusive alignment agreement in place.

Section 6: Statement of acceptance to exceptions to contract terms

Vendors must include a statement signed by an officer of the company that: (1) indicates acceptance of the standard contract terms set forth in **Attachment B**, or (2) specifies any exceptions to the contract terms.

Section 7: Certificate of Notice of Eligibility

The completion of the attached Certificate of Notice of Eligibility, **Attachment C** is required. In compliance with TEC section 44.034, each person or business entering into a contract with Education Service Center Region XIII (fiscal agent for TESCCC) must give advance notice if the person, owner, or operator of the business has been convicted of a felony.

Section 8: Financial Stability

Vendor must provide a copy of a Dun & Bradstreet credit report or equivalent rating of financial stability. The report must include a vendor rating and the rating must be dated between June 2010 and May 2011. Additional financial information may be requested of vendor finalists later during the evaluation process.



6.0 Selection Criteria

TESCCC may award one or more vendor contracts based on the following criteria. Vendors must meet a minimum score level (50 percent of total possible points) for each category to be eligible for further evaluation. Then, cumulative scoring will be performed on those vendors.

- Value of the alignment/correlation to CSCOPE customers (25 points)
- Quality of products and any related services (15 points)
- Quality of alignment/correlation process and sample alignment materials provided (25 points)
- Qualifications and availability of vendor staff or other resources to support alignment/correlation efforts (5 points)
- Reputation of company and products in Texas school systems (5 points)
- Financial stability of vendor (5 points)
- Financial proposal (20 points)

Total possible points = 100

7.0 Contract Award

A response to this RFP is an offer to contract with the TESCCC based on the terms and conditions contained in this RFP. Responses do not become contracts unless and until they are accepted through a fully executed Trademark License Agreement (see **Attachment B**) with TESCCC.

The contract is null and void if sold or assigned to another company without written approval of the purchasing party.

Written notification of changes to company name, address, telephone number, etc. shall be provided to the purchasing party no later than three business days from the date of change.



Attachment A

Notice of Intent to Submit a Proposal



ATTACHMENT A
NOTICE OF INTENT TO SUBMIT A PROPOSAL

The undersigned organization hereby files a notice of intent to submit a proposal for:

CSCOPE Alignment/Correlation RFP

Name of Organization: _____

Point of Contact: _____

Mailing Address: _____

Phone Number: _____

Fax: _____

E-Mail: _____

Filing of this notice is not mandatory; however, it will assist the TESCCC in anticipating the volume of proposals in order to better expedite the review process and finalize contract awards.

Filing this notice in no way binds the organization to submit a proposal for: CSCOPE Alignment

While not preferable, Proposers who do not file this notice are still eligible to submit a proposal.

PLEASE SUBMIT THIS NOTICE BY EMAIL OR FAX AS SOON AS POSSIBLE AFTER RECEIPT OF THE REQUEST FOR PROPOSAL, BUT NOT LATER THAN FRIDAY, MAY 27, 2011, TO:

Region XIII Education Service Center (fiscal agent for TESCCC)

Attention: Frank Haby

Email: frank.haby@esc13.txed.net

Fax: 512-919-5374



Attachment B

Standard Trademark License Agreement



ATTACHMENT B
Standard TRADEMARK LICENSE AGREEMENT

This is a TRADEMARK LICENSE AGREEMENT (the Agreement), having an effective date of _____, by and between Texas Education Service Center Curriculum Collaborative, a Texas domestic non-profit corporation, acting through its fiscal agent Education Service Center Region XIII (collectively "TESCCC") and [VENDOR], a _____ corporation ("[VENDOR]").

RECITALS

The Parties desire to enter into this Master Agreement to provide the limited licensing of the CSCOPE Trademarks owned by TESCCC to [VENDOR] for use with [VENDOR] products and related Marketing Materials ([VENDOR] Products), and certain other related agreements between the Parties. In consideration of the mutual agreements contained herein, and the mutual benefits to be derived therefrom, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to such terms in this Article I, unless the context otherwise requires:

"**Affiliate**" of any Person means any Person directly or indirectly controlling, controlled by, or under common control with, any such Person and any officer, director or controlling Person of such Person.

"**Agreement**" means this Trademark License Agreement, together with all annexes, exhibits, attachments, schedules, addenda or modifications hereto.

"**CSCOPE**" refers to the comprehensive, customized, curriculum management system developed by TESCCC.

"**Marketing Materials**" means all printed, electronic, and video media used in the marketing, selling, and packaging of [VENDOR] Products, such as, but not limited to, flyers, brochures, web sites, links, videos, price lists, labels, signage, etc.

"**Net Sales**" means actual total invoiced price by [VENDOR] for the sale of the [VENDOR] Products less returns, discounts, rebates, allowances, third party commissions, third party royalties and credits, and excludes [VENDOR] professional development or training fees; applicable taxes; and shipping and handling fees collected in conjunction with such sale.



[VENDOR] and TESCCC are sometimes referred to collectively as the "**Parties**" and individually as a "**Party**".

"**Person**" means an individual, a partnership, a corporation, an association, a trust, a joint venture or a governmental entity.

"**Territory**" means the state of Texas. A product shall be considered to be sold or distributed within the Territory if the initial purchaser or distributee of such product is located in the Territory. Put differently, a [VENDOR] Product shall be considered sold or distributed in the Territory if the ultimate customer is located in the Territory.

ARTICLE II

TESCCC ALIGNMENT AND TRADEMARK USE

2.1 TESCCC Marks. During the Term of this Agreement, subject to the limitations set forth in Article 2, TESCCC hereby grants and [VENDOR] hereby accepts a limited non-exclusive license to use the TESCCC-owned trade names, trademarks and/or service marks associated with the CSCOPE system as set forth on Schedule 1 (the "TESCCC Marks"), in use in the preparation of Marketing Materials in a manner reasonably instructed and approved by TESCCC in the Territory only, for the sole purpose of promoting, marketing and selling [VENDOR] Products. During the term of this Agreement, [VENDOR] may also mark [VENDOR] Products with the term "For Use with CSCOPE" in a manner that is reasonably instructed by TESCCC.

2.2 Limitations and Quality Control. Any use of the TESCCC Marks by [VENDOR] shall be subject to the prior written approval of TESCCC, which approval shall not be unreasonably withheld, and [VENDOR] shall provide TESCCC with samples showing the use of the TESCCC Marks in Marketing Materials and promotional materials and [VENDOR] Products prepared by [VENDOR] for approval prior to distribution. [VENDOR] agrees to maintain a quality of services provided in connection with the TESCCC Marks and quality of [VENDOR] Products in a manner that is consistent with the quality of services which TESCCC presently provides in connection with the services currently provided under the TESCCC Marks and to perform all services in a professional, good and workman like manner with reasonable skill and care. No rights other than those specifically granted in this Article II are granted to [VENDOR] with respect to the TESCCC Marks. The Parties acknowledge that at all times during this Agreement TESCCC shall remain the owner of the TESCCC Marks. This Agreement does not provide any rights or privileges outside of the State of Texas. If CSCOPE is sold in other states, this Agreement may be amended in writing by the Parties and additional consideration may be negotiated. Upon the termination of this Agreement for any reason, [VENDOR]'s right to use TESCCC's Marks shall immediately terminate and [VENDOR] shall destroy all marketing and promotional materials bearing TESCCC Marks according to the provisions of Section 6.4 of this Agreement.



2.3 Other Licenses to the TESCCC Marks. This is a non-exclusive agreement, and as such TESCCC reserves the right to grant non-exclusive licenses to other third parties that provide similar products.

2.4 Flat Fee Payments. In consideration for the grant of the license to use the TESCCC Marks during the term of this agreement, [VENDOR] shall pay to TESCCC in U.S. dollars an annual flat fee of \$xxx (xxx USD) payable annually for the term of this Agreement, with the first annual payment being made upon the execution of this Agreement and each anniversary thereafter.

2.5 Royalty Payment. **(IF APPLICABLE)** During the term of this Agreement [VENDOR] shall pay TESCCC quarterly royalty payments of xx% (xx percent) of the [VENDOR] Net Sales revenue above \$xxx (xxx USD), from CSCOPE customers that were not [VENDOR] customers as of _____ (hereinafter, "New [VENDOR] Customers"). Each royalty payment shall be accompanied with a report detailing sales of [VENDOR] Products in the Territory during the quarterly payment period. Stated differently to avoid confusion, [VENDOR] shall report quarterly Net Sales revenue for [VENDOR] Products and make royalty payments, as necessary, within forty-five (45) days of the end of each quarter of the royalty period. The first royalty quarter will end on _____, and the first quarterly royalty report and payment shall be made within forty-five (45) days of _____.

2.6 Right to Audit. **(IF APPLICABLE)** [VENDOR] shall maintain accurate books and records with respect to the Net Sales during the term. Once each year during the contract term and once during the six (6) months immediately following the expiration or termination of this Agreement, a reputable audit firm selected by TESCCC and reasonably approved by [VENDOR], shall have the right, upon thirty (30) days prior written notice and during reasonable business hours, to inspect [VENDOR]'s books and records relating to the Net Sales. Within the first 90 days of the contract term, the audit firm shall also have the right to inspect and review the method [VENDOR] applies in tracking [VENDOR] Product sales under this Agreement. Once the books and records related to a certain period of time have been audited, TESCCC may not audit such books and records again. Such audit firm shall be required to sign a confidentiality agreement acceptable to [VENDOR]. Further, such audit firm shall limit their report to TESCCC as to whether the royalties paid were accurate without providing TESCCC with any further detail on [VENDOR]'s books and records. If such audit report shows an underpayment of more than ten percent (10%), [VENDOR] agrees to pay the amount of such underpayment owed and accrued interest at the prime rate and to pay the reasonable costs of the audit report, within thirty (30) days of receiving notification of the underpayment. In the event it is determined that [VENDOR] has overpaid the amounts due, TESCCC shall, at [VENDOR]'s discretion, refund the amount overpaid, or credit the overpayment to any amount due by [VENDOR] to TESCCC.

ARTICLE III OTHER AGREEMENTS

3.1 TESCCC Covenants. TESCCC shall, during the Term of this Agreement:



- (a) use commercially reasonable efforts to provide the necessary staff to provide instruction for and approve marketing materials developed by [VENDOR] pursuant to Section 2.2 of this agreement;
- (b) use commercially reasonable efforts to maintain the quality of the CSCOPE products;
- (c) provide [VENDOR] with applicable CSCOPE content in a mutually agreeable timeframe to enhance [VENDOR]'s ability to communicate appropriate sales and support information;
- (d) present on the CSCOPE website [VENDOR]'s name and [VENDOR] Products approved by TESCCC;
- (e) allow [VENDOR] to participate as a sponsor at one (1) CSCOPE conference per year, subject to the terms of a separate conference sponsorship agreement, at no additional cost to [VENDOR], that promotes [VENDOR] Products in a manner agreed upon by TESCCC and [VENDOR]; and,
- (f) provide [VENDOR] on a monthly basis names of all new CSCOPE customers along with a purchase date;

3.2 [VENDOR] Covenants. [VENDOR] shall, during the Term of this Agreement:

- (a) use commercially reasonable efforts to maintain the quality of [VENDOR] Products provided in connection with CSCOPE and the TESCCC Marks consistent with the quality TESCCC currently provides in connection with the products and services provided under the TESCCC Marks; and
- (b) participate as a sponsor in the CSCOPE annual conference and promote [VENDOR] Products in a manner agreed upon by TESCCC and [VENDOR];
- (c) use commercially reasonable best efforts to advertise, market and sell [VENDOR] Products in the Territory promptly upon execution of this Agreement;
- (d) provide CSCOPE on a monthly basis names of all New [VENDOR] Customers, along with a purchase date; ***(IF APPLICABLE under a royalty payment structure)***
- (e) maintain sufficient books and records to track Net Sales by school district, charter school or other educational entity; ***(IF APPLICABLE under a royalty payment structure)*** and,



(f) agree to not charge [VENDOR] customers a premium for any [VENDOR] Product, or pass through its costs incurred through this agreement that are in any way characterized as a CSCOPE-related charge.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1 Representations of TESCCC. TESCCC represents to [VENDOR], as of the date of this Agreement, as follows:

(a) To the knowledge of TESCCC, the TESCCC Marks do not interfere with, infringe upon misappropriate, or violate in any material respect any intellectual property of any third party.

4.2 Representations and Warranties of TESCCC. TESCCC represents and warrants to [VENDOR], as of the date of this Agreement, as follows:

(a) TESCCC has full power and authority to execute, deliver and perform this Agreement. All corporate action of TESCCC necessary for the execution, delivery and performance of this Agreement by TESCCC has been taken. This Agreement is the legal, valid and binding obligation of TESCCC, enforceable in accordance with its terms.

(b) Neither the execution and delivery of this Agreement or any other agreement or instrument to be executed and delivered in connection herewith, nor the consummation of the transactions or the performance of the obligations contemplated hereby or thereby, will violate or conflict with (i) any federal, state, or local law, regulation, ordinance, governmental restriction, order, judgment, or decree applicable to TESCCC, (ii) any provision of any charter, code of regulations or other governing or organizational instrument of TESCCC, or (iii) any material contract or other commitment or arrangement to which TESCCC is a party or by which TESCCC is bound.

This Section constitutes the exclusive provision relating to the Representations and Warranties in relation to the TESCCC Marks.

4.3 Representations and Warranties of [VENDOR]. [VENDOR] represents and warrants to TESCCC, as of the date of this Agreement, as follows:

(a) [VENDOR] has full power and authority to execute, deliver and perform this Agreement. All corporate action of [VENDOR] necessary for the execution, delivery and performance of this Agreement by [VENDOR] has been taken. This Agreement is the legal, valid and binding obligation of [VENDOR], enforceable in accordance with its terms.



(b) Neither the execution and delivery of this Agreement or any other agreement or instrument to be executed and delivered in connection herewith, nor the consummation of the transactions or the performance of the obligations contemplated hereby or thereby, will violate or conflict with (i) any federal, state, or local law, regulation, ordinance, governmental restriction, order, judgment, or decree applicable to [VENDOR], (ii) any provision of any charter, bylaws or other governing or organizational instrument of [VENDOR], or (ii) any material contract or other commitment or arrangement to which [VENDOR] is a party or by which [VENDOR] is bound.

(c) To their knowledge, [VENDOR] is in compliance with and shall continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and all regulations and guidelines issued pursuant thereto.

(d) [VENDOR] certifies that within the 12 months preceding the effective date hereof, to their knowledge, [VENDOR] has not been found guilty, in a judicial or state agency administrative proceeding, of unfair business practices. [VENDOR] also certifies that no officer has, within the 12 months preceding the effective date hereof, served as an officer of a [VENDOR] affiliate which has been found, in a judicial or state agency administrative proceeding in its domestic jurisdiction or the State of Texas, to be guilty of unfair business practices.

(e) [VENDOR] certifies that neither they, nor any officer have been convicted of a felony, nor are any of the named persons presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this proposed contract by any Federal or State Department or Agency.

ARTICLE V RESTRICTIVE COVENANTS

5.1 Confidential Information. In consideration of the mutual covenants contained herein, each Party covenants and agrees at all times to hold as secret and confidential (unless disclosure is required pursuant to court order, subpoena in a governmental proceeding, arbitration or pursuant to other process or requirement of law, in which case, such Party will provide the other Party reasonable notice prior to such disclosure) any and all knowledge, information, developments, methods, processes, trade secrets, know-how and confidences of the other Party, whether communicated by a Party to the receiving Party directly or indirectly, in writing, orally, or by inspection of tangible objects (including, but not limited to, documents, prototypes, software, samples and lists of CSCOPE purchasers and prospects), which is designated by the Party as "confidential", "proprietary", "secret" or a like designation, or which the receiving Party should reasonably know to be the confidential or propriety information of the disclosing Party ("Confidential Information"). Confidential Information will not include any information that (i) was publicly known and made generally available in the public domain prior to the time of the disclosure by the disclosing Party; (ii) becomes publicly known and made



generally available after disclosure by the disclosing Party to the receiving Party through no action or inaction of the receiving Party; (iii) is already in the possession of the receiving Party at the time of the disclosure, as shown by the receiving Party's records and files; (iv) is obtained by the receiving Party from a third party without a breach of the third party's obligations of confidentiality; or (v) is independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information, as shown by documents and other competent evidence in the receiving Party's possession. The phrase "made public" as used in this Agreement shall apply to matters within the domain of the general public or industry of the Parties, other than as a result of a disclosure by any Party in violation of the terms of this Agreement or such Party's failure to fulfill its obligations hereunder. Except as otherwise provided in this Agreement, each Party agrees not to use the Confidential Information for its own benefit or for the benefit of others or disclose any Confidential Information without the prior written consent of the other Party, which consent shall make express reference to this Agreement. The Parties also agree to take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the other Party's Confidential Information, and each Party agrees to take at least those measures and precautions that it takes to protect its own most highly confidential information. Parties agree this obligation will survive the termination of this Agreement.

5.2 Noninterference. In further consideration of the mutual covenants contained herein, the Parties covenant and agree that each will not, during the Term of the Agreement and for a period of one (1) year thereafter, without the prior written consent of the other Party, directly or indirectly, (a) hire any employee or agent of the other Party or any of its Affiliates; or (b) induce any supplier or customer of the other Party or any of its Affiliates to terminate or adversely change its relationship with such other Party or any of its Affiliates. [VENDOR] further covenants that during the term of this Agreement, [VENDOR] shall not challenge the ownership or validity of the TESCCC Marks.

5.3 Remedies for Certain Breaches. The Parties acknowledge and agree that this Agreement was negotiated at arm's length, are required for the fair and reasonable protection of the Parties, that the restrictions contained herein are designed to protect the business of the Parties, and to ensure that the Parties do not engage in unfair competition with each other, and that the obligations of the Parties in this Agreement constitute adequate consideration for their respective obligations under this Article V. The Parties acknowledge and agree that a breach of any of the covenants, obligations or agreements set forth in this Article V will result in irreparable and continuing damage to the Parties in their business and property for which there will be no adequate remedy at law, and the Parties agree that in the event of any such breach, each Party shall be entitled to the immediate termination of this Agreement pursuant to Section 6.2(b), injunctive relief to restrain such breach by the violating Party, and to such other and further relief (including damages) as is proper under the circumstances.

5.4 Reformation of Agreement; Severability. The Parties intend this Agreement to be enforced as written. However, in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable to any extent, such court shall exercise its discretion in reforming such provision to the end that each Party shall be subject to such restrictions and



obligations as the court deems reasonable under the circumstances and enforceable by the other Party. In the event that a provision or term of this Agreement is found to be void or unenforceable to any extent and such court does not exercise its discretion to reform as set forth in the preceding sentence, it is the agreed upon intent of the Parties that all remaining provisions or terms of the Agreement shall remain in full force and effect to the maximum extent permitted by law and the Agreement shall be enforceable as if such void or unenforceable provision or term had never been a part hereof.

ARTICLE VI TERM AND TERMINATION

6.1 Term. This Agreement has a term of four (4) years commencing on the effective date of this Agreement and will continue in full force and effect from the date hereof until _____ unless earlier terminated in accordance with the provisions of Section 6.3 below or mutually extended by the Parties (the "Term").

6.2 Renewal Term. Parties may agree to renew this Agreement for an additional four (4) year period upon written agreement. Parties shall indicate their desire in writing to be provided to the other Party no later than _____. If this Agreement is renewed, consideration shall continue as defined in Section 2.5 of this Agreement.

6.3 Termination. This Agreement may be terminated as follows:

- (a) at any time upon the mutual written agreement of the Parties;
- (b) by either Party immediately by written notice to the other Party upon any violation by the other Party of such other Party's obligations under Article V; or
- (c) by either Party by written notice to the other Party upon any breach or violation by the other Party of this Agreement in any material respect or inaccuracy of any representations of the other Party made in this Agreement in any material respect, and the failure to cure such breach within sixty (60) days after written notice of such violation is given to the violating Party.

6.4 Effect of Termination.

- (a) Upon termination of this Agreement, all documents and other tangible objects containing or representing Confidential Information and all copies thereof will be and remain the property of the disclosing Party. Upon the disclosing Party's request, the receiving Party shall either destroy or return to the disclosing Party all Confidential Information, without retaining any copies. All obligations under this Agreement shall immediately terminate except as expressly provided for in this Agreement and provided that the provisions of Section 5.1 (Confidentiality), Section 5.2 (Noninterference) and any claim that either Party may have for



indemnification pursuant to Article VII (Indemnification), Sections 8.2-8.7 and Section 8.12 shall survive such termination.

(b) Upon termination of this Agreement, [VENDOR] shall have phase-down period of the longer of two (2) months or until June 30 of the applicable year, during which time [VENDOR] shall be allowed to distribute Marketing Materials and distribute and/or sell [VENDOR] Products that include the TESCCC Marks, if any.

(c) At the conclusion of this phase-down period, TESCCC shall remove references to [VENDOR] Products from its website, and [VENDOR] shall cease use and distribution of Marketing Materials and/or sale of existing [VENDOR] Products that include the TESCCC Marks. [VENDOR] agrees that the continued use and distribution of Marketing Materials and/or sale of [VENDOR] Products that include the TESCCC Marks after the conclusion of the phase-down period is a breach the agreement and will result in direct harm to TESCCC and entitle TESCCC to immediate injunctive relief and damages.

ARTICLE VII

INDEMNIFICATION AND LIMITATION OF LIABILITY

7.1 Indemnification by [VENDOR]: [VENDOR] will indemnify, defend and hold harmless TESCCC and its Affiliates, members, managers, officers and agents ("[VENDOR] Indemnified Parties") from and against any loss, liability, expense, suit or proceeding resulting from any third party claims arising from or relating to:

(a) any alleged breach by [VENDOR] of any representation, warranty or covenant contained in this Agreement; or

(b) any gross negligence or willful or intentional misconduct by [VENDOR] or its agents.

7.2 Indemnification by TESCCC. TESCCC will indemnify, defend and hold harmless [VENDOR] and its Affiliates, members, managers, officers and agents ("TESCCC Indemnified Parties") from and against any loss, liability, expense, suit or proceeding resulting from any third party claims arising from or relating solely to:

(a) any alleged breach by TESCCC of any representation, warranty or covenant contained in this Agreement; or

(b) any gross negligence or willful or intentional misconduct by TESCCC or its agents.

7.3 Limitation of Liability



(a) The total liability of either Party with respect to the subject matter of this Agreement (including but not limited to liability arising out of contract, tort, strict liability, breach of warranty or otherwise) is limited to the total amount paid to TESCCC by [VENDOR] under the Agreement during the term year (i.e., the period between July 1 of any year and June 30 of the following year) during which the liability occurs. Neither Party shall be liable to the other Party for any special, indirect, incidental, punitive or consequential damages of any kind, including, without limitation, attorneys' fees, in any way due to, resulting from, or arising in connection with this Agreement.

ARTICLE VIII MISCELLANEOUS

8.1 Force Majeure.

(a) Definition. "Force Majeure" shall mean any event or condition, not existing as of the date hereof and not reasonably within the control of a Party, which prevents in whole or in material part the performance by one of the Parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: governmental action, including the refusal or failure to grant any required export license; riots; disturbance; war; strikes; lockouts; slowdowns; prolonged shortage of energy supplies; epidemics; fire; flood; hurricane; typhoon; earthquake; lightning; explosion and other disasters.

(b) Notice. Upon giving notice to the other Party, a Party affected by an event of Force Majeure will be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by Force Majeure.

(c) Suspension of Performance. If a Party's obligations are suspended, in whole or in part, by reason of Force Majeure, the other Party will be correspondingly relieved of its obligations to perform to the extent that, and for so long as, such Force Majeure continues.

8.2 Relationship of Parties. [VENDOR] and its employees and agents shall not be deemed agents or representatives of TESCCC, nor shall TESCCC and its agents and employees be deemed agents or representatives of [VENDOR]. Neither [VENDOR] nor TESCCC shall have any right to enter into any contract or commitment in the name of, or on behalf of, the other, or to bind the other in any respect whatsoever. The Parties are independent contractors and are not partners or joint venturers.

8.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns. No Party shall have the right to assign or otherwise



transfer its rights and obligations under this Agreement except with the prior written consent of the other Party, or in the event of the sale of all or essentially all of the assets of a Party.

8.4 Publicity. No Party may issue any press releases or other type of publicity relating to this Agreement without providing the other Party with a reasonable prior opportunity to review and approve the content of such announcement. In no event may a Party disclose the terms of this Agreement.

8.5 Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given three (3) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or on the next business day after it is sent by overnight courier, and, in either case, addressed to the intended recipient as set forth below:

to TESCCC: TESCCC
5701 Springdale Road
Austin, Texas 78723
Attn: Wade Labay

to [VENDOR]: [VENDOR]

Attn: _____

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

8.6 Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of laws principles. All actions or proceedings arising in connection with this Agreement and or services performed under this Agreement shall be tried and litigated solely in the state and federal courts located in Travis County, Texas. Each Party irrevocably consents to the exclusive jurisdiction and venue of such courts.

8.7 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all previous agreements by and between them, as well as all proposals, oral or written, and all negotiations, conversations or discussions heretofore had between the parties related to this Agreement. No additional terms or conditions (other than requested



quantities and delivery instructions not inconsistent with this Agreement) contained in any purchase order, invoice or other document not executed by both Parties will be effective for sales hereunder.

8.8 Amendment. This Agreement may not be modified, amended, rescinded, canceled or waived, in whole or in part, except in a writing signed by the Parties.

8.9 Severability. In the event that any of the terms of this Agreement are in conflict with any rule of law or statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement, and this Agreement shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.

8.10 Counterparts. This Agreement may be executed in two or more counterparts, and each such counterpart shall be deemed an original hereof.

8.11 Waiver. No failure by either Party to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

8.12 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

8.13 Nondiscrimination in Employment

(a) [VENDOR] agrees and assures TESCCC that [VENDOR] and any sub-entities shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of TESCCC, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. [VENDOR] shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of TESCCC employees and agents, and recipients of services are free from such discrimination and harassment.

(b) [VENDOR] agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.



(c) [VENDOR] shall include this nondiscrimination provision in all subcontracts related to this Contract.

8.14 The Parties acknowledge that TESCCC and Education Service Center Region XIII are to be treated as political subdivisions of the state of Texas, and thus are subject to the requirements of Section 15.0151 of the Texas Civil Practices & Remedies Code.

(Signature Page Follows)



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first above written.

Texas Education Service Center Curriculum Collaborative

By: _____

Name: _____

Title: _____

Date: _____

[VENDOR]

By: _____

Name: _____

Title: _____

Date: _____



Schedule 1
TESCCC Marks

Mark	<u>Registration Number</u>	<u>Filing Date</u>
<u>CSCOPE (word mark); class</u>	<u>3,714,352</u>	<u>December 19, 2008</u>
<u>CSCOPE (stylized), class</u>	<u>3,714,356</u>	<u>December 19, 2008</u>



Attachment C

Certificate of Notice of Eligibility



Education Service Center Region XIII
CERTIFICATE OF NOTICE OF ELIGIBILITY
 Texas Education Code 44.034

In compliance with TEC 44.034, each person or business entering into a contract with an Education Service Center or public school must give advance notice if the person, owner, or operator of the business has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. Additionally, the prospective vendor must certify, by submission of this application, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this proposed transaction by any Federal Department or Agency.

The ESC may cancel any contract for which it was not properly notified.

Certification:

In acting as the authorized representative in responding to this offer, I certify that the affixed information concerning notification of Felony Conviction, Debarment, or Suspension is true to the best of my knowledge.

Check one of the following:

- The vendor is a publicly held corporation and is exempt from this requirement.
- The vendor is not owned or operated by anyone who has been convicted of a felony.
- The vendor is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name(s) and conviction details:

Authorized Representatives Signature of Certification: _____

Authorized Representatives Printed Name: _____

Firm Name: _____

Date of Certification: _____