

Legal Committee Meeting  
Wednesday, September 4, 2019 3:00 PM  
ESU No.10  
76 Plaza Blvd  
Kearney, NE 68845

1. Call to Order  
Committee Chair
2. Roll Call  
Committee Chair
3. Agenda Item  
Committee Chair
  1. Legislative Updates  
Committee Chair
    1. Bromm's Updates  
Curt and Jason Bromm
    2. LR63: Interim study to examine educational service units  
Committee Chair
    3. LB 519 - Distance Education Incentives  
Committee Chair
  2. Policies and Procedures  
Committee Chair
    1. Policies and Procedures - Updates Aug 2019  
Board President
  3. COOP  
Committee Chair
    1. Coop Strategic Plan  
Committee Chair
    2. Coop Contracts  
Committee Chair
      1. Approve Interlocal with City of Ainsworth  
Committee Chair
      2. Approve Contracts/Addendums signed by Executive Director for Months May - August  
Committee Chair
      3. Approve Annual Buy Terms and Conditions  
Committee Chair
      4. Approve Special Buy Agreement with SAM Labs  
Committee Chair
      5. Approve Special Buy Agreement with Nearpod  
Committee Chair
  3. Staff Written Reports  
Committee Chair

1. Peterson Report  
Craig Peterson
1. Coop Annual Buy  
Committee Chair
2. Specials Buys  
Craig Peterson
3. AEPA  
Committee Chair
2. Colleen Lentz (Data)  
Colleen Lentz
4. Next Meetings Agenda Items  
Committee Chair
5. Adjournment  
Committee Chair

## LEGISLATIVE BILL 519

Approved by the Governor May 13, 2015

Introduced by Sullivan, 41.

A BILL FOR AN ACT relating to education; to amend sections 79-8,134, 79-8,137, 79-8,137.01, 79-8,137.02, 79-8,137.03, 79-8,137.04, 79-8,137.05, 79-1001, 79-1003, 79-1007.11, 79-1017.01, 79-1337, 85-1412, and 85-1920, Reissue Revised Statutes of Nebraska, and section 9-812, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to the Nebraska Education Improvement Fund, the Attracting Excellence to Teaching Program, the Enhancing Excellence in Teaching Program, the Tax Equity and Educational Opportunities Support Act, distance education incentives, the Coordinating Commission for Postsecondary Education, and the Nebraska Opportunity Grant Fund; to provide for competitive innovation grants; to create funds; to provide for best practices aid; to adopt the Expanded Learning Opportunity Grant Program Act and the Community College Gap Assistance Program Act; to require a study of postsecondary education by the Education Committee of the Legislature; to eliminate obsolete provisions; to harmonize provisions; to repeal the original sections; and to outright repeal section 79-2306, Reissue Revised Statutes of Nebraska. Be it enacted by the people of the State of Nebraska,

Section 1. Section 9-812, Revised Statutes Cumulative Supplement, 2014, is amended to read:

9-812 (1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2) A portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund as provided in subsection (3) of this section. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006;

(b) Beginning July 1, 2016, forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Education Improvement Fund;

(c) Through June 30, 2016, nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(d) Through June 30, 2016, twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Opportunity Grant Fund;

(e) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(f) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides

matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(g) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006.

(4)(a) The Education Innovation Fund is created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement.

~~(b) For fiscal year 2013-14, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) up to the next one hundred sixty thousand dollars shall be used by the State Department of Education to implement section 79-759; (iv) the next one million seven hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the department pursuant to section 79-1103; (v) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (vi) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; (vii) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (viii) the next eighty-five thousand five hundred fifty dollars shall be allocated to the State Department of Education for distribution pursuant to section 79-2306; and (ix) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337. No funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016.~~

~~(b e) For fiscal year 2014-15, the Education Innovation Fund shall be allocated, after administrative expenses, as follows: (i) The first one million two hundred thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next one million eight hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the State Department of Education pursuant to section 79-1103; (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; (vi) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (vii) the next two million dollars shall be allocated for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337; (viii) the next one million dollars shall be transferred to the School District Reorganization Fund; (ix) up to the next one hundred forty-five thousand dollars shall be used by the State Department of Education to implement section 79-759; and (x) the next three hundred thirty-five thousand dollars shall be allocated to local systems as grants awarded by the State Department of Education to assist schools in evaluating and improving career education programs to align such programs with the state's economic and workforce needs. Except for funds transferred to the School District Reorganization Fund, the Early Childhood Education Endowment Cash Fund, or the department for early childhood education grants pursuant to section 79-1103, no funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016, and such funds received as transfers or allocations from the Education Innovation Fund that have not been used for their designated purpose as of such date shall be transferred to the Nebraska Education Improvement Fund on or before August 1, 2016.~~

~~(c d) For fiscal year 2015-16, the Education Innovation Fund shall be allocated, after administrative expenses, as follows: (i) The first one million two hundred thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next one million nine hundred fifty thousand dollars shall be allocated to early~~

childhood education grants awarded by the State Department of Education pursuant to section 79-1103; (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (vi) the next two million five hundred thousand dollars shall be allocated for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337; (vii) the next one million dollars shall be transferred to the School District Reorganization Fund; (viii) up to the next one hundred forty-five thousand dollars shall be used by the State Department of Education to implement section 79-759; and (ix) of the amount remaining, (A) three million dollars shall be retained in the Education Innovation Fund to transfer to the Nebraska Education Improvement Fund on June 30, 2016, and (B) the remaining amount shall be allocated to local systems as grants awarded by the State Department of Education to assist schools in evaluating and improving career education programs to align such programs with the state's economic and workforce needs. Except for funds transferred to the School District Reorganization Fund, the Early Childhood Education Endowment Cash Fund, or the department for early childhood education grants pursuant to section 79-1103, no funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016, and such funds received as transfers or allocations from the Education Innovation Fund that have not been used for their designated purpose as of such date shall be transferred to the Nebraska Education Improvement Fund on or before August 1, 2016.

(d e) The Education Innovation Fund terminates on June 30, 2016. Any money in the fund on such date shall be transferred to the Nebraska Education Improvement Fund on such date.

(5) The Nebraska Education Improvement Fund is created. The fund shall consist of money transferred pursuant to subsections (3) and (4) of this section, money transferred pursuant to section 85-1920, and any other funds appropriated by the Legislature. The fund shall be allocated, after actual and necessary administrative expenses, as provided in this section for fiscal years 2016-17 through 2020-21. A portion of each allocation may be retained by the agency to which the allocation is made or the agency administering the fund to which the allocation is made for actual and necessary expenses incurred by such agency for administration, evaluation, and technical assistance related to the purposes of the allocation, except that no amount of the allocation to the Nebraska Opportunity Grant Fund may be used for such purposes. On or before December 31, 2019, the Education Committee of the Legislature shall electronically submit recommendations to the Clerk of the Legislature regarding how the fund should be allocated to best advance the educational priorities of the state for the five-year period beginning with fiscal year 2021-22. For fiscal year 2016-17, an amount equal to ten percent of the revenue allocated to the Education Innovation Fund and to the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be retained in the Nebraska Education Improvement Fund. For fiscal years 2017-18 through 2020-21, an amount equal to ten percent of the revenue received by the Nebraska Education Improvement Fund in the prior fiscal year shall be retained in the fund. For fiscal years 2016-17 through 2020-21, the remainder of the fund shall be allocated as follows: Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(a) One percent of the allocated funds to the Expanded Learning Opportunity Grant Fund to carry out the Expanded Learning Opportunity Grant Program Act;

(b) Seventeen percent of the allocated funds to the Department of Education Innovative Grant Fund for competitive innovation grants pursuant to section 2 of this act;

(c) Nine percent of the allocated funds to the Community College Gap Assistance Program Fund to carry out the community college gap assistance program;

(d) Eight percent of the allocated funds to the Excellence in Teaching Cash Fund to carry out the Excellence in Teaching Act;

(e) Sixty-two percent of the allocated funds to the Nebraska Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in conjunction with appropriations from the General Fund; and

(f) Three percent of the allocated funds to fund distance education incentives pursuant to section 79-1337.

(6) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, the Nebraska Education Improvement Fund, or the Education Innovation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Sec. 2. (1) The State Board of Education shall establish a competitive innovation grant program with funding from the Nebraska Education Improvement Fund pursuant to section 9-812. Grantees shall be a school district, an educational service unit, or a combination of entities that includes at least one school district or educational service unit. For grantees that consist of a

combination of entities, a participating school district or educational service unit shall be designated to act as the fiscal agent and administer the program funded by the grant. The state board shall only award grants pursuant to applications that the state board deems to be sufficiently innovative and to have a high chance of success.

(2) An application for a grant pursuant to subsection (1) of this section shall describe:

(a) Specific measurable objectives for improving education outcomes for early childhood students, elementary students, middle school students, or high school students or for improving the transitions between any successive stages of education or between education and the workforce;

(b) The method for annually evaluating progress toward a measurable objective, with a summative evaluation of progress submitted to the state board and electronically to the Education Committee of the Legislature on or before July 1, 2019;

(c) The potential for the project to be both scalable and replicable; and

(d) Any cost savings that could be achieved by reductions in other programs if the funded program is successful.

(3) Based on evaluations received on or before July 1, 2019, for each grant, the State Board of Education shall recommend the grant project as:

(a) Representing a best practice;

(b) A model for a state-supported program; or

(c) A local issue for further study.

(4) For grant projects that are recommended as best practices, the State Board of Education may establish criteria allowing such best practices to be included in the best practices allowance to school districts pursuant to section 11 of this act beginning with aid calculated for school fiscal year 2021-22. The criteria shall:

(a) Specify qualifications for a school district to participate in the best practices allowance for each best practice to be included in the allowance;

(b) Specify a best practices dollar amount based on eighty-five percent of the estimated costs related to each best practice included in the allowance that would not otherwise be incurred without the best practice, that do not replace other such costs, and that are not included in another allowance;

(c) Specify an accountability process which will result in a future aid correction if a school district is found to be in violation of any of the qualifications; and

(d) Specify any other criteria deemed relevant by the state board.

(5) On or before November 1, 2020, and on or before November 1 of each year thereafter, the department shall certify to each qualifying school district the amount of the best practices cost pursuant to this section for such school district and the total best practices cost for all qualifying school districts to be included in the calculation of state aid for the next school fiscal year.

(6) On or before December 1, 2017, and on or before December 1 of each year thereafter, the state board shall electronically submit a report to the Clerk of the Legislature on all such grants, including, but not limited to, the results of the evaluations for each grant and on the best practices allowance if the allowance has been implemented. The state board may adopt and promulgate rules and regulations to carry out this section, including, but not limited to, application procedures, selection procedures, and annual evaluation reporting procedures.

(7) The Department of Education Innovative Grant Fund is created. The fund shall be administered by the State Department of Education and shall consist of transfers pursuant to section 9-812, repayments of grant funds, and interest payments received in the course of administering this section. The fund shall be used to carry out this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 3. Section 79-8,134, Reissue Revised Statutes of Nebraska, is amended to read:

79-8,134 The purposes of the Attracting Excellence to Teaching Program are to:

(1) Attract outstanding students to major in shortage areas at the teacher education programs of Nebraska's postsecondary educational institutions;

(2) Retain resident students and graduates as teachers in the accredited school districts, educational service units, and private schools or approved public and private schools of Nebraska; and

(3) Establish a loan contract that requires a borrower to obtain employment as a teacher in this state after graduation.

Sec. 4. Section 79-8,137, Reissue Revised Statutes of Nebraska, is amended to read:

79-8,137 (1)(a) Prior to receiving any money from a loan pursuant to the Attracting Excellence to Teaching Program, an eligible student shall enter into a contract with the department. ~~Such contract shall provide notice to the eligible student that funding for loans pursuant to the Attracting Excellence to Teaching Program terminates on June 30, 2016.~~ Such contract shall be exempt from the requirements of sections 73-501 to 73-510.

(b) For eligible students who applied for the first time prior to April 23, 2009, the contract shall require that if (i) the borrower is not employed as a teacher in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section and is

not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan must be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract, and an appropriate penalty as determined by the department may be assessed. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(c) For eligible students who apply for the first time on or after April 23, 2009, the contract shall require that if (i) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska and teaching at least a portion of the time in the shortage area for which the loan was received for a time period equal to the number of years required for loan forgiveness pursuant to subsection (3) of this section or and is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to continue to be an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rule and regulation provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(2) If the borrower applied for the first time prior to April 23, 2009, and (a) successfully completes the teacher education program and becomes certified pursuant to sections 79-806 to 79-815, (b) becomes employed as a teacher in this state within six months of becoming certified, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. For each year that the borrower teaches in Nebraska pursuant to the contract, payments shall be forgiven in an amount equal to the amount borrowed for one year, except that if the borrower teaches in a school district that is in a local system classified as very sparse as defined in section 79-1003 or teaches in a school district in which at least forty percent of the students are poverty students as defined in section 79-1003, payments shall be forgiven each year in an amount equal to the amount borrowed for two years.

(3)(a) If the borrower applies for the first time on or after April 23, 2009, and (i a) successfully completes the teacher education program and major for which the borrower is receiving a forgivable loan pursuant to the program and becomes certified pursuant to sections 79-806 to 79-815 with an endorsement in the shortage area for which the loan was received, (ii b) becomes employed as a full-time teacher teaching at least a portion of the time in the shortage area for which the loan was received in an approved or accredited school in this state within six months of becoming certified, and (iii c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract.

(b) Beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the formula students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

Sec. 5. Section 79-8,137.01, Reissue Revised Statutes of Nebraska, is amended to read:

79-8,137.01 The Enhancing Excellence in Teaching Program is created. For purposes of the Enhancing Excellence in Teaching Program:

(1) Department means the State Department of Education;

(2) Eligible graduate program means a program of study offered by an eligible institution which results in obtaining a graduate degree;

(3) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by a regional accrediting agency recognized by the United States Department of Education as determined to be acceptable by the State Board of Education, (c) has a teacher education program, and (d) if a privately funded college or university, has not opted out of the Enhancing Excellence in Teaching Program pursuant to rules and regulations;

(4) Eligible student means an individual who (a) is a certificated teacher employed to teach in an approved or accredited school in Nebraska, (b) is

enrolled in an eligible graduate program, including a course of study leading to an endorsement in a shortage area specified by the State Board of Education, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, (d) is majoring in a shortage area, curriculum and instruction, a subject area in which the individual already holds a secular teaching endorsement, or a subject area that will result in an additional secular teaching endorsement which the superintendent of the school district or head administrator of the private, denominational, or parochial school employing the individual believes will be beneficial to the students of such school district or school as evidenced by a statement signed by the superintendent or head administrator, and (e) is applying for a loan pursuant to the Enhancing Excellence in Teaching Program to be received at a time other than during fiscal year 2011-12 or 2012-13;

(5) Majoring in a shortage area or subject area means pursuing a degree or course of study which will allow an individual to be properly endorsed to teach in such shortage area or subject area; and

(6) Shortage area means a secular field of teaching or endorsement area for which there is a shortage, as determined by the department, of properly endorsed teachers at the time the borrower first receives funds pursuant to the Enhancing Excellence in Teaching Program.

Sec. 6. Section 79-8,137.02, Reissue Revised Statutes of Nebraska, is amended to read:

79-8,137.02 The purposes of the Enhancing Excellence in Teaching Program are to:

(1) Retain teachers in the accredited school districts, educational service units, and private schools or approved ~~public and~~ private schools of Nebraska;

(2) Improve the skills of existing teachers in Nebraska through the graduate education or endorsement programs of Nebraska's postsecondary educational institutions; and

(3) Establish a loan contract that requires a borrower to continue employment as a teacher in this state after graduation from an eligible graduate or endorsement program.

Sec. 7. Section 79-8,137.03, Reissue Revised Statutes of Nebraska, is amended to read:

79-8,137.03 (1) The department shall administer the Enhancing Excellence in Teaching Program either directly or by contracting with public or private entities.

(2) To be eligible for the program, an eligible student shall:

(a) Agree to complete an eligible graduate or endorsement program at an eligible institution and to complete the program ~~major~~ on which the applicant's eligibility is based as determined by the department; and

(b) Commit to teach in an accredited or approved public or private school in Nebraska upon successful completion of the eligible graduate or endorsement program for which the applicant is applying to the Enhancing Excellence in Teaching Program and to maintaining certification pursuant to sections 79-806 to 79-815.

(3) Eligible students may apply on an annual basis for loans in an amount of not more than one hundred seventy-five dollars per credit hour. Loans awarded to individual students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through the department. Loans shall be funded pursuant to section 79-8,137.05.

Sec. 8. Section 79-8,137.04, Reissue Revised Statutes of Nebraska, is amended to read:

79-8,137.04 (1) Prior to receiving any money from a loan pursuant to the Enhancing Excellence in Teaching Program, an eligible student shall enter into a contract with the department. ~~Such contract shall provide notice to the eligible student that funding for loans pursuant to the Enhancing Excellence in Teaching Program terminates on June 30, 2016.~~ Such contract shall be exempt from the requirements of sections 73-501 to 73-510. The contract shall require that if (a) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section or (b) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subsection based upon mitigating circumstances.

(2)(a) If the borrower (i a) successfully completes the eligible graduate or endorsement program and ~~major~~ for which the borrower is receiving a forgivable loan pursuant to the Enhancing Excellence in Teaching Program and maintains certification pursuant to sections 79-806 to 79-815, (ii b) maintains employment as a teacher in an approved or accredited school in this state, and (iii c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract.

(b) For funds received prior to July 1, 2016, beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

(c) For funds received on or after July 1, 2016, beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to one thousand five hundred dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the formula students are poverty students as defined in section 79-1003, or teaches in an accredited private school or educational service unit or an approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to one thousand five hundred dollars for the first year of loan forgiveness and three thousand dollars for each year of loan forgiveness thereafter.

Sec. 9. Section 79-8,137.05, Reissue Revised Statutes of Nebraska, is amended to read:

79-8,137.05 (1) The Excellence in Teaching Cash Fund is created. The fund shall consist of appropriations by the Legislature, transfers pursuant to section 9-812, and loan repayments, penalties, and interest payments received in the course of administering the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program.

(2) ~~For all fiscal years except fiscal years 2011-12 and 2012-13, the department shall allocate on an annual basis up to four hundred thousand dollars in the aggregate of the funds to be distributed for the Attracting Excellence to Teaching Program to all eligible institutions according to the distribution formula as determined by rule and regulation. The eligible institutions shall act as agents of the department in the distribution of the funds for the Attracting Excellence to Teaching Program to eligible students. The department shall allocate on an annual basis up to eight hundred thousand dollars of the remaining available funds to shall be distributed by the department to eligible students for the Enhancing Excellence in Teaching Program. Funding amounts granted in excess of one million two hundred thousand dollars shall be evenly divided for distribution between the two programs.~~

(3) ~~For fiscal years 2011-12 and 2012-13, the department shall allocate on an annual basis funds to be distributed for the Attracting Excellence to Teaching Program to all eligible institutions receiving applications from eligible students for loans to be received during such fiscal years. The distribution for each of fiscal years 2011-12 and 2012-13 shall be proportional based on the amounts applied for by eligible students at each institution, except that no more than one hundred percent of such amounts shall be distributed. The eligible institutions shall act as agents of the department in the distribution of the funds for the Attracting Excellence to Teaching Program to eligible students.~~

(3 4) Any money remaining in the fund on August 1, ~~2021~~ 2016, shall be transferred to the Nebraska Education Improvement Fund on such date.

(4 5) Any money in the Excellence in Teaching Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 10. Section 79-1001, Reissue Revised Statutes of Nebraska, is amended to read:

79-1001 Sections 79-1001 to 79-1033 and section 11 of this act shall be known and may be cited as the Tax Equity and Educational Opportunities Support Act.

Sec. 11. Beginning with aid calculated for school fiscal year 2021-22, for any school fiscal year for which the best practices allowance has been implemented by the State Board of Education, the State Department of Education shall calculate a best practices allowance for each school district qualifying pursuant to section 2 of this act equal to the lesser of (1) the best practices cost certified pursuant to section 2 of this act for such school district or (2) the product of the best practices cost certified pursuant to section 2 of this act for such school district multiplied by the ratio of one million dollars divided by the aggregate total of the best practices cost certified for all qualifying school districts for such school fiscal year. Fifty percent of the best practices allowance calculated pursuant to this section for each qualifying school district shall be paid to such school district as best practices aid for the school fiscal year for which aid is being calculated.

Sec. 12. Section 79-1003, Reissue Revised Statutes of Nebraska, is amended to read:

79-1003 For purposes of the Tax Equity and Educational Opportunities

Support Act:

(1) Adjusted general fund operating expenditures means (a) for school fiscal years 2013-14 through 2015-16, the difference of the general fund operating expenditures as calculated pursuant to subdivision (22) of this section increased by the cost growth factor calculated pursuant to section 79-1007.10, minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, instructional time allowance, teacher education allowance, and focus school and program allowance, and (b) for school fiscal year 2016-17 and each school fiscal year thereafter, the difference of the general fund operating expenditures as calculated pursuant to subdivision (22) of this section increased by the cost growth factor calculated pursuant to section 79-1007.10, minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, best practices allowance, and focus school and program allowance;

(2) Adjusted valuation means the assessed valuation of taxable property of each local system in the state, adjusted pursuant to the adjustment factors described in section 79-1016. Adjusted valuation means the adjusted valuation for the property tax year ending during the school fiscal year immediately preceding the school fiscal year in which the aid based upon that value is to be paid. For purposes of determining the local effort rate yield pursuant to section 79-1015.01, adjusted valuation does not include the value of any property which a court, by a final judgment from which no appeal is taken, has declared to be nontaxable or exempt from taxation;

(3) Allocated income tax funds means the amount of assistance paid to a local system pursuant to section 79-1005.01 as adjusted by the minimum levy adjustment pursuant to section 79-1008.02;

(4) Average daily membership means the average daily membership for grades kindergarten through twelve attributable to the local system, as provided in each district's annual statistical summary, and includes the proportionate share of students enrolled in a public school instructional program on less than a full-time basis;

(5) Base fiscal year means the first school fiscal year following the school fiscal year in which the reorganization or unification occurred;

(6) Board means the school board of each school district;

(7) Categorical funds means funds limited to a specific purpose by federal or state law, including, but not limited to, Title I funds, Title VI funds, federal vocational education funds, federal school lunch funds, Indian education funds, Head Start funds, and funds from the Education Innovation Fund. Categorical funds does not include funds received pursuant to section 79-1028.02 or 79-1028.04;

(8) Consolidate means to voluntarily reduce the number of school districts providing education to a grade group and does not include dissolution pursuant to section 79-498;

(9) Converted contract means an expired contract that was in effect for at least fifteen school years beginning prior to school year 2012-13 for the education of students in a nonresident district in exchange for tuition from the resident district when the expiration of such contract results in the nonresident district educating students, who would have been covered by the contract if the contract were still in effect, as option students pursuant to the enrollment option program established in section 79-234;

(10) Converted contract option student means a student who will be an option student pursuant to the enrollment option program established in section 79-234 for the school fiscal year for which aid is being calculated and who would have been covered by a converted contract if the contract were still in effect and such school fiscal year is the first school fiscal year for which such contract is not in effect;

(11) Department means the State Department of Education;

(12) District means any Class I, II, III, IV, V, or VI school district and, beginning with the calculation of state aid for school fiscal year 2011-12 and each school fiscal year thereafter, a unified system as defined in section 79-4,108;

(13) Ensuing school fiscal year means the school fiscal year following the current school fiscal year;

(14) Equalization aid means the amount of assistance calculated to be paid to a local system pursuant to sections 79-1007.11 to 79-1007.23, 79-1007.25, 79-1008.01 to 79-1022, 79-1022.02, 79-1028.02, and 79-1028.04;

(15) Fall membership means the total membership in kindergarten through grade twelve attributable to the local system as reported on the fall school district membership reports for each district pursuant to section 79-528;

(16) Fiscal year means the state fiscal year which is the period from July 1 to the following June 30;

(17) Formula students means:

(a) For state aid certified pursuant to section 79-1022, the sum of the product of fall membership from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid multiplied by the average ratio of average daily membership to fall membership for the second school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and the prior two school fiscal years plus sixty percent of the qualified early childhood education fall membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in

which aid is to be paid minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the fall membership multiplied by 0.5; and

(b) For the final calculation of state aid pursuant to section 79-1065, the sum of average daily membership plus sixty percent of the qualified early childhood education average daily membership plus tuitioned students minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the average daily membership multiplied by 0.5 from the school fiscal year immediately preceding the school fiscal year in which aid was paid;

(18) Free lunch and free milk student means a student who qualified for free lunches or free milk from the most recent data available on November 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(19) Full-day kindergarten means kindergarten offered by a district for at least one thousand thirty-two instructional hours;

(20) General fund budget of expenditures means the total budget of disbursements and transfers for general fund purposes as certified in the budget statement adopted pursuant to the Nebraska Budget Act, except that for purposes of the limitation imposed in section 79-1023 and the calculation pursuant to subdivision (2) of section 79-1027.01, the general fund budget of expenditures does not include any special grant funds, exclusive of local matching funds, received by a district;

(21) General fund expenditures means all expenditures from the general fund;

(22) General fund operating expenditures means for state aid calculated for school fiscal years 2012-13 and each school fiscal year thereafter, as reported on the annual financial report for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (a) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, federal impact aid, and levy override elections pursuant to section 77-3444, (b) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, (c) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund, (d) any legal expenses in excess of fifteen-hundredths of one percent of the formula need for the school fiscal year in which the expenses occurred, (e) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, occurring on or after the last day of the 2010-11 school year and prior to the first day of the 2013-14 school year, or, to the extent that a district has demonstrated to the State Board of Education pursuant to section 79-1028.01 that the agreement will result in a net savings in salary and benefit costs to the school district over a five-year period, occurring on or after the first day of the 2013-14 school year, (f)(i) expenditures to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Employees Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent or (ii) expenditures to pay for school district contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to the retirement system established pursuant to the Class V School Employees Retirement Act to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent, and (g) any amounts paid by the district for lobbyist fees and expenses reported to the Clerk of the Legislature pursuant to section 49-1483.

For purposes of this subdivision (22) of this section, receipts from levy override elections shall equal ninety-nine percent of the difference of the total general fund levy minus a levy of one dollar and five cents per one hundred dollars of taxable valuation multiplied by the assessed valuation for school districts that have voted pursuant to section 77-3444 to override the maximum levy provided pursuant to section 77-3442;

(23) High school district means a school district providing instruction in at least grades nine through twelve;

(24) Income tax liability means the amount of the reported income tax liability for resident individuals pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(25) Income tax receipts means the amount of income tax collected pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(26) Limited English proficiency students means the number of students with limited English proficiency in a district from the most recent data available on November 1 of the school fiscal year preceding the school fiscal year in which aid is to be paid plus the difference of such students with

limited English proficiency minus the average number of limited English proficiency students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(27) Local system means a learning community for purposes of calculation of state aid for the second full school fiscal year after becoming a learning community and each school fiscal year thereafter, a unified system, a Class VI district and the associated Class I districts, or a Class II, III, IV, or V district and any affiliated Class I districts or portions of Class I districts. The membership, expenditures, and resources of Class I districts that are affiliated with multiple high school districts will be attributed to local systems based on the percent of the Class I valuation that is affiliated with each high school district;

(28) Low-income child means a child under nineteen years of age living in a household having an annual adjusted gross income for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated equal to or less than the maximum household income that would allow a student from a family of four people to be a free lunch and free milk student during the school fiscal year immediately preceding the school fiscal year for which aid is being calculated;

(29) Low-income students means the number of low-income children within the district multiplied by the ratio of the formula students in the district divided by the total children under nineteen years of age residing in the district as derived from income tax information;

(30) Most recently available complete data year means the most recent single school fiscal year for which the annual financial report, fall school district membership report, annual statistical summary, Nebraska income tax liability by school district for the calendar year in which the majority of the school fiscal year falls, and adjusted valuation data are available;

(31) Poverty students means the number of low-income students or the number of students who are free lunch and free milk students in a district plus the difference of the number of low-income students or the number of students who are free lunch and free milk students in a district, whichever is greater, minus the average number of poverty students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(32) Qualified early childhood education average daily membership means the product of the average daily membership for school fiscal year 2006-07 and each school fiscal year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the actual instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(33) Qualified early childhood education fall membership means the product of membership on the last Friday in September 2006 and each year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the planned instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(34) Regular route transportation means the transportation of students on regularly scheduled daily routes to and from the attendance center;

(35) Reorganized district means any district involved in a consolidation and currently educating students following consolidation;

(36) School year or school fiscal year means the fiscal year of a school district as defined in section 79-1091;

(37) Sparse local system means a local system that is not a very sparse local system but which meets the following criteria:

(a)(i) Less than two students per square mile in the county in which each high school is located, based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than ten miles between each high school attendance center and the next closest high school attendance center on paved roads;

(b)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads;

(c)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than two hundred seventy-five square miles in the local system; or

(d)(i) Less than two formula students per square mile in the local system and (ii) the local system includes an area equal to ninety-five percent or more

of the square miles in the largest county in which a high school attendance center is located in the local system;

(38) Special education means specially designed kindergarten through grade twelve instruction pursuant to section 79-1125, and includes special education transportation;

(39) Special grant funds means the budgeted receipts for grants, including, but not limited to, categorical funds, reimbursements for wards of the court, short-term borrowings including, but not limited to, registered warrants and tax anticipation notes, interfund loans, insurance settlements, and reimbursements to county government for previous overpayment. The state board shall approve a listing of grants that qualify as special grant funds;

(40) State aid means the amount of assistance paid to a district pursuant to the Tax Equity and Educational Opportunities Support Act;

(41) State board means the State Board of Education;

(42) State support means all funds provided to districts by the State of Nebraska for the general fund support of elementary and secondary education;

(43) Statewide average basic funding per formula student means the statewide total basic funding for all districts divided by the statewide total formula students for all districts;

(44) Statewide average general fund operating expenditures per formula student means the statewide total general fund operating expenditures for all districts divided by the statewide total formula students for all districts;

(45) Teacher has the definition found in section 79-101;

(46) Temporary aid adjustment factor means (a) for school fiscal years before school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, the local system's special receipts allowance, and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping and (b) for school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, special receipts allowance, and distance education and telecommunications allowance and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping;

(47) Tuition receipts from converted contracts means tuition receipts received by a district from another district in the most recently available complete data year pursuant to a converted contract prior to the expiration of the contract;

(48) Tuitioned students means students in kindergarten through grade twelve of the district whose tuition is paid by the district to some other district or education agency; and

(49) Very sparse local system means a local system that has:

(a)(i) Less than one-half student per square mile in each county in which each high school attendance center is located based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than fifteen miles between the high school attendance center and the next closest high school attendance center on paved roads; or

(b)(i) More than four hundred fifty square miles in the local system, (ii) less than one-half student per square mile in the local system, and (iii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads.

Sec. 13. Section 79-1007.11, Reissue Revised Statutes of Nebraska, is amended to read:

79-1007.11 (1) Except as otherwise provided in this section, for school fiscal years 2013-14 through 2015-16, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, instructional time allowance, teacher education allowance, distance education and telecommunications allowance, averaging adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and any negative student growth adjustment correction.

(2) Except as otherwise provided in this section, for school fiscal year 2016-17 and each school fiscal year thereafter, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, best practices allowance, distance education and telecommunications allowance, averaging adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and any negative student growth adjustment correction.

(3) If the formula need calculated for a school district pursuant to subsections (1) and (2) of this section is less than one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(4) Except as provided in subsection (6) of this section, if the formula

need calculated for a school district pursuant to subsections (1) and (2) of this section is more than one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, except that the formula need shall not be reduced pursuant to this subsection for any district receiving a student growth adjustment for the school fiscal year for which aid is being calculated.

(5) For purposes of subsections (3) and (4) of this section, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be the formula need used in the final calculation of aid pursuant to section 79-1065 and for districts that were affected by a reorganization with an effective date in the calendar year preceding the calendar year in which aid is certified for the school fiscal year for which aid is being calculated, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be attributed to the affected school districts based on information provided to the department by the school districts or proportionally based on the adjusted valuation transferred if sufficient information has not been provided to the department.

(6) For state aid calculated for the first full school fiscal year of a new learning community, if the formula need calculated for a member school district pursuant to subsections (1) through (3) of this section is less than the sum of the school district's state aid certified for the school fiscal year immediately preceding the first full school fiscal year of the learning community plus the school district's other actual receipts included in local system formula resources pursuant to section 79-1018.01 for such school fiscal year plus the product of the school district's general fund levy for such school fiscal year up to one dollar and five cents multiplied by the school district's assessed valuation for such school fiscal year, the formula need for such school district for the school fiscal year for which aid is being calculated shall equal such sum.

Sec. 14. Section 79-1017.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-1017.01 (1) For state aid calculated for school fiscal year 2013-14, local system formula resources includes retirement aid determined under section 79-1028.03, teacher education aid determined for each district pursuant to subdivision (2) of section 79-1007.25, instructional time aid determined pursuant to subsection (2) of section 79-1007.23, allocated income tax funds determined for each district pursuant to section 79-1005.01, and adjustments pursuant to section 79-1008.02 and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.~~

~~(1 2) For state aid calculated for school fiscal years 2014-15 and 2015-16, local system formula resources includes teacher education aid determined for each district pursuant to section 79-1007.25, instructional time aid determined pursuant to subsection (2) of section 79-1007.23, allocated income tax funds determined for each district pursuant to section 79-1005.01, and adjustments pursuant to section 79-1008.02 and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.~~

~~(2 3) For state aid calculated for school fiscal year 2016-17 and each school fiscal year thereafter, local system formula resources includes best practices aid pursuant to section 11 of this act, if any districts in the local system qualify, allocated income tax funds determined for each district pursuant to section 79-1005.01, and adjustments pursuant to section 79-1008.02 and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.~~

Sec. 15. Sections 15 to 24 of this act shall be known and may be cited as the Expanded Learning Opportunity Grant Program Act.

Sec. 16. The purpose of the Expanded Learning Opportunity Grant Program Act is to promote academic achievement outside of school hours in high-need school districts.

Sec. 17. For purposes of the Expanded Learning Opportunity Grant Program Act:

(1) Community learning center has the definition found in 20 U.S.C. 7171(b)(1), as such section existed on January 1, 2015;

(2) Department means the State Department of Education;

(3) Expanded learning opportunity program means a school-community partnership that provides participating elementary-age and secondary-age students and their families with programming and other support activities and services after school and on weekends, holidays, and other hours when school is not in session through a mix of programs and services that (a) complement but do not duplicate elementary and secondary school day learning and (b) create opportunities to strengthen school-community partnerships that provide students and their families with the support they need to be successful in school; and

(4) High-need school district means a school district in which forty percent or more of the enrolled students qualify for free and reduced price meals under the National School Lunch Program, 7 C.F.R. part 210, as such regulations existed on January 1, 2015.

Sec. 18. The department shall establish and administer the Expanded

Learning Opportunity Grant Program. The grant program shall provide grants to community-based organizations working in partnership with schools in high-need school districts to provide expanded learning opportunity programs.

Sec. 19. The first priority of the Expanded Learning Opportunity Grant Program is to continue existing 21st Century Community Learning Centers funded by the federal 21st Century Community Learning Center program pursuant to 20 U.S.C. 7171 et seq., as such sections existed on January 1, 2015, in high-need school districts that have a record of success. The second priority shall be support for new expanded learning opportunity program development in areas of the state with a high percentage of at-risk children that are not currently served by school-based or school-linked expanded learning opportunity programs funded by the federal 21st Century Community Learning Center program pursuant to 20 U.S.C. 7171 et seq., as such sections existed on January 1, 2015.

Sec. 20. (1) The department shall establish an application process and timeline pursuant to which partner organizations may submit proposals for a grant under the Expanded Learning Opportunity Grant Program. Each proposal shall include:

- (a) A grant planning period;
- (b) An agreement to participate in periodic evaluations of the expanded learning opportunity program, to be specified by the department;
- (c) Evidence that the proposed expanded learning opportunity program will be coordinated or contracted with existing programs;
- (d) A plan to coordinate and use a combination of local, state, philanthropic, and federal funding sources, including, but not limited to, funding available through the federal No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq., as such act and sections existed on January 1, 2015, funds allocated pursuant to section 9-812, and funds from any other source designated or appropriated for purposes of the program. Funding provided by the Expanded Learning Opportunity Grant Program shall be matched on a one-to-one basis by community or partner contributions;
- (e) A plan to use sliding-fee scales and the funding sources included in subdivision (d) of this subsection;
- (f) An advisory body which includes families and community members;
- (g) Appropriately qualified staff;
- (h) An appropriate child-to-staff ratio;
- (i) Compliance with minimum health and safety standards;
- (j) A strong family development and support component, recognizing the central role of parents in their children's development; and
- (k) Developmentally and culturally appropriate practices and assessments.

(2) The proposal shall demonstrate how the expanded learning opportunity program will provide participating students with academic enrichment and expanded learning opportunities that are high quality, based on proven methods, if appropriate, and designed to complement students' regular academic programs. Such activities shall include two or more of the following:

- (a) Core education subjects of reading, writing, mathematics, and science;
- (b) Academic enrichment learning programs, including provision of additional assistance to students to allow the students to improve their academic achievement;
- (c) Science, technology, engineering, and mathematics (STEM) education;
- (d) Sign language, foreign language, and social studies instruction;
- (e) Remedial education activities;
- (f) Tutoring services, including, but not limited to, tutoring services provided by senior citizen volunteers;
- (g) Arts and music education;
- (h) Entrepreneurial education programs;
- (i) Telecommunications and technology education programs;
- (j) Programs for English language learners that emphasize language skills and academic achievement;
- (k) Mentoring programs;
- (l) Recreational activities;
- (m) Expanded library service hours;
- (n) Programs that provide assistance to students who have been truant, suspended, or expelled to allow such students to improve their academic achievement;
- (o) Drug abuse prevention and violence prevention programs;
- (p) Character education programs;
- (q) Health and nutritional services;
- (r) Behavioral health counseling services; and
- (s) Programs that promote parental involvement and family literacy.

(3) A proposal shall: (a) Demonstrate specifically how its activities are expected to improve student academic achievement; (b) demonstrate that its activities will be provided by organizations in partnership with the school that have experience or the promise of success in providing educational and related activities that will complement and enhance the academic performance, achievement, and positive development of the students; and (c) demonstrate that the expanded learning opportunity program aligns with the school district learning objectives and behavioral codes. Nothing in this subsection shall be construed to require an expanded learning opportunity program to provide academic services in specific subject areas.

(4) The department shall make an effort to fund expanded learning opportunity programs in both rural and urban areas of the state. The department shall award grants to proposals that offer a broad array of services, programs, and activities.

Sec. 21. A school district participating in an expanded learning opportunity program shall inform an authorized representative or designee of each nonpublic school geographically located within each public school building's attendance area regarding potential participation in an expanded learning opportunity program.

Sec. 22. Grantees receiving funds pursuant to the Expanded Learning Opportunity Grant Program shall cooperate with evaluators and supervise the administration and collection of student, teacher, parent, and collaboration surveys. Grantees shall also designate a qualified evaluation professional or local evaluation support to ensure data collection, perform annual self-assessments, monitor program progress, and assist in developing local evaluation reports.

Sec. 23. The department shall provide a report evaluating the expanded learning opportunity programs to the Legislature by January 1 of each odd-numbered year. The report submitted to the Legislature shall be submitted electronically.

Sec. 24. (1) The Expanded Learning Opportunity Grant Fund is created. The fund shall be administered by the department and shall consist of transfers pursuant to section 9-812, repayments of grant funds, and interest payments received in the course of administering the Expanded Learning Opportunity Grant Program Act. The fund shall be used to carry out the Expanded Learning Opportunity Grant Program Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Board of Education, in consultation with the department, may adopt and promulgate rules and regulations to carry out the Expanded Learning Opportunity Grant Program Act.

Sec. 25. Section 79-1337, Reissue Revised Statutes of Nebraska, is amended to read:

79-1337 (1) For fiscal years 2007-08 through ~~2020-21~~ 2015-16, the State Department of Education shall provide distance education incentives from the Education Innovation Fund to school districts and educational service units for qualified distance education courses coordinated through the Distance Education Council until July 1, 2008, and the Educational Service Unit Coordinating Council on and after July 1, 2008, as provided in this section. Through fiscal year 2015-16, funding for such distance education incentives shall come from the Education Innovation Fund. For fiscal years 2016-17 through 2020-21, funding for such distance education incentives shall come from the Nebraska Education Improvement Fund.

(2) School districts and educational service units shall apply for incentives annually through calendar year ~~2020~~ 2015 to the department on or before August 1 on a form specified by the department. The application shall:

(a) For school districts, specify (i) the qualified distance education courses which were received by students in the membership of the district in the then-current school fiscal year and which were not taught by a teacher employed by the school district and (ii) for each such course (A) the number of students in the membership of the district who received the course, (B) the educational entity employing the teacher, and (C) whether the course was a two-way interactive video distance education course; and

(b) For school districts and educational service units, specify (i) the qualified distance education courses which were received by students in the membership of another educational entity in the then-current school fiscal year and which were taught by a teacher employed by the school district or educational service unit, (ii) for each such course for school districts, the number of students in the membership of the district who received the course, and (iii) for each such course (A) the other educational entities in which students received the course and how many students received the course at such educational entities, (B) any school district that is sparse or very sparse as such terms are defined in section 79-1003 that had at least one student in the membership who received the course, and (C) whether the course was a two-way interactive video distance education course.

(3) On or before September 1 of each year through calendar year ~~2020~~ 2015, the department shall certify the incentives for each school district and educational service unit which shall be paid on or before October 1 of such year. The incentives for each district shall be calculated as follows:

(a) Each district shall receive distance education units for each qualified distance education course as follows:

(i) One distance education unit for each qualified distance education course received as reported pursuant to subdivision (2)(a) of this section if the course was a two-way interactive video distance education course;

(ii) One distance education unit for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was not received by at least one student who was in the membership of another school district which was sparse or very sparse;

(iii) One distance education unit for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was received by at least one student who was in the membership of another school district which was sparse or very sparse, but the course was not a two-way interactive video distance education course; and

(iv) Two distance education units for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was received by at least one student who was in the membership of another school district which was sparse or very sparse and the course was a

two-way interactive video distance education course;

(b) The difference of the amount available for distribution in the Education Innovation Fund on the August 1 when the applications were due minus any amount to be paid to school districts pursuant to section 79-1336 shall be divided by the number of distance education units to determine the incentive per distance education unit, except that the incentive per distance education unit shall not equal an amount greater than one thousand dollars; and

(c) The incentives for each school district shall equal the number of distance education units calculated for the school district multiplied by the incentive per distance education unit.

(4) If there are additional funds available for distribution after equipment reimbursements pursuant to section 79-1336 and incentives calculated pursuant to subsections (1) through (3) of this section, school districts and educational service units may qualify for additional incentives for elementary distance education courses. Such incentives shall be calculated for sending and receiving school districts and educational service units as follows:

(a) The per-hour incentives shall equal the funds available for distribution after equipment reimbursements pursuant to section 79-1336 and incentives calculated pursuant to subsections (1) through (3) of this section divided by the sum of the hours of elementary distance education courses sent or received for each school district and educational service unit submitting an application, except that the per-hour incentives shall not be greater than ten dollars; and

(b) The elementary distance education incentives for each school district and educational service unit shall equal the per-hour incentive multiplied by the hours of elementary distance education courses sent or received by the school district or educational service unit.

(5) The department may verify any or all application information using annual curriculum reports and may request such verification from the council.

(6) On or before October 1 of each year through calendar year ~~2020~~ 2015, a school district or educational service unit may appeal the denial of incentives for any course by the department to the State Board of Education. The board shall allow a representative of the school district or educational service unit an opportunity to present information concerning the appeal to the board at the November board meeting. If the board finds that the course meets the requirements of this section, the department shall pay the district from the Education Innovation Fund as soon as practical in an amount for which the district or educational service unit should have qualified based on the incentive per distance education unit used in the original certification of incentives pursuant to this section.

(7) The State Board of Education shall adopt and promulgate rules and regulations to carry out this section.

Sec. 26. Section 85-1412, Reissue Revised Statutes of Nebraska, is amended to read:

85-1412 The commission shall have the following additional powers and duties:

(1) Conduct surveys and studies as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 and request information from governing boards and appropriate administrators of public institutions and other governmental agencies for research projects. All public institutions and governmental agencies receiving state funds shall comply with reasonable requests for information under this subdivision. Public institutions may comply with such requests pursuant to section 85-1417;

(2) Recommend to the Legislature and the Governor legislation it deems necessary or appropriate to improve postsecondary education in Nebraska and any other legislation it deems appropriate to change the role and mission provisions in sections 85-917 to 85-966.01. The recommendations submitted to the Legislature shall be submitted electronically;

(3) Establish any advisory committees as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 or to solicit input from affected parties such as students, faculty, governing boards, administrators of the public institutions, administrators of the private nonprofit institutions of postsecondary education and proprietary institutions in the state, and community and business leaders regarding the coordination function of the commission;

(4) Participate in or designate an employee or employees to participate in any committee which may be created to prepare a coordinated plan for the delivery of educational programs and services in Nebraska through the telecommunications system;

(5) Seek a close liaison with the State Board of Education and the State Department of Education in recognition of the need for close coordination of activities between elementary and secondary education and postsecondary education;

(6) Administer the Integrated Postsecondary Education Data System or other information system or systems to provide the commission with timely, comprehensive, and meaningful information pertinent to the exercise of its duties. The information system shall be designed to provide comparable data on each public institution. The commission shall also administer the uniform information system prescribed in sections 85-1421 to 85-1427 known as the Nebraska Educational Data System. Public institutions shall supply the appropriate data for the information system or systems required by the commission;

(7) Administer (a) the Access College Early Scholarship Program Act, (b)

the Community College Aid Act, (c) the Nebraska Community College Student Performance and Occupational Education Grant Fund under the direction of the Nebraska Community College Student Performance and Occupational Education Grant Committee, (d) the Nebraska Opportunity Grant Act, ~~and~~ (e) the Postsecondary Institution Act, and (f) the community college gap assistance program and the Community College Gap Assistance Program Fund;

(8) Accept and administer loans, grants, and programs from the federal or state government and from other sources, public and private, for carrying out any of its functions, including the administration of privately endowed scholarship programs. Such loans and grants shall not be expended for any other purposes than those for which the loans and grants were provided. The commission shall determine eligibility for such loans, grants, and programs, and such loans and grants shall not be expended unless approved by the Governor;

(9) On or before December 1 of each even-numbered year, submit to the Legislature and the Governor a report of its objectives and activities and any new private colleges in Nebraska and the implementation of any recommendations of the commission for the preceding two calendar years. The report submitted to the Legislature shall be submitted electronically;

(10) Provide staff support for interstate compacts on postsecondary education; and

(11) Request inclusion of the commission in any existing grant review process and information system.

Sec. 27. Sections 27 to 37 of this act shall be known and may be cited as the Community College Gap Assistance Program Act.

Sec. 28. For purposes of the Community College Gap Assistance Program Act:

(1) Committee means the Nebraska Community College Student Performance and Occupational Education Grant Committee;

(2) Community college gap assistance program means the program created pursuant to section 29 of this act;

(3) Eligible program means a program offered by a community college that is not offered for credit but is aligned with training programs with stackable credentials that lead to a program awarding college credit, an associate's degree, a diploma, or a certificate in an in-demand occupation, has a duration of not less than sixteen contact hours in length, and does any of the following:

- (a) Offers a state, national, or locally recognized certificate;
- (b) Offers preparation for a professional examination or licensure;
- (c) Provides endorsement for an existing credential or license;
- (d) Represents recognized skill standards defined by an industrial sector;

or

(e) Offers a similar credential or training; and

(4) In-demand occupation means:

- (a) Financial services;
- (b) Transportation, warehousing, and distribution logistics;
- (c) Precision metals manufacturing;
- (d) Biosciences;
- (e) Renewable energy;
- (f) Agriculture and food processing;
- (g) Business management and administrative services;
- (h) Software and computer services;
- (i) Research, development, and engineering services;
- (j) Health services;
- (k) Hospitality and tourism; and
- (l) Any other industry designated as an in-demand occupation by the committee.

Sec. 29. (1) The community college gap assistance program is created. The program shall be under the direction of the committee and shall be administered by the Coordinating Commission for Postsecondary Education. The purpose of the community college gap assistance program is to provide funding to community colleges to award community college gap assistance to students in eligible programs.

(2) To be eligible for community college gap assistance under the community college gap assistance program, an applicant:

(a) Shall have a family income which is at or below two hundred fifty percent of Office of Management and Budget income poverty guidelines; and

(b) Shall be a resident of Nebraska as provided in section 85-502.

(3) Eligibility for such tuition assistance shall not be construed to guarantee enrollment in any eligible program.

Sec. 30. Application for community college gap assistance under the community college gap assistance program shall be made to the community college in which the applicant is enrolled or intends to enroll. An application shall be valid for six months from the date of signature on the application. The applicant shall provide documentation of all sources of income. An applicant shall not receive community college gap assistance for more than one eligible program.

Sec. 31. (1) An applicant for community college gap assistance under the community college gap assistance program shall demonstrate capacity to achieve the following outcomes:

(a) The ability to be accepted to and complete an eligible program;

(b) The ability to be accepted into and complete a postsecondary certificate, diploma, or degree program for credit;

- (c) The ability to obtain full-time employment; and
- (d) The ability to maintain full-time employment over time.

(2) The committee may grant community college gap assistance under the community college gap assistance program to an applicant in any amount up to the full amount of eligible costs.

(3) The committee shall deny an application when the community college receiving the application determines that funding for an applicant's participation in an eligible program is available from any other public or private funding source.

Sec. 32. The eligible costs for which the committee may award community college gap assistance under the community college gap assistance program include, but are not limited to:

- (1) Tuition;
- (2) Direct training costs;
- (3) Required books and equipment; and
- (4) Fees, including, but not limited to, fees for industry testing services and background check services.

Sec. 33. An applicant for community college gap assistance under the community college gap assistance program shall complete an initial assessment administered by the community college receiving the application to determine the applicant's readiness to complete an eligible program. The initial assessment shall include any assessments required by the eligible program.

Sec. 34. (1) A recipient of community college gap assistance under the community college gap assistance program shall:

- (a) Maintain regular contact with faculty of the eligible program to document the applicant's progress in the program;
- (b) Sign any necessary releases to provide relevant information to community college faculty or case managers, if applicable;
- (c) Discuss with faculty of the eligible program any issues that may affect the recipient's ability to complete the eligible program and obtain and maintain employment;
- (d) Attend all required courses regularly; and
- (e) Meet with faculty of the eligible program to develop a job-search plan.

(2) A community college may terminate community college gap assistance under the community college gap assistance program for a recipient who fails to meet the requirements of this section.

Sec. 35. (1) The Community College Gap Assistance Program Fund is created. The fund shall be under the direction of the committee and shall be administered by the Coordinating Commission for Postsecondary Education. The fund shall consist of money received pursuant to section 9-812, any other money received by the state in the form of grants or gifts from nonfederal sources, such other amounts as may be transferred or otherwise accrue to the fund, and any investment income earned on the fund. The fund shall be used to provide aid or grants to the community colleges pursuant to the Community College Gap Assistance Program Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The total of community college gap assistance awarded from the Community College Gap Assistance Program Fund during any fiscal year shall not exceed one million five hundred thousand dollars.

(3) Money in the fund may also be used by the committee:  
(a) To establish application and funding procedures; and  
(b) To assist community colleges in defraying the costs of direct staff support services, including, but not limited to, marketing, outreach, applications, interviews, and assessments as follows: (i) Up to twenty percent of any amount allocated for such purposes to the two smallest community colleges; (ii) up to ten percent of any such amount to the two largest community colleges; and (iii) up to fifteen percent of any such amount to the remaining two community colleges. For purposes of this subsection, community college size shall be determined based on the most recent three-year rolling average full-time equivalent enrollment.

Sec. 36. (1) The committee shall develop a common applicant tracking system for the community college gap assistance program that shall be implemented consistently by each participating community college.

(2) The committee shall coordinate statewide oversight, evaluation, and reporting efforts for the community college gap assistance program.

(3) The committee shall meet at least quarterly to evaluate and monitor the performance of the community college gap assistance program to determine if performance measures are being met and shall take necessary steps to correct any deficiencies. Performance measures include, but are not limited to, eligible program completion rates, job attainment rates, and continuing education rates.

Sec. 37. The Coordinating Commission for Postsecondary Education may adopt and promulgate rules and regulations to carry out the Community College Gap Assistance Program Act.

Sec. 38. Section 85-1920, Reissue Revised Statutes of Nebraska, is amended to read:

85-1920 The Nebraska Opportunity Grant Fund is created. Money in the fund shall include amounts transferred from the State Lottery Operation Trust Fund pursuant to section 9-812 until June 30, 2016, or the Nebraska Education Improvement Fund pursuant to section 9-812 until June 30, 2021. All amounts accruing to the Nebraska Opportunity Grant Fund shall be used to carry out the

Nebraska Opportunity Grant Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The Nebraska Opportunity Grant Fund terminates on June 30, ~~2021~~ 2016. Any money in the fund on such date shall be transferred to the Nebraska Education Improvement Fund on such date.

Sec. 39. The Education Committee of the Legislature shall conduct a study of postsecondary education affordability in Nebraska and alternatives for supporting students and families with the cost. The committee shall electronically report its recommendations to the Clerk of the Legislature on or before December 31, 2015.

Sec. 40. Original sections 79-8,134, 79-8,137, 79-8,137.01, 79-8,137.02, 79-8,137.03, 79-8,137.04, 79-8,137.05, 79-1001, 79-1003, 79-1007.11, 79-1017.01, 79-1337, 85-1412, and 85-1920, Reissue Revised Statutes of Nebraska, and section 9-812, Revised Statutes Cumulative Supplement, 2014, are repealed.

Sec. 41. The following section is outright repealed: Section 79-2306, Reissue Revised Statutes of Nebraska.

**ADDENDUM TO 2018-2021 SPECIAL BUY AGREEMENT BETWEEN  
ESUCC COOPERATIVE PURCHASING AND Impero Inc.**

THIS ADDENDUM is made by and between Nebraska ESUCC Cooperative Purchasing ("Cooperative") and Impero Inc. ("Contractor") to the 2018-2021 Special Buy Agreement signed by the Cooperative on November 29, 2018, and by the Contractor on November 20, 2018. The Addendum is as follows:

**Exhibit "A"** is amended to add the following goods or services:

- PAT-001
- ESUCC-Impero\_Patch Manager-1YR
- Patch Manager - SAAS Device Bolt On - 1 Year
- Patch Manager patches Microsoft and more than 60 third-party applications. (including Flash and Java)

**Exhibit "B"** is amended to add the following pricing information:

- \$1.50 per device
- Districts that purchase Impero Edpro will qualify to receive Patch Manager at the fixed cost of \$1.50 per device

All other terms and conditions of the 2018-2021 Special Buy Agreement shall remain in full force and effect.

**COOPERATIVE**

David M. Ludwig  
David Ludwig (May 29, 2019)

David Ludwig  
Executive Director

Date Executed May 29, 2019

**CONTRACTOR**

Jayce Haghighi  
Jayce Haghighi  
Regional Account Manager

Date Executed 5/23/19

Signature: David M. Ludwig  
David Ludwig (May 29, 2019)

Email: dludwig@esucc.org

Title: ESUCC Director

Company: ESUCC






# 2019-05-24 Impero Addendum

Final Audit Report

2019-05-29

Created:	2019-05-29
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIAr5qwNCZbDtMxauvEO-qFnAsddDDC0f

## "2019-05-24 Impero Addendum" History

-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
2019-05-29 - 1:01:49 PM GMT- IP address: 162.127.11.100
-  Document emailed to David Ludwig (dludwig@esucc.org) for signature  
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-  Document e-signed by David Ludwig (dludwig@esucc.org)  
Signature Date: 2019-05-29 - 1:46:22 PM GMT - Time Source: server- IP address: 216.131.21.62
-  Signed document emailed to CRAIG PETERSON (craig.peterson@esucc.org), jhaghighi@imperosoftware.com, Deb Hericks (dhericks@esucc.org), David Ludwig (dludwig@esucc.org), and 1 more  
2019-05-29 - 1:46:22 PM GMT



## 2019-2022 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the ESUCC and Edgenuity Inc. ("Contractor"). Educational Service Unit Coordinating Council (ESUCC) was created in statute to coordinate the activities of Nebraska's 17 Educational Service Units. The Educational Service Unit Coordinating Council was created by LB 603 in 2007 and officially came into existence on July 1, 2008. Cooperative Purchasing is a Project of ESUCC that has been in existence since 1968 with the purpose of providing the Educational Service Unit (ESU) member school districts ("Members") of Nebraska an opportunity to secure the maximum procurement value through cooperative synergies. The Educational Service Unit Coordinating Council (ESUCC) Advisory group serves as the steering committee for new and future cooperative buys statewide under its direction. A chief executive officer coordinates the statewide purchasing agreement between educational service units and their school districts and other serviceable entities. The Director of Cooperative Purchasing manages the program with the guidance of the ESUCC, Advisory Board, and the Fiscal Agent. ESUCC serves 17 ESUs that provide a statewide network of educational opportunities to approximately 245 school districts and more than 300,000 students.

In consideration of mutual covenants, the parties agree as follows:

- 1. Scope of the Contract.** The Contractor shall provide Members the opportunity to purchase the goods and/or services as defined in **Exhibit A**, which is attached hereto and incorporated herein by this reference, at the prices set forth in this Agreement and its Exhibits.
- 2. Payment Terms/Payment Schedule.** Members shall pay for services rendered and/or for accepted goods on the terms and payment schedule as set forth in **Exhibit B** which is attached hereto and incorporated herein by this reference. Prices listed in Exhibit B shall remain in effect during the term of this Agreement unless agreed otherwise by the parties in writing.
- 3. Administrative Fee.** Contractor shall submit to ESUCC as an administrative fee a sum equal to two percent (2%) of the total gross dollar volume, less freight of all goods and services and excluding annual support and maintenance purchased by the ESUCC, ESUs, and Members. This fee will be submitted to ESUCC on a quarterly basis beginning three (3) months from the Effective Date of this Agreement for all transactions completed and paid during said quarter.
- 4. Term.** This Agreement is effective July 1, 2019 ("Effective Date") and shall continue until 12:00 midnight (CST) on June 30, 2022, unless terminated earlier as provided by this Agreement or by law.

**5. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Sarpy County, Nebraska.

**6. Student Privacy Protections.**

- A. **Definition of Data.** Data include all Personally Identifiable Information (PII), Member Data, and other non-public information. Data include, but are not limited to, student data, metadata, and user content.
- B. **Definition of Member Data.** Member Data includes all PII and other information that is not intentionally made generally available by ESUCC or its Members on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student and personnel data and metadata.
- C. **Definition of Personally Identifiable Information.** Personally Identifiable Information includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as used in Neb. Rev. Stat. § 84-712.05 and personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g.
- D. **Definition of User.** User means a participant, instructor, or administrator of ESUCC or its Members who are authorized with login credentials by ESUCC or its Members to use the goods and/or services provided by this Agreement.
- E. **Data De-Identification.** Contractor may use deidentified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Contractor agrees not to attempt to re-identify deidentified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt reidentification.
- F. **Marketing and Advertising.** Contractor will not use any Data to advertise or market to students or their parents. Advertising or marketing may be directed to the ESUCC, Members, or their school districts only if student information is properly de-identified."
- G. **Modification of Terms of Service.** Contractor will not change how Data are collected, used, or shared under the terms of this Agreement in any way without advance notice to and consent from the ESUCC, the Members, and the affected school district(s).
- H. **Data Collection.** Contractor will only collect Data necessary to fulfill its duties as outlined in this Agreement.

- I. **Data Use.** Contractor will use Data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement.
- J. **Data Mining.** Contractor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.
- K. **Data Sharing.** Data cannot be shared with any additional parties without prior written consent of the User except as required by law.
- L. **Data Transfer or Destruction.** Contractor will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the Contractor may have transferred Data, are destroyed or transferred to the ESUCC under the direction of the ESUCC when the Data are no longer needed for their specified purpose, at the request of the Member.
- M. **Rights and License in and to Data.** Parties agree that all rights, including all intellectual property rights to Data, shall remain the exclusive property of the Member, and Contractor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Contractor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data.
- N. **Access.** Any Data held by Contractor will be made available to a Member upon request by the Member.
- O. **Security Controls.** Contractor will store and process Data in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor will also have a written incident response plan, to include prompt notification of the Member in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. Contractor agrees to share its incident response plan upon request.
- P. **Response to Legal Orders, Demands or Requests for Data.** Except as otherwise expressly prohibited by law, Contractor will:
  - (1) Promptly notify ESUCC and Members of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking Data;
  - (2) Consult with ESUCC and Members regarding its response;
  - (3) Cooperate with ESUCC's and Member's reasonable requests in connection with efforts by them to intervene and quash or modify the legal order, demand or request; and
  - (4) Upon ESUCC's or a Member's request, provide them with a copy of its response.

## **7. Termination.**

A. ESUCC may terminate this Agreement in whole or part if funding from federal, state, or other sources for ESUCC or its Members is not obtained and continued at levels sufficient to allow for purchase of the good and/or services in the indicated quantities or term. ESUCC shall notify the Contractor as soon as practicable if funds to meet ESUCC's or Members' obligations become unavailable. The determination of ESUCC as to the insufficiency of funds is conclusive.

B. Each party may terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within thirty (30) days after receipt of written notice of such default or such additional cure period as the non-defaulting party may authorize in writing.

C. Each party may terminate this Agreement by written notice if federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.

D. ESUCC may terminate this Agreement, in whole or in part, by written notice to the Contractor and may regard the Contractor in default of this Agreement if the Contractor becomes:

- (1) Insolvent;
- (2) Makes a general assignment for the benefit of creditors;
- (3) Files a voluntary petition of bankruptcy;
- (4) Suffers or permits the appointment of a receiver for its business or assets;
- (5) Becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or
- (6) Has wound up or liquidated, voluntarily or otherwise.

E. ESUCC may terminate this Agreement, in whole or in part, immediately, without notice, if the Contractor is debarred or suspended from performing services on any public contracts.

F. The parties may terminate this Agreement without cause by mutual written consent or by either party with a minimum of ninety (90) days written notice.

G. Upon the termination for any reason or expiration of this Agreement, the Contractor promptly must return to ESUCC all papers, materials and other property of ESUCC then in its possession, including but not limited to all work in progress as is appropriate in its then existing form to ESUCC.

## **8. Indemnification.**

A. The Contractor hereby waives and agrees to indemnify and save harmless ESUCC and the ESUs and their officials, agents, employees, and volunteers

(hereinafter collectively referred to as "Indemnities"), against third party claims of injuries, death, damage to property, liabilities, judgments, costs and expenses which may otherwise accrue against Indemnities in consequence of the granting of this Agreement or which may otherwise result therefrom.

B. The Contractor shall, at his or her own expense, appear, defend and pay reasonable charges of attorneys and direct expenses arising therefrom or incurred in connection therewith.

C. If any judgment shall be rendered against ESUCC or the ESUs in any such action as a result of Contractor's direct actions, the Contractor shall, at his or her own expense, satisfy and discharge the same.

D. Any performance bond or insurance protection required by this Agreement, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.

E. The Contractor's obligation to indemnify and save harmless any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.

**9. Insurance.** Contractor shall secure and keep in force during the term of this Agreement the following insurance coverages from insurance companies or government self-insurance pools authorized to do business in Nebraska:

A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per person and \$5,000,000 per occurrence; and

B. If applicable, workers compensation coverage meeting all statutory requirements.

The Contractor shall furnish a certificate of insurance to the undersigned ESUCC representative prior to commencement of this Agreement. Failure to provide insurance as required in this agreement is a material breach of contract entitling ESUCC to terminate this Agreement immediately.

**10. Public Records.** The Contractor acknowledges that ESUCC must comply with Neb. Rev. Stat. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

**11. Publicity.** ESUCC does not endorse the goods or services of the Contractor. Except for listing ESUCC as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of ESUCC.

**12. Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the

performance of this Agreement while on ESUCC, ESU, or Member premises or at ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on ESUCC, ESU, or Member property or at ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all ESUCC, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on ESUCC, ESU, or Member premises or at ESUCC, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. ESUCC may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.

- 13. Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
  
- 14. Independent Contractor.** Contractor is an independent contractor under this Agreement and is not an ESUCC, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
  
- 15. Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
  
- 16. Taxpayer Identification.** Contractor's federal employer identification number is: 31-1692050.
  
- 17. Sales Tax.** ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. ESUCC, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
  
- 18. Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

Cooperative: ESUCC  
Attn: Kraig Lofquist  
6949 South 110<sup>th</sup> Street

LaVista, NE 68128

With copy to:

ESUCC Cooperative Purchasing  
Attn: Craig Peterson  
PO Box 858  
412 W. 14<sup>th</sup> Ave  
Holdrege, NE 68949

Steve Williams, Legal Counsel  
KSB School Law, PC, LLO  
Cornhusker Plaza  
301 South 13th Street, Suite 210  
Lincoln, NE 68508

Contractor: Edgenuity Inc.  
ATTN: Director of Legal Services  
8860 E. Chaparral Rd., Ste 100  
Scottsdale, AZ 85250

Notice is effective only if the party giving the Notice has complied with this section.

- 19. Warranties and Specifications.** Contractor shall be responsible for providing to Members all manufacturer warranties on all goods and services. Contractor shall provide Members with all attachments normally supplied by the manufacturer and/or supplier. Complete product specification sheets or brochures must be provided to Members, ESUs, or ESUCC upon request.
- 20. Entire Agreement.** The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.
- 21. Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.
- 22. Waivers.** The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay: (1) In exercising any right or remedy, **or** (2) In requiring the satisfaction of any condition under this Agreement, **and** (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.

- 23. Severability.** If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.
- 24. Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.
- 25. Force Majeure.** Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non performing party's failure to perform, or delay in performing, any of its obligations contained in this Agreement (except any obligations to make payments for services rendered or accepted goods received before the failure to perform or the delay in performance), where, in the opinion of ESUCC, such failure or delay is caused by circumstances beyond the non performing party's control or which make performance commercially impracticable, including but not limited to fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, government regulations or restrictions of any kind or any acts of any government, alien enemy, judicial action, power failure, acts of God, or other natural circumstances. This Force Majeure provision excludes economic hardship, changes in market conditions, and insufficiency of funds on the part of Contractor.
- 26. Assignment.** This Agreement binds the parties and their respective successors and assignees. The Contractor shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of ESUCC.
- 27. Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of ESUCC.
- 28. Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
- 29. Rights and Remedies Cumulative.** Any enumeration of ESUCC's rights and remedies set forth in this Agreement is not exhaustive. ESUCC's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of the ESUCC's rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.

**30. Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as my from time to time be provided by written instrument signed by both parties.

**31. Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.

**32. Attachments.** Attachments to this Agreement include the following:



- Exhibit A – Scope of Services to be provided to ESUCC and Members
- Exhibit B – Payment Terms & Schedule
- Exhibit C – Vendor Software License Agreement

IN WITNESS WHEREOF the parties have executed this Agreement on the last date written below.

**ESUCC**

By:   
Kraig Lofquist (Jul 1, 2019)  
 Name: Kraig Lofquist  
 Title: Executive Director  
 Date: Jul 1, 2019

**CONTRACTOR**

DocuSigned by:  
  
70D9EFB5FC2F46D  
 By: \_\_\_\_\_  
 Name: Sari G. Factor  
 Title: CEO  
 Date: 6/25/2019  
 Approved by Legal: 

## **EXHIBIT "A"**

### **SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO MEMBERS**

**Edgenuity Digital Libraries Summer All Courses Concurrent User: This license provides access to Edgenuity's grades 6-12 Digital Content / Courseware for June 1 – August 31 for use with District / School teachers. Excludes subscription-based electives, dual credit, social-emotional, and courses only available via Instructional Services.**

**Available content provides comprehensive course coverage across a myriad of subject areas for credit recovery, initial credit, and acceleration. Content and courses are aligned to state and national standards. Prebuilt course offerings with ready-to-use lessons are available for English Language Arts, mathematics, science, and social studies, as well as general electives, world languages, career education and pathways, Advanced Placement, and test preparation options. Curriculum is fully customizable and can be used to build custom courses, instructional sequences, concept recovery strands and assign content in a multitude of ways.**

**EXHIBIT "B"****1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

Edgenuity Digital Libraries Summer All Courses Concurrent User	Price
Quantity 1-500	\$100 each
Quantity 501+	\$90 each

**2. Payment Terms/ Payment Schedule**

- A. Members will pay Contractor for all undisputed amounts for the goods and/or services identified in Exhibit A and provided by Contractor under this Agreement within thirty (30) days of receipt of invoice, provided that goods/services have been accepted by the Member as hereinafter provided.
- B. The procedure for billing and payment for services or products and deliverables shall be as specified in this exhibit.

**3. Acceptance of Services or Products:**

- A. The Contractor shall deliver any goods, perform any services or both in accordance with the schedule set forth in any RFP, RFQ, the time specified in a purchase order issued by ESUCC, ESU, or Member, or this Agreement (whichever is later).
- B. Unless otherwise agreed to by the parties, the Contractor shall provide written notification of completion of any deliveries, or performances of services or both, to the Member ("Delivery Notice").
- C. Members shall have sixty (60) days from the date of receipt of the Delivery Notice to provide the Contractor with written notification of acceptance or rejection due to unsatisfactory performance or nonconforming goods.
- D. If the Member issues a rejection notice, the Contractor shall as quickly as is practicable, correct or replace all deficiencies at its expense. ESUCC shall not unreasonably withhold or delay its acceptance or rejection.

**4. Title and Risk of Loss:**

- A. Title and risk of loss for goods shall remain with the Contractor. B. Insurance during shipment and until the goods are accepted by ESUCC, ESU, or Member is the responsibility of the Contractor.

**EXHIBIT "C"**

**SOFTWARE LICENSE AGREEMENT**

**EDGENUITY STANDARD TERMS & CONDITIONS**



## STANDARD TERMS AND CONDITIONS

These Terms and Conditions govern the provision of products and services as set forth in the applicable Edgenuity quote, customer-accepted proposal, or purchase order (collectively the “Quote,” and with these Terms and Conditions, the “Agreement”). Edgenuity updates these Standard Terms from time-to-time, and posts the current version on its website at <http://www.edgenuity.com/edgenuity-standard-terms-and-conditions.pdf>.

### 1.

#### DEFINITIONS

- a. **Subscription** refers to Edgenuity’s internet based learning management software as a service. The Subscription includes access to the **Licensed Material** (defined below) and **Third Party Services** (defined in Attachment A).
- b. **Licensed Material** refers to the Edgenuity products and services specified in the Quote or other agreement, which may include Edgenuity Courseware, audio, video and other content, curriculum, documentation and software including applets and animations.
- c. **Professional Development** refers to all implementation planning, program design, administrative and instructional training, consulting and coaching for education professionals provided by Edgenuity as described in the applicable Quote. Professional Development services are also subject to the additional terms contained in Attachment B.
- d. **Instructional Services** refers to services provided by Edgenuity including student access to teachers and coaches, the development and implementation of policies and procedures for purposes of improving student outcomes, and other services as stated in the applicable Quote. Instructional Services are also subject the additional terms contained in Attachment B.

### 2. LICENSE and SERVICES.

- a. **License.** Edgenuity grants Customer a non-exclusive, non-transferable license to access and use Licensed Material for internal educational and training purposes solely for the Subscription as set forth in the Quote. This Agreement provides only Customer and Customer’s specifically authorized instructors, administrators, students and parents (“End Users”) access to and use of the Subscription solely for internal education- and training-related purposes.
- b. **Services.** If set forth in the Quote, Edgenuity will also provide Professional Development and/or Instructional Services, subject to the additional terms and conditions in Attachment B. Customer’s access to any Professional Development or Instructional Services will expire at the end of the Term set forth in the applicable Quote, or if the Subscription is terminated for any reason.
- c. **Edgenuity Technical and Customer Support.** Edgenuity will provide technical and customer support for the Service under the terms of Edgenuity’s support policies found at [www.edgenuity.com/support](http://www.edgenuity.com/support) including all updates, bug fixes, and enhancements when generally made available.

### 3. USE OF SUBSCRIPTION.

- a. **Customer Data and Student Data.** All data and materials uploaded or entered during use of the Subscription by Customer, including student information and student records, remain the property of Customer (“**Customer Data**”). All student-generated content and personally identifiable information about any students (“**Student Data**”) shall remain the property of the student, or of the parent or legal guardian of the student. Customer represents and warrants that it has appropriate rights to any Customer Data and Student Data. Customer grants Edgenuity the right to use the Customer Data and Student Data solely for purposes of performing under this Agreement. Students (or Parents or legal guardians of the Student), retain ownership and control of all Student Data that is provided or accessed through Edgenuity’s course, and ownership of such Student Data never passes to Edgenuity. During the term of this Agreement, Customer may export Customer Data and Student Data to the extent allowed by the functionality within the Subscription. For training and demonstration purposes, Edgenuity may use and share Customer Data and Student Data, but will share only with supervisors, instructors and other Customer employees who have appropriate authorization.
- b. **Customer Responsibilities.** Customer must (i) keep its passwords secure and confidential; (ii) be solely responsible for Customer Data and all activity in its account; (iii) use commercially reasonable efforts to prevent unauthorized access to its account and notify Edgenuity promptly of any such unauthorized access; and (iv) use the Subscription as

described in Edgenuity's written technical guides. Customer authorizes its integrators or other third party vendors and Edgenuity to conduct initial setup and to allow continued access to the Subscription for the sole benefit of Customer. Customer may provide Edgenuity the name and contact information for all third parties authorized by Customer, or necessary for Customer to use the Subscription. Customer is solely responsible for ensuring compliance by its authorized integrators or other third party vendor(s) with all federal, state and local privacy laws and regulations.

#### 4. **WARRANTIES and DISCLAIMERS.**

- a. **Compliance Warranty & Privacy Policy.** Edgenuity will comply with, and will cause each of its employees, agents, and contractors to comply with, all state, federal and municipal laws and regulations applicable to its performance under this Agreement ("Applicable Laws"), including without limitation the Family Educational Rights and Privacy Act ("**FERPA**"), and the Children's Online Privacy Protection Act ("**COPPA**"). Edgenuity's Privacy Policy, which is incorporated by reference into these terms and conditions, contains additional terms regarding Edgenuity's use of and commitment to safeguarding Student Data, and compliance with other student privacy laws. Customers and End Users can find Edgenuity's privacy policy at <http://www.edgenuity.com/Information/Privacy/>. Customer is responsible for providing notice of its own privacy policy to parents of its student and for obtaining any necessary parental consents for students to use the Subscription as may be required by Applicable Law.
- b. **Professional Development and Instructional Services Warranty.** Edgenuity warrants that it will provide Professional Development and/or Instructional Services in a professional and competent manner consistent with the terms of this Agreement and under generally accepted industry standards.
- c. **Edgenuity Service Warranty.** Edgenuity warrants that it will make commercially reasonable efforts to maintain the online availability of the Subscription. CUSTOMER'S EXCLUSIVE REMEDY AND EDGENUITY'S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR EDGENUITY TO REPAIR THE NON-CONFORMING SERVICE, OR IF EDGENUITY CANNOT MAKE SUCH REPAIR WITHIN A REASONABLE PERIOD OF TIME, THEN EDGENUITY MAY TERMINATE ACCESS TO THE SUBSCRIPTION AND REFUND A PORTION OF THE FEE.
- d. **DISCLAIMERS.** THE SUBSCRIPTION IS PROVIDED "AS IS" AND WITH ALL FAULTS. EXCEPT FOR THE ABOVE WARRANTIES, THE SUBSCRIPTION AND ANY PROFESSIONAL DEVELOPMENT AND INSTRUCTIONAL SERVICES ARE PROVIDED ON AN "AS-IS" AND "WHEN AVAILABLE" BASIS. EDGENUITY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES CONCERNING THE SUBSCRIPTION AND SERVICES TO THE EXTENT ALLOWED BY LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE OPERATION OR CONNECTIVITY OF THE SUBSCRIPTION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SUBSCRIPTION WILL BE FREE OF ALL POSSIBLE METHODS OF UNAUTHORIZED ACCESS, ATTACK, OR INTRUSION.

5. **PAYMENT, INVOICING AND TAXES.** Unless otherwise provided in the Quote, Customer will pay the amount of each invoice net 30 days after the invoice date. Except to the extent that Customer provides Edgenuity with a valid tax exemption certificate authorized by the appropriate taxing authority, Customer must pay any taxes, impositions, or other charges imposed or levied by any governmental authority, including any sales, use, value-added, or withholding taxes, in connection with the Quote, excluding Edgenuity income and payroll taxes.

#### 6. **MUTUAL CONFIDENTIALITY.**

- a. **Definition of Confidential Information.** Confidential Information means all non-public information including Personally Identifiable Information ("**PII**") as defined by Applicable Law, disclosed by a party ("**Discloser**") to the other party ("**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("**Confidential Information**"). Edgenuity's Confidential Information includes without limitation the Service, its user interface design and layout, pricing information, and the Licensed Material.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement.
- c. **Exclusions.** Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance written notice to seek a protective order.

## 7. EDGENUITY PROPERTY.

- a. **Reservation of Rights.** The content, documentation, software, workflow processes, user interface, designs, know-how and other items provided by Edgenuity as part of the Subscription, any Instructional Services or Professional Development, or in response to Customer requests for customized content are the proprietary property of Edgenuity and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Edgenuity and its licensors. Customer may not remove or modify any proprietary marking or restrictive legends in the Edgenuity Courseware. Edgenuity reserves all rights unless expressly granted in this Agreement.
- b. **Restrictions.** Customer may not (i) sell, resell, rent or lease the access to the Subscription or use it in a service provider capacity; (ii) use the Subscription to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Subscription or attempt to gain unauthorized access to the Subscription or its related systems or networks; (iv) use the Subscription for other than internal Customer educational purposes; (v) reproduce, frame, mirror, modify, translate, enhance, decompile, disassemble, copy, download or reverse engineer the Subscription or modify, create derivative works based on the Subscription; or (vi) access the Subscription to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

## 8. TERM AND TERMINATION.

- a. **Term.** The Term of this Agreement and Customer's access to the Subscription, Services, and any instructional Services or Professional Development services will continue for the period indicated on the applicable Quote, unless terminated by Edgenuity for material breach.
- b. **Funding-Out Clause.** Customer's payment obligation may be conditioned upon the availability of funds that are appropriated or allocated by the applicable government agency. If funds are not allocated, Customer may terminate this Agreement at the end of the period for which funds are available. Customer must notify Edgenuity in writing within thirty (30) calendar days before termination. Upon termination, Edgenuity will be entitled to a pro-rata portion of the fees for Service performed up to the date of termination.
- c. **Non-payment of Fees.** Edgenuity may terminate the Agreement and access to the Subscription in a Quote within ten (10) days after Customer receipt of a notice of non-payment of amounts owed under that Quote.
- d. **Mutual Termination for Material Breach.** Except for 7(b), if either party is in material breach of this Agreement, the non-breaching party may terminate this Agreement at the end of a written thirty (30) calendar day notice and cure period, if the breach has not been cured.
- e. **Access to and Return of Customer Data and Student Data.** For a period of up to sixty (60) days after termination, upon request, Edgenuity will make the Subscription available for Customer to access and export Customer Data and Student Data. Alternately, Customer may submit a written request to Edgenuity up to sixty (60) days after termination, to request the deletion of Student Data (other than anonymized or de-identified data that may be retained pursuant to Edgenuity's Privacy Policy).
- f. **Suspension for Violations of Law.** Edgenuity may temporarily suspend the Subscription or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Subscription, Customer has violated a law. Edgenuity will attempt to contact Customer in advance.
- g. **Return or Destroy Edgenuity Materials Upon Termination.** Within sixty (60) days after expiration or termination of this Agreement for any reason, upon request, Customer agrees to return, delete or destroy all proprietary Edgenuity materials provided by Edgenuity. Customer will confirm its compliance with this destruction or return requirement in writing upon request of Edgenuity.

## 9. LIABILITY LIMIT.

- a. **EXCLUSION OF INDIRECT DAMAGES.** EDGENUITY IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF DATA, RECORDS OR INFORMATION; AND LOST PROFITS), EVEN IF IT KNOWS OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.
- b. **TOTAL LIMIT ON LIABILITY.** EDGENUITY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12-MONTH PERIOD BEFORE THE EVENT THAT GAVE RISE TO THE LIABILITY.

## 10. INDEMNITY.

- a. Edgenuity will defend or settle any third party claim against Customer to the extent that such claim alleges that Edgenuity technology used to provide the Subscription violates a copyright, patent, trademark or other intellectual property right.

Customer must promptly notify Edgenuity of any such claim in writing, cooperates with Edgenuity in the defense, and allow Edgenuity solely to control the defense or settlement of the claim. If such a claim appears likely, then Edgenuity may modify the Subscription, procure the necessary rights, or replace the infringing part of the Subscription with a functional equivalent. If Edgenuity determines that none of these are reasonably available, then Edgenuity may terminate the Subscription and refund any prepaid and unused fees. Edgenuity has no obligation for any claim, in whole or in part, arising from information, items or technology not provided by Edgenuity or for any third party services not owned by Edgenuity. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND EDGENUITY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

- b. To the extent permitted under Applicable Law, each party will defend, indemnify and hold harmless the other party from and against any third party claims, injuries, losses, damages, settlements, penalties, fines, costs, or expenses (including reasonable attorneys' fees) that arise from or relate to (i) the indemnifying party's negligence, misconduct or breach of this Agreement; and (ii) an indemnifying party's violation of Applicable Law.

#### 11. OTHER TERMS.

- a. **Governing Law.** If Customer is a public school or district or other state or municipal governmental agency, this Agreement will be governed by the laws of the state where the Customer resides, excluding any conflict of law principles. Otherwise, this Agreement will be governed by the laws of the state of Arizona.
- b. **Entire Agreement and Changes.** These Terms and Conditions (and any Attachments) and the Quote constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. The Parties may modify this Agreement only by written agreement signed by both parties.
- c. **No Assignment.** Neither party may assign or transfer this Agreement or a Quote to a third party, except that this Agreement with all Quotes may be assigned, without the consent of the other party as part of a merger or sale of all or substantially all the assets of a party.
- d. **Independent Contractors.** The parties to this Agreement are independent contractors, and this Agreement does not create any partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- e. **Feedback.** By submitting ideas, suggestions or feedback to Edgenuity regarding the Subscription, Customer agrees that items submitted do not contain confidential or proprietary information; and Customer grants Edgenuity an irrevocable, unlimited, royalty-free and fully-paid perpetual license to use such items for any business purpose.
- f. **Enforceability and Force Majeure.** If any term of this Agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of fees, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events, failure of Internet services, any third party service and telecommunications services.
- g. **Money Damages Insufficient.** Any breach by a party of this Agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- h. **No Additional Terms and Order of Precedence.** This Agreement supersedes any additional or conflicting terms of any Customer form-purchasing document. If there is an inconsistency between these Terms and Conditions and any Quote, the Quote will prevail only with respect to pricing, duration and service specific terms.
- i. **Survival of Terms.** Sections 5 through 10, 11(a) (e) (g) (h) and (i) shall survive termination of this Agreement.

**Attachment A**  
**Third Party Terms**

1. **Third Party Services** refer to web based software, content or services licensed by Edgenuity from a third party for use by Edgenuity for the Subscription or Hardware. Customer's use of Third Party Services may be subject to additional terms from the third parties, some of which are listed below or can be found at the web links indicated:
- a. **ExploreLearning.** Access to and use of any ExploreLearning *Gizmos* (Gizmos) provided by Edgenuity are governed by the following additional terms: (i) Neither Customer nor any of its users are authorized to access or use any Gizmos, except: (a) users who are students and who are authorized by Customer to access and use the Service that includes or incorporates the Gizmos; and (b) users who are teachers of those same students, provided that such teachers may use the Gizmos only for the purposes of assigning and managing assignments for those students; (ii) A Gizmo may only be used in connection with the Service with which that particular Gizmo has been provided, and may not be used in connection with any other class, program, application, or software; and (iii) Customer understands and agrees that any access to or use of any Gizmo provided by Edgenuity by Customer or any of its users in contravention of the foregoing terms constitutes a material breach of the Agreement, and that if Customer desires to use a Gizmo in a manner that is not authorized by the Agreement, it is solely the responsibility of Customer (and not of Edgenuity) to obtain authorization for such use from the appropriate third party.
  - b. **Education Testing Services (ETS) e-rater® Scoring Service.** If the Agreement includes any ETS services, Customer agrees as follows: (i) the score and/or feedback received from the e-rater® technology should be considered as one piece of evidence about a student's writing ability. When a score from the e-rater® engine is being used for an important decision about a student's performance, instructors should review and evaluate the score and/or feedback to ensure that the appropriate decision about placement or performance has been made; (ii) the user understands and agrees that the Scoring Service may not be used for any other purpose, or provided to any other party, than as described herein. As permitted under state or federal law, user shall indemnify and hold Edgenuity and/or Educational Testing Service (ETS) harmless from any and all claims arising out of the use of the Scoring Service or use of the scores and/or feedback to determine placement of, or grades for students, or any other purpose; (iii) THE E-RATER® SCORING SERVICE (SCORE AND GRAMMAR CHECKING FEATURE) PROVIDED BY ETS IS PROVIDED "AS-IS", WITHOUT WARRANTIES OF ANY KIND AND ETS DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE E-RATER® SCORING SERVICE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL ETS BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE THIRD PARTY PRODUCTS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; and (iv) with regard to essays submitted to the site, you (Customer) hereby grant to ETS a non-exclusive, royalty-free, world-wide, irrevocable license to reproduce, transmit, display, disclose, archive and otherwise use any such files you submit to the site for the purposes of scoring and providing feedback. ETS will not retain any personally identifiable information that may be associated with the essays. This license shall survive the termination of any license granted herein to ETS but in no event longer than 18 months. Any cessation of use of the site shall not result in the termination of any license you grant herein to ETS. Nothing herein shall preclude ETS from using information independently created by ETS.
  - c. **Sophia® Learning Inc.** If this Agreement includes any Sophia Learning Inc. courses for use, the following term applies to any such purchase or use: "Customer agrees that the use of any Sophia course is prohibited for all students under the age of 13 years."
  - d. **CompassLearning Third Party Information.** (i) CKEditor (© 2003-2013 CKSource – Frederico Knabben, all rights reserved), is a third party software text editor, licensed pursuant to the CKEditor Enterprise OEM License 2.3.2 and the GNU Lesser General Public License Version 3 ("LGPL"), available at <http://www.gnu.org/licenses/gpl.html>; (ii) SSHNET (© 2010 RENCI, all rights reserved), is a third party secure connectivity software tool, licensed pursuant to the terms found at <https://sshnet.codeplex.com/license>; (iii) Agilix Labs, Inc.'s xLi platform, (© Agilix Labs, Inc., all rights reserved), is distributed with other licensed third party components under the MIT License and/or the Apache License found at <https://jquery.org/license/> and <http://cdn.mathjax.org/mathjax/2.0-latest/LICENSE>.
2. **Hardware** refers to any equipment with any pre-installed software marketed or supplied by Edgenuity and identified on a Quote. Edgenuity is not the manufacturer of Hardware and it is provided subject to the separate sale terms provided by the manufacturer (including without limitation, return and exchange terms). Customer grants Edgenuity permission to provide remote technical support for setup and diagnostic purposes for any Hardware if required. Customer owns the Hardware and has a license to any pre-installed software, subject to the applicable license agreement. During the term of this Agreement, if Customer modifies Hardware in any way, it may void the manufacturer's warranty. Upon expiration or termination of the Agreement, Edgenuity will remotely remove all Edgenuity content and software from the Hardware.
3. **DISCLAIMERS.** ALL THIRD PARTY SERVICES AND HARDWARE ARE PROVIDED BY EDGENUITY "AS IS." EDGENUITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. Edgenuity transfers to Customer, to the extent transferable, warranties and indemnities Edgenuity receives from the manufacturer of the Hardware or Third Party Service. Edgenuity's sole obligation with respect to Hardware and Third Party Service will be to use reasonable commercial efforts to facilitate warranty and indemnification claims that Customer makes against the manufacturer of the Hardware or Third Party Service. Customer, recognizing that Edgenuity is not the manufacturer of Hardware or Third Party Service, expressly waives any claim that Customer may have against Edgenuity for product liability or infringement of any intellectual property right with respect to any Hardware or Third Party Service, as well as any right to indemnification from Edgenuity on account of any such claim made against Customer by a third party.

**Attachment B****Additional Terms for Instructional Services & Professional Development**

1. **APPLICABILITY.** These additional terms and conditions apply if the Quote includes the purchase of Instructional or Professional Development Services from Edgenuity. In the event of a conflict between these additional terms and the Edgenuity Standard Terms and Conditions, these additional terms shall control, but solely with respect to the provision of Instructional and/or Professional Development Services.
2. **CUSTOMER LIAISON.** Customer will designate an individual to serve as its primary liaison to Edgenuity for all communications related to the provision of Instructional and Professional Development Services, setting up access for End Users, and use of the Subscription.
3. **HOURS OF AVAILABILITY.** Edgenuity Instructional and Professional Development Services will be available during the business hours specified by Edgenuity, or if Customer requires Instructional Services for certain times or additional hours, such requirements must be specified in the Quote prior to the beginning of the Subscription. Requests for access to Instructional or Professional Development Services not already provided for in the Quote must be made or approved by the Customer Liaison, and may result in additional charges.
4. **NO GUARANTY OF OUTCOMES.** Edgenuity cannot make any guarantees, representations or warranties as to any student, teacher, or other End User outcomes or results from the Instructional or Professional Development Services.
5. **INSTRUCTIONAL SERVICES.** If specified in the Quote, Edgenuity will provide virtual access to teachers or coaches (or both) (“Edgenuity Instructors”) who are hired, trained, supervised, and paid by Edgenuity, and who will assist in the virtual delivery of the Licensed Material to students and their use of the Subscription (the “Virtual Programs”). Customer is responsible for (a) providing secure internet access for End Users to use the Virtual Programs; (b) all day-to-day management of the Virtual Programs, subject in all cases to compliance with Applicable Law and Customer policies; (c) obtaining all necessary consents for the provision of Instructional Services where they will involve direct contact between Edgenuity Instructors and students and parents; (d) determining appropriate student courses and verifying student schedules; (e) monitoring student attendance and ensuring compliance with applicable state requirements; and (f) assisting students not making adequate progress.
  - a. **Instructor Requirements.** Customer shall be responsible for advising Edgenuity of any special certification, training, background checks, insurance, fingerprinting or similar requirements for the Edgenuity Instructors as may be imposed by Applicable Law (“Instructor Requirements”). Edgenuity shall be solely responsible for all decisions regarding hiring, supervision, discipline, and dismissal of Edgenuity Instructors, and for ensuring that all Edgenuity Instructors meet and comply with Instructor Requirements.
  - b. **Exceptional Student Services.** If Customer is a public entity receiving federal funds, Customer is considered the “Local Educational Agency,” or LEA, as that term is defined by Applicable Law, and Customer is solely responsible for the provision of any special education services. Edgenuity’s services do not include (i) providing special education services; (ii) creating, implementing or providing Individualized Education Programs (**IEP**); (iii) providing reasonable accommodations or any services to insure compliance with the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or any other Applicable Law. Notwithstanding the foregoing, Edgenuity will discuss, formulate and make reasonable adjustments and accommodations in furtherance of student IEPs or reasonable accommodations established by Customer, provided that Customer provides necessary IEPs and section 504 documentation to Edgenuity. Customer shall be solely responsible for the costs of any required adjustments or accommodations.
  - c. **State Testing.** Customer is responsible for providing appropriate accommodations for the administration of any state-mandated standardized testing by End Users. Customer is also responsible for receiving, distributing, administering, proctoring and returning all state mandated standardized tests under applicable state law, policies and procedures.
  - d. **Reporting and Withdrawal of Students/End Users.** Where reporting of student results is required by Applicable Law, Customer shall be responsible for insuring the accuracy and completeness of student information used, relied upon, or reported by Edgenuity in providing the Instructional Services, and shall promptly notify Edgenuity if any student information needs to be corrected or updated. Upon notice to Customer, Edgenuity reserves the right to withdraw End User access for students who fail to take required tests or maintain adequate progress.
6. **PROFESSIONAL DEVELOPMENT SERVICES.** If included in the Quote, Edgenuity may also provide Professional Development Services, (“PD Services”) which may include training and instruction to Customer’s instructors and administrators on the implementation and use of the Subscription, curriculum workshops, use of student information to monitor progress, and other related topics as may be specified in the Quote. Customer shall be solely responsible for providing necessary equipment and secure internet access to facilitate the PD Services, and for scheduling the PD Services at least two (2) weeks in advance.

- a. **Charges for PD Services.** Before delivering Professional Development Services, Edgenuity must receive a signed Quote specifying the number of hours included and the cost of the services provided, and all necessary setup and implementation services required to demonstrate and use the Subscription must be completed. PD Services will be available for use by Customer only during the Term of the Subscription. PD Services purchased but not scheduled and delivered within the first year of the Term may be forfeited without notice. If there are any changes or cancellations of PD services less than 72 hours prior to the scheduled delivery date, Customer agrees to reimburse Edgenuity for travel and other out-of-pocket expenses incurred. The Parties must document in writing and sign any grace periods or extension of time for delivery of PD Services.
  - b. **Use of Customer's Facilities.** If Edgenuity will be providing any PD Services at Customer's premises, Customer shall advise Edgenuity in advance of any Instructor Requirements for Edgenuity personnel, and Edgenuity will be responsible for insuring that all Professional Development personnel meet and comply with all such requirements.
7. **NO UNAUTHORIZED RECORDING OR REPRODUCTION.** All content delivered by Edgenuity as part of Instructional or PD Services are the property of Edgenuity, and customer may not record, reproduce or copy such content without Edgenuity's express written authorization.

Signature:   
Kraig Lofquist (Jul 2019)

Email: klofquist@esucc.org

Title: Executive Director

Company: ESUCC







# 2019-06-25 Edgenuity-ESUCC Special Buy - Signed Edgenuity

Final Audit Report

2019-07-01

Created:	2019-07-01
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAATDZJEai5VMuw4jzrmgnl6uxlParWKEHM

## "2019-06-25 Edgenuity-ESUCC Special Buy - Signed Edgenuity" History

-  Document digitally presigned by DocuSign\, Inc. (techops@docusign.com)  
2019-06-25 - 6:44:51 PM GMT- IP address: 162.127.11.100
-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
2019-07-01 - 8:13:13 PM GMT- IP address: 162.127.11.100
-  Document emailed to Kraig Lofquist (klofquist@esucc.org) for signature  
2019-07-01 - 8:16:22 PM GMT
-  Email viewed by Kraig Lofquist (klofquist@esucc.org)  
2019-07-01 - 9:12:50 PM GMT- IP address: 64.233.172.34
-  Document e-signed by Kraig Lofquist (klofquist@esucc.org)  
Signature Date: 2019-07-01 - 9:14:23 PM GMT - Time Source: server- IP address: 184.178.40.19
-  Signed document emailed to CRAIG PETERSON (craig.peterson@esucc.org), Kraig Lofquist (klofquist@esucc.org), Colleen Lentz (clentz@esucc.org), jenn.mccoskey@edgenuity.com, and 2 more  
2019-07-01 - 9:14:23 PM GMT



## 2019-2022 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the ESUCC and Glynlyon, Inc. ("Contractor"). Educational Service Unit Coordinating Council (ESUCC) was created in statute to coordinate the activities of Nebraska's 17 Educational Service Units. The Educational Service Unit Coordinating Council was created by LB 603 in 2007 and officially came into existence on July 1, 2008. Cooperative Purchasing is a Project of ESUCC that has been in existence since 1968 with the purpose of providing the Educational Service Unit (ESU) member school districts ("Members") of Nebraska an opportunity to secure the maximum procurement value through cooperative synergies. The Educational Service Unit Coordinating Council (ESUCC) Advisory group serves as the steering committee for new and future cooperative buys statewide under its direction. A chief executive officer coordinates the statewide purchasing agreement between educational service units and their school districts and other serviceable entities. The Director of Cooperative Purchasing manages the program with the guidance of the ESUCC, Advisory Board, and the Fiscal Agent. ESUCC serves 17 ESUs that provide a statewide network of educational opportunities to approximately 245 school districts and more than 300,000 students.

In consideration of mutual covenants, the parties agree as follows:

- 1. Scope of the Contract.** The Contractor shall provide Members the opportunity to purchase the goods and/or services as defined in **Exhibit A**, which is attached hereto and incorporated herein by this reference, at the prices set forth in this Agreement and its Exhibits.
- 2. Payment Terms/Payment Schedule.** Members shall pay for services rendered and/or for accepted goods on the terms and payment schedule as set forth in **Exhibit B** which is attached hereto and incorporated herein by this reference. Prices listed in Exhibit B shall remain in effect during the term of this Agreement unless agreed otherwise by the parties in writing.
- 3. Administrative Fee.** Contractor shall submit to ESUCC as an administrative fee a sum equal to two percent (2%) of the total gross dollar volume, less freight of all goods and services and excluding annual support and maintenance purchased by the ESUCC, ESUs, and Members. This fee will be submitted to ESUCC on a quarterly basis beginning three (3) months from the Effective Date of this Agreement for all transactions completed and paid during said quarter.
- 4. Term.** This Agreement is effective July 1, 2019 ("Effective Date") and shall continue until 12:00 midnight (CST) on June 30, 2022, unless terminated earlier as provided by this Agreement or by law.

5. **Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Sarpy County, Nebraska.
  
6. **Student Privacy Protections.**
  - A. **Definition of Data.** Data include all Personally Identifiable Information (PII), Member Data, and other non-public information. Data include, but are not limited to, student data, metadata, and user content.
  - B. **Definition of Member Data.** Member Data includes all PII and other information that is not intentionally made generally available by ESUCC or its Members on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student and personnel data and metadata.
  - C. **Definition of Personally Identifiable Information.** Personally Identifiable Information includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as used in Neb. Rev. Stat. § 84-712.05 and personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g.
  - D. **Definition of User.** User means a participant, instructor, or administrator of ESUCC or its Members who are authorized with login credentials by ESUCC or its Members to use the goods and/or services provided by this Agreement.
  - E. **Data De-Identification.** Contractor may use deidentified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Contractor agrees not to attempt to re-identify deidentified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt reidentification.
  - F. **Marketing and Advertising.** Contractor will not use any Data to advertise or market to students or their parents. Advertising or marketing may be directed to the ESUCC, Members, or their school districts only if student information is properly de-identified."
  - G. **Modification of Terms of Service.** Contractor will not change how Data are collected, used, or shared under the terms of this Agreement in any way without advance notice to and consent from the ESUCC, the Members, and the affected school district(s).
  - H. **Data Collection.** Contractor will only collect Data necessary to fulfill its duties as outlined in this Agreement.

- I. **Data Use.** Contractor will use Data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement.
- J. **Data Mining.** Contractor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.
- K. **Data Sharing.** Data cannot be shared with any additional parties without prior written consent of the User except as required by law.
- L. **Data Transfer or Destruction.** Contractor will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the Contractor may have transferred Data, are destroyed or transferred to the ESUCC under the direction of the ESUCC when the Data are no longer needed for their specified purpose, at the request of the Member.
- M. **Rights and License in and to Data.** Parties agree that all rights, including all intellectual property rights to Data, shall remain the exclusive property of the Member, and Contractor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Contractor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data.
- N. **Access.** Any Data held by Contractor will be made available to a Member upon request by the Member.
- O. **Security Controls.** Contractor will store and process Data in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor will also have a written incident response plan, to include prompt notification of the Member in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. Contractor agrees to share its incident response plan upon request.
- P. **Response to Legal Orders, Demands or Requests for Data.** Except as otherwise expressly prohibited by law, Contractor will:
  - (1) Promptly notify ESUCC and Members of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking Data;
  - (2) Consult with ESUCC and Members regarding its response;
  - (3) Cooperate with ESUCC's and Member's reasonable requests in connection with efforts by them to intervene and quash or modify the legal order, demand or request; and
  - (4) Upon ESUCC's or a Member's request, provide them with a copy of its response.

## **7. Termination.**

A. ESUCC may terminate this Agreement in whole or part if funding from federal, state, or other sources for ESUCC or its Members is not obtained and continued at levels sufficient to allow for purchase of the good and/or services in the indicated quantities or term. ESUCC shall notify the Contractor as soon as practicable if funds to meet ESUCC's or Members' obligations become unavailable. The determination of ESUCC as to the insufficiency of funds is conclusive.

B. Each party may terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within thirty (30) days after receipt of written notice of such default or such additional cure period as the non-defaulting party may authorize in writing.

C. Each party may terminate this Agreement by written notice if federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.

D. ESUCC may terminate this Agreement, in whole or in part, by written notice to the Contractor and may regard the Contractor in default of this Agreement if the Contractor becomes:

- (1) Insolvent;
- (2) Makes a general assignment for the benefit of creditors;
- (3) Files a voluntary petition of bankruptcy;
- (4) Suffers or permits the appointment of a receiver for its business or assets;
- (5) Becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or
- (6) Has wound up or liquidated, voluntarily or otherwise.

E. ESUCC may terminate this Agreement, in whole or in part, immediately, without notice, if the Contractor is debarred or suspended from performing services on any public contracts.

F. The parties may terminate this Agreement without cause by mutual written consent or by either party with a minimum of ninety (90) days written notice.

G. Upon the termination for any reason or expiration of this Agreement, the Contractor promptly must return to ESUCC all papers, materials and other property of ESUCC then in its possession, including but not limited to all work in progress as is appropriate in its then existing form to ESUCC.

## **8. Indemnification.**

A. The Contractor hereby waives and agrees to indemnify and save harmless ESUCC and the ESUs and their officials, agents, employees, and volunteers

(hereinafter collectively referred to as "Indemnities"), against third party claims of injuries, death, damage to property, liabilities, judgments, costs and expenses which may otherwise accrue against Indemnities in consequence of the granting of this Agreement or which may otherwise result therefrom.

B. The Contractor shall, at his or her own expense, appear, defend and pay reasonable charges of attorneys and direct expenses arising therefrom or incurred in connection therewith.

C. If any judgment shall be rendered against ESUCC or the ESUs in any such action as a result of Contractor's direct actions, the Contractor shall, at his or her own expense, satisfy and discharge the same.

D. Any performance bond or insurance protection required by this Agreement, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.

E. The Contractor's obligation to indemnify and save harmless any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.

**9. Insurance.** Contractor shall secure and keep in force during the term of this Agreement the following insurance coverages from insurance companies or government self-insurance pools authorized to do business in Nebraska:

A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per person and \$5,000,000 per occurrence; and

B. If applicable, workers compensation coverage meeting all statutory requirements.

The Contractor shall furnish a certificate of insurance to the undersigned ESUCC representative prior to commencement of this Agreement. Failure to provide insurance as required in this agreement is a material breach of contract entitling ESUCC to terminate this Agreement immediately.

**10. Public Records.** The Contractor acknowledges that ESUCC must comply with Neb. Rev. Stat. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

**11. Publicity.** ESUCC does not endorse the goods or services of the Contractor. Except for listing ESUCC as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of ESUCC.

**12. Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the

performance of this Agreement while on ESUCC, ESU, or Member premises or at ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on ESUCC, ESU, or Member property or at ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all ESUCC, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on ESUCC, ESU, or Member premises or at ESUCC, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. ESUCC may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.

13. **Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
14. **Independent Contractor.** Contractor is an independent contractor under this Agreement and is not an ESUCC, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
15. **Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
16. **Taxpayer Identification.** Contractor's federal employer identification number is: 88-0409322
17. **Sales Tax.** ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. ESUCC, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
18. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

Cooperative: ESUCC  
Attn: Kraig Lofquist  
6949 South 110<sup>th</sup> Street

LaVista, NE 68128

With copy to:

ESUCC Cooperative Purchasing  
Attn: Craig Peterson  
PO Box 858  
412 W. 14<sup>th</sup> Ave  
Holdrege, NE 68949

Steve Williams, Legal Counsel  
KSB School Law, PC, LLO  
Cornhusker Plaza  
301 South 13th Street, Suite 210  
Lincoln, NE 68508

Contractor: Glynlyon, Inc.  
ATTN: Director of Legal Services  
8860 E. Chaparral Rd., Ste 100  
Scottsdale, AZ 85250

Notice is effective only if the party giving the Notice has complied with this section.

19. **Warranties and Specifications.** Contractor shall be responsible for providing to Members all manufacturer warranties on all goods and services. Contractor shall provide Members with all attachments normally supplied by the manufacturer and/or supplier. Complete product specification sheets or brochures must be provided to Members, ESUs, or ESUCC upon request.
20. **Entire Agreement.** The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.
21. **Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.
22. **Waivers.** The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay: (1) In exercising any right or remedy, **or** (2) In requiring the satisfaction of any condition under this Agreement, **and** (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.

23. **Severability.** If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.
24. **Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.
25. **Force Majeure.** Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non performing party's failure to perform, or delay in performing, any of its obligations contained in this Agreement (except any obligations to make payments for services rendered or accepted goods received before the failure to perform or the delay in performance), where, in the opinion of ESUCC, such failure or delay is caused by circumstances beyond the non performing party's control or which make performance commercially impracticable, including but not limited to fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, government regulations or restrictions of any kind or any acts of any government, alien enemy, judicial action, power failure, acts of God, or other natural circumstances. This Force Majeure provision excludes economic hardship, changes in market conditions, and insufficiency of funds on the part of Contractor.
26. **Assignment.** This Agreement binds the parties and their respective successors and assignees. The Contractor shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of ESUCC.
27. **Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of ESUCC.
28. **Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
29. **Rights and Remedies Cumulative.** Any enumeration of ESUCC's rights and remedies set forth in this Agreement is not exhaustive. ESUCC's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of the ESUCC's rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.

30. **Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as my from time to time be provided by written instrument signed by both parties.


31. **Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.

32. **Attachments.** Attachments to this Agreement include the following:

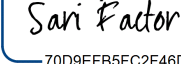

- Exhibit A – Scope of Services to be provided to ESUCC and Members
- Exhibit B – Payment Terms & Schedule
- Exhibit C – Vendor Software License Agreement

IN WITNESS WHEREOF the parties have executed this Agreement on the last date written below.

**ESUCC**

By:   
Kraig Lofquist (Jul 1, 2019)  
 Name: Kraig Lofquist  
 Title: Executive Director  
 Date: Jul 1, 2019

**GLYNLYON, INC.**

By:   
70D9EFB5FC2F46D...  
 Name: Sari G. Factor  
 Title: CEO  
 Date: 6/25/2019  
 Approved by Legal: 

**EXHIBIT "A"**

**SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO MEMBERS**

**Odysseyware Full Library - Summer School Concurrent: This license provides access to Odysseyware's grades 6-12 Digital Content / Courseware for June 1 – August 31 for use with District / School teachers. Excludes career technical education (CTE) and social-emotional courses.**

**Available content includes prebuilt core and elective courses for credit recovery and/or initial credit. Content and courses are aligned to state and national standards. Curriculum is fully customizable and can be used to build custom courses, instructional sequences, concept recovery strands and assign content in a multitude of ways.**

**Attach Price Quote for Services**

**EXHIBIT "B"****1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

Odysseyware Full Library - Summer School Concurrent	Price
Quantity 1-500	\$100 each
Quantity 501+	\$90 each

**2. Payment Terms/ Payment Schedule**

- A. Members will pay Contractor for all undisputed amounts for the goods and/or services identified in Exhibit A and provided by Contractor under this Agreement within thirty (30) days of receipt of invoice, provided that goods/services have been accepted by the Member as hereinafter provided.
- B. The procedure for billing and payment for services or products and deliverables shall be as specified in this exhibit.

**3. Acceptance of Services or Products:**

- A. The Contractor shall deliver any goods, perform any services or both in accordance with the schedule set forth in any RFP, RFQ, the time specified in a purchase order issued by ESUCC, ESU, or Member, or this Agreement (whichever is later).
- B. Unless otherwise agreed to by the parties, the Contractor shall provide written notification of completion of any deliveries, or performances of services or both, to the Member ("Delivery Notice").
- C. Members shall have sixty (60) days from the date of receipt of the Delivery Notice to provide the Contractor with written notification of acceptance or rejection due to unsatisfactory performance or nonconforming goods.
- D. If the Member issues a rejection notice, the Contractor shall as quickly as is practicable, correct or replace all deficiencies at its expense. ESUCC shall not unreasonably withhold or delay its acceptance or rejection.

**4. Title and Risk of Loss:**

- A. Title and risk of loss for goods shall remain with the Contractor. B. Insurance during shipment and until the goods are accepted by ESUCC, ESU, or Member is the responsibility of the Contractor.

**EXHIBIT "C"**

**SOFTWARE LICENSE AGREEMENT  
ODYSSEYWARE STANDARD TERMS & CONDITIONS**

## **ODYSSEYWARE AND ODYSSEYWARE ACADEMY**

### **STANDARD TERMS & CONDITIONS**

These Standard Terms and Conditions (“**Terms**”) are incorporated into and made part of the License Agreement signed by Company and Customer (“**Agreement**”) and constitute a binding legal agreement between the parties for Customer’s use of the Products and/or Service. Capitalized terms not otherwise defined in these Terms have the meaning assigned to them in the Agreement. These Terms are effective as of the date of full execution of the Agreement. If the Agreement indicates the Service includes Odysseyware, the Odysseyware Addendum attached hereto is incorporated hereby. If the Agreement indicates the Service includes Odysseyware Academy, the Odysseyware Academy Addendum attached hereto is incorporated hereby. If the Agreement indicates the inclusion of Products such as Content Provider, the Odysseyware Curriculum Addendum attached hereto is incorporated hereby.

**1. SERVICE.** The “Service” as indicated in the Agreement is Odysseyware (Company’s proprietary internet-based learning management system and curriculum including academic core curriculum content for grades 3-12 (Social Studies/History, Science, Math, Language Arts), electives, placement testing, CRx, prescriptive and GED prep course, and all of its components) and/or Odysseyware Academy (Company’s proprietary internet-based educational, instructional, and support service, including curriculum, teacher grading services, academic support, technical support, and program support for School leadership). The Service expressly includes all data, software, technology, animation, photographs, graphic, audio and visual files, text, platforms, documentation, and other materials related thereto.

**2. PRODUCTS.** The “Products” are Content Provider and the Odysseyware courses indicated in the Agreement including all curriculum and assessments thereof provided by Company. The Products expressly include all data, software, technology, animation, photographs, graphic, audio and visual files, text, documentation, and other materials related thereto.

**3. ONLINE LEGAL NOTICE.** Use of the Service and users of the Service are subject to and governed by the End User License Agreement and Privacy Policy posted on the Service website (collectively, “**Legal Terms**”), as may be amended from time to time by Company. In the event of a conflict between the terms of the Legal Terms and the Agreement, the Agreement will control.

**4. TERM.** The term of the Agreement begins and ends on the effective dates stated in the Agreement (“**Term**”) and Customer only has the right to use the Products and/or Service during the Term. The Term will be extended for additional one (1) year (or other duration stated in the invoice) renewal terms upon Company’s issuance of an invoice for extension and either: (a) payment for such invoice by Customer or (b) Customer’s continued accessing and use of the Products and/or Service.

**5. GRANT OF RIGHTS.** Subject to the terms of the Agreement and upon payment in full of all required fees:

a. Company grants Customer a limited, non-exclusive, non-transferable license to utilize the Service only with Customer's students, administrators, faculty, and staff (collectively, "**Authorized Users**"). Customer's rights are limited to accessing the Service via the internet for the number of fully paid Authorized Users hereunder.

b. Company grants Customer a limited, non-exclusive, non-transferable license to incorporate the Products in the learning management system selected by Customer and to grant access thereby only to Customer's Authorized Users. Customer's rights are limited to utilizing the Products via the internet solely with Company's Authorized Users.

c. Customer will not assign or sub-license any of its rights hereunder.

**6. FEES.** Customer will pay all amounts as stated and in accordance with the details of the Agreement. Customer will always pay in full any Company invoice according to the terms stated on the invoice. Company may discontinue Customer's access to or use of the Products or Service if Customer fails to make any payment due Company within thirty (30) days of the applicable due date.

**7. OWNERSHIP.** The Products and Service and all associated materials are the solely-owned or legally licensed property of Company. The Products and Service are licensed, not sold, to Customer under the Agreement. Remuneration paid for access to and use of the Products and/or Service is a license fee for use. Company does not sell any title, ownership right, or interest in or to the Products or Service. Customer's rights are limited to a non-exclusive, non-transferable, limited license to use the Products and/or Service according to the terms of the Agreement. Company reserves and retains all right, title, and interest (including copyrights, patents, trademarks, service marks, and other intellectual property rights) in, to, and associated with the Products and Service including rights to any derivative works that result from Customer's use of the Products and/or Service.

**8. PROFESSIONAL DEVELOPMENT.** If so indicated in the Agreement, Company will provide orientation and training to Customer's staff and employees following payment to Company of the professional development fee(s) stated in the Agreement. Customer must use the professional development during the Term. Professional development will include instruction on utilization of the Products and/or Service for prescribed purposes and responses to questions from Customer's staff and employees. Any Customer cancellation or postponement of a scheduled professional development session requires notice to Company in writing (email acceptable) at least forty-eight (48) hours before the scheduled session. Failure to provide such notice will result in Customer's forfeiture of the professional development session or payment of additional fees to reschedule the session. If Customer believes there to be any deficiency in training, Customer must specify its concerns in writing to Company within thirty (30) days after the completion of the training. Failure to submit such notice will be deemed full acceptance by Customer of the training.

**9. CUSTOMER WARRANTIES AND REPRESENTATIONS.** Customer hereby warrants and represents that:

a. Customer has the legal right and is duly authorized to enter into the Agreement and no part of the Agreement conflicts with any other agreements or obligations binding or applicable to Customer

b. Customer will promptly and completely install, use, test, and inspect the Products and/or Service

and advise Company in writing of any inadequacies or shortcomings within one hundred twenty (120) days from the date that access to the Products and/or Service is first provided.

c. Customer will utilize the Products and/or Service only as expressly permitted by the Agreement.

d. Customer will not do any act or thing or fail to do any act or thing, or permit or allow any other party to do any act or thing or fail to do any act or thing, that could harm or diminish Company's rights in

or to the Products and/or Service, including the copyrights, trademarks, and intellectual property.

e. Customer will not make copies of, distribute, or permit any use of the Products and/or Service, or

any related intellectual property, other than as specifically authorized by the Agreement.

f. Customer acknowledges and agrees that there will be times when access to the Products and/or Service may be limited or interrupted and that any such lack of access, regardless of timing, is not a breach of the Agreement.

g. Customer will not, nor permit or allow any other party to, reverse engineer or otherwise analyze,

disassemble, reconstruct, or reproduce any portion of the Products and/or Service in any way.

h. Customer will furnish, at its sole expense, all computer and network hardware and software with adequate system configuration and maintenance and adequate internet service to operate the Products and/or Service.

i. Customer will assume the entire risk arising from Customer's use of the Products and/or Service.

j. Customer has followed all applicable procurement and governance statutes, policies, procedures, and/or regulations necessary to enter into the Agreement.

k. As an educational service provider, Company is not subject to the Individuals with Disabilities Education Act (“**IDEA**”) and will not be a party to any individualized education program (“**IEP**”) prepared by Customer. Customer is solely responsible for ensuring that any student with a disability receives appropriate education as required by IDEA and receives any and all accommodations, supports, and/or services necessary to utilize the Products and/or Service. Upon Customer’s written request, Company will make reasonable efforts to facilitate students with disabilities utilization of the Service, if not changing the fundamental nature of the Products and/or Service or resulting in undue administrative hardships or costs.

**10. TECHNICAL SUPPORT AND OPERABILITY.** Company will provide Customer with technical support for the proper and intended use of the Products and/or Service subject to Customer’s payment in full of all amounts due Company so long as Customer is not in breach of the Agreement. The following issues are not covered by Company technical support and Customer will not rely on any statements made on the following technical support matters or any other matter other than proper and intended use of the Products and/or Service:

- a. Network issues including internet connectivity or speed, internet service providers, online service providers, spyware, viruses, malware, faulty communications, etc.
- b. Hardware issues including switches, hubs, modems, routers, firewalls, computers, etc.
- c. Infrastructure issues including power, electrical, cable, internet connection, etc.
- d. Issues related to Customer’s use of third-party software that are not caused by or related to the

Service, as determined by Company in Company’s sole discretion.

**11. COMPANY WARRANTIES AND DISCLAIMER.**

- a. Company warrants during the Term that the Products and Service will function as intended and

that such functionality will be maintained in all material respects in any subsequent upgrades to the Products and/or Service. Customer’s sole and exclusive remedy for Company’s breach of this warranty shall be that Company shall use commercially reasonable efforts to correct such errors or modify the Products and/or Service to achieve the material functionality intended within a reasonable period of time. However, Company shall have no obligation with respect to this warranty claim unless Customer notifies Company of such claim within thirty (30) days of the first material functionality problem. Further, Company shall have no obligation with respect to this warranty claim, and Customer may not terminate the Agreement, where any alleged nonconformity is due to user error, as reasonably determined

by Company. Company does not warrant that the Products or Service will be free of non-material errors, bugs, or minor interruption, or that all such errors will be corrected.

- b. Company warrants during the Term that it will practice and maintain industry-standard backup procedures and, in the event of a breach of this warranty, Company will use commercially reasonable efforts to correct or restore Customer data within three (3) business days.

c. Company warrants that it owns, controls, or has valid license to offer the Products and Service and has the power and authority to grant the license and use granted by the Agreement. Customer's use of the Products and/or Service as specifically authorized hereunder will not infringe or violate the rights of any third party. The foregoing terms of this Section may not apply to Customer's use of the Customization Tool, if applicable.

d. Company makes no representation or warranty express or implied concerning the compatibility or operability of the Products or Service with any particular operating system or software. Company is not responsible or liable for any hardware failure, operating system or software conflict, server or security issue, or any other condition compromising or interfering with the operability or functioning of the Products or Service.

e. THE WARRANTIES STATED IN SECTIONS 11(A)-(C) ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY COMPANY. OTHER THAN AS SPECIFICALLY

DETAILED IN SECTIONS 11(A)-(C), THE PRODUCTS AND/OR SERVICE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND AND COMPANY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS AND/OR SERVICE, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

f. COMPANY DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS

THAT THE PRODUCTS AND/OR SERVICE ARE FREE OF ERROR OR WILL MEET CUSTOMER'S NEEDS OR REQUIREMENTS, WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

g. The disclaimers set forth in these Terms supersede any and all statements, information, or demonstrations, oral or written, by Company, its representatives, dealers, distributors, agents, or employees. No statements that are not set forth expressly and specifically in this Agreement will create a warranty or in any way increase the scope of this Agreement and Customer may not rely on any such information, advice, suggestions, or recommendations.

**12. LIMITATION OF LIABILITY.** COMPANY, ITS SUBSIDIARIES, AFFILIATES, AND ASSIGNS, AND EACH OF THEIR DIRECTORS, OFFICERS, AGENTS, CONTRACTORS, PARTNERS, AND EMPLOYEES, WILL NOT BE LIABLE TO CUSTOMER, AUTHORIZED USERS, OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES INCLUDING DAMAGES FOR LOSS OF FUNDS OR PROPERTY, BUSINESS INTERRUPTION, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA, OR ANY OTHER HARDSHIP, DAMAGES, OR LOSSES ARISING OUT OF OR RELATED TO: THE USE OR INABILITY TO USE THE PRODUCTS OR SERVICE, HOWEVER CAUSED; UNAUTHORIZED OR ACCIDENTAL ACCESS TO OR ALTERATION OF DATA; STATEMENTS OR CONDUCT OF ANY THIRD PARTY; OR ANY MATTER RELATING TO THE USE OF THE PRODUCTS OR SERVICE; **AND EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** COMPANY'S ENTIRE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY RECEIVED BY COMPANY FROM CUSTOMER.

### **13. TERMINATION.**

a. The Agreement and any and all rights to access or use the Products and/or Service will terminate upon: (i) expiration of the Term; (ii) mutual written agreement of the parties; or (iii) notice of termination to a breaching party following a material, uncured breach hereof.

b. Upon termination, Customer will immediately pay Company any and all amounts due. No refunds, whether prorated or otherwise, will be due Customer hereunder unless specifically agreed upon by the parties in writing.

c. Upon termination, Customer and all Authorized Users will discontinue access to and use of the Products and/or Service and all rights granted to Customer and Authorized Users under the Agreement will revert to Company.

d. Within thirty (30) days of termination, at Customer's sole cost and expense, Customer will irrevocably and entirely delete and ensure the deletion of all Product and Service components and materials, and any and all copies thereof, within the possession or control of Customer or Authorized Users, in whatever form then existing, including translations or compilations, whether partial or complete, and whether or not modified or merged into other software. Company has the right to obtain upon request, within thirty (30) days of termination, Customer's written statement under oath that all Product and Service components and materials have been destroyed and deleted, including the names of the person(s) responsible for the destruction and/or deletion and the date(s) on which it was completed.

**14. SUSPENSION.** If Customer is in breach of any term of the Agreement, Company may elect to suspend Customer's access to the Products and/or Service until such breach is cured or the Agreement is terminated according to its terms.

**15. FORCE MAJEURE.** If either party's failure to perform under the Agreement is caused by the unavailability of services or materials, labor disputes, governmental restrictions, or any other circumstances beyond such party's control, the failure to perform will not terminate this Agreement unless such failure continues for a period of more than three (3) months, following which either party, at its option, may terminate the Agreement by written notice to the other party.

**16. ASSIGNMENT.** Neither party may assign the Agreement, or any part thereof, without written permission from the other party, except for the unconditional right of Company to assign or otherwise transfer the Agreement to any affiliate or any party acquiring a substantial portion of Company's business or assets.

**17. CONTROLLING LAW.** The Agreement will be governed by the Uniform Commercial Code and Arizona law. The parties hereby consent to the exclusive jurisdiction of the courts located in Maricopa County, Arizona and agree that, in any action arising from or related to the Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and court costs.

**18. CONTROVERSIES.** The parties agree that as a condition precedent to any party initiating any lawsuit to assert a claim for monetary damages arising out of or relating to the Agreement, such party will first participate in good faith mediation before a mutually agreed upon mediator in Maricopa County, Arizona. Resulting mediation fees will be borne equally by the parties. Any dispute unresolved after mediation will be decided by arbitration in Maricopa County, Arizona and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon an arbitration decision may be entered in any court otherwise having jurisdiction.

**19. REIMBURSEMENT RIGHTS.** To the extent that Company or Customer breaches or allegedly breaches an obligation, covenant, representation, or warranty to the other party hereunder ("**Other Party**") and such breach gives rise to a claim by a third-party against the Other Party, the parties agree that breaching party ("**Responsible Party**") will reimburse and be financially responsible to the Other Party for any and all liabilities, damages, costs, expenses (including reasonable attorneys' fees and court costs) demanded, claimed, or obtained by a third-party against the Other Party. This contractual right of reimbursement will be cumulative and will not be exclusive of any other right or remedy which may be available.

**20. SEVERABILITY.** If any provision of the Agreement is found to be void, invalid, or unenforceable, such provision will be reformed so as to be enforceable or severed and the

Agreement with such provision reformed or severed will remain in full force and effect to the extent permitted by law.

**21. WAIVER.** No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent is in writing signed by the party claimed to have waived or consented. A waiver of any term or condition will not be deemed a waiver of such term or condition for the future, or of any subsequent breach thereof, nor a permanent modification of such provision or of the Agreement.

**22. NOTICE.** Any notice hereunder other than regular statements, invoices, or payments will be sent prepaid to the applicable address stated in the Agreement via certified or registered mail, return receipt requested, or overnight traceable courier (e.g. FedEx, UPS) and will be deemed delivered upon proof of receipt. Notices to Company will be Attention: Legal Department with a copy via email to: [legal@glynlyon.com](mailto:legal@glynlyon.com).

**23. ENTIRE AGREEMENT.** The Agreement constitutes the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all prior agreements, understandings, promises, and undertakings, if any, made orally or in writing, by or on behalf of the parties with respect to said subject matter. Any use of “including” herein means without limitation. No modification, amendment, waiver, termination, or discharge of any provision hereof will be binding unless confirmed in writing and executed by both parties. Each party has had the time and opportunity to consult legal and professional counsel of its choice regarding the Agreement. Neither the Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either party, whether under any rule of construction or otherwise. On the contrary, the Agreement will be construed and interpreted according to the fair meaning of the words used so as to accomplish the purposes and intentions of the parties. The Agreement may be executed in counterparts, including facsimile and email versions, each of which will be deemed an original and all of which taken together with these Terms will constitute a single instrument.

## **ODYSSEYWARE ADDENDUM**

### **1. GRANT OF RIGHTS.**

a. The quantity of Concurrent Licenses, User Licenses, Site Licenses, and/or Single Course Student

licenses granted hereunder is set forth in the Agreement and in any invoice for extension of the Term that is fully paid by Customer.

b. A “Concurrent License” means an individual license to access the Service via the internet as follows: A Concurrent License may be used by any number of Authorized Users but each Concurrent License may not be used by more than one (1) Authorized User at the same time. The maximum number of Authorized Users that may access and use the Service at the same time shall be no more than the number of Concurrent Licenses specified in the Agreement or any fully paid invoice for an extension of the Term.

c. A “User License” shall mean a license to access the Service via the internet as follows: A User License is issued to a single and identified Authorized User and only that Authorized User shall be permitted to access or use the Service via that User License. Once a User License is assigned to an Authorized User, it may not be transferred to or used by another Authorized User except if the Authorized User to whom the User License was initially assigned graduates from, drops out of, transfers out of, or dis-enrolls from Customer’s facility or institution. A User License can be transferred to another Authorized User as permitted herein no more than once.

d. A “Site License” shall mean a license to access the Service via the Internet as follows: A Site License allows a group of Authorized Users enrolled with Customer to access the Service. The maximum number of Authorized Users that may access and use the Service at the same time shall be no more than the number specified in the Agreement or any fully paid invoice for an extension of the Term.

e. In addition to and independent of the Concurrent Licenses and User Licenses granted hereunder, if so indicated in the Agreement, Customer may license individual courses for an Authorized User not utilizing a Concurrent License or User License (“Single Course Student”) upon payment of the per-course fee specified in the Agreement. Customer may purchase only one (1) course for any Single Course Student and shall pay the per-course fee in full in advance of Company granting access to the Single Course Student.

### **2. CUSTOMIZATION TOOL.**

a. Company may provide Customer with access to an application allowing for the creation, modification, and deletion of portions of Service curriculum (“Customization Tool”). Customer acknowledges and agrees that any and all content or material Customer modifies with the Customization Tool (“OW Content”) shall be the sole and exclusive property of Company. Customer, for itself and its Authorized Users, hereby assigns and quit-claims to Company, and waives any and all rights to, any OW Content.

b. Company acknowledges and agrees that any and all original content created by Customer with the Customization Tool (“Customer Content”) shall be the sole and exclusive property of Customer. Customer hereby grants Company a non-exclusive, perpetual, worldwide, irrevocable, royalty-free license to use and exploit all Custom Content in connection with the Service. Customer will reimburse and be financially responsible to the Company for any and all liabilities, damages, costs, and expenses (including reasonable attorneys’ fees and court costs) demanded, claimed, or obtained by a third-party against Company for any infringement of rights related to the Custom Content.

c. Customer and its Authorized Users shall not use the Customization Tool in any manner that could infringe upon any proprietary rights of any party or that could defame, slander, or libel any party, or to add or provide access to any content that Company deems in its sole discretion to be harmful, threatening, unlawful, defamatory, infringing, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically, or otherwise objectionable, as determined by Company in its sole discretion.

**d. COMPANY HEREBY DISCLAIMS FOR ALL PURPOSES AND CIRCUMSTANCES ANY RESPONSIBILITY OR LIABILITY FOR USE OF THE CUSTOMIZATION TOOL INCLUDING, WITHOUT LIMITATION, THE CONTENTS OF THE CUSTOM CONTENT.**

## **ODYSSEYWARE ACADEMY ADDENDUM**

**1. GRANT OF RIGHTS.** Rights are granted to Authorized Users on a “per student, per course” basis.

An Authorized User may only utilize the Service for the courses in which the Authorized User is enrolled.

Company will grade all assignments not automatically graded via the Service; provide Customer with access to Company teachers via the Service; and document Authorized Users’ performance with grade reports. If an Authorized User does not use the Service for any course(s) within twenty-four (24) months of Company receiving Customer’s purchase order for such course(s), access to such course(s) will be permanently forfeited.

**2. SCHOOL RESPONSIBILITIES.** In consideration of Company’s provision of the Service, Customer will:

- a. Provide all necessary on-site supervisory staff at Customer’s sole cost and expense;
- b. Ensure that students have the ability to access the Service including all technological and physical facilities and equipment;
- c. Ensure all Customer 's facilities are at all times in compliance with all applicable laws, codes, and regulations;
- d. Comply with all applicable requirements regarding non-public funded educational options including graduation requirements;
- e. Provide academic counseling for students including prescribing course work based upon transcripts, grade reports, and placement test scores;
- f. Provide and account for all student documentation not provided by the Service including transcripts, grades, attendance records, consent forms, and health records;
- g. Obtain registration information and collect tuition fees from all students enrolled in the Service, if applicable; and
- h. Appoint a single, individual, full-time employee to act as its agent hereunder and serve as the primary contact for communication with Company regarding the Service (“**Partner Administrator**”).

Customer represents and warrants that its Partner Administrator will:

- i. Communicate directly with parents of students regarding all applicable Service-related issues including test results, course assignments, graduation requirements, lesson plans, completion of daily course work, and study habits. Customer acknowledges and agrees that Company is not required to communicate with students’ parents or guardians and that such communication regarding relevant issues is the sole obligation of Customer and Partner Administrator.
- ii. Supervise students' work including proctoring tests, monitoring daily work, ensuring compliance with lesson plans, setting progress goals, and submitting report forms. Company may block access to students’ work to ensure academic integrity and the Partner Administrator will contact Company to request student access to such work.
- iii. Communicate with Company-designated Partnership Manager at all times to review and evaluate students’ progress, program goals, and other concerns related to the Service.

**3. TERMINATION.** In the event Customer ceases to provide educational services to Authorized Users prior to Authorized Users’ completion of course work hereunder, and Authorized Users wish to continue access to the Service, Customer will provide to Company contact information for such Authorized Users’ parents and Company may thereafter communicate with parents regarding Authorized Users’ re- enrollment in the Service.

## **ODYSSEYWARE CURRICULUM ADDENDUM**

1. **GRANT OF RIGHTS.** Rights granted to Customer hereunder are limited to the specific Products detailed in the Agreement and in any invoice for extension of the Term that is fully paid by Customer. The Products may only be used by Customer and its Authorized Users. Neither Customer nor any Authorized User may resell, sub-license, or otherwise grant access to the Products to any other party. No portion of the Products may be re-used, altered, or adapted for inclusion in any other curriculum, product, or service. Any modification or alteration of the Products by Customer or an Authorized User is subject to Section 2 of this Addendum, below.

2. **CUSTOMIZATION OF CONTENT.**

a. Customer acknowledges and agrees that any and all content or material used, added, modified, or created through or in connection with the Products (“Custom Content”) and shall be the sole and exclusive property of Company. Customer, for itself and its Authorized Users, hereby assigns and quit-claims to Company, and waives any and all rights to, any Custom Content.

b. Customer and its Authorized Users shall not use the Products in any manner that could infringe upon any proprietary rights of any party or that could defame, slander, or libel any party, or to add or provide access to any content that Company deems in its sole discretion to be harmful, threatening, unlawful, defamatory, infringing, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically, or otherwise objectionable, as determined by Company in its sole discretion.

c. **COMPANY HEREBY DISCLAIMS FOR ALL PURPOSES AND CIRCUMSTANCES ANY RESPONSIBILITY OR LIABILITY FOR USE OF THE PRODUCTS INCLUDING THE CUSTOMIZATION THEREOF.**

Signature:   
Kraig Lofquist (Jul 1, 2019)

Email: klofquist@esucc.org

Title: Executive Director

Company: ESUCC







# 2019-06-25 Odysseyware ESUCC Special Buy - Signed Glynlyon

Final Audit Report

2019-07-01

Created:	2019-07-01
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAtWUrOOdyd2691fK3433P8meG_ZHQ0YUy

## "2019-06-25 Odysseyware ESUCC Special Buy - Signed Glynlyon" History

-  Document digitally presigned by DocuSign\, Inc. (techops@docusign.com)  
2019-06-25 - 6:48:01 PM GMT- IP address: 162.127.11.100
-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
2019-07-01 - 8:17:37 PM GMT- IP address: 162.127.11.100
-  Document emailed to Kraig Lofquist (klofquist@esucc.org) for signature  
2019-07-01 - 8:18:41 PM GMT
-  Email viewed by Kraig Lofquist (klofquist@esucc.org)  
2019-07-01 - 9:10:56 PM GMT- IP address: 64.233.172.61
-  Document e-signed by Kraig Lofquist (klofquist@esucc.org)  
Signature Date: 2019-07-01 - 9:12:39 PM GMT - Time Source: server- IP address: 184.178.40.19
-  Signed document emailed to jenn.mccoskey@edgenuity.com, trish.corcoran@edgenuity.com, CRAIG PETERSON (craig.peterson@esucc.org), Colleen Lentz (clentz@esucc.org), and 2 more  
2019-07-01 - 9:12:39 PM GMT

## **ADDENDUM TO 2016-2019 SPECIAL BUY AGREEMENT BETWEEN ESUCC COOPERATIVE PURCHASING AND Swank Motion Pictures**

THIS ADDENDUM is made by and between Nebraska ESUCC Cooperative Purchasing ("Cooperative") and Swank Motion Pictures ("Contractor") to the 2016-2019 Special Buy Agreement signed by the Cooperative on March 22, 2016, and by the Contractor on March 22, 2016 and Extension to the agreement signed by the Cooperative on January 18, 2019, and by the Contractor on January 17, 2019. The Addendum is as follows:

The Agreement is amended to add the following paragraph:

- 32. Piggyback Clause.** For the term of the Agreement and any mutually agreed extensions, excluding the Public Performance Site License, other public agencies may purchase, lease-purchase, or rent the identical item(s) at the same price and upon the same terms and conditions as provided in this Agreement. The term "public agencies" means any school or school district of another state. Cooperative will maintain a working list of any and all states, groups, schools or otherwise being provided access and will submit to Contractor, in writing, changes to said database as they occur.

**Exhibit "A"** is amended to add the following goods or services:

**1) Subject Matter and Term of Agreement**

- A) Swank streaming access grants Licensee non-transferrable right to give Authorized Users access to the Licensed Materials via a Secure Network solely for the purpose of research, teaching and private study (hereafter, the "Purpose") on the terms and conditions set forth herein.
- B) The term of this Agreement, outlined in Exhibit B shall continue for 12 months (the "License Period"). Each individual title's licensing period will start at the time of the ordering date and no titles may be shown outside of the License Period.

**2) Grant of License, Delivery and Use Restrictions, Availability of Titles**

- A) During the License Period and any subsequent renewal terms, Licensee shall, for the Purpose, make the Titles available to, and only to, individuals properly authenticated, authorized students currently enrolled for a course or courses through Licensee's institutions and/or faculty and staff responsible for teaching those courses (hereafter collectively referred to as "Students, Faculty and Staff"). Authentication and authorization for use by Students, Faculty and Staff shall occur through a password protected network with assigned Username and Password or Single Sign On. It is up to the sole discretion of Swank which network(s) will be

used for authentication and authorization of use. Student access shall be limited to only the films for which they have been assigned for class.

Licensee agrees that it is responsible for ensuring that access to the Titles limited to Students, Faculty and Staff. Without limiting the foregoing, Licensee agrees that access to the Titles shall (i) end once a Student is no longer enrolled in classes at Licensee; and (ii) not be available to alumni of Licensee who are not actively enrolled in classes at Licensee. It is at the sole discretion of Swank if/when password resets, specifically for student based user roles, shall occur.

All Titles licensed to Licensee pursuant to this Agreement are to be made available to Students, Faculty and Staff and on campus library users expressly as permitted in this Agreement. By way of example only and without limiting the foregoing:

- i. The Titles shall be made available by Licensee only for the Purpose;
- ii. The Titles shall be delivered using only the delivery method described in this Section 2A;
- iii. The Titles in this license do not include public performance.

Swank reserves the right to decline the use of certain Titles if it is determined the intended use does not align with the Purpose. The availability of such content shall not affect the validity or enforceability of this Agreement.

B) From time to time Producers may withdraw or suspend the licensing rights for one or more of their Titles. In this event, suitable alternative content will be provided at the sole discretion of Swank. The withdrawal or suspension of Titles as described in this paragraph shall not affect the validity or enforceability of this Agreement.

**3) Marketing and Additional Use Restrictions.** Licensee shall only publicize the availability of Swank specifically related to the Purpose via regular classroom announcements or through internal channels, including email, to promote the service to faculty and staff specifically related to the Purpose.

Furthermore, the Titles may not be duplicated, edited, altered, copied, modified, or recorded in any way, by use of computer or digital recording device or otherwise. Ownership of the Titles shall at all times be vested in the applicable Producer and Licensee shall acquire no ownership rights therein.

Licensee shall immediately notify Swank (including confirming in writing) of any loss, theft, injury, piracy, destruction, duplication, editing, alteration or use of Titles.

**4) Breach of Agreement.** Because of the specific nature of this Agreement, in addition to all other remedies available to Swank, in the event Licensee breaches any term or condition hereof, Swank may, at its option and in its sole discretion, immediately terminate this Agreement, in which case Licensee will immediately and fully (i) withdraw the Titles from its library; (ii) suspend access to the Titles; and (iii) return to Swank all Titles and/or digital files and digital media related thereto. Notwithstanding the preceding sentence, in the event Licensee is in breach of Section 3A, 3B or 3C, Licensee shall have 30 days to cure such breach before Swank may terminate the Agreement.

In the event Swank breaches any term or condition of this Agreement, Licensee may terminate the Agreement after giving Swank written notice of the breach and passage of a 30-day cure period.

5) **Warranties.** Swank represents and warrants it has the streaming rights for all Titles licensed to Licensee.

Exhibit "B" is amended to add the following pricing information:

**Swank K-12 Educational Streaming - 2020 NE State Pricing**

Individual School Purchase	Swank State Level Price (per school)	ESUCC Price (2% Surcharge included)
<500 Students	\$490	\$500
500 - 899 Students	\$735	\$750
900 - 1999 Students	\$980	\$1,000
2000+ Students	\$1,960	\$2,000

District Purchase	Swank State Level Price (per student)	ESUCC Price (2% Surcharge included)
Over 10,000 Students	\$0.88	\$0.90
Under 10,000 Students	\$0.98	\$1.00

\*\*\$500 minimum

Open Enrollment Begins:	3/1/2020
Enrollment Deadline:	5/15/2020
Bill Date:	7/1/2020
Payment Due Date:	8/1/2020
Streaming Activation Date:	8/1/2020

All other terms and conditions of the 2016-2019 Special Buy Agreement and Extension to the agreement shall remain in full force and effect.

**COOPERATIVE**

**CONTRACTOR**

*Kraig J. Lofquist*

*Brian Edwards*  
 Brian Edwards (Aug 6, 2019)

Name: Kraig Lofquist  
 Executive Director

Name: Brian Edwards  
 Title: Digital Campus Manager

Date Executed: Aug 7, 2019

Date Executed: Aug 6, 2019

Signature: *Brian Edwards*  
 Brian Edwards (Aug 6, 2019)

Email: bedwards@swankmp.com

Title: Digital Campus Manager

Company: Swank Motion Pictures

Signature: *Kraig J. Lofquist*

Email: klofquist@esucc.org

Title: Executive Director

Company: ESUCC Cooperative











# 2019-07-31 Product Addendum to Swank Agreement

Final Audit Report

2019-08-07

Created:	2019-07-31
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAnou-uuibmsWGb_9nCXaZ2EUI7jcOoIk5

## "2019-07-31 Product Addendum to Swank Agreement" History

-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
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 Signed document emailed to Kraig Lofquist (klofquist@esucc.org), Deb Hericks (dhericks@esucc.org), Colleen Lentz (clentz@esucc.org), CRAIG PETERSON (craig.peterson@esucc.org), and 2 more

2019-08-07 - 9:09:32 PM GMT



## Invitation for Bid Terms & Conditions

# *ESUCC-2020*

### 1. Issuing Agency

1.1 Nebraska ESUCC - Cooperative Purchasing is requesting online Bids from qualified vendors for the following: **Coop Annual Buy ESUCC-2020.**

1.2 Nebraska ESUCC - Cooperative Purchasing utilizes an online sourcing application suite through Ion Wave. All bidding initiated by Nebraska ESUCC - Cooperative Purchasing will be conducted using this sourcing application suite. **Vendors must be registered with ESUCC Cooperative Purchasing prior to participating.** Interested parties can register on the Nebraska ESUCC - Cooperative Purchasing website at <http://www.neesucoop.org/> under the Vendor area.

1.3 Nebraska ESUCC - Cooperative Purchasing will charge a 5% administrative fee to the awarded vendors based on the purchases made from the line item bid. This fee will be assessed as defined in "Key RFP Dates". The administrative fee must be paid to ESU Coordinating Council (ESUCC) by dates defined in the "Key RFP Dates". Billings will be sent to all awarded vendors.

1.3.1 Vendors that have received a line item award will have the option of offering to members their entire product(s) line in addition to line items awarded to the ESUCC membership after June 1 and until January 1 of the following year. This offering must be in the format utilizing cXML punch-out technology either through their own punch-out or through an ESUCC provided interface that the vendor maintains all catalog updates through. The attribute "Catalog Discount Pricing" is reflective of the bid response for "Vendor chooses to offer entire product(s) line in addition to line items awarded in the ESUCC Annual Buy Bid. Please provide definition of pricing term(s). ie. Single primary discount rate or multiple discount rates by category." Vendors will pay a 2% administrative fee for items not awarded on the ESUCC-2020 bid and offered through a punch-out catalog. This fee will be assessed on a quarterly basis.

1.4 Nebraska ESUCC - Cooperative Purchasing represents 17 Educational Service Units statewide who in turn service Nebraska school districts with over 300,000 students. Nebraska ESUCC - Cooperative Purchasing is currently in its 5th decade of operation. Nebraska ESUCC - Cooperative Purchasing is authorized to coordinate purchases for public school districts, nonpublic school systems, other ESUs, and other public agencies, including any county, city, village, school district, or agency of the state government, any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of the State of Nebraska.

### 2. ESUCC is a member of the following National Cooperative Purchasing organizations.

2.1 Association of Educational Purchasing Agencies (AEPA) is a multi-state non-profit organization made up of Educational Service Agencies / political subdivisions organized through a Memorandum of Understanding between all participating states. ESUCC is the Nebraska State agency that manages all AEPA contracts for its members.

2.2 Sourcewell, formerly National Joint Powers Alliance (NJPA)

2.2.1 Member Name: ESU Coordinating Council

2.2.2 NJPA Member Number: 128838

2.3 This IFB is being conducted to offer the Schools of Nebraska and members the opportunity to purchase specific products from vendors as specified in the terms and conditions. Nebraska ESUCC - Cooperative Purchasing reserves the right to award to multiple vendors if it is in the best interest of the Nebraska ESUCC - Cooperative Purchasing or its ESUs, schools, or other members.

2.3.1 Vendors will agree to offer their product at a unique price to Nebraska ESUCC - Cooperative Purchasing and the Educational Service Unit affiliated schools/members statewide. Bid award determination shall be made, primarily, in regards to merchandise meeting or exceeding specifications at the lowest possible price from vendors with demonstrated ability to service participating Schools, Educational Service Unit's, Community or State Colleges and other members in the state. In other words, the bid will be awarded to the lowest, responsible bidder.

### 3. Time Lines

3.1 Bids must be received on or before Friday, December 6th, 2019 with the exception of the Electronics section which will be due on or before Friday, January 10, 2020. The bid closing time is 3:00 p.m., Central Standard Time. Be advised that any bid being submitted online at the closing time runs the risk of being disqualified if the bid closes while the bid is being uploaded. Bidders should allow ample time to submit bids.

3.2 All bids must be submitted electronically using the Nebraska ESUCC - Cooperative Purchasing sourcing application. Submitting your bid through this application will signify your authorized signature and acceptance of all Bid Terms and Conditions for the ESUCC-2020 bid.

3.3 Bids will be opened publicly and simultaneously in the presence of bidders and/or their representatives beginning at 8:00 a.m. Central Standard Time, on designated dates as defined in "Key RFP Dates" or as soon as possible thereafter, in the Office of Nebraska ESUCC - Cooperative Purchasing, Ainsworth, NE. Bids will also be awarded on dates defined in "Key RFP Dates" below, except as otherwise provided in this document.

3.4 Bids for the Electronics section will be opened publicly and simultaneously in the presence of bidders and/or their representatives beginning at 8:00 a.m. Central Standard Time, on designated dates defined in "Key RFP Dates", or as soon as possible thereafter, in the Office of Nebraska ESUCC - Cooperative Purchasing, Ainsworth, NE. Bids for Electronics will also be awarded on dates defined in "Key RFP Dates" below, except as otherwise provided in this document.

### 3.5 Key RFP Dates

3.5.1 Public Announcement of RFP	October 8, 2019 9:00 a.m. CST
3.5.2 Conference Call	October 17, 2019 2:00 p.m. CST
3.5.3 Deadline for Questions	November 18, 2019 4:00 p.m., CST
3.5.4 RFP Due Date & Time	December 6, 2019 3:00 p.m. CST (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.5 Deadline for Bid Bonds received	December 6, 2019 (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.6 Preliminary Awards Available	December 16, 2019 (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.7 Vendor Review Period of Awards	December 16, 2019 – December 31, 2019 (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.8 Vendor Dispute Period	January 1-3, 2020 (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.9 Awards Finalized	January 6, 2020 (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.10 RFP Due Date & Time	January 10, 2020 3:00 p.m. CST (100 Electronics Section)
3.5.11 Deadline for Bid Bonds received	January 10, 2020 (100 Electronics Section)
3.5.12 Electronics Section Awarded	January 13-14, 2020
3.5.13 Electronics Dispute/Review Period	January 15-17, 2020
3.5.14 Electronics Awards Finalized	January 21, 2020

3.5.15 Paper Buy Catalog Opens	February 3, 2020
3.5.16 Annual Buy Catalog Opens	February 17, 2020
3.5.17 Paper Orders sent to vendors	March 19, 2020
3.5.18 First Day for 400 Paper delivery	April 9, 2020
3.5.19 Annual Buy orders sent to Vendors	April 22, 2020
3.5.20 Paper Buy Admin Fees billed	April 22, 2020
3.5.21 First Day for Annual Buy delivery	May 22, 2020
	(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
3.5.22 Annual Buy Admin Fees billed	June 2, 2020
3.5.23 Delivery Deadline for 400 Paper	June 9, 2020
3.5.24 Late delivery penalty 2% on Paper	June 10, 2020
3.5.25 Notification to ESUCC Coop by Vendors of Outstanding items yet to be shipped and Backordered items.	June 25, 2020
3.5.26 Paper Admin Fees due to ESUCC	July 2, 2020
3.5.27 Earliest Possible payment due date	July 6, 2020
	(45 Days from First Day for Delivery of Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
3.5.28 Delivery Deadline Annual Buy Items	July 24, 2020
	(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
3.5.29 Late delivery penalty 2%	July 27, 2020
	(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
3.5.30 Deadline Admin Fees paid to ESUCC	August 11, 2020
3.5.31 Late delivery penalty 4%	August 27, 2020
	(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
3.5.32 Late delivery penalty 6%	September 28, 2020
	(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
3.5.33 Awarded vendor Bid bonds returned	September 1, 2020
3.5.34 Overages picked up by Vendors	October 1, 2020

#### 4. Questions

- 4.1 The Bidder is responsible for asking any questions or obtaining any clarification regarding this solicitation or proposal prior to submitting the proposal. Any inquiries should be directed to Craig Peterson coop@esucc.org, in writing (email only) or through ESUCC's sourcing application Ion Wave to be received no later than date defined in the "Key RFP Dates".

#### 5. Bidder Qualifications

- 5.1 All bidders that are awarded individual item contracts by Nebraska ESUCC - Cooperative Purchasing, shall comply and conform to all applicable Nebraska and Federal laws, regulations, standards, orders, or requirements including but not limited to the following:
- 5.1.1 Equal Employment Opportunity: The Bidder shall comply with the Equal Employment Opportunity Clause required under Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- 5.1.2 Copeland "Anti-Kickback" Act: The Bidder shall comply with the Copeland "Anti-Kick Back" Act (40 U.S.C. 3145), as supplemented in Department of Labor regulations (29 CFR 3).
- 5.1.3 Lobbying: The Bidder agrees and understands that under the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) that Bidders that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
- 5.1.4 Contract Work Hours and Safety Standards Act: The Bidder agrees to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5).

- 5.1.5 Patent Rights: The USDOE's and any other federal agency's requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course or under this Agreement include, but are not necessarily limited to, 34 CFR Part 80.
- 5.1.6 Copyrights and Right in Data: The USDOE's and any other federal agency's requirements and regulations pertaining to copyrights and rights in data include, but are not necessarily limited to, 34 CFR Part 80.
- 5.1.7 Access to Documents: The Parties and their grantees, the USDOE and/or other federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Bidder which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.
- 5.1.8 Energy Policy and Conservation Act: The parties shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- 5.1.9 Clean Air and Federal Water Pollution Control Acts: The parties shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- 5.1.10 USDA Nondiscrimination Statement: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.
- 5.1.11 Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.
- 5.1.12 To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:
  - 5.1.12.1 Mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
  - 5.1.12.2 Fax: (202) 690-7442; or
  - 5.1.12.3 Email: [program.intake@usda.gov](mailto:program.intake@usda.gov).
- 5.1.13 Buy American: To the maximum extent practicable, the Bidder will purchase domestic commodities or products produced in the United States or processed substantially using commodities produced in the United States
- 5.1.14 Minority Business Owners: ESUCC will contract with minority-owned businesses, women's business enterprises, and labor surplus firms when possible. Steps to ensure compliance with this provision will include:
  - 5.1.14.1 Qualified small, minority, and women's businesses on solicitation lists so that when such businesses are potential vendors, they are included in ESUCC solicitations.
  - 5.1.14.2 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation for such businesses.
  - 5.1.14.3 Establishing delivery schedules, where requirement permits, which encourage such enterprises
  - 5.1.14.4 Use services of Small Business Administration, Minority Development Agency, or similar state agency to maximize participation.
  - 5.1.14.5 Require vendor, if subcontracts are to be let, to follow the above steps
- 5.1.15 Debarment and Suspension: The parties agree and understand that under Executive Orders 12549 and 12689 that a contract award (see 2 CFR 180.220) must not be made to any party listed on the government-wide Excluded Parties List System in the System for Award Management (SAM). The Bidder, by signature to this RFP, certifies that neither the Bidder nor its key employees are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from

participating in transactions (debarred). The Bidder also agrees to include the above requirements in any and all sub-contracts into which it enters. The Bidder shall immediately notify the ESUCC if, during the term of this contract, Bidder becomes debarred. The ESUCC may immediately terminate consideration of the Bidder by providing Bidder written notice if Bidder becomes debarred during the term of the potential contract.

- 5.1.16 State Letting Law - Neb. Rev. Stat. § 73-101 et seq. Vendors awarded a contract for a public work shall file with Nebraska ESUCC - Cooperative Purchasing a statement as required by Neb. Rev. Stat. § 73-102. The statement shall indicate that the bidder is complying with and will continue to comply with fair labor standards in the pursuit of its business and in the execution of the contract upon which it is bidding. Failure to provide such a statement may result in the bid being disqualified. As used herein, "fair labor standards" means such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the companies in the same business or field of endeavor as the bidder. If the requirements of this provision would increase the cost to the cooperative of merchandise, materials, supplies or services, this provision shall not be a requirement for bidding. Written Notification required from bidders opting out of this requirement due to increased costs to be received prior to bid close.
- 5.1.17 Conflict of Interest - By submitting a proposal, Bidder certifies that there does not now exist any relationship between the Bidder and any person or entity which is or gives the appearance of a conflict of interest related to this Request for Proposal. The Bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest. The Bidder certifies that it will not employ any individual known by Bidder to have a conflict of interest.
- 5.1.18 Personnel Recruitment Prohibition - The Bidder shall not, at any time, recruit or employ any employee or agent who has worked on the Request for Qualification or project, or who had any influence on decisions affecting the Request for Proposal or project.
- 5.1.19 The submission of the offer did not involve collusion or other anti-competitive practices. Neither signatory nor any person on his behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the matter of the bidding or award of a contract under this solicitation.
- 5.1.20 Bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.
- 5.1.21 Neither Bidder, nor any officer, director, partner, member or associate of Bidder, nor any of its employees directly involved in obtaining contracts with the State of Nebraska, ESUCC, or any subdivision of the state has been convicted of false pretenses, attempted false pretenses, or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985
- 5.1.22 Reporting Notice - The parties shall adhere to the United States Department of Education, and any other federal agency's requirements and regulations that pertain to reporting. This includes, but is not limited to, 34 CFR Part 80.
- 5.1.23 Record Retention - The parties shall retain all required records for at least three (3) years after the the purchasing party makes final payment and all other pending matters are closed.

## **6. Bid Submission**

- 6.1 All bids must be submitted electronically through the ESUCC sourcing application. Submitting your bid through this application will signify your authorized signature and acceptance of all Bid Terms and Conditions for the ESUCC-2020 bid. Hard copies or facsimile bid responses will not be accepted under any condition.

### 6.2 Special Notes:

- 6.2.1 Orders will be submitted directly from Nebraska Schools, ESUs, or other member agencies. Orders may be submitted by School District, Building, College Campus(s), or other Agencies. Vendors may receive multiple purchase orders from School Districts/Members and multiple ship to locations per School District/Campus/Members. A list of the previous year's ship to locations will be provided as an attachment to the bid for bidder reference. Additional locations may be added without notifying winning bidder. Please plan accordingly.

- 6.2.2 Bidders awarded item 400140(per case), 400141(per pallet), and/or 400135 agree to provide orders shipped to Cass, Douglas, Sarpy and Washington County a \$.50 per case freight discount from awarded price on these items.
- 6.2.3 Special Notes for cut paper (400 section): Vendors may begin delivery of paper on the date for “First Day for 400 Paper delivery” defined in the “Key RFP Dates”. Late deliveries will be subject to late delivery penalties (2% per month). Payment terms are Net 45 days upon completion of entire PO.
- 6.2.4 Vendors must identify all miscellaneous packaging with labels or markings on the boxes. Nebraska ESUCC affiliated Schools and members will not be responsible for erroneous reporting of shortages due to unidentified miscellaneous packaging.
- 6.2.5 Vendors must deliver ordered quantities ONLY. Bidders are responsible for picking-up all overages by date defined in the “Key RFP Dates” section. All overages not picked-up by this date will be retained at no cost by ESUCC or its affiliate members.
- 6.2.6 Vendors must deliver all required cables, straps, and accessories with the respective product. Do not ship accessories on separate delivery dates or packaged with unrelated items.

## **7. Type of Contract: ANNUAL BUY**

7.1 The Annual Buy bid provides the vendor the opportunity to bid in (10) ten product categories:

- 7.1.1 Electronics
- 7.1.2 General Supplies
- 7.1.3 Furniture
- 7.1.4 Copier Paper
- 7.1.5 Maintenance-Shop Supplies
- 7.1.6 Health and Safety Supplies
- 7.1.7 Athletic Equipment and Supplies
- 7.1.8 Hot Lunch Equipment and Supplies
- 7.1.9 Science Equipment and Supplies
- 7.1.10 Art Equipment and Supplies

7.2 Bidders may bid on any or all of the categories listed.

7.3 All “Annual Buy” individual item contracts are awarded for FOB Destination tailgate delivery (unless optional delivery method is selected for the 400 Copier Paper) to the member school districts in Nebraska or as designated by the Ship to address on each order. All orders will be submitted electronically to the awarded vendor, after order aggregation is complete from the member school district or any of its designated staff or for aggregated orders by the designated date. All orders will be submitted electronically to the awarded vendor by date defined in the “Key RFP Dates” section. Any vendor that can receive purchase orders via cXML data will be assisted to accommodate this process by Nebraska ESUCC - Cooperative Purchasing and Equal Level. Awarded parties unable to receive cXML data will receive orders via email at an email account designated by the awarded vendor.

## **8. Bid Bond Requirement**

The undersigned bidder hereby agrees to submit a **bid bond**, on or before the “Bid Submittal Deadline”, from a reputable surety company in the amount of \$2,500.00 or a bid bond in the form of cash, certified check, or money order, in the amount of \$2,500.00. Upon awarding the bids the amount of the bid bond, if cash, certified check, or money order, will be returned to said bidder once all product is received. The bid bond shall be conditioned upon honoring said bid if awarded to said bidder and shall be in favor of ESU Coordinating Council.

Bid Bonds should be mailed to:

ESU Coordinating Council  
1292 East 4th Street  
Ainsworth, NE 69210

## **9. Terms and Conditions**

The submission of bids to Nebraska ESUCC - Cooperative Purchasing shall be the consideration for this agreement. The undersigned bidder hereby agrees to honor bid prices regardless of quantities and said bidder agrees that guaranteed quantities are not a condition of this bid. The undersigned upon the execution of this document hereby agrees to the Terms and Conditions of this bid and Nebraska ESUCC - Cooperative Purchasing agrees to accept such bids under the following conditions.

#### 9.1 Delivery

- 9.1.1 All items bid upon are for FOB Destination Tailgate delivery to participating school districts and/or individual school buildings of the Nebraska ESU's or any entity by statute ESU's/ESUCC may serve. A listing of all member cities and counties but not limited to can be found in the City-ESU-County Listing PDF document along with a list of the previous year's ship to addresses accessible through the ESUCC sourcing solution. Winning bidders, in compliance with bid bond requirements, may begin deliveries no earlier than "First Day for Delivery" defined in the "Key RFP Dates.
- 9.1.2 Shipper must notify the respective "ship to" destination 48 hours in advance of delivery to schedule and insure a delivery time. Failure to schedule a delivery appointment with 48-hour lead-time may result in refusal to receive shipment until appropriate arrangements can be made. Nebraska ESUCC - Cooperative Purchasing, Schools, or members and its receiving locations will not be responsible for any costs incurred for winning bidder's and/or their designated shipper's failure to make delivery appointments.

#### 9.2 Package/Lot Bids

- 9.2.1 When a Package/Lot BID is requested, a respondent is expected to bid each and every item within the Package/Lot, and the award will be made based upon the "Total Package Bid" calculation for the stipulated Package. The calculation for "PACKAGE BIDS" will be evaluated on a weighted average basis based on the previous year's sales volume. Each bidder will be responsible for the accuracy of each "Total Bid Package". If the package bid for the current year does not have previous year sales volumes to compare then the package will be awarded based on low bid of the entire package.
- 9.2.2 In the event that not all items within a Package/Lot can be sourced by the respondent, Nebraska ESUCC - Cooperative Purchasing reserves the right to omit items from the calculation in the event that the removal from the package/ lot is in the best interest of the previous year's order quantities and the pricing calculation.

#### 9.3 Quantities

- 9.3.1 Nebraska ESUCC - Cooperative Purchasing is hereby not stipulating estimated quantities of merchandise for bidding. There is no guarantee that quantities will be greater or smaller than those purchased in prior years. Bidders submitting bids with stipulations and/or conditions on quantities or awarded dollar amounts by line item, category, or total order will be disqualified from consideration for award. The undersigned bidder hereby agrees to honor bid prices and shipments regardless of quantities or dollar volume actually determined following bid awards, and said bidder hereby agrees that guaranteed purchase order quantities or dollar amounts are not a condition of this bid.

#### 9.4 Bid Award Determination

- 9.4.1 The Nebraska ESUCC - Cooperative Purchasing Awards Committee shall award contracts to the lowest responsible bidders, as determined by the Awards Committee in its sole discretion. In the event of a tie the award shall be determined by a public coin flip, to establish the winner unless one of the involved bidders has been designated a Nebraska resident bidder in which event said bidder shall be automatically declared the winner. The Committee, however, reserves the right to award an additional selection whenever a substantial brand-name preference has been indicated by the participating schools and when it is determined that said brand-name bid is competitive in price. The undersigned bidder hereby agrees to these bidding conditions by submitting this signed document on or before the Bid Closing date as specified below.
- 9.4.2 Nebraska ESUCC - Cooperative Purchasing reserves the right to reject any or all bids in whole or in part; to waive any formalities or irregularities in any bids, and to accept the bids, which in its discretion, may be for the best interest of Nebraska ESUCC - Cooperative Purchasing.
- 9.4.3 Preliminary awards will be available during the "Vendor Review Period of Awards" defined in "Key RFP Dates". Vendors will have until the end of the "Vendor Review Period" to review awards. Please note that during portions of this review period the offices of Nebraska ESUCC - Cooperative Purchasing will be

closed. Vendors may formally dispute awards, in writing, to Nebraska ESUCC - Cooperative Purchasing during the "Vendor Dispute Period" defined in "Key RFP Dates". Disputes will be reviewed and vendors will be notified of decisions. Final Bid Awards will be available as defined in "Key RFP Dates".

#### 9.5 Warranties and Specifications

- 9.5.1 The Company receiving the award shall be responsible for providing the manufacturer's standard warranty or other in-state warranty service facility to the schools, educational service units, and other members.
- 9.5.2 Every item bid will include all attachments normally supplied with the machine by the manufacturer or vendor and none shall be omitted when shipped.
- 9.5.3 Complete product specification sheets and/or brochures must be submitted when requested and can be submitted electronically through the ESUCC sourcing application per Response Attachments. Failure to provide said specification sheets could disqualify the bid. All product specifications must be submitted on or before the Bid Closing date and must be clearly identified with the vendor's name and the Nebraska ESUCC - Cooperative Purchasing Item Number.

#### 9.6 Product Safety Information

- 9.6.1 Bidders are responsible to insure that all equipment meets applicable safety codes and that all electrical equipment bids will be Underwriters Laboratory Approved. The awarded vendor must, upon request, provide data that substantiates that the items bid are not hazardous or toxic in the manufactured condition as to asbestos content, etc. The vendor further agrees to provide proper Safety Data Sheets (SDS), as required by law, with products upon delivery.

#### 9.7 Service Manuals and Product Nomenclature

- 9.7.1 Operator's manuals should be supplied for all items when shipped. The vendor agrees to make service manuals available, at a reasonable cost, to Schools, Educational Service Units and members upon request.
- 9.7.2 The ASA code or other lamp nomenclature shall be specified by the vendor for each type of projection equipment to facilitate projection lamp stocking at all schools and Educational Service Unit's repair facilities.

#### 9.8 "Equivalent to" Item Specifications

- 9.8.1 When an item specification lists "Equivalent to", bidders may submit a single "equivalent to" item. However, each bidder is restricted to one item submitted per item number unless the Nebraska ESUCC - Cooperative Purchasing staff provide the ability of offering an alternate through the sourcing application. Multiple submissions on a single line item will not be considered and will automatically disqualify that bidder from all award consideration for that item number.
- 9.8.2 Nebraska ESUCC - Cooperative Purchasing recommends that vendors submit requests for "alternative brand name approval" in the "annual bid specification review period" scheduled in August and September of each year. Details of this protocol can be found on the website: [www.neesucoop.org](http://www.neesucoop.org).
- 9.8.3 Whenever the word "ONLY" follows the specific brand and/or model name and/or number, equivalents will not be accepted and should not be submitted.

#### 9.9 Samples

- 9.9.1 Samples, when required, must be submitted within the time specified at the bidder's expense. Whenever the notation "SAMPLE REQUIRED" is made, a sample must be submitted for the bid to be considered. Each sample and specification sheet must be provided on or before the bid closing date. Each sample and specification sheet must be labeled with the name of the vendor/manufacturer submitting the sample for consideration and the Nebraska ESUCC - Cooperative Purchasing item number. If not consumed by testing, samples will be returned upon written request only at the expense of the bidder. All samples will become the property of Nebraska ESUCC - Cooperative Purchasing if a written "Return Request" is not submitted with the sample. Samples and specification sheets not properly labeled may not be considered in bid award.
- 9.9.2 Previous year awards will not be used to determine current year awards. A sample must be submitted for all specifications that indicate "Sample Required" and current "specification sheet" must be submitted when indicated. Failure of a bidder to do so may result in disqualification for that item.

## 9.10 Payment Terms

- 9.10.1 Payments will be made to vendors directly from Schools, Educational Service Units, and members. All payment terms are Net 45 based on product received date by members. The first possible day of delivery as defined in “Key RFP Dates”, and, the earliest payment due date is also defined in “Key RFP Dates”. All Purchase Orders must be delivered and verified 100% complete and accurate before they will be considered payable. Any product not received by “Delivery Deadline for Items” as defined in “Key RFP Dates” will be subject to late shipment penalties and should be adjusted on the member invoices accordingly.
- 9.10.2 A “late delivery” penalty fee of 2% shall be deducted from a members final invoice for deliveries made after “Delivery Deadline for Items” and “Delivery Deadline for Paper”. An additional 2% per month “late delivery” penalty fee will be assessed for deliveries made for any part of each month on the total dollar amount of all undelivered merchandise. Members must communicate in writing non-receipt of product(s) to vendors at a minimum of one week prior to the delivery deadline or if the deadline has past the vendor shall have 14 days to deliver product without penalty after receiving communication of non-delivery of items from member.
- 9.10.3 A bidder is in default for any merchandise not delivered by end of day for “Delivery Deadline for Items” and “Delivery Deadline for Paper” as defined in “Key RFP Dates” and any Nebraska ESUCC - Cooperative Purchasing member may, at their option, purchase the merchandise elsewhere on such terms and at such prices as available or cancel the item. Upon default by a bidder, the bidder and the surety named in the bid bond shall then become liable to Nebraska ESUCC - Cooperative Purchasing for the difference of the total amount between the total cost of the replacement merchandise and the total bid of the undelivered merchandise, and any additional administrative costs and expenses of Nebraska ESUCC - Cooperative Purchasing or members.

## 9.11 Lost and Damaged Merchandise

- 9.11.1 The awarded vendor shall accept full responsibility and pay for return shipping charges on any item received by a school, Educational Service Unit, or member that is found to be deficient in quality, defective in packaging, fails to meet specifications or is an unauthorized substitution so as to render the item unsuitable for its intended purpose.

## 9.12 Discontinued Items/Model Changes/Cancellations

- 9.12.1 Bidders are responsible for bidding items and model numbers that are current. Winning bidders are responsible for notifying, in writing Nebraska ESUCC - Cooperative Purchasing, of any model changes prior to shipment of product, addressed to [coop@esucc.org](mailto:coop@esucc.org). These written notifications are subject to approval from Nebraska ESUCC - Cooperative Purchasing. Items delivered prior to any notification of changes are subject to rejection at receiving without prior notice.
- 9.12.2 By bidding an item, the bidder is accepting responsibility for delivering that item if awarded. Bidders will be responsible for finding an acceptable replacement of equal or greater quality for all discontinued or cancelled items. Failure to provide a suitable replacement shall result in Nebraska ESUCC - Cooperative Purchasing deducting the cost of having to secure acceptable replacements from winning bidders bid bond.

## 9.13 Late Shipments

- 9.13.1 Vendor is responsible to notify, in writing, Nebraska ESUCC - Cooperative Purchasing [coop@esucc.org](mailto:coop@esucc.org) of any late or delayed shipments as soon as vendor is aware of this information. On date noted in “Key RFP Dates”, vendors must submit to Nebraska ESUCC - Cooperative Purchasing a complete list of all items that have yet to be shipped and an estimate, by line item and delivery location, of expected delivery dates.
- 9.13.2 Nebraska ESUCC - Cooperative Purchasing and its affiliates reserve the right to cancel the whole or any part of this agreement due to failure by the vendor to carry out any obligation, term or condition of the agreement.
- 9.13.3 Nebraska ESUCC - Cooperative Purchasing will issue written notice to the vendor for acting or failing to act in any of the following:
- 9.13.3.1 The vendor provides material that does not meet the specifications of the agreement;
  - 9.13.3.2 The vendor fails to adequately perform the services set forth in the specifications of the agreement.

- 9.13.3.3 The vendor fails to observe any of the terms and conditions of the agreement.
  - 9.13.3.4 The vendor fails to follow the established procedure for purchase orders, invoices, and receipt of funds as stipulated by Nebraska ESUCC - Cooperative Purchasing.
- 9.13.4 Nebraska ESUCC - Cooperative Purchasing reserves the right to cancel, or suspend the use thereof, any agreement resulting from this IFB if the vendor files bankruptcy protection, or is acquired by an independent third party. Upon receipt of the written notice, the vendor shall have ten (10) business days to provide a satisfactory response to Nebraska ESUCC - Cooperative Purchasing. Failure on the part of the vendor to address adequately all issues of concern may result in cancellation of the agreement.
  
- 9.14 Inspections and Acceptance
  - 9.14.1 Inspection and acceptance will be at the member delivery destination unless specified otherwise, and will be made at the ship to address by a duly authorized representative. Until delivery and acceptance, and after any rejection, risk of loss will be the vendors unless loss results from negligence by the receiver.
  
- 9.15 Electronic Procurement System
  - 9.15.1 Nebraska ESUCC - Cooperative Purchasing and its members will issue orders for supplies, equipment and services utilizing an electronic procurement system.
  
- 9.16 General Information
  - 9.16.1 Sales Summary Reports will be provided reflecting a vendor's total catalog sales upon request only.
  
- 9.17 Multiple Awards
  - 9.17.1 In order to assure that any bid award will allow Nebraska ESUCC - Cooperative Purchasing to fulfill current and future requirements, Nebraska ESUCC - Cooperative Purchasing reserves the right to award bids to multiple vendors. The actual use of any bid award will be at the sole discretion of Nebraska ESUCC - Cooperative Purchasing affiliated schools, ESU's or members. Each vendor should take into account the fact that Nebraska ESUCC - Cooperative Purchasing may consider multiple awards. It is at the discretion of Nebraska ESUCC - Cooperative Purchasing to make multiple bid awards, to award only one bid, or to make no awards.
  
- 9.18 Bid Preparation and Submission
  - 9.18.1 All bids must be submitted through the Nebraska ESUCC - Cooperative Purchasing's hosted sourcing application service at <http://www.neesucoop.org> via the Internet. All vendors will be able to access the bid from the system as long as you have pre-registered with ESUCC Cooperative Purchasing. Submitting a bid using the hard copy will render the bid non-responsive and therefore disqualified. All bids are to be prepared on a prepaid, FOB Destination Tailgate basis. No payments for transportation charges, of any kind, will be allowed, unless otherwise specified.
  
- 9.19 Governing Law
  - 9.19.1 This IFB, any resulting contracts, and the vendor's performance will be governed by and construed in accordance with the laws of the State of Nebraska.
  
- 9.20 Publicity
  - 9.20.1 ESUCC does not endorse the goods or services of the vendors. Except for listing ESUCC as a client during the term of any award or related contract, news releases or other publicity concerning the award or contract must not be made by the vendor without the prior written approval of ESUCC.
  
- 9.21 Nondiscrimination
  - 9.21.1 By submitting a bid, the vendor agrees that it and its subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of any bid award with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

## 9.22 Employment Eligibility Verification

9.22.1 The vendor agrees that it shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska as the result of any bid award. If the vendor employs or contracts with any subcontractor in connection with any bid award, the vendor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska as a result of the bid award.

## 9.23 Disqualification of Bidders

9.23.1 Vendors may be disqualified and their proposals disregarded for reasons which include but are not limited to the following:

9.23.1.1 ESUCC Cooperative Purchasing has reason to believe that vendors have engaged in collusion.

9.23.1.2 The vendor being interested in any litigation against the ESUCC, the Cooperative, or any of its ESUs or their member school districts.

9.23.1.3 The vendor is in arrears on any existing contract or has defaulted on a previous contract.

9.23.1.4 The vendor has uncompleted work which, in the judgment of the ESUCC, will prevent or hinder its ability to complete this project, if it were awarded to the Vendor.

## 9.24 Non-Responsive Bids

9.24.1 A vendor that fails to respond to any request for information may be deemed non-responsive and its bid may not be considered for the award.

## 9.25 Debarment

9.25.1 Submission of a bid is certification that vendor and any subcontractor is not currently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from submitting proposals to any State or Federal department or agency or any political subdivision of the State of Nebraska.

## 9.26 Public Records

9.26.1 Vendor acknowledges that ESUCC must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include vendor's bid documents and all records created and maintained in relation to it.

## 9.27 Electronic Bid Protocol

9.27.1 All bids and modifications thereof, shall not be viewable until the day and time indicated in the bid. A "Bid Submittal Deadline" time will be displayed for all types of bids. No bid can be received or modified after the "Bid Submittal Deadline" designated for whatever reason.

9.27.2 Because of the availability of electronic bidding, Nebraska ESUCC - Cooperative Purchasing reserves the right to postpone the electronic Bid Closing due to electrical or communication problems on our end or with a hosted server, due to accidents or acts of God. Bidders must mail or electronically submit the requested bid information as requested by the Nebraska ESUCC - Cooperative Purchasing sourcing application. Official signatures are required to validate the bid. Neglecting to provide the information requested on the "Response Submission" will result in disqualification of the bid.

## 9.28 Piggyback Clause.

9.28.1 For the term of the Agreement and any mutually agreed extensions, other public agencies may purchase, lease-purchase, or rent the identical item(s) at the same price and upon the same terms and conditions as provided in this Agreement. The term "public agencies" means any county, city, village, school district, or agency of any state government or of the United States; any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of Nebraska; and any political subdivision of another state that has executed an interlocal agreement with ESUCC.

## 10. Indemnification

10.1 Bidder agrees to indemnify, defend, and hold harmless the ESUCC and/or its member agencies against any and all claims, suits, and/or judgments, including costs, expenses, damages, and reasonable legal

fees based upon and arising from Bidder's violation of the rights of others and/or by reason of a breach of any of the foregoing warranties.

- 10.2 Bidder represents and warrants that the contents of this response to Request for Proposal and all figures, illustrations, photographs, charts, and other supplementary material herein are original and do not libel anyone or infringe upon any patent, copyright, proprietary right, or any other right whatsoever of any other party. Bidder represents and warrants that Bidder has full power and authority to execute this Copyright Release and to grant the ESUCC and/or its member agencies the right granted herein.

**11. Tariffs**

- 11.1 In the event of significant delay or price increase of materials or goods occurring during the performance of the contract due to a tariff that goes into effect after the execution of this contract, the contract price/sum, time of performance, or contract requirements shall be equitably adjusted by written amendment of the contract. A change in price of an item of material or good shall be considered significant when the price of an item increases 5 percent between the date of execution of the contract and the date of catalog opening February 1, 2019. The price amendment shall be effective only as long as the tariff is in effect. The intent of the adjustment is to hold the vendor harmless from the impact of the tariff, but the price adjustment is in no way intended to provide or guarantee the same percentage of profit. The vendor shall provide documentation that is satisfactory to ESUCC to support any claim under this section. In addition, ESUCC shall have the right to request a cost analysis vs. price analysis for each change in tariff adjustment request. In the event that the parties are unable to reach an agreement regarding a contract amendment under this section, either party has the option to terminate the contract, bid award or re-award the item to the next low bid.

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Sign: \_\_\_\_\_

Kraig Lofquist

Executive Director

Terms and Conditions reviewed on: \_\_\_\_\_, 2019



## 2019-2022 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing (“Cooperative”), and [REDACTED] (“Contractor”). The Cooperative is an organization founded in 1968 with the purpose of providing the Educational Service Unit (ESU) member school districts (“Members”) of Nebraska an opportunity to secure the maximum procurement value through cooperative synergies. The Educational Service Unit Coordinating Council (ESUCC) Advisory group serves as the steering committee for new and future cooperative buys statewide under its direction. A chief executive officer coordinates the statewide purchasing agreement between service units and their school districts and other serviceable entities. The Director manages the program with the guidance of the ESUCC, Advisory Board, and the Fiscal Agent. Nebraska ESUCC Cooperative Purchasing serves 17 ESUs that provide a statewide network of educational opportunities to approximately 249 school districts and more than 300,000 students.

In consideration of mutual covenants, the parties agree as follows:

- 1. Scope of the Contract.** The Contractor shall provide Members the opportunity to purchase the goods and/or services as defined in **Exhibit A**, which is attached hereto and incorporated herein by this reference, at the prices set forth in this Agreement and its Exhibits.
- 2. Payment Terms/Payment Schedule.** Members shall pay for services rendered and/or for accepted goods on the terms and payment schedule as set forth in **Exhibit B** which is attached hereto and incorporated herein by this reference. Prices listed in Exhibit B shall remain in effect during the term of this Agreement unless agreed otherwise by the parties in writing.
- 3. Administrative Fee.** Contractor shall submit to the Cooperative as an administrative fee a sum equal to two percent (2%) of the total gross dollar volume, less freight of all goods and services and excluding annual support and maintenance purchased by the Cooperative, ESUs, and Members. This fee will be submitted to the Cooperative on a quarterly basis beginning three months from the Effective Date of this Agreement for all transactions completed and paid during said quarter.
- 4. Term.** This Agreement is effective on [REDACTED], 2019 (“Effective Date”) and shall continue until 12:00 midnight (CST) on [REDACTED], 2022, unless terminated earlier as provided by this Agreement or by law.
- 5. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Sarpy County, Nebraska.

**6. Termination.**

- A. The Cooperative may terminate this Agreement in whole or part if funding from federal, state, or other sources for the Cooperative or its Members is not obtained and continued at levels sufficient to allow for purchase of the good and/or services in the indicated quantities or term. The Cooperative shall notify the Contractor as soon as practicable if funds to meet the Cooperative's or Members' obligations become unavailable. The determination of the Cooperative as to the insufficiency of funds is conclusive.
- B. Each party may terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within 30 days after receipt of written notice of such default or such additional cure period as the nondefaulting party may authorize in writing.
- C. Each party may terminate this Agreement by written notice if federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- D. The Cooperative may terminate this Agreement, in whole or in part, by written notice to the Contractor and may regard the Contractor in default of this Agreement if the Contractor becomes:
  - (1) Insolvent;
  - (2) Makes a general assignment for the benefit of creditors;
  - (3) Files a voluntary petition of bankruptcy;
  - (4) Suffers or permits the appointment of a receiver for its business or assets;
  - (5) Becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or
  - (6) Has wound up or liquidated, voluntarily or otherwise.
- E. The Cooperative may terminate this Agreement, in whole or in part, immediately, without notice, if the Contractor is debarred or suspended from performing services on any public contracts.
- F. The parties may terminate this Agreement without cause by mutual written consent or by either party with a minimum of 90 days written notice.
- G. Upon the termination for any reason or expiration of this Agreement, the Contractor promptly must return to the Cooperative all papers, materials and other property of the Cooperative then in its possession, including but not limited to all work in progress as is appropriate in its then existing form to the Cooperative.

**7. Indemnification.**

- A. The Contractor hereby waives and agrees to indemnify and save harmless the Cooperative and the ESUs and their officials, agents, employees, and volunteers (hereinafter collectively referred to as "Indemnities"), against any and all claims of

injuries, death, damage to property, liabilities, judgments, costs and expenses which may otherwise accrue against Indemnities in consequence of the granting of this Agreement or which may otherwise result therefrom.

- B. The Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith.
  - C. If any judgment shall be rendered against the Cooperative or the ESUs in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same.
  - D. Any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.
  - E. The Contractor's obligation to indemnify and save harmless any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.
- 8. Insurance.** Contractor shall secure and keep in force during the term of this Agreement the following insurance coverages from insurance companies or government self-insurance pools authorized to do business in Nebraska:
- A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per person and \$5,000,000 per occurrence; and
  - B. If applicable, workers compensation coverage meeting all statutory requirements.
- The Contractor shall furnish a certificate of insurance to the undersigned Cooperative representative prior to commencement of this Agreement. Failure to provide insurance as required in this agreement is a material breach of contract entitling the Cooperative to terminate this Agreement immediately.
- 9. Public Records.** The Contractor acknowledges that the Cooperative must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.
- 10. Publicity.** The Cooperative does not endorse the goods or services of the Contractor. Except for listing the Cooperative as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of the Cooperative.
- 11. Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on Cooperative, ESU, or Member property or at Cooperative, ESU, or Member

related functions. The Contractor and all subcontractors, if any, also shall adhere to all Cooperative, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. The Cooperative may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.

12. **Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
13. **Independent Contractor.** Contractor is an independent contractor under this contract and is not a Cooperative, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
14. **Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
15. **Taxpayer Identification.** Contractor's federal employer identification number is:  
.
16. **Sales Tax.** The Cooperative, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
17. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

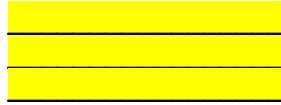
Cooperative: ESUCC  
Attn: Kraig Lofquist  
6949 South 110<sup>th</sup> Street  
LaVista, NE 68128

With copy to:

ESUCC Cooperative Purchasing  
Attn: Craig Peterson  
PO Box 858

412 W. 14<sup>th</sup> Ave  
Holdrege, NE 68949

Contractor:

A yellow rectangular redaction box covering the contractor's name and contact information.

Notice is effective only if the party giving the Notice has complied with this section.

18. **Warranties and Specifications.** Contractor shall be responsible for providing to Members all manufacturer warranties on all goods and services. Contractor shall provide Members with all attachments normally supplied by the manufacturer and/or supplier. Complete product specification sheets or brochures must be provided to Members, ESUs, or the Cooperative upon request.
19. **Entire Agreement.** The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.
20. **Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.
21. **Waivers.** The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay: (1) In exercising any right or remedy, **or** (2) In requiring the satisfaction of any condition under this Agreement, **and** (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.
22. **Severability.** If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.
23. **Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.
24. **Force Majeure.** Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non performing party's failure to perform, or delay in performing, any of its obligations contained in this contract (except any obligations

to make payments for services rendered or accepted goods received before the failure to perform or the delay in performance), where, in the opinion of the Cooperative, such failure or delay is caused by circumstances beyond the non performing party's control or which make performance commercially impracticable, including but not limited to fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, government regulations or restrictions of any kind or any acts of any government, alien enemy, judicial action, power failure, acts of God, or other natural circumstances. This Force Majeure provision excludes economic hardship, changes in market conditions, and insufficiency of funds on the part of Contractor.

25. **Assignment.** This Agreement binds the parties and their respective successors and assignees. The Contractor shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of the Cooperative.
26. **Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the Cooperative.
27. **Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
28. **Rights and Remedies Cumulative.** Any enumeration of the Cooperative's rights and remedies set forth in this Agreement is not exhaustive. The Cooperative's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of the Cooperative's rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.
29. **Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as may from time to time be provided by written instrument signed by both parties.
30. **Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.
31. **Piggyback Clause.** For the term of the Agreement and any mutually agreed extensions, other public agencies may purchase, lease-purchase, or rent the identical item(s) at the same price and upon the same terms and conditions as provided in this Agreement. The term "public agencies" means any county, city, village, school district, or agency of any state government or of the United States; any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of Nebraska; and any political subdivision of another state.
32. **Attachments.** Attachments to this Agreement include the following:

Exhibit A – Scope of Good or Services to be provided to Cooperative  
Exhibit B – Payment Terms & Schedule

IN WITNESS WHEREOF the parties have executed this Agreement on the date last date written below.

**COOPERATIVE**

By: \_\_\_\_\_  
Name: Kraig Lofquist  
Title: Executive Director  
Date: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT "A"**

**SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO MEMBERS**

**<<VENDOR-INSERT SCOPE OF GOODS>>**

## EXHIBIT "B"

### 1. Contractor's Pricing

Contractor's Pricing Model under this Agreement is:

**<<VENDOR-INSERT PRICING>>**

### 2. Payment Terms/ Payment Schedule

- A. Members will pay Contractor for all undisputed amounts for the goods and/or services identified in Exhibit A and provided by Contractor under this Agreement within sixty (60) days of receipt of invoice, provided that goods/services have been accepted by the Member as hereinafter provided.
- B. The procedure for billing and payment for services or products and deliverables shall be as specified in this exhibit.

### 3. Acceptance of Services or Products:

- A. The Contractor shall deliver any goods, perform any services or both in accordance with the schedule set forth in any RFP, the time specified in a purchase order issued by the Cooperative, ESU, or Member, or this Agreement (whichever is later).
- B. Unless otherwise agreed to by the parties, the Contractor shall provide written notification of completion of any deliveries, or performances of services or both, to the Member ("Delivery Notice").
- C. Members shall have sixty (60) days from the date of receipt of the Delivery Notice to provide the Contractor with written notification of acceptance or rejection due to unsatisfactory performance or nonconforming goods.
- D. If the Member issues a rejection notice, the Contractor shall as quickly as is practicable, correct or replace all deficiencies at its expense. The Cooperative shall not unreasonably withhold or delay its acceptance or rejection.

### 4. Title and Risk of Loss:

- A. Title and risk of loss for goods shall remain with the Contractor until goods are accepted by the Member, ESU, or Cooperative.
- B. Insurance during shipment and until the goods are accepted by the Cooperative, ESU, or Member is the responsibility of the Contractor.



## 2019-2022 SPECIAL BUY AGREEMENT

THIS SPECIAL BUY AGREEMENT ("Agreement") is entered into by and between the Educational Service Unit Coordinating Council ("ESUCC") and Nearpod Inc., a Delaware corporation ("Contractor" or "Nearpod") on this 16<sup>th</sup> day of August 2019 ("Effective Date").

### RECITALS

WHEREAS, Educational Service Unit Coordinating Council (ESUCC) was created in statute to coordinate the activities of Nebraska's 17 Educational Service Units. The Educational Service Unit Coordinating Council was created by LB 603 in 2007 and officially came into existence on July 1, 2008. Cooperative Purchasing is a Project of ESUCC that has been in existence since 1968 with the purpose of providing the Educational Service Unit (ESU) member school districts ("Members") of Nebraska an opportunity to secure the maximum procurement value through cooperative synergies. ESUCC Advisory Group serves as the steering committee for new and future cooperative buys statewide under its direction. A chief executive officer coordinates the statewide purchasing agreement between educational service units and their school districts and other serviceable entities. The Director of Cooperative Purchasing manages the program with the guidance of the ESUCC, Advisory Board, and the Fiscal Agent. ESUCC serves 17 ESUs that provide a statewide network of educational opportunities to approximately 245 school districts and more than 300,000 students.

Whereas, Nearpod provides products to allow teachers and educators the ability to create and curate interactive multimedia lessons that can contain quizzes, polls, videos, images, and web content ("Content Tool"), access reports with student answers, assessments and activities ("Reporting Tool") and manage individual users, share presentations and obtain usage statistics ("Admin Tool"). The Content Tool, Reporting Tool, and Admin Tool are collectively referred to as the Nearpod Services.

Whereas, ESU's and Members' users can use the Content Tool to create customized interactive multimedia lessons for use with the Reporting Tool and the Admin Tool ("Co-Op Content").

Now therefore, in consideration of mutual covenants and promises, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Scope of the Contract.** The Contractor shall provide Members the opportunity to purchase the goods and/or services as defined in **Exhibit A**, which is attached hereto

and incorporated herein by this reference, at the prices set forth in this Agreement and its Exhibits.

- 2. Payment Terms/Payment Schedule.** Members shall pay for services rendered and/or for accepted goods on the terms and payment schedule as set forth in **Exhibit B** which is attached hereto and incorporated herein by this reference. Prices listed in Exhibit B shall remain in effect during the term of this Agreement unless agreed otherwise by the parties in writing.
- 3. Administrative Fee.** Upon receipt of invoice by ESUCC, Contractor shall submit to ESUCC as an administrative fee a sum equal to two percent (2%) of the total gross dollar volume, less freight of all goods and services and excluding annual support and maintenance purchased and paid by the ESUCC, ESUs, and Members. This fee will be submitted to ESUCC on a quarterly basis beginning three months from the Effective Date of this Agreement for all transactions completed and paid during said quarter. If no sales are made through this Agreement and accordingly marked on the purchase order by each Member, no administrative fee shall be paid to ESUCC for that transaction. Notwithstanding anything to the contrary in this Agreement or otherwise, Nearpod will provide payment of the administrative fee to ESUCC when (i) Nearpod has been paid for all ordered and received Nearpod products by the applicable Member(s), (ii) ESUCC provided a written invoice to Nearpod regarding the transaction or sale of the Nearpod Services to the Member, (iii) the invoiced transactions mention this Agreement on the corresponding purchase order, unless received from the ESUCC hosted Marketplace in which these transactions qualify for Administrative Fee payment.
- 4. Term.** This Agreement is effective on the Effective Date and shall continue until 12:00 midnight (CST) on July 31, 2022, unless terminated earlier as provided by this Agreement or by law.
- 5. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Sarpy County, Nebraska.
- 6. Student Privacy Protections.**
  - A. Definition of Data.** Data includes all Personally Identifiable Information (PII), Member Data, and other non-public information. Data includes, but are not limited to, student data, metadata, and user content.
  - B. Definition of Member Data.** Member Data includes all PII and other information that is not intentionally made generally available by ESUCC or its Members on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student and personnel data and metadata.
  - C. Definition of Personally Identifiable Information.** Personally Identifiable Information includes but is not limited to: personal identifiers such as name,

address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as used in Neb. Rev. Stat. § 84-712.05 and personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g.

- D. **Definition of User.** User means a participant, instructor, or administrator of ESUCC or its Members who are authorized with login credentials by ESUCC or its Members to use the goods and/or services provided by this Agreement.
- E. **Data De-Identification.** Contractor may use deidentified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Contractor agrees not to attempt to re-identify deidentified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt reidentification.
- F. **Marketing and Advertising.** Contractor will not use any Data to advertise or market to students or their parents. Advertising or marketing may be directed to the ESUCC, Members, or their school districts only if student information is properly de-identified.
- G. **Modification of Terms of Service.** Contractor will not change how Data are collected, used, or shared under the terms of this Agreement in any way without advance notice to and consent from the ESUCC, the Members, and the affected school district(s). Such notice may be provided by posting on the Nearpod website found at: [www.nearpod.com/terms-conditions](http://www.nearpod.com/terms-conditions).
- H. **Data Collection.** Contractor will only collect Data necessary to fulfill its duties as outlined in this Agreement.
- I. **Data Use.** Contractor will use Data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement.
- J. **Data Mining.** Contractor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.
- K. **Data Sharing.** Data cannot be shared with any additional parties without prior written consent of the User except as required by law, or in the instance of using a third-party hosting agent or sub-processor.
- L. **Data Transfer or Destruction.** Contractor will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the Contractor may have transferred Data, are destroyed or transferred to the ESUCC under the direction of the ESUCC when the Data are no longer needed for their specified purpose, at the request of the Member.
- M. **Rights and License in and to Data.** Parties agree that all rights, including all intellectual property rights in and to the Data or Co-Op Content, shall remain the

exclusive property of the Member, and Contractor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Contractor any rights, implied or otherwise, to Data, Co-Op Content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data. **Notwithstanding anything to the contrary in this Agreement or otherwise, ESUCC grants Nearpod the irrevocable, perpetual, worldwide, sublicensable, transferable, right to use ESUCC or Members' information solely on an aggregated and anonymized basis ("Aggregated Data").**

- N. **Access.** Any Data held by Contractor will be made available to a Member upon request by the Member, as allowed pursuant to the Nearpod Services capabilities.
- O. **Security Controls.** Contractor will store and process Data in accordance with reasonable practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor will also have a written incident response plan, to include prompt notification of the Member in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. Contractor agrees to share its incident response plan upon request.
- P. **Response to Legal Orders, Demands or Requests for Data.** Except as otherwise expressly prohibited by law, Contractor will:
  - (1) Promptly notify ESUCC and Members of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking Data;
  - (2) Consult with ESUCC and Members regarding its response;
  - (3) Cooperate with ESUCC's and Member's reasonable requests in connection with efforts by them to intervene and quash or modify the legal order, demand or request; and
  - (4) Upon ESUCC's or a Member's request, provide them with a copy of its response.

## 7. Termination.

A. ESUCC may terminate this Agreement in whole or part if funding from federal, state, or other sources for ESUCC or its Members is not obtained and continued at levels sufficient to allow for purchase of the good and/or services in the indicated quantities or term, provided (i) ESUCC may terminate any current year, and (ii) ESUCC must provide Nearpod with written evidence of the budget reduction. ESUCC shall notify the Contractor as soon as practicable if funds to meet ESUCC's or Members' obligations become unavailable. The determination of ESUCC as to the insufficiency of funds is conclusive.

B. Each party may terminate this Agreement by providing written notice of termination if the other party breaches or is in default of any material obligation

hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within 30 days (10 days for nonpayment) after receipt of written notice of such default or such additional cure period as the nondefaulting party may authorize in writing. Notwithstanding anything to the contrary in this Agreement, or otherwise, if any Member fails to pay any fees due and owing after written notice of same, then, without limiting Nearpod's other rights and remedies, Nearpod may suspend access to the Nearpod Services for that applicable Member until such amounts are paid in full.

C. Each party may terminate this Agreement by written notice if federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

D. ESUCC may terminate this Agreement, in whole or in part, by written notice to the Contractor and may regard the Contractor in default of this Agreement if the Contractor becomes:

- (1) Insolvent;
- (2) Makes a general assignment for the benefit of creditors;
- (3) Files a voluntary petition of bankruptcy;
- (4) Suffers or permits the appointment of a receiver for its business or assets;
- (5) Becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or
- (6) Has wound up or liquidated, voluntarily or otherwise.

E. ESUCC may terminate this Agreement, in whole or in part, immediately, without notice, if the Contractor is debarred or suspended from performing services on any public contracts.

F. The parties may terminate this Agreement without cause by mutual written consent or by either party with a minimum of 90 days written notice. Notwithstanding anything to the contrary in this Agreement or otherwise, fees paid are non-refundable.

G. Upon the termination for any reason or expiration of this Agreement, the Contractor promptly must destroy all papers, materials, and other property of the ESUCC, if applicable.

**8. Indemnification.**

A. Nearpod shall indemnify, defend, and hold ESUCC harmless from any third-party claim that the Nearpod Services infringe the intellectual property right of any third-party.

B. ESUCC or any of its Members shall indemnify, defend, and hold Nearpod harmless from any third-party claim that the Co-Op Content infringes the intellectual property right of any third party.

C. The indemnified party will: (i) provide the indemnifying party with reasonably prompt notice of any claims; (ii) provide the indemnifying party with reasonable information and assistance to help the indemnifying party defend any claims at the indemnifying party's expense. Any indemnified party will have the right to employ separate counsel at its own expense.

**9. Insurance.** Contractor shall secure and keep in force during the term of this Agreement the following insurance coverages from insurance companies or government self-insurance pools authorized to do business in Nebraska:

A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per person and \$2,000,000 per occurrence; and

B. If applicable, workers compensation coverage meeting all statutory requirements.

The Contractor shall furnish a certificate of insurance to the undersigned ESUCC representative prior to commencement of this Agreement. Failure to provide insurance as required in this agreement is a material breach of contract entitling ESUCC to terminate this Agreement immediately.

**10. Public Records.** The Contractor acknowledges that ESUCC must comply with Neb. Rev. Stat. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

**11. Publicity.** ESUCC does not endorse the goods or services of the Contractor. Except for listing ESUCC as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of ESUCC, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding anything to the contrary in this Agreement or otherwise, Nearpod may use ESUCC's logo and name in connection with regional and local marketing assets to show and publicize that Nearpod Services may be purchased through ESUCC.

**12. Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or

use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on ESUCC, ESU, or Member premises or at ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on ESUCC, ESU, or Member property or at ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all ESUCC, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on ESUCC, ESU, or Member premises or at ESUCC, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. ESUCC may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.

- 13. Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
- 14. Independent Contractor.** Contractor is an independent contractor under this contract and is not an ESUCC, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 15. Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
- 16. Taxpayer Identification.** Contractor's federal employer identification number is: 46-0993679.
- 17. Sales Tax.** ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. ESUCC, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.

**Notice.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or

(d) on the day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this):

Cooperative: ESUCC  
Attn: Kraig Lofquist  
6949 South 110<sup>th</sup> Street  
LaVista, NE 68128

With copy to:  
ESUCC Cooperative Purchasing  
Attn: Craig Peterson  
PO Box 858  
412 W. 14<sup>th</sup> Ave  
Holdrege, NE 68949

Steve Williams, Legal Counsel  
KSB School Law, PC, LLO  
Cornhusker Plaza  
301 South 13th Street, Suite 210  
Lincoln, NE 68508

Contractor: Nearpod Inc.  
Attn: Natali Barski-Meyman  
1855 Griffin Road, A-290  
Dania Beach, FL 33004

Notice is effective only if the party giving the Notice has complied with this section.

**18. Warranties and Specifications.**

- a. Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such Party; (iii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms and (iv) it will comply with all applicable laws, statutes, regulations or rules, without limitation, the Family Educational Rights and Privacy Act ("FERPA") and the Protection of Pupil Rights Amendment ("PPRA") (collectively, "Laws").

**NEARPOD**

- 19. Entire Agreement.** The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters

contained in this Agreement are expressly merged into and superseded by this Agreement.

- 20. Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.
- 21. Waivers.** The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay: (1) In exercising any right or remedy, **or** (2) In requiring the satisfaction of any condition under this Agreement, **and** (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.
- 22. Severability.** If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.
- 23. Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.
- 24. Force Majeure.** Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non performing party's failure to perform, or delay in performing, any of its obligations contained in this contract (except any obligations to make payments for services rendered or accepted goods received before the failure to perform or the delay in performance), where, in the opinion of ESUCC, such failure or delay is cause by circumstances beyond the non performing party's control or which make performance commercially impracticable, including but not limited to fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, government regulations or restrictions of any kind or any acts of any government, alien enemy, judicial action, power failure, acts of God, or other natural circumstances. This Force Majeure provision excludes economic hardship, changes in market conditions, and insufficiency of funds on the part of Contractor.
- 25. Assignment.** This Agreement binds the parties and their respective successors and assignees. The Contractor shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other

person without the previous written consent of ESUCC. Notwithstanding the foregoing, Nearpod may assign, this agreement without the prior consent of ESUCC in the event of a corporate restructure, merger, acquisition, or sale of all or substantially all of its assets.

- 26. Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of ESUCC.
- 27. Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
- 28. Rights and Remedies Cumulative.** Any enumeration of either party's rights and remedies set forth in this Agreement is not exhaustive. Either party's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of either party's rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.
- 29. Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as may from time to time be provided by written instrument signed by both parties.
- 30. Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.
- 31. Attachments.** Attachments to this Agreement include the following:

- Exhibit A – Scope of Services to be provided to ESUCC and Members
- Exhibit B – Payment Terms & Schedule
- Exhibit C – Vendor Software License Agreement

IN WITNESS WHEREOF the parties have executed this Agreement on the last date written below.

**ESUCC**

**CONTRACTOR**

By: \_\_\_\_\_  
Name: Kraig Lofquist  
Title: Executive Director

By: \_\_\_\_\_  
Name: Maurice Heiblum  
Title: President & COO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT "A"

### SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO MEMBERS

Nearpod provides products to allow teachers and educators the ability to create and curate interactive multimedia lessons that can contain quizzes, polls, videos, images, and web content ("Content Tool"), access reports with student answers, assessments and activities ("Reporting Tool") and manage individual users, share presentations and obtain usage statistics ("Admin Tool"). The Content Tool, Reporting Tool and Admin Tool are collectively referred to as the Nearpod Services or Nearpod Products.

ESU's and Members' users can use the Content Tool to create customized interactive multimedia lessons for use with the Reporting Tool and Admin Tool ("Member Content").

### Nearpod Product Descriptions

**Nearpod Instructional Software:** Nearpod's award-winning instructional software is designed to modernize traditional instruction and engage students. It is compatible on any device, operating system, LMS or web browser to easily integrate into your technology landscape. Software features allow teachers to present content by synchronizing with student devices, engage students by integrating rich multimedia within lessons and assess students in real-time through formative assessments. Additionally, our intuitive instructional software provides administrative reporting tools and shared school/district libraries to support school/district-wide initiatives, foster collaboration, and ensure oversight.

**Nearpod Lesson Library:** Nearpod offers 7,000+ customizable, standards-aligned lessons for all subject areas and grade levels. Designed in partnership with respected publishers and built on research-based instructional models, the Nearpod store saves teachers time with ready-to-teach content and provides exemplars on how teachers can transform their own content.

- Drive deeper learning with rigorous content from well-known publishers in all academic areas.
- Support all learners with research-based instructional models such as Gradual Release of Responsibility, BCSC's 5e Model and Universal Design for Learning.
- Search by standards, resource type, and grade level to align with your instructional needs.

**Digital Citizenship and Literacy:** Nearpod's Digital Citizenship & Literacy (DCL) program is a four-part series that offers a comprehensive K-12 curriculum that is standards-aligned, using research-based instructional models to support a district-wide implementation. As students navigate the modern world, DCL is your central resource to teach Digital Citizenship, Media Literacy, Technology Applications, and Coding. Featuring our partnerships with Common Sense Education and Codemonkey, over 250 ready-to-teach, customizable lessons cover topics such as cyberbullying, evaluating popular social media sites, creative productivity apps, computational thinking, programming, and more.

- Access to the newest digitally-enhanced content from the nation's leading digital citizenship curriculum from Common Sense Education.
- Assess and apply knowledge with authentic practices and applications that drive meaningful discussions including PBLs.
- Access to a library of up-to-date content that grows as quickly as the digital landscape evolves.
- K-12 comprehensive resource to ensure all students become digital and media literate.

**College and Career Exploration:** Nearpod's College & Career Exploration (CCE) program is a five-part series that offers a comprehensive K-12 curriculum that is standards-aligned, using research-based instructional models to support a district-wide implementation. Close the soft skills gap and prepare students for life beyond high school with this central resource to teach Social & Emotional Learning, Habits of Mind, Lifelong Learning Strategies, Career Exploration, and College Exploration & Preparation. Over 300 ready-to-teach, customizable lessons cover topics such as responsible decision-making, growth mindset, time management, career-fit analysis and personal financial literacy.

- Ensure students think critically and prepare for life decisions through lessons that create interactive collaborative opportunities.
- Inspire students to investigate and evaluate college and career readiness using Nearpod VR.
- Foster the skills that create lifelong learners, productive citizens, and successful contributors to work environments.
- Access to a growing library of content to meet the needs of diverse student populations that have varying interests and distinct college and career goals.

**Nearpod EL (K-12; 1000+ lessons):** A K-12 solution for scaffolded access to rigorous, grade-level, learning experiences and language instruction. Includes 500+ scaffolded companion lessons (aligned to core instruction lessons from Nearpod's lesson library), grammar, academic vocabulary, and Newcomer Essentials.

**Social and Emotional Learning** (200+ lessons for the 2019-20 school year) Built in partnership with Common Sense Education and based on CASEL's leading SEL framework, this K-12 solution covers essential SEL and Character Education topics such as Applied SEL Skills, SEL in Digital Life, Growth Mindset Practices, Lifelong Learning Strategies.

**Learning Labs** (Professional Development for educators): Learning Labs, formerly Ready-to-Run PD, is Nearpod's offering of expert-derived, experiential professional development experiences.

**Historical Perspectives and Literacy** (6-12; 250+ lessons)- *launching for the 2019-20 school year*

A 6-12 social studies supplemental curriculum that provides culturally relevant, inquiry-based experiences with dynamic media, including immersive VR experiences. This program is built in partnership with the Smithsonian Institution and the Pulitzer Center.

**Flocabulary** is a learning program for all grades that uses educational hip-hop music to engage students and increase achievement across the curriculum.

- Teachers at 20,000 schools use Flocabulary's standards-based videos, instructional activities and student creativity tools to supplement instruction and develop core literacy skills.
- Student engagement is essential for deep learning, and Flocabulary uses music to get students interested and ready to learn while teaching key skills and concepts.
- Flocabulary has been shown to raise scores on state reading tests and 96% of regular users believe the program increases student achievement in school, participation in class, engagement with subject matter and retention of knowledge.

**EXHIBIT "B"**

**1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

**\*Nearpod Licensing Options: There are two licensing options described below. Check your preferred licensing option and complete the form for that option.**

- 1. **Per Campus:** The license fee is based on per school building per year. Add-on and optional products are also listed below.

<b>Nebraska ESUCC Per Campus Nearpod Licensing</b>		
Check to Select	Description	Cost Per Campus
<input type="checkbox"/>	<b>Nearpod Site License for campuses up to 300 students:</b> Provides access to all teachers at an individual campus. This includes the Nearpod instructional software as well as unlimited access to the Nearpod Lesson Library featuring thousands of ready to run lessons and one of Nearpod's supplemental library offerings (listed below).	\$2500
<input type="checkbox"/>	<b>Nearpod Site License for 300 students and above:</b> Provides access to all teachers at an individual campus. This includes the Nearpod instructional software as well as unlimited access to the Nearpod Lesson Library featuring thousands of ready to run lessons and one of Nearpod's supplemental library offerings (listed below).	\$4000
<input type="checkbox"/>	Nearpod Digital Citizenship and Literacy	\$350
<input type="checkbox"/>	Nearpod College and Career Exploration	\$350
<input type="checkbox"/>	Nearpod for English Learners Add-On Content Library	\$350
<input type="checkbox"/>	Learning Labs Professional Development Add-On Content Library	\$350
<input type="checkbox"/>	Historical Perspectives and Literacy Add-On Content Library	\$350
<input type="checkbox"/>	Nearpod Social Emotional Learning Add-On Content Library	\$350
<input type="checkbox"/>	Flocabulary: Campus access to Flocabulary's standards-based videos, instructional activities and student creativity tools to supplement instruction and develop core literacy skills.	\$2,000
	<b>SUBTOTAL</b>	
	<b>NUMBER of CAMPUSES (multiplier)</b>	
	<b>TOTAL PER CAMPUS PER YEAR</b>	

**2. District-Wide Per Student:** The license fee is based on per enrolled student per year and must include the entire District or Charter School K-12 student population. Add-on and optional products are also listed below.

<b>Nebraska District-Wide Per/ Enrolled Student Nearpod Pricing</b>		
<b>Check to Select</b>	<b>Description</b>	<b>Cost per Enrolled Student</b>
<input type="checkbox"/>	Nearpod District-Wide License: Provides access to all teachers in the district. This includes the Nearpod Instructional software as well as unlimited access to the Nearpod Lesson Library featuring thousands of ready to teach lessons and one of Nearpod's supplemental library offerings (listed below).	\$4.22
<input type="checkbox"/>	Nearpod Digital Citizenship and Literacy	\$.55
<input type="checkbox"/>	Nearpod College and Career Exploration	\$.55
<input type="checkbox"/>	Nearpod For English Learners Add-On Content Library	\$.55
<input type="checkbox"/>	Learning Labs Professional Development Add-On Content Library	\$.55
<input type="checkbox"/>	Historical Perspectives and Literacy Add-On Content Library	\$.55
<input type="checkbox"/>	Nearpod Social Emotional Learning Add-On Content Library	\$.55
<input type="checkbox"/>	Flocabulary: District wide access to Flocabulary's standards-based videos, instructional activities and student creativity tools to supplement instruction and develop core literacy skills.	\$1.75
	<b>SUBTOTAL</b>	
	<b>NUMBER of ENROLLED STUDENTS; (multiplier)</b>	
	<b>TOTAL PER DISTRICT or CHARTER PER YEAR</b>	

## **2. Payment Terms/ Payment Schedule**

- A. Members will pay Contractor for all undisputed amounts for the goods and/or services identified in Exhibit A and provided by Contractor under this Agreement within thirty (30) days of receipt of invoice, provided that goods/services have been accepted by the Member as hereinafter provided.

- B. The procedure for billing and payment for services or products and deliverables shall be as specified in this exhibit.

**3. Acceptance of Services or Products:**

- A. The Contractor shall deliver any goods, perform any services or both in accordance with the time specified in a purchase order issued by ESUCC, ESU, or Member, or this Agreement (whichever is later).
- C. Intentionally Deleted.
- D. Intentionally Deleted.

**4. Title and Risk of Loss:**

- A. Title and risk of loss for goods shall remain with the Contractor until goods are accepted by the Member, ESU, or ESUCC.
- B. Insurance during shipment and until the goods are accepted by ESUCC, ESU, or Member is the responsibility of the Contractor.

## EXHIBIT "C"

### SOFTWARE LICENSE AGREEMENT

- <https://nearpod.com/terms-conditions>
- <https://nearpod.com/privacy-policy>
- <https://www.flocabulary.com/privacy-policy/>
- <https://www.flocabulary.com/terms-of-use/>

Coop Directors report to ESUCC Board  
submitted by: Craig Peterson  
September 5, 2019

### **1. Annual/Paper Buy**

- a. Definition of the Annual Buy: This is a line item bid were vendors are awarded by line item. If there is a tie for the bid price then a Nebraska vendor wins over an out of state vendor, otherwise it goes to a coin flip. Bids are sent to registered vendors nation-wide in October. Bid Awards announced in December and January, catalogs with over 4,200 items are published and distributed schools/members in February. The orders are then aggregated by address (all teacher/staff orders for items are aggregated into one line item per address) and sent to vendors in March and April and merchandise is delivered to the Cooperative members during May through July. The product categories offered are as follows: Electronics and Related Supplies, General Supplies, Furniture, Copier Paper, Maintenance-Shop Supplies, Health & Safety Supplies, Athletic Equipment & Supplies, Hot Lunch Equipment & Supplies, Science Equipment & Supplies, and Art Equipment & Supplies.
- b. Multi State Annual Buy discussion: Montana notified us that they will no longer be contracting with Equal Level and this was the hitch pin in sharing the Annual Buy catalog with them and other states. It also sounds like Wyoming may follow if they cannot get schools to begin to utilize their Marketplace. Iowa is just coming onboard with Equal Level and wants to wait a year before considering. The Cooperative in Minnesota has shown some interest in the Technology section only and not the complete catalog. The other item that may hold up other states in participating is the Equal Level cost of \$7,600 per state for the setup and aggregated order module; this cost goes down if multiple states participate. I think it is important to note that when a State Cooperative elects to choose a Marketplace platform that this is not a short-term decision and not easy to get schools to utilize unless you have enough vendors in the Marketplace to make it worth their time and eliminate visiting multiple sites. I believe after 4 years in our Marketplace we are at that tipping point where we have enough vendors to make it a convenience for schools to utilize on a regular basis. Currently we have 57 vendors in the Marketplace with order capabilities and at times throughout the year we can have as many as 65 (this includes Annual Buy Vendors).
- c. Over the Summer I worked with Equal Level in getting the ESUCC Marketplace to search across all the ESUCC stores, this was lacking in the past. We are now able to report that the Extended Annual Buy store and the ESUCC year round stores have this capability. When searching from the main ESUCC Marketplace home page it now searches across all ESUCC managed stores/catalogs.
- d. Review of sales Data over last four years
  - i. 2018-19 – Annual Buy \$2,280,138.82; Paper Buy \$957,712.43
  - ii. 2017-18 – Annual Buy \$2,407,565.41; Paper Buy \$866,109.76
  - iii. 2016-17 – Annual Buy \$2,382,736.12; Paper Buy \$790,259.16
  - iv. 2015-16 – Annual Buy \$2,493,646.00; Paper Buy \$925,156.08

### **2. Special Buys**

a. Definition Special Buy: Contracts are negotiated agreements with exclusive pricing to ESUCC Cooperative Purchasing members. These contracts may range from one to three years. Within the agreement, terms shall be explicitly defined as to both parties' expectations and the scope of the agreement.

**b. Securly**

- i. 43 Entities
  - 1. 3 ESUs participating (ESU 05, 09, 19)
  - 2. 40 Schools participating
  - 3. 90,078 # Licenses across 8 different products
- ii. Sales - \$170,654.75
- iii. List Price – \$7 Filter - Variable on each product
- iv. Current price for filtering based on tiered pricing \$1.75
- v. Savings off List price (filtering product only) - \$440,136.50

**c. Adobe VIP Named User licenses**

- i. 119 Entities
  - 1. 11 - ESUs participating
  - 2. 108 - Schools participating
  - 3. 16,283 Licenses Creative Cloud licenses, 27,878 Free Spark users.
- ii. Sales - \$81,415
- iii. \$297,381 Minimum Savings (#Entities \* \$2,499 building cost if bought on their own). District cost is \$12,500
- iv. All licensing statewide is through one console were schools can add users to the console to their group. Scott Isaacson and I are the System Administrators for the console and control settings such as setting Quota's based on the number of licenses for each school group, importing users for schools, setting up Active directory sync and general console tasks. Because of how the console is setup and without giving rights out to School Admins ESUCC staff uploads CSV files on behalf of districts. This does take up some of our time but it is on the roadmap for Adobe to include this capability for Group Admins, which will then relieve us of these duties. I have also been encouraging any schools with Active Directory to setup the Sync process so we can be relieved of user upload duties.

**d. World Book – Meets Rule 10 requirement of having an updated encyclopedia**

- i. 126 Entities
  - 1. 5 - ESUs participating (purchasing for member schools)
  - 2. 121 Schools participating
  - 3. 185,924 Student Licenses
- ii. Sales - \$128,039.92
- iii. List Price – Varies on product - \$1.69 - \$2.54
- iv. Savings off List price 35% - \$1.10 - \$1.65 for every license sold

**e. Movie Licensing USA**

- i. Entities
  - 1. 2 - ESUs participating
  - 2. 154 Schools participating
  - 3. 397 Building Licenses

- ii. Sales - \$132,904
- iii. List Price – Varies by building size \$429-\$758
- iv. Savings off List price - Varies by building size \$144-\$255 for every building license sold

**f. Impero – First year buy**

- i. Entities
  - 1. 0 ESUs participating
  - 2. 12 Schools participating
  - 3. 8,055 Device Licenses
- ii. Sales - \$43,504.50
- iii. List Price – Varies by Product \$4.20 - \$23.40
- iv. Savings off List price – Varies by Product \$1.70 - \$8.28 for every license sold.

**g. Special Buy Contract Considerations**

- i. Educlimber – Request from ESU 16. Made contact with the vendor Illuminate Education and discussed a Special Buy. Adam Palmese presented a webinar to Jane Byers and NDE so I wanted to make sure we are not overstepping by negotiating with the vendor. Illuminate has indicated they are not interested in a Special Buy agreement at this time since they have not worked with third party sellers but they do have tiered pricing based on district size.
- ii. Remind – Vendor has responded they are not interested in a negotiated agreement with ESUCC. Request came from Milford Public Schools.
- iii. With NNNC’s Canvas contract expiring in 06/30/2020, NNNC has asked if ESUCC would consider negotiating with Canvas to include pricing for Post-Secondary Ed institutions.
  - 1. NNNC licensing quantities include 11,136 seats for the 2018-19 year and Post-Secondary Ed numbers are unknown.
  - 2. Past issues with ESUCC contract included reconciling invoices, collecting Admin fees, and tracking of orders.

**3. AEPA**

- a. Definition: The Association of Educational Purchasing Agencies (AEPA) is a group of Educational Service Agencies/political subdivisions organized through a Memorandum of Understanding between all participating states for the purpose of securing combined volume purchasing contracts based on potential sales by qualifying customers in participating states. Of the many advantages to this unique purchasing group, are the combined human resources representing purchasing/bidding expertise, current and past vendor relationships, past experience and overall vision with regard to the needs of the qualified customers within each represented state. Nebraska is a founding member of AEPA, which started with ten states in 2000 and now has grown to 28 states. AEPA is a voluntary run organization and asks for volunteers from the membership to complete work in Bid Oversight, Administrative Committees, Marketing, Website management, Reporting and other areas as required.
- b. IFB #020 Bids released on September 16 in the following categories

- i. Athletic Surfaces – Natural & Synthetic Surfaces for Sport Fields, Tracks, Courts, Playground & Landscaping Applications
  - ii. Carpet & Resilient Flooring (Craig Peterson is a member on this committee)
  - iii. Digital Resources & Instructional Materials (Craig Peterson is bid Chair for this committee)
  - iv. Facility Management Software
  - v. Lawn & Grounds keeping Equipment, Supplies & Services
  - vi. Digital Display Solutions
  - vii. Vehicles – Cars, SUVs, Crossovers, Light Duty Trucks, Vans, Police & Public Safety
- c. Website Committee (Craig Peterson is Chair of Committee)
  - i. Changes/Updates to website
    - 1. Setup Member State Events Calendar
    - 2. Added AEPA Newsletter to site.
    - 3. Created processes for Vendor Response and Download of Vendor Response into a single download for States and Members.
    - 4. Updated access to Pricing files and made this private for Members only
  - ii. CRM (Customer Relations Management) Development where reporting of member state sales will be input into a database and then auto generated reports can be created for the entire AEPA membership.

**4. Data**

- a. ESUCC Marketplace Sales
  - i. January 1, 2016 to December 31, 2016 - \$4,070,589.58
  - ii. January 1, 2017 to December 31, 2017 - \$3,863,795.56
  - iii. January 1, 2018 to December 31, 2018 - \$4,449,044.40
  - iv. January 1, 2019 to August 28, 2019 - \$4,371,189.16 (4 Months remaining)



2018-19

## Nebraska ESUCC Cooperative Purchasing Sales & Savings By ESU

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<u>ESU #</u>	<u>List Price</u>	<u>Member Cost</u>	<u>Savings</u>
00	\$389,596.12	\$336,713.12	\$113,452.40
01	\$1,567,675.67	\$1,298,948.95	\$462,289.24
02	\$2,070,772.19	\$1,740,404.70	\$563,884.87
03	\$2,785,528.13	\$2,246,325.27	\$734,189.09
04	\$838,459.54	\$657,946.88	\$293,888.29
05	\$848,242.52	\$711,552.00	\$211,914.45
06	\$2,012,679.89	\$1,633,221.98	\$602,415.75
07	\$1,505,055.85	\$1,138,410.76	\$446,832.44
08	\$1,027,313.43	\$802,353.94	\$296,248.84
09	\$1,106,702.49	\$917,100.22	\$259,270.74
10	\$1,739,393.72	\$1,327,655.45	\$600,637.45
11	\$974,469.61	\$800,343.64	\$241,652.37
13	\$1,050,762.70	\$827,742.42	\$426,387.20
15	\$250,104.36	\$191,135.60	\$97,996.91
16	\$569,132.76	\$439,145.13	\$145,508.56
17	\$268,212.96	\$210,224.98	\$85,461.50
18	\$82,692.72	\$57,483.53	\$25,258.19
19	\$341,474.15	\$264,783.77	\$86,727.14
20	\$362,862.96	\$303,733.66	\$72,377.20
CC	\$37,498.55	\$22,750.44	\$14,936.77
<b><u>Grand Totals</u></b>	<b><u>\$19,828,630.34</u></b>	<b><u>\$15,927,976.43</u></b>	<b><u>\$5,781,329.41</u></b>



2018-19

## Nebraska ESUCC Cooperative Purchasing Sales & Savings By Program

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<u>Program</u>	<u>List Price</u>	<u>Member Cost</u>	<u>Savings</u>
AEPA	\$4,536,358.15	\$3,685,080.29	\$1,708,496.04
Annual Buy	\$3,123,477.84	\$2,280,138.82	\$843,339.02
Annual Buy Punchout	\$21,619.60	\$15,133.72	\$6,485.88
Custodial Buy	\$2,067,413.02	\$1,514,159.29	\$618,609.14
Extended Buy	\$11,047.36	\$8,287.02	\$2,700.74
Food Buy	\$5,796,099.61	\$5,341,358.66	\$1,417,516.59
Paper Buy	\$1,260,147.93	\$957,712.43	\$302,435.50
Special Buy	\$3,012,466.84	\$2,126,106.20	\$881,746.51
<b><u>Grand Totals</u></b>	<b><u>\$19,828,630.34</u></b>	<b><u>\$15,927,976.43</u></b>	<b><u>\$5,781,329.41</u></b>



## Nebraska ESUCC Cooperative Purchasing Sales & Savings By Vendor

<u>Vendor</u>	<u>List Price</u>	<u>Member Cost</u>	<u>Savings</u>
ACCO Brands USA LLC (Annual Buy) (ESUCC-AB-	\$42,669.64	\$31,148.84	\$11,520.80
Aluminum Athletic Equipment Co (Annual Buy) (ESUCC-AB-	\$34,773.97	\$25,385.00	\$9,388.97
Biofit Engineered Products	\$42,014.00	\$21,007.00	\$21,007.00
Blick Art Material LLC	\$17,913.25	\$14,390.76	\$3,522.49
Blick Art Materials (Annual Buy) (ESUCC-AB-Blick)	\$94,320.68	\$68,858.42	\$25,462.26
Brown & Saenger (Annual Buy) (ESUCC-AB- BrownSaenger)	\$2,720.26	\$2,040.19	\$680.07
BSN Sports LLC (Annual Buy) (ESUCC-AB- BSN Sports)	\$45,965.56	\$33,554.86	\$12,410.70
Cannon Sports (Annual Buy) (ESUCC-AB-CannonSports)	\$10,946.05	\$7,990.62	\$2,955.43
CCS Presentation Systems (Annual Buy) (ESUCC-AB-CCS)	\$4,365.75	\$3,187.00	\$1,178.75
CDW-G	\$1,056,020.28	\$923,338.47	\$124,562.18
Centennial Sales (Annual Buy) (ESUCC-AB- Centen Sales)	\$3,056.21	\$2,231.03	\$825.18
Computers Etc (Annual Buy) (ESUCC-AB- Comp Etc)	\$46,633.08	\$34,042.15	\$12,590.93
Daktronics	\$15,945.00	\$14,395.00	\$1,550.00
Dude Solutions	\$145,661.44	\$126,725.45	\$18,935.99
Egan Supply Company (Annual Buy) (ESUCC-AB- Egan SC)	\$96,045.16	\$70,112.97	\$25,932.19
ETA hand2mind	\$3,131.59	\$2,750.95	\$380.64
Flinn Scientific Inc (Annual Buy) (ESUCC-AB-FlinnScientific)	\$13,747.38	\$10,035.59	\$3,711.79
Gopher Sport (Annual Buy) (ESUCC-AB-GopherSport)	\$2,520.12	\$1,839.69	\$680.43
Impero, Inc	\$88,975.00	\$43,504.50	\$44,570.50



2018-19

## Nebraska ESUCC Cooperative Purchasing Sales & Savings By Vendor

<u>Vendor</u>	<u>List Price</u>	<u>Member Cost</u>	<u>Savings</u>
Innovative Office Solutions	\$21,619.60	\$15,133.72	\$6,485.88
Innovative Office Solutions (Annual Buy) (ESUCC-AB-IOS)	\$529,006.73	\$386,174.91	\$142,831.82
Insight	\$12,276.29	\$8,211.59	\$4,064.70
IXL Learning, Inc.	\$3,850.00	\$3,150.00	\$700.00
JourneyEd	\$1,400,255.82	\$1,025,363.50	\$374,522.96
Kansas City Audio Visual (Annual Buy) (ESUCC-AB-	\$24,047.95	\$17,555.00	\$6,492.95
KnowBe4, Inc	\$3,958.86	\$3,256.75	\$702.11
Konica Minolta	\$134,047.26	\$117,571.11	\$17,426.15
Kyocera	\$8,110.00	\$2,546.00	\$5,564.00
Mackin	\$25,341.67	\$33,228.42	\$12,312.35
Midwest Technology	\$17,374.06	\$15,548.92	\$1,825.14
MNJ Technologies	\$42,533.17	\$37,639.44	\$4,893.73
Movie Licensing USA	\$193,907.21	\$132,904.00	\$61,003.21
National Art & School Supplies (Annual Buy) (ESUCC-AB- Natl	\$484,424.09	\$353,634.73	\$130,789.36
National Business Furniture	\$68,005.28	\$55,674.28	\$14,376.43
Norris Products Corp (Annual Buy) (ESUCC-AB-Norris)	\$574.86	\$419.65	\$155.21
Paper 101	\$1,260,147.93	\$957,712.43	\$302,435.50
Partac Peat Corp (Beam Clay)	\$1,032.60	\$952.60	\$80.00
Pitsco Education	\$324.00	\$317.52	\$6.48



## Nebraska ESUCC Cooperative Purchasing Sales & Savings By Vendor

<u>Vendor</u>	<u>List Price</u>	<u>Member Cost</u>	<u>Savings</u>
PowerSchool	\$22,687.50	\$19,965.00	\$2,722.50
Pyramid School Products (Annual Buy) (ESUCC-AB- Quill	\$804,452.02	\$587,271.39	\$217,180.63
Quill	\$364,240.44	\$491,743.13	\$725,482.64
Rapids Wholesale (Annual Buy) (ESUCC-AB-RapidsWholesale)	\$30,627.88	\$22,358.35	\$8,269.53
Renaissance	\$20,978.75	\$12,298.75	\$8,680.00
Riddell / All American (Annual Buy) (ESUCC-AB-Riddell AA)	\$956.71	\$698.40	\$258.31
S&S Worldwide (Annual Buy) (ESUCC-AB- SS Wrldwd)	\$33,700.31	\$24,607.54	\$9,092.77
School Health	\$14,244.33	\$12,845.09	\$1,399.24
School Health Corporation (Annual Buy) (ESUCC-AB- Sch	\$110,924.70	\$80,990.84	\$29,933.86
School Specialty	\$2,104,940.19	\$1,367,208.59	\$726,829.95
School Specialty (Annual Buy) (ESUCC-AB- Sch Spclty)	\$268,333.91	\$195,889.18	\$72,444.73
Schoology	\$192,280.00	\$135,548.24	\$56,731.76
Schutt Sports	\$341.89	\$200.88	\$141.01
Scott Electric (Annual Buy) (ESUCC-AB- Scott Elec)	\$664.55	\$489.68	\$174.87
Securly, Inc	\$214,073.26	\$170,654.75	\$43,418.51
Softchoice	\$25,530.15	\$14,386.70	\$11,143.65
Squirrels	\$0.00	\$111.99	\$0.00
Staples	\$371,756.44	\$224,355.94	\$143,943.54
Staples (Annual Buy) (ESUCC- AB- Stpls Adv)	\$270,475.90	\$197,447.41	\$73,028.49



2018-19

## Nebraska ESUCC Cooperative Purchasing Sales & Savings By Vendor

<u>Vendor</u>	<u>List Price</u>	<u>Member Cost</u>	<u>Savings</u>
Sysco Foods	\$5,796,099.61	\$5,341,358.66	\$1,417,516.59
The Home Depot Pro	\$2,067,413.02	\$1,514,159.29	\$618,609.14
Tremco-Weatherproofing Technologies Inc	\$479,491.24	\$450,665.58	\$28,825.66
Troxell Communications Inc (Annual Buy) (ESUCC-AB-	\$30,658.99	\$22,389.67	\$8,269.32
Virco Inc (Annual Buy) (ESUCC-AB- Virco)	\$146,690.79	\$107,154.78	\$39,536.01
Voss Lighting Inc	\$261,830.44	\$201,609.44	\$60,221.00
World Book	\$196,975.54	\$128,034.10	\$68,941.44
<b><u>Grand Totals</u></b>	<b><u>\$19,828,630.34</u></b>	<b><u>\$15,927,976.43</u></b>	<b><u>\$5,781,329.41</u></b>

Sales- Revenue-Savings Summary	2016-17	2017-18	2018-19	YOY (completed years)Delta
<b>Total Coop Sales</b>	15,640,253.67	16,446,634.93	15,927,976.44	-518,658.49
<b>Total Coop Savings</b>	4,067,170.89	5,554,935.24	5,781,329.42	226,394.18
<b>Total Expected Sales Revenue [1]</b>	411,118.23	431,226.15	416,013.62	-15,212.53
<b>Total Paid Revenue</b>	414,212.56	427,690.17	343,235.74	-84,454.43
<b>Sales By Program</b>				
Annual/ Paper Buy	3,172,995.28	3,273,675.17	3,237,851.25	-35,823.92
Annual Buy Punchout			15,133.72	
AEPA	3,939,001.37	3,769,550.58	3,685,080.29	-84,470.29
Special Buys	1,719,292.64	2,196,965.45	2,126,586.20	-70,379.25
Food Program	5,006,128.75	5,405,047.05	5,340,878.66	-64,168.39
Custodial	1,798,612.51	1,788,954.99	1,514,159.30	-274,795.69
Extended Buys	4,223.12	12,441.69	8,287.02	-4,154.67
<b>Savings By Program [2]</b>				
Annual/ Paper Buy	1014533.12	1,414,177.87	1,145,774.52	-268,403.35
Annual Buy Punchout			6,485.88	
AEPA	1,254,655.49	1,260,045.63	1,708,496.04	448,450.41
Special Buys	811,891.94	1,330,973.87	881,746.51	-449,227.36
Food Program	750,919.31	954,392.21	1,417,516.59	463,124.38
Custodial	233,819.63	590,507.22	618,609.14	28,101.92
Extended Buys	1,351.40	4,838.44	2,700.74	-2,137.70
<b>Expected Revenue by Program</b>				
Annual & Paper Buy	158,649.76	163,683.76	161,892.56	-1,791.20
Annual Buy Punchout			302.67	
AEPA	78,780.03	75,391.01	70,747.40	-4,643.61
Special Buys	37,382.45	47,649.26	45,555.87	-2,093.39
Food Program	100,122.58	108,100.94	106,817.57	-1,283.37
Custodial	35,972.25	35,779.10	30,283.19	-5,495.91
Extended Buys	211.16	622.08	414.35	-207.73
<b>Sales Statistics</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>YOY Delta</b>
<b>Total Number of Purchasing Schools- All Programs</b>	424	402	402	-22
<b>Total Number of Contracts [5]</b>	69	71	66	-5
<b>Food Program Participants</b>	111	114	114	0
<b>Food Program Purchasing Schools</b>	107	109	108	-1
<b>Annual- Paper Buy Purchasing Schools [6]</b>	273	261	250	-11
<b>Annual Buy Items Offered [7]</b>	3227	3917 [8]	4258 [9]	341
<b>Annual Buy Items Ordered</b>	2328	2659	2429	-230
<b>Paper Buy Items Offered [10]</b>	149 [11]	115 [12]	194 [13]	79
<b>Paper Buy Items Ordered</b>	131	107	150	43
<b>Total Number of Annual Buy Bidding Vendors</b>	29	31	27	-4
<b>Total Number of Annual Buy Awarded Vendors</b>	27	29	26	-3
<b>Total Number of Marketplace Shoppable Vendors</b>			39	39
<b>Total Number of Vendors with sales- All Programs [1]</b>	52	54	59	5

2017-18 Svgs by ESU	2017-18 Sales	2017-18 Savings	2018-19 Sales	2018-19 Savings
<b>ESU 00</b>	442,448.99	129,946.16	336,713.12	113,452.40
<b>ESU 01</b>	1,363,591.22	437,455.33	1,298,948.95	462,289.24
<b>ESU 02</b>	1,728,281.20	534,212.40	1,740,404.70	563,884.87
<b>ESU 03</b>	2,337,948.75	819,821.41	2,246,325.27	734,189.09
<b>ESU 04</b>	595,928.57	226,270.78	657,946.88	293,888.29
<b>ESU 05</b>	693,046.43	192,924.50	711,552.00	211,914.45
<b>ESU 06</b>	1,636,623.29	489,346.14	1,633,221.98	602,415.75
<b>ESU 07</b>	1,155,653.78	397,165.30	1,138,410.76	446,832.44
<b>ESU 08</b>	802,765.96	311,899.32	802,353.94	296,248.84
<b>ESU 09</b>	630,189.68	195,633.03	917,100.22	259,270.74
<b>ESU 10</b>	1,518,719.48	639,823.25	1,327,655.45	600,637.45
<b>ESU 11</b>	948,854.08	297,181.32	800,343.64	241,652.37
<b>ESU 13</b>	1,239,940.12	371,974.85	827,742.42	426,387.20
<b>ESU 15</b>	162,278.39	86,952.16	191,135.60	97,996.91
<b>ESU 16</b>	309,090.63	139,132.34	439,145.13	145,508.56
<b>ESU 17</b>	181,350.85	73,495.04	210,224.98	85,461.50
<b>ESU 18</b>	51,794.77	24,762.05	57,483.53	25,258.19
<b>ESU 19</b>	438,649.72	126,094.02	264,783.77	86,727.14
<b>ESU 20</b>	207,816.92	58,937.84	303,733.66	72,377.20
<b>ESUCC</b>	1,662.09	1,488.61	22750.44	14,936.77
<b>Total Sales By ESU</b>		<b>16,446,634.92</b>	<b>Total Sales By ESU</b>	<b>15,927,976.44</b>
<b>Total Savings By ESU</b>		<b>5,554,515.85</b>	<b>Total Savings By ESU</b>	<b>5,781,329.40</b>
<b>4 Year Savings Total</b>	<b>20,250,249.48</b>			
<b>2018-19 Sales/ Savings By Program [3]</b>				
<b>Program</b>	<b>Total Sales</b>	<b>Total Savings</b>		
Annual/Paper Buy	3,237,851.25	1,145,774.52		
AEPA	3,685,080.29	1,708,496.04		
Special Buys	2,126,106.20	881,946.51		
Food Program	5,341,358.66	1,417,516.59		
Custodial	1,514,159.29	618,609.14		
Extended Buys	23,420.74	9,186.62		
<b>Total Sales</b>	<b>15,927,976.43</b>	<b>5,781,529.42</b>		
<b>Total % Savings</b>	<b>36.30%</b>			