

ESUCC
Coop Committee Meeting
Wednesday, September 6, 2017, 2:00 PM
ESU No.10, 76 Plaza Blvd, Kearney, NE 68845

Attendance Taken at 2:00 PM.

Bell ESU 10:	Absent
Kraig Lofquist:	Present
Mowinkel ESU 08:	Present
Shoemake ESU 06:	Present
Gregg Robke (ESU 04):	Absent
Paul Calvert (ESU 15):	Present
Deb Paulman (ESU 16):	Present

1. Call to Order

2. Roll Call

3. Agenda Item

3.1. Consent Items

3.1.1. Approve 2017-ESUCC-Food bid Award

3.1.2. Approve contracts signed by Executive Director during May, June, and July

3.2. Coop Data Base Presentation

3.2.1. ESUCC 2016-17 Coop Sales/ Savings Report by ESU

3.3. Future Efforts

3.4. Coop Data

3.5. Program Updates

3.5.1. Annual/Paper Buy

3.5.1.1. Information on Annual Buy Marketplace Reports Development

3.5.2. Specials Buys

3.5.2.1. Special Buy - Nearpod

3.5.3. AEPA

3.6. Coop Strategic Plan

4. Next Meeting Agenda Items

5. Executive Session

6. Adjournment

{{Name: Agenda Item Name}}

{{Discussion: Agenda Item Discussion}}

{{Comments: Agenda Item Comments}}

{{Actions: Agenda Item Actions}}

Nebraska ESUCC (Purchasing) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Craig Peterson Coop Director	Address	1292 East 4th Street	Address
Email	craig.peterson@esucc.org		Ainsworth, NE 69210	
Phone	(308) 995-0665	Contact	Craig Peterson Coop	Contact
Fax	(402) 387-2530		Director	
			Coop	Department
Bid Number	2017-ESUCC-Food	Department		Building
Title	RFP-2017-FDPRG	Building		
Bid Type	CSP			Floor/Room
Issue Date	4/21/2017 09:00 AM (CT)	Floor/Room		Telephone
Close Date	5/18/2017 04:00:00 PM (CT)	Telephone	(308) 995-0665	Fax
		Fax	(308) 995-6587	Email
		Email	craig.peterson@esucc.org	

Supplier Information

Company Sysco
 Address 900 Kingbird Road

 Lincoln, NE 68521
 Contact
 Department
 Building
 Floor/Room
 Telephone (402) 421-5250 x42152
 Fax (402) 421-5335
 Email rmeyer@lincoln.sysco.com
 Submitted 5/18/2017 03:09:20 PM (CT)
 Total \$0.00

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature Dave Slagle

Email dslagle@lincoln.sysco.com

Supplier Notes

Bid Notes

The Educational Service Unit Coordinating Council (ESUCC) is a Nebraska political subdivision tasked with coordinating statewide efforts to provide the most cost-effective services for the students, teachers, and school districts in each educational service unit (ESU). The ESUCC is composed of one administrator from each of the 17 ESUs that provide a statewide network of educational opportunities to approximately 249 school districts and more than 300,000 students. The ESUCC's duties include, but are not limited to: (a) Preparation of strategic plans to assure the cost-efficient and equitable delivery of services across the state; (b) Administration of statewide initiatives and provision of statewide services; and (c) Coordination of distance education. More information about the ESUCC can be found at <http://www.esucc.org>.

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.

In a continuing effort to provide quality food products and food related services to ESUCC affiliated schools and members, ESUCC will accept sealed Bid Proposals for the Food Program. The Food Program has been in existence since 2001 (16 years). ESUCC represents 17 ESU's statewide, who in turn service approximately 249 school districts offering food programs. The Food Program award will provide ESU affiliated schools and members the opportunity to purchase food and related items on a weekly or monthly basis.

This RFP is based on a need for ESUCC to provide the economic benefits of volume purchasing and reduction in administrative costs for the best use of Federal, State, and local funds through cooperative purchasing by schools and members. Although Bidders may restrict sales to certain public units (for example, state agencies or local government units), any contract that prohibits sales from being made to ESUCC members will not be considered. The vendor agrees this offer is made exclusively to Educational Service Unit Coordinating Council (ESUCC), ESUCC affiliated schools, and members.

Bid Activities

Date	Name	Description
4/21/2017 09:00:00 PM (CT)	Public Announcement of RFP	<p>NOTICE TO BIDDERS</p> <p>Nebraska Educational Service Unit Coordinating Council (ESUCC) is accepting bids on line? via Ion Wave's sourcing suite. To register for the bid, please go to http://esucc.ionwave.net, Select Supplier Restration or login with your current username. For questions regarding registration, contact ESUCC Coop at 1-402-387-1245</p> <p>In a continuing effort to provide quality Food item related services to ESUCC affiliated schools and other members, ESUCC will accept sealed Bid Proposals for Food.</p> <p>Upon registration, an automated email with login information will be sent. Once registered please contact ESUCC Cooperative Purchasing indicating your intent to bid. Bid Terms & Conditions and submission requirements will be available to bidders on line only.</p> <p>For additional bid information please forward your written request to: ESUCC Cooperative Purchasing email: coop@esucc.org</p> <p>ESUCC Cooperative Purchasing reserves the right to reject any and all bids, in whole or in part, to waive any formalities or irregularities in any bid, and to accept the bids, which, in its discretion, may be for the best interest of ESUCC members.</p>
5/18/2017 04:00:00 PM (CT)	RFP Due	RFP DUE DATE & TIME: 4:00 p.m. CST Thursday, May 18th, 2017
5/19/2017 08:00:00 AM (CT)	RFP Opening	Proposals will be electronically unsealed publicly in the presence of Vendors and/or their representatives beginning at the published time or as soon as possible thereafter, in the Office of Craig Peterson, ESUCC, 412 W. 14th Ave, Holdrege, Nebraska 68949.
5/26/2017 04:00:00 PM (CT)	RFP Awards Announced	AWARD ANNOUNCEMENTS: 4:00 p.m. CST Friday, May 26th, 2017

9/1/2017 12:00:00 AM
(CT)

New Contract Period Begins

NEW CONTRACT PERIOD BEGINS: Thursday, September 1st, 2016

Bid Messages

Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	TERMS & CONDITIONS ACKNOWLEDGEMENT	Check the box indicating you've read and agree to the attached bid Terms and Conditions, Special Terms and Conditions, scope of work, specifications, and other documents in this solicitation.	Agree

2 INDEMNIFICATIONS

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.

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.

COMPLIANCE WITH FAIR LABOR

STANDARDS/NONDISCRIMINATION Fair Labor

Standards as required in Nebraska Statute Chapter 73: Public Lettings and Contracts Reference Neb. Rev. Stat. §73-102 As an authorized representative of bidding Company: I certify that our company agrees: 1.) Our company will comply with, and will continue to comply with, fair labor standards in the pursuit of our business and in the execution of the contract in which we are bidding. 2.) In the execution of this contract, fair labor standards will be maintained. (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 bidding company.)

The Bidder and all subcontractors, if any, shall not discriminate against any employee or bidder 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.

Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended

Compliance with Federal requirements: Contractor agrees, when working on any federally assisted projects with more than \$2000 in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland "Anti-Kickback" Act, and the Equal Opportunity Employment requirements of Executive Order 11246 as amended by Executive Order 11375. In such projects, contractor agrees to post wage rates at the work site and submit a copy of their payroll to the member for their files. In addition, to comply with the Copeland Act, contractor must submit weekly payroll records to the member. Contractor must keep records for three years and allow the federal grantor agency access to these records, upon demand.

MODIFICATION BY MEMBER: Contractor shall have no obligation with respect to any patent and copyright infringement claim based upon member's modification of the equipment and/or software, or its operation or use with apparatus, data or programs not furnished by contractor. However, one member's action will not preclude

contractor's obligation to others not having modified their equipment or software.

PATENT AND COPYRIGHT: Contractor shall indemnify and hold harmless ESUCC and its members against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of contract performance or use by ESUCC and its members of materials furnished or work performed under this contract. ESUCC and its members shall reasonably notify contractor of any claim for which it may be liable under this paragraph.

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|---|-----------------------------------|--|-------|
| 3 | PERSONNEL RECRUITMENT PROHIBITION | The Bidder shall not, at any time, recruit or employ any employee or agent who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project. | Agree |
| 4 | CONFLICT OF INTEREST | <p>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.</p> <p>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.</p> <p>The Bidder certifies that it will not employ any individual known by Bidder to have a conflict of interest.</p> | Agree |
| 5 | DISCLOSURE OF RESPONSE CONTENTS | <p>The Applicant, by signature to this RFP, certifies that the Applicant nor its key employees is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The Applicant also agrees to include the above requirements in any and all sub-contracts into which it enters. The Applicant shall immediately notify the ESUCC if, during the term of this contract, Applicant becomes debarred. The ESUCC may immediately terminate consideration of the applicant by providing Applicant written notice if Applicant becomes debarred during the term of the potential contract.</p> <p>Also, the Applicant, by signature to this RFP, certifies that Vendor has not had a contract with education organizations in State of Nebraska terminated early. If Applicant has had a contract terminated early within the State of Nebraska, Applicant must provide the contract number, along with an explanation of why the contract was terminated early.</p> | Agree |
| 6 | East Region | By checking the box below Bidder agrees that they can serve the East Region of Nebraska (For a County listing of regions, review Exhibit "C"). | Agree |
| 7 | West Region | By checking the box below Bidder agrees that they can serve the West Region of Nebraska (For a County listing of regions, review Exhibit "C"). | |

8 Certifications

If awarded a contract, Bidder agrees that all students, staff or other individuals eligible to receive services will have equal access to the services regardless of race, religion, color, sex, disability, age or national origin (including language minority individuals). Agree

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.

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.

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

9 REFERENCES

Please provide the name, phone number and email address of three school references in Nebraska.

UPLOAD ON RESPONSE SUBMISSION

This may also be submitted as an Excel spreadsheet in the Response Attachments section.

10 Introduction

Write a brief history of your company that includes length of time in business and your firm's philosophy of doing business. If Bidder has recently purchased an established business or has proof of prior success in this business or a closely related business, please provide written verification.

The Pegler Family entered food service distribution in 1895 in Lincoln, NE. Their level of distribution expanded to include restaurants, schools, hospitals, hotels, motels and multi-unit accounts. A strong foundation of service and growth led Pegler & Co joining forces with Sysco Corporation in 1984, becoming Pegler Sysco. In 2008, Pegler Sysco became Sysco Lincoln. In July 2010, Lincoln Poultry was acquired by the Sysco Corporation. Sysco Lincoln is committed to the business of food service distribution. We make it our business to specialize in just one thing, to market and deliver great products to our customers with exceptional service.

Please Provide a one-page description of what you are offering for this contract.

Dedicated to value. Committed to care. Sysco Lincoln is ESU's headquarters for Innovation, Ingenuity and valued services. We are committed to your success with unlimited resources for schools. Trained Marketing Associates on K-12 Resources including school menus, CN labels and smart snacks.

Online express ordering through www.esysco.net

Educational programs which include: KEYS Inservice Solutions- a complete kit that offers instructional presentations and literature for employee training, topics including sanitation, allergens, HACCP, work safety, diet education, food cost and regulations.

Education Interface- a 24 hour/ 7 days a week interactive web-based training library of safety, foodservice, and professional development courses.

Video Lending Program- Available to borrow from Sysco Lincoln: ServSafe video training series on food safety, Worksafe Video training series on preventing injuries.

Food Shows- opportunities to expand product knowledge.

Foodservice Express – from Med-diet: www.800-45-sysco.com, a direct ship program with specialty therapeutic products such as allergen free, gluten free, dysphagia and shelf- stable disaster meals.

Sysco Shape; www.sysco.com/health/sysco-shape.com, tools and resources available to help meet the growing demand for nutritious and “good for you” food products.

Cutting Edge Solutions- on trend products exclusively from Sysco and directed at schools, for example- Carrot and Parsnip Fries, bake not fried.

Syscobetterforyou.com, products that are natural, organic, cage free, gluten free, low sodium, as well as fresh produce and seafood without additives.

Buy Local- Sysco's locally grown initiatives work closely with small farms and local Automated Recall service.

<p>12 Company Headquarters/Branches</p>	<p>Provide the address for your company's headquarters. Provide addresses for any branch offices in Nebraska. Indicate how long your company has provided the services/products you are proposing. Provide names, titles, qualifications, and experiences of the key people who will support this contract.</p> <p>HEADQUARTERS: Address:</p> <p>BRANCH OFFICE: Address:</p> <p>Company years in Business:</p> <p>Name: Title: Qualifications: Experience:</p>	<p>Headquarters Address is 1390 Enclave Pkwy, Houston, TX 77077. Branch Office Address: Sysco Lincoln 900 Kingbird Road Lincoln, NE 68521. Sysco years in business: 48. Sysco Lincoln 122 years . Key People who will support the contract: Dave Slagle- VP of Sales, Zach Navrkal- Regional Sales Manager, Rose Meyer- Administrative Assistant Sales all of whom have experience working with ESU school contracts in the past 16 years.</p>
<p>13 Service Limitations</p>	<p>Describe any limitations to your company's ability to sell to all ESU Coordinating Council members in the region you are bidding by county. Counties are listed in Exhibit "A".</p>	<p>no limitations in the East Region.</p>
<p>14 Training and Product Support</p>	<p>Please describe your company's training/product support policy and capabilities.</p>	<p>In House Specialists- Center of the Plate to include: Beef, Poultry, and Seafood. Produce Specialist and Supply and Equipment Specialists along with two corporate chefs- with 100 combined years of service. When it comes to sustainability, Sysco is committed to creating a positive change in our industry, our company and in the communities we serve by advocating low-impact farming methods, using hybrid diesel delivery trucks and offering biodegradable takeout containers.</p>
<p>15 Restock Fee Description</p>	<p>Describe your return policy? What is your restock fee, if any? (Restock fee must not exceed 15%)</p>	<p>No restock fee on stocked items, Fee on special order items.</p>
<p>16 Return Policy Exclusions</p>	<p>Describe any exclusions or limitations applicable to your return policy.</p>	<p>Most credits and returns should happen upon delivery. Exceptions to this would be Special orders, auto-ship or standing orders. Potentially Hazardous Food products/ Temperature Controlled for Safety (Refrigerated and Frozen) are only eligible for return at time of delivery. Refunds or credits on product after delivery must meet the following requirements: Refrigerated foods not classified as Potentially Hazardous Foods: within 48 hours from delivery. Frozen, dry and foodservice supplies- within 14 days of delivery. All refrigerated and frozen products are required to be stored at the following temperatures: Frozen items- -18C to -7 C (0 to 20 F) and refrigerated items: 0 C to 4 C (32 to 40 F). Products are returnable for full credit only when they are in the original package, free of markings or</p>

			damage, must be stored within the required temperature range at all times, and within the specified return time frame.
17	Customer Service Contact	Please list the primary customer service contact for this contract:	Brenda Kubicek
18	Customer Service Phone	Please Specify Customer Service Phone Number:	402-437-3320
19	Customer Service Contact Email	Please Specify Customer Service email address:	Kubicek.brenda@lincoln.sysco.com
20	Delivery Schedule Exceptions	Please list, by county, areas that your company cannot service at least once per week.	none
21	Delivery Schedules, Number of Trucks Covering Area	Please define your delivery schedules and number of devlivery vehichles below.	We deliver in the East Region Monday through Friday's and we have approximately 90 trucks on designated routes Monday through Friday.
22	Items (SKU's) Company Offers	How many different items/SKU's does your company offer?	7900
23	Items on Hand	How many items/SKU's does your company stock in planned/service warehouse(s)?	7900
24	Order Lead Time	Please Define Order Lead Time Policy (s) by County if appropriate.	next day delivery
25	Company Fill Rate	What was your company's fill rate for the previous year?	99.58
26	Guaranteed Fill Rate	What it this guaranteed fill rate for this contract?	99.58
27	cXML Order Option	Please Check this option if available that ESU Coordinating Council Members can submit orders by cXML:	cXML Orders Accepted
28	Punchout Order Option	Please Check this option if Available to ESU Coordinating Council Members to submit orders by Punchout:	
29	Mail Order Option	Please Check this option if Available to ESU Coordinating Council Members to submit orders by Mail:	
30	Fax Order Option	Please Check this option if Available to ESU Coordinating Council Members to submit orders by Fax:	Fax Orders Accepted
31	Phone Order Option	Please Check this option if Available to ESU Coordinating Council Members to submit orders by Phone:	Phone Orders Accepted
32	Email Order Option	Please Check this option if Available to ESU Coordinating Council Members to submit orders by Email:	Email Orders Accepted

33 Quality Control Measures

Discuss your company's quality control measures.

Food safety is our No. 1 priority, and it cannot be compromised. The Freshness, Safety and Consistent Quality of product is Sysco's recipe for assuring product integrity. Our Sysco Quality Assurance team is responsible for ensuring we meet today's food safety and quality challenges. We accomplish this through the diligent efforts of our full-time Quality Assurance team members and supportive quality experts located throughout the world. Suppliers must pass strict audit and inspection before approval to supply Sysco Branded products including: Audits for food safety programs (HACCP, sanitation, pest control, allergen control, foreign materials prevention, etc.). Additional requirements for high-risk products, including ground beef and fresh produce, that exceed government standards. Receiving: Chilled docks, mandatory inspection upon receipt and thorough equipment inspection before and after load door is opened. Warehousing: State of the art radio frequency (RF) technology and continuous monitoring of storage temperature and products. Delivery: Customized transportation system keeps track of every case, RF barcoded labels on every product and immediate product verification.

34 Food Safety Policies

Please describe your company's food safety control procedures/policies.

We are committed to providing safe, quality- assured products to our customers. Key components of Sysco's Food Safety system involve: comprehensive risk assessments and implementation of preventive controls, HACCP plans for potentially hazardous foods, sourcing from capable suppliers who pass an approved third party Food Safety audit, Eliminating the possibility of cross- contamination during storage and transport, and establishing time and temperature control limits from the time product leave the supplier to the time they are delivered to the end-customer.

35 Account Service

Please describe your company's plans for servicing school accounts.

Marketing Associate assigned to each area and each account.

36	Value added services	Discuss distinguishing factors about your proposal or company that would add value to the ESUCC Cooperative Purchasing Food Program.	Our solutions and services go beyond food. In house Product Specialists, menu analysis, e-nutrition website, training on food handling, online ordering, inventory application, Supply & Equipment staff, Corporate Chef's, specialty goods, reporting and dedicated Marketing Associates to show new innovative items. We also have automated recall system where customer is notified directly by Sysco.
37	Number of Sales Representatives	How many Sales Representatives are located at your warranty and service facility(ies)?	71
38	Sales Reporting	Do you have ability to email electronic detailed sales report to ESU Coordinating Council in CSV or tab delimited format on a monthly basis?	YES
39	Sales Reporting NO Response	If you answered NO to the Sales Reporting question above, what format can you offer?	
40	Warranty and Maintenance	Do you provide warranty and maintenance for the items in the proposal? (If Not Applicable mark N/A in response)	No
41	Warranty and Maintenance Service	If no you do not provide Warranty and Maintenance, how do members obtain it? (If Not Applicable mark N/A in response)	n/a
42	Warranty Contacts	Provide the name and address of the facility that will provide warranty and maintenance service. If there is more than one facility, provide the names and addresses for all facilities. Attach a list if necessary and include the following; Contact person: Phone Number: (If Not Applicable mark N/A in response)	n/a
43	Inventory Value	What is the value of parts inventory normally on hand? (If Not Applicable mark N/A in response)	\$32,336,813.00
44	Warranty Activation	Describe the steps a member should take to activate a warranty, if any. (If Not Applicable mark N/A in response)	n/a
45	Extended Warranty Plans	Do you offer extended warranty or maintenance service plans? (If Not Applicable mark N/A in response)	No Extended Warranty Plan
46	Summary of Warranty Plans	If yes you offer extended warranty or maintenance service plans, provide a summary of the plans here and upload sample forms as a Response Attachment. (If Not Applicable mark N/A in response)	n/a
47	Extended Warranty Pricing	Will your company make known to members details of pricing for extended warranty or maintenance service plans? (If Not Applicable mark N/A in response)	No, Pricing for Extended Warranties provided
48	Farm to School Sources	Please provide an explanation of how you are utilizing Farm to School sources in Nebraska.	we currently purchase from 132 vendors within the state of NE. a complete list is available upon request.

Line Items

Response Total: \$0.00



AGREEMENT FOR Food

THIS AGREEMENT is entered into by and between the Nebraska Educational Service Unit Coordinating Council ("ESUCC"), and Lincoln Sysco ("Contractor").

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

- 1. Scope of the Contract.** The Contractor shall provide to the ESUCC the goods and/or services as defined in **Exhibit A** which is attached hereto and incorporated herein by this reference.
- 2. Payment Terms/Payment Schedule.** The ESUCC shall pay for services rendered and 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.
- 3. Term.** This Agreement is effective on the 1st day of August 2017 ("Effective Date") and shall continue until 12:00 midnight (CST) on the 31st day of July 2018, unless terminated earlier as provided by this Agreement or by law.
- 4. 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 Douglas County, Nebraska.
- 5. Compliance with Federal Regulations.** Products and services under this contract will be rendered in compliance with all federal regulations including, but not limited to those outlined in section 10.6 of the Request for Proposal; attached to this Agreement as Exhibit C.
- 6. Termination.**
 - A.** The ESUCC may terminate this Agreement in whole or part if funding from federal, state, or other sources 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 ESUCC shall notify the Contractor as soon as practicable if funds to meet

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

7. Indemnification.

- A. The Contractor agrees to indemnify and save harmless the ESUCC against any and all claims of injuries, death, damage to property, liabilities, judgments, costs and expenses to the extent caused by or that arise out of the negligence or intentional misconduct of Contractor. . In addition, Contractor will indemnify and hold the ESUCC harmless from and against any claims brought by a third party to the extent arising out of or in connection with any allegation that Sysco trademarks or trade dress contained on any Sysco® Brand products purchased by the ESUCC under this Agreement infringe or violate such third party's trademark or trade dress.
 - 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 ESUCC in any such action for which the Contractor has an obligation to indemnify the ESUCC as provided in Section 7(A) above, the Contractor shall, at his or her own expense, satisfy and discharge the same to the extent of such Indemnity obligation.
 - 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 \$2,000,000 per person and \$4,000,000 per occurrence.
 - B. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability combined single limits of \$5,000,000 per occurrence.

- C. Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible is subject to approval by the ESUCC.
 - 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage Less than an "A-" rating must be approved by the ESUCC. The policies shall be in form and terms approved by the ESUCC.
 - 3) Contractor will promptly notify the ESUCC upon Contractor's receipt of notice that the insurance required in this Agreement has been canceled or modified.
 - 4) The Contractor shall furnish a certificate of insurance to the undersigned ESUCC representative prior to commencement of this Agreement.
 - 5) Failure to provide insurance as required in this agreement is a material breach of contract entitling the ESUCC to terminate this Agreement immediately.
- 9. Public Records.** The Contractor acknowledges that the 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.
- 10. Publicity.** The ESUCC does not endorse the goods or services of the Contractor. Except for listing the 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 the ESUCC.
- 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 ESUCC premises or at ESUCC 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

property or at ESUCC related functions. The Contractor and all Subcontractors, if any, also shall adhere to all ESUCC's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on ESUCC premises or at ESUCC related functions. Failure to comply with this provision may be considered a material breach. The ESUCC 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 ESUCC 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: 47-0445654.
- 16. Sales Tax.** The ESUCC is exempt from sales tax and shall not pay any sales tax under this Agreement. The ESUCC 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:

ESUCC: ESU Coordinating Council
Attn: Craig Peterson

1292 East 4th Street
Ainsworth, NE 69210

With copy to:

Steve Williams, Legal Counsel
KSB School Law, PC, LLO
301 S. 13th, Suite 210
Lincoln, NE 68508

Contractor: Lincoln Sysco
900 Kingbird Road
Lincoln, NE. 68521

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

18. 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.

19. Order of Preference.

The RFP and any requirements therein are hereby incorporated into the Agreement. In the case of any inconsistency or conflict among the specific provisions of this Agreement (including any amendments accepted by both the ESUCC and the Contractor attached hereto), the RFP (including any subsequent addenda) (Exhibit C), and Contractor's Response (Exhibit D), any inconsistency or conflict shall be resolved as follows:

- A. First, by giving preference to the specific provisions of this Agreement, any accepted amendments, Exhibit A and Exhibit B;
- B. Second, by giving preference to the specific provisions of the RFP, Exhibit C;
- C. Third, by giving preference to the specific provisions of Contractor's Response, Exhibit D, except that objections or amendments by a Contractor that have not been explicitly accepted by the ESUCC in writing shall not be included in this Agreement and shall be given no weight or consideration.

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.

A. 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.

B. 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

shall constitute a waiver or estoppel of any right, remedy or condition.

C. 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 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.

- 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 ESUCC.
- 26. Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the ESUCC.
- 27. Third Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the signatories.
- 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 the ESUCC's rights and remedies set forth in this Agreement is not exhaustive. The 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. Time is of the Essence.** Time is of the essence with regard to performance of any services under this Agreement, unless the parties agree otherwise in writing.
- 31. 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.

32. 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.

33. Attachments. Attachments to this Agreement include the following:

- Exhibit A – Scope of Good or Services to be provided to ESUCC
- Exhibit B – Payment Terms & Schedule
- Exhibit C – Request for Proposal or Invitation for Bids ("RFP")
- Exhibit D – Contractors Proposal or Bid
- Exhibit E – Warranties and Maintenance

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

[THE NEXT PAGE IS THE SIGNATURE PAGE]

ESUCC

By: David Ludwig

Name: David Ludwig

Title: Executive Director

Date: June 9, 2017

CONTRACTOR

By: Kim B. Brown

Name: Kim B. Brown

Title: President

Date: June 9th, 2017

EXHIBIT "A"

SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO ESUCC

- 1.1 Sysco Foods will work with ESUCC to establish a state-wide (East and West regions) Food Program supplied by Sysco Foods which:
 - 1.1.1 Allows Sysco Foods to provide food supplies and services and increase food service value to ESUCC affiliated schools and members with significant cost savings, quality food items, and exceptional service to the member schools participating in the program.
 - 1.1.2 Allows member schools to order food items from the following product lines:
 - .1 Dispenser Beverages
 - .2 Canned & Dry Goods
 - .3 Meat/Meat Alternatives
 - .4 Water
 - .5 Dairy Products
 - .6 Poultry
 - .7 Fresh Produce
 - .8 Frozen Items
 - .9 Milk
 - .10 Grains/Bread Products
 - .11 Seafood
 - .12 Other Foods
 - 1.1.3 These products will meet the requirements of the United States Department of Agriculture, the 2010 Healthy and Hunger Free Kids Act, and the Food Buying Guide. As well as be in compliance with all other applicable state and federal regulations.
 - 1.1.4 These products will be delivered in accordance with the procedures outlined in the Request for Proposal, attached to this Agreement as Exhibit A.

EXHIBIT "B"

1. Payment Terms/ Payment Schedule

- A. The ESUCC will pay for the goods and/or services identified in Exhibit A and provided by Contractor under this Agreement as follows:

Payment Terms and Schedule for ESUCC members

Terms are SE20* - Purchases last month due 20th of following month.

Schedules are as follows:

August 1- August 31, 2017- invoices due September 20, 2017

September 1 – September 30, 2017- invoices due October 20, 2017

October 1- October 31, 2017- invoices due November 20, 2017

November 1- November 30, 2017- invoices due December 20, 2017

December 1 – December 31, 2017- invoices due January 20, 2018

January 1 – January 31, 2018- invoices due February 20, 2018

February 1 – February 28, 2018- invoices due March 20, 2018

March 1 – March 31, 2018- invoices due April 20, 2018

April 1 – April 30, 2018- invoices due May 20, 2018

May 1 – May 31, 2018- invoices due June 20, 2018

June 1 – June 30, 2018- invoices due July 20, 2018

- B. The ESUCC agrees to pay Contractor for all undisputed amounts within thirty (30) days of receipt of invoice, provided that services have been accepted by the ESUCC as hereinafter provided.
- C. The procedure for billing and payment for services or products and deliverables shall be as specified in this exhibit.

2. 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 the RFP, the time specified in a purchase order issued by the ESUCC, 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 ESUCC ("Delivery Notice").
- C. The ESUCC shall have thirty (30) 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 ESUCC issues a rejection notice, the Contractor shall as quickly as is practicable, correct or replace all deficiencies at its expense. The ESUCC shall not unreasonably withhold or delay its acceptance or rejection.

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

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



2017-2020 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative"), and Infobase Learning ("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 July 1st, 2017 ("Effective Date") and shall continue until 12:00 midnight (CST) on July 1st, 2020, 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:
13-3720604.
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: Nebraska ESUCC Cooperative Purchasing
Attn: Craig Peterson
1292 East 4th Street
Ainsworth, NE 69210

With copy to:

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

Contractor: Steve Kindel

Infobase/Facts On File _____
132 W. 31st St, 17th Floor
New Yoprk, N.Y.
10001 _____

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 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 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 my 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 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.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

COOPERATIVE

By: 

Name: David Ludwig

Title: Executive Director

Date: 7-10-17

CONTRACTOR

By: 

Name: Steve Kindel

Title: National Accounts Manager

Date: 6/20/2017

EXHIBIT "A"

SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO MEMBERS

Middle/High School Resources	
American History Online	<p>More Than 500 Years of Political, Military, Social, and Cultural History—and Now Better Than Ever!</p> <p>American History Online is a comprehensive resource that spans our nation's history, with a user-friendly interface and award-winning content. The home page offers many ways to begin exploring the material, from the videos, slideshow overviews, and Topic Centers to the lists of key content handpicked by our editors to help users find a starting point for their research. By providing the most comprehensive range of information in one complete resource—subject entries, biographies, primary sources, videos and slideshows, images, timelines, and maps and graphs, plus full cross-searchability across all the Infobase history databases—American History Online offers a virtual library of American history for educators, students, and researchers of all ages.</p>
Bloom's Literature	<p>Literature Resources and Criticism Selected by Harold Bloom</p> <p>Bloom's Literature, formerly Bloom's Literary Reference Online, offers a comprehensive resource for the study of literature, with curated content from authoritative sources. The wide range of material in this award-winning database includes content from Facts On File's extensive literature collection; hundreds of Harold Bloom's essays examining the lives and works of great writers; thousands of critical articles published by noted scholars under the Bloom's Literary Criticism imprint; extensive entries on literary topics, themes, movements, genres, and authors; more than 4,300 video clips; more than 2,700 full-text poems; and more than 9,000 discussion questions on a range of literary topics. A Performance Video gateway page provides easy access to all full-length videos of classic productions—which can be watched either in their entirety or scene by scene using the convenient clips.</p>
Science Online	<p>Expansive Reference Coverage of the Full Range of Scientific Disciplines</p> <p>With a wealth of content and a dynamic design that facilitates STEM research and learning, the award-winning Science Online offers a comprehensive overview of a broad range of scientific disciplines. Topic Centers feature specially selected content on core science disciplines to help students find a starting point for their research, and students can also access the full, updated content of our unique science eLearning Modules, which target a variety of core topics and feature valuable Teacher Support materials for seamless in-class integration. Plus, interactive science experiments that come with lesson objectives, data tables for findings, and analysis of expected results allow students to replicate the in-class laboratory experience in a safe and user-friendly environment.</p>

<p>Issues and Controversies</p>	<p>Objective Analysis of Hundreds of Today's Hot TopicsFeaturing a dynamic design and a wealth of features, Issues & Controversies helps researchers understand today's crucial issues by exploring hundreds of hot topics in politics, government, business, society, education, and popular culture. Our Issue and Article pages make it simple to see all of the available content in one place; thousands of editorials and opinions from renowned newspaper sources via NewsEdge keep researchers on top of trending topics; and our enhanced navigation and search results and improved organization and taxonomy give users an intuitive and user-friendly research experience. Updated weekly, with an extensive backfile, Issues & Controversies offers in-depth articles—each presenting both sides of an issue clearly, coherently, and without bias—made to inspire thought-provoking debates. Its straightforward presentation of the key facts, arguments, history, and current context of today's most important and timely issues makes the database an ideal resource for research papers, debate preparation, and persuasive writing assignments. The articles are written by our own expert writers and editors, and each article includes a full range of supporting materials.</p>
<p>Modern World History</p>	<p>Presents the Full Scope of World History from the Mid-15th Century to the Present</p> <p>Modern World History Online offers a comprehensive look at world history from the mid-15th century to the present. Thousands of subject entries, biographies, images, videos and slideshows, maps and graphs, primary sources, and timelines combine to provide a detailed and comparative view of the people, places, events, and ideas that have defined modern world history. Focused Topic Centers pull forward interesting entries, search terms, documents, and maps handpicked by our editors to help users find a starting point for their research, as well as videos and slideshow overviews to offer a visual introduction to key eras and regions. All the Infobase history databases in a collection are fully cross-searchable.</p>
<p>Ancient & Medieval History</p>	<p>An Exploration of World History, from Prehistory through the 1500s</p> <p>Ancient and Medieval History Online provides thorough coverage of world history from prehistory through the 1500s, with special Topic Centers on key civilizations and regions, including the ancient Near East, Egypt, Greece, and Rome; ancient and medieval Africa, Asia, and the Americas; and medieval Europe and the Islamic World. Each civilization's history is brought to life through tablet/mobile-friendly videos and slideshows, primary sources, maps and graphs, timelines, suggested readings, and suggested search terms. All the Infobase history databases in a collection are fully cross-searchable.</p>

Today's Science	<p>Today's Science bridges the gap between the science taught in class and real-world discoveries—giving in-depth explanations of important advances in biology, chemistry, environmental science, space, physics, and technology. Featured articles offer easy access to related content such as crossword puzzles, cartoons, and questions; additional articles that help place news and discoveries in context; and interviews with scientists that bring the research to life. An extensive backfile dating back to 1992 illustrates how one scientific advance leads to another; the stories focus on the questions scientists ask themselves and, in doing so, reinforce science educators' traditional emphasis on the scientific method. This essential STEM resource shows how the scientific method can be applied to everyday life, helping students think like scientists—applied science in a nutshell.</p>
Health Reference Center	<p>A Powerful Source for Reliable, Detailed Information on Today's Most Important Health Topics</p> <p>Your first stop for current, important health information is now better than ever! The critically acclaimed Health Reference Center has been redesigned and upgraded with a wealth of essential new content and a new, more intuitive design that better facilitates research. Thirty-five Topic Centers highlight specially selected content to help users find a starting point for their studies, and numerous videos and collections of illustrations make it easy to find relevant visual media on the most frequently researched topics. New features and tools—including Read Aloud, Google Translate, and tag “clouds” for all content, to name a few—provide added functionality and accessibility.</p>
K-8 Resources	
World Almanac For Kids	<p>Erasing the line between homework support and fun exploration, The World Almanac® for Kids Online includes exclusive online-only material as well as content from award-winning Chelsea House and Facts On File sets and series. Each subject area provides resources for elementary- and middle school-level homework, reports, and projects, and kids can explore age-appropriate topics while developing online research skills with a trusted content source.</p> <p>The World Almanac® for Kids Online has been redesigned with a new header that makes our wide variety of great content even easier than ever to access. The new Teacher Support drop-down menu at the top of the home page provides easy access to a treasure trove of brand-new content that will help educators get the most out of using the database in class, including comprehensive lesson plans—specially created by our editors—for selected modules, including Ancient Civilizations, Animals, Our Planet Earth, Our Solar System, Countries of the World, The 50 States, Canadian Provinces, and U.S. Presidents. Teachers will also find science diagrams, maps, and graphic organizers that help with any lesson in the Teacher Support drop-down menu. The top bar also now features a link to accessible Homework Help articles for students, and the Resources drop-down menu puts videos, interactives, science projects, Fun Facts articles, maps, flags, and an interactive Trivia Challenge game right at your fingertips.</p>

EXHIBIT "B"

1. Contractor's Pricing

Contractor's Pricing Model under this Agreement is:

Nebraska ESU CC Pricing 2017/18			
Prices are subject to a 4% increase annually			
For Schools With Less than 1,000 Students			
Product	List Price	School Price	District Price
Middle/High School Resources			
American History Online	\$875	\$625	\$0.49/Student
Bloom's Literature	\$875	\$625	\$0.49/Student
Science Online	\$875	\$625	\$0.49/Student
Issues and Controversies	\$495	\$425	\$0.33/Student
Modern World History	\$495	\$425	\$0.33/Student
Ancient & Medieval History	\$495	\$425	\$0.33/Student
Today's Science	\$495	\$425	\$0.33/Student
Health Reference Center	\$495	\$425	\$0.33/Student
K-8 Resources			
World Almanac For Kids	\$495	\$425	\$0.33/Student

For Schools With More than 1,000 Students			
Product	List Price	School Price	District Price
Middle/High School Resources			
American History Online	\$1,395	\$750	\$0.49/Student
Bloom's Literature	\$1,395	\$750	\$0.49/Student
Science Online	\$1,395	\$750	\$0.49/Student
Issues and Controversies	\$795	\$550	\$0.33/Student
Modern World History	\$795	\$550	\$0.33/Student
Ancient & Medieval History	\$795	\$550	\$0.33/Student
Today's Science	\$795	\$550	\$0.33/Student
Health Reference Center	\$795	\$550	\$0.33/Student
K-8 Resources			
World Almanac For Kids	\$795	\$550	\$0.33/Student

- Prices are subject to a 4% increase annually

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 or 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.



2016-17

Nebraska ESUCC Cooperative Purchasing Sales & Savings By ESU

<u>ESU #</u>	<u>Total Sales</u>	<u>Total Retail</u>	<u>Savings</u>
00	\$411,376.86	\$558,202.75	\$155,848.89
01	\$1,231,367.40	\$1,538,479.87	\$308,636.93
02	\$1,740,234.33	\$2,140,937.21	\$400,053.83
03	\$2,237,892.49	\$2,820,264.80	\$586,100.77
04	\$823,489.44	\$1,020,721.25	\$198,782.38
05	\$645,508.74	\$788,346.84	\$145,503.92
06	\$1,726,221.75	\$2,128,415.19	\$405,424.47
07	\$1,327,195.66	\$1,642,899.71	\$316,377.69
08	\$831,288.44	\$1,087,980.22	\$262,187.75
09	\$560,800.99	\$702,552.45	\$146,023.63
10	\$1,472,085.76	\$1,875,466.80	\$391,678.55
11	\$487,445.11	\$625,241.23	\$135,482.89
13	\$780,922.67	\$1,030,131.36	\$258,662.35
15	\$202,114.72	\$274,720.38	\$73,353.00
16	\$435,788.08	\$543,497.17	\$103,877.73
17	\$194,214.11	\$249,476.46	\$55,197.36
18	\$48,358.61	\$72,271.31	\$23,912.70
19	\$263,251.86	\$310,010.87	\$70,895.65
20	\$152,106.51	\$180,695.53	\$28,589.02
CC	\$1,431.45	\$2,310.89	\$581.39
<u>Grand Totals</u>	<u>\$15,573,095.00</u>	<u>\$19,592,622.29</u>	<u>\$4,067,170.89</u>

2014-15 Sales/ Savings

Program	Total Sales	Total Savings
Annual Buy	2,874,707.70	862,412.31
Paper Buy	1,080,117.91	324,035.37
AEPA/ Special Buy	6,964,694.30	2,468,914.31
Food Program	\$4,886,929.96	733,039.49
Custodial	1,527,432.48	198,566.22
Estimated Total Sales	17,333,882.35	4,586,967.71
Total % Savings	26.46%	

2015-16 Sales/ Savings

Program	Total Sales	Total Savings
Annual Buy	\$3,535,320.26	\$1,131,302.48
AEPA	\$4,959,155.16	1,762,417.90
Special Buys	\$1,478,273.60	1,128,055.84
Food Program	\$5,048,578.45	757,286.77
Custodial	\$1,798,885.66	233,855.14
Extended Buys	\$540.32	172.90
Total Sales	16,820,753.45	5,013,091.03
Total % Savings	29.80%	

2016-17

Program	Total Sales	Total Savings
Annual/Paper Buy	3,170,416.00	1014533.12
AEPA	3,939,001.37	1,254,655.49
Special Buys	1,654,713.25	811,891.94
Food Program	5,006,128.75	750,919.31
Custodial	1,798,612.52	233,819.63
Extended Buys	4,223.12	1,351.40
Total Sales	15,573,095.00	4,067,170.89
Total % Savings	26.12%	

Region	Agency Count	Agency Count w/Orders	# of Purchasers	Orders	Items	Total Value
ESU 07	39	31	154	724	54379	\$ 417,150.94
ESU 08	39	28	157	747	36729	\$ 384,842.81
ESU 03	21	17	109	314	60588	\$ 381,957.36
ESU 10	46	36	175	765	39933	\$ 374,910.44
ESU 13	30	24	138	660	36398	\$ 372,723.47
ESU 01	32	30	136	684	24109	\$ 363,520.05
ESU 06	35	26	43	357	16541	\$ 247,459.12
ESU 02	27	21	70	430	26428	\$ 238,007.49
ESU 11	15	15	159	615	18158	\$ 226,176.83
ESU 16	23	16	82	387	18869	\$ 166,592.72
ESU 04	16	15	81	347	12088	\$ 156,891.65
ESU 09	23	13	43	220	17433	\$ 108,414.48
ESU 15	11	10	55	240	8430	\$ 104,156.71
ESU 05	16	11	48	262	10626	\$ 102,603.85
ESU 17	8	6	33	189	6083	\$ 94,565.98
ESU 18	2	1	1	2	41057	\$ 45,255.00
Higher Ed	2	2	2	6	164	\$ 14,227.73
Private	83	1	2	8	189	\$ 4,685.28
Cities	3	1	1	1	2	\$ 1,999.20
ESUCC	1	1	3	26	121	\$ 1,743.99
ESU 19	3	1	3	3	3	\$ 936.00

Avg. Value	Last Order Date
\$ 576.18	8/29/2017
\$ 515.18	8/29/2017
\$ 1,216.42	8/29/2017
\$ 490.08	8/29/2017
\$ 564.73	8/24/2017
\$ 531.46	8/29/2017
\$ 693.16	8/22/2017
\$ 553.51	8/29/2017
\$ 367.77	8/24/2017
\$ 430.47	8/28/2017
\$ 452.14	8/2/2017
\$ 492.79	8/28/2017
\$ 433.99	8/14/2017
\$ 391.62	8/25/2017
\$ 500.35	8/25/2017
\$ 22,627.50	5/4/2017
\$ 2,371.29	3/24/2017
\$ 585.66	4/17/2017
\$ 1,999.20	3/3/2017
\$ 67.08	8/18/2017
\$ 312.00	5/17/2017



Statement of Work

1 Project Overview

1.1 Project Information

Customer Name	ESUCC
Customer Primary Contract	Craig Peterson
Solution Manager	Eric Schuld
Project Name	ESUCC Annual Buy Custom Reports and Export
Project Owner	Ira Golden
Target Delivery Date	January 31 st , 2018

1.2 Objective

Create custom reports for exporting ESUCC annual buy order data and send to Location Point of Contacts (POCs) for the purpose of:

- **Order Receiving:** The Location POCs would use the aggregated Receive Order Report to compare between the quantity ordered and quantity received from suppliers.
- **Order Distribution:** The Location POCs would use the aggregated Sort Order Report to determine the quantity of items to be distributed to shoppers.

2 Customer Requirements

2.1 As-is Requirements

- ESUCC Marketplace Administrator exports the aggregated order data and creates Receive Order Report and Sort Order Report manually, outside of the ESUCC Marketplace.

2.2 To-be Requirements

- Generate and transmit a set of custom reports for the Location POCs for the purpose of annual buy receiving and distribution effort.

3 Proposed Solution

3.1 Custom Annual Buy Order Exports by Location

This customization effort includes automatically generating a set of two files for each 'ship-to' address used in the annual buy orders. One file for order receiving and one file for order distribution.

3.1.1 Common Requirements

- The file set will be generated after the orders have been sent to the annual buy suppliers.
- The format of the file will be CSV. Can be opened with MS Excel.
- The filename will include the address name in EqualLevel.
- The file set will be emailed to the "owner" of each address as email attachments.
- The file set will be posted to an FTP site. The FTP folder will be hosted by EqualLevel.



3.1.2 Receive Order Report

- File will include a row for each item on aggregated orders sent to vendors.
- File will include placeholder blank columns for receiver to utilize when receiving the orders.
- The report will be sorted by vendor then by item name.
- See Appendix A for Data Elements to be included in the report

3.1.3 Sort Order Report

- File will include a row for each item on shopper's approved requisitions
- The report will be sorted by item name then by district then by user.
- See Appendix A for Data Elements to be included in the report

3.1.4 ESU3 Reports

- A single Sort Order Report will be generated for ESU3, based on all requisitions from districts assigned to ESU3 that have not opted out. As such, this file will include requisitions from multiple ship-to locations.
- The filename for this file will include "ESU3" instead of an address name.
- A single Receive Order Report will automatically result from all ESU3 aggregated orders already having the same ship-to location applied during the aggregation task.

3.2 Anticipating Order Adjustments during Annual Buy

There are two potential points in the business flow where districts may update the order quantities after requisition approvals are done – before and after orders are aggregated. EqualLevel recommends all order changes to be made during the requisition submission and approval phase to prevent discrepancies between the requisition quantity and the order quantity received. If a quantity needs to be changed after the requisition approval and/or after order aggregation, the following proposed solution will help to identify the discrepancies:

- Receive Order Report to include two Quantity columns: Total Qty Requested and Total Qty Ordered to identify if quantities were changed after a requisition was approved.
- As a new step in the annual buy process, EqualLevel will export a single file of all item data from the annual buy purchase orders just before order aggregation and post the file to the FTP site.
- ESUCC can use this data file to look up which orders had a quantity changed, provided the change was made before the order aggregation. For any quantity changes made after the order aggregation, it's impossible to identify which order those changes were intended for.



4 Level of Effort (LOE) estimation

Task ID	Task Description	LOE (in Hours)	Notes
1	Project Coordination & Management	4	
2	Requirements Capture & Assessment	4	
3	Solution Design	5	
4	Solution Implementation	38	8 additional hours (= 1 work day) for added requirements. (See section 3.14 and 3.2)
5	Testing and User Acceptance	3	
6	Configuration Management	1	
	Total	55	<ul style="list-style-type: none">• Time &Material. Not to exceed 65 billable hours.• Up to 45 hours to be billed in FY '18

**EqualLevel Professional Service Rate for ESUCC = \$150/hour*

5 Signature

EqualLevel, Inc.

ESUCC Cooperative Purchasing

Date

Date



Appendix A: Export Data Elements Mapping

Receive Order Report

Data Element	Sort Order	Notes
Supplier	1	From aggregated orders.
Item Name	2	
Manufacturer		
Manufacturer Part #		
Supplier Part #		
UOM		
Total Qty Ordered		
Total Qty Requested		From aggregated approved requisitions having same Ship To Locations.
Qty Received		Placeholder column without data. Location POCs to use when receiving items.
Qty Damaged		
Note		
Date Received		

Sort Order Report

Data Element	Sort Order	Notes
Item Name	1	From approved requisitions.
Item Description		
Supplier		
Manufacturer		
Manufacturer Part #		
Supplier Part #		
UOM		
District Name	2	
User	3	
Qty Requested		
Requisition		
Requisition PO Number		Include user entered PO number, if the user has entered in a PO number on the requisition.
Ship To Address		



2017-2020 SPECIAL BUY AGREEMENT

THIS SPECIAL BUY AGREEMENT (“Agreement”) is entered into by and between the Nebraska ESUCC Cooperative Purchasing (“Cooperative”), and Nearpod Inc., a Delaware corporation (“Contractor” or “Nearpod”).

RECITALS

WHEREAS, 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.

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 or Nearpod Products.

WHEREAS, 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 (“Cooperative Content”).

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 A**, which is attached hereto and incorporated herein by this reference. Prices listed in Exhibit A 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 and paid 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. If no sales were made through this Agreement with the ESU, then no administrative fee will be provided to ESU. Under no circumstance will Nearpod provide payment of the administrative fee to Cooperative until (1) the Member paid Nearpod for the Nearpod Products and (2) Cooperative provided a written invoice to Nearpod regarding the transaction/sale to the Member.
4. **Term.** This Agreement is effective on September 1, 2017 (“Effective Date”) and shall continue until 12:00 midnight (CST) on August 31, 2020, 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. **Grant of Rights.**
 - 6.1 Nearpod grants to Cooperative and its Members a limited, non-sublicenable, non-transferrable license and right to use, reproduce, distribute, publicly perform, and display the Nearpod Services for the number of users set forth in the Purchase Order. In addition, Cooperative and its Members may create the derivative works described in Section 6.2 below. Nearpod hereby reserves all rights in and to the Nearpod Services not expressly granted in this Agreement.
 - 6.2 ESU’s and Members’ users can use the Content Tool to create the Cooperative Content.
 - 6.3 Nearpod may provide physical items, such as hardware items, marketing materials, t-shirts and other tangible goods to the District (“Physical Goods”). There are no fees associated with the Physical Goods. Physical Goods are provided solely for promotional purposes and Nearpod is not under any obligation to support, maintain, repair or replace such Physical Goods.
7. **ESU’s and Member’s Obligations and Restrictions.**
 - A. Cooperative or its Member’s will not (i) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Nearpod Services are compiled or interpreted, and Cooperative acknowledges that nothing in this Agreement will be construed to grant Cooperative any right to obtain or use such code; (ii) create any derivative product from any of the foregoing, except as expressly provided in Section 6.2 or with the prior written consent of Nearpod; (iii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, ESU’s rights

hereunder; (iv) remove any title, trademark, copyright or restricted rights notices or labels from the Nearpod Services or related documentation and (v) share accounts. Allocated accounts may be reassigned to accommodate District's users changes upon notice to Nearpod during the Term.

- B. Cooperative shall be responsible for (i) internet connectivity needed to access the Nearpod Services, (ii) its users' compliance with this Agreement and the Nearpod Privacy Policy (www.nearpod.com/privacy-policy) and (iii) be responsible for Cooperative Content. Cooperative will not (w) use the Nearpod Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (x) use the Nearpod Services to store or transmit malicious code, (y) interfere with or disrupt the integrity or performance of the Nearpod Services or third party data contained therein, or (z) attempt to gain unauthorized access to the Nearpod Service or its related systems or networks.

8. Rights to Data

- A. As between Nearpod and Cooperative, Cooperative owns all right, title and interest in and to Cooperative Content and Cooperative's Confidential Information. Cooperative grants Nearpod the irrevocable, perpetual, worldwide, sublicensable, transferrable, right to use Cooperative information solely on an aggregated and anonymized basis ("Aggregated Data"). Nearpod represents and warrants it will not use student personal information for third party marketing.
- B. Nearpod will use commercially reasonable efforts to keep Cooperative and its Members' data confidential and maintain a security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information against unauthorized access or use through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information.
- C. Cooperative and its Members' designate Nearpod a "school official" within the meaning of FERPA. Nearpod will be under the direction of Cooperative and/or its Members with respect to the use and maintenance of personally identifiable information and education records, as those terms are defined by FERPA, and Nearpod may use personally identifiable information and education records only as set forth under the Agreement.

9. Confidentiality.

- A. Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's confidential information, including pricing, or confidential information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of confidential information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.
- B. Mutual Confidentiality Obligations. Each Party agrees as follows: (i) to use Confidential Information disclosed by the other Party only for the purposes described herein; (ii) that such Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information

from dissemination to, and use by, any third party; (iii) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (iv) to the extent practicable, return or destroy, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of this Agreement.

- C. Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 9(A) and 9(B) will not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that, to the extent permitted by law, the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

10. 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 provided: (a) the Cooperative may terminate any current Year; and (b) the Cooperative must provide Contractor with written evidence of the budget reduction. In such instance, Contractor, in its sole discretion, may enter into negotiations with the Cooperative to revise this Agreement. The Cooperative shall notify the Contractor as soon as practicable if funds to meet the Cooperative's or Members' obligations become unavailable.
- 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 non-defaulting party may authorize in writing. Notwithstanding anything to the contrary in this Agreement, or otherwise, if any amount owed by Cooperative or any of its Members is thirty (30) days or more overdue, Contractor may, with ten (10) business days' prior written notice to Cooperative or any of its Members, without limiting Contractor's other rights and remedies, suspend access to the Contractor services 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. 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 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 destroy all papers, materials, and other property of the Cooperative, if applicable.
- H. Effect of Termination. Upon expiration or termination of this Agreement, (i) all rights to use the Nearpod Services shall cease, (ii) Nearpod shall discontinue the provision of the Nearpod Services, and (iii) Cooperative shall immediately pay any outstanding invoices. In addition, Sections 2, 7, 8, 9, 10, 20, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, and 35 will survive any termination or expiration of this Agreement.

11. Indemnification.

- A. Contractor shall indemnify defend and hold Cooperative harmless from any third party claim that the Contractor Products infringe the intellectual property right of any third party.
- B. Cooperative shall indemnify defend and hold Contractor harmless from any third party claim that the Cooperative Content infringe 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.

12. **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 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.

13. **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. Notwithstanding the immediately preceding sentence, Cooperative will notify Contractor in writing of any public records request and afford Contractor the opportunity to respond and/or object to the disclosure of any information Contractor, in its sole discretion, deems privileged and/or confidential.
14. **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, which will not be unreasonably withheld, conditioned, or delayed.
15. **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.
16. **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.
17. **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.

18. **Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after January 1, 2018 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.
19. **Taxpayer Identification.** Contractor's federal employer identification number is: 46-0993679.
20. **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.
21. **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 facsimile or 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: Nebraska ESUCC Cooperative Purchasing
Attn: Craig Peterson
1292 East 4th Street
Ainsworth, NE 69210
EMAIL: _____

With copy to:

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

Contractor: Nearpod Inc.
Attn: Natali Barski
18305 Biscayne Blvd., Suite 301

Aventura, FL 33160
natalib@nearpod.com

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

- 22. Warranties and Specifications.** 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").

EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 18, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE NEARPOD SERVICE, THE DOCUMENTATION, PHYSICAL ITEMS AND ALL SERVICES PERFORMED BY NEARPOD ARE PROVIDED "AS IS," AND NEARPOD DISCLAIMS ANY AND ALL OTHER PROMISES, INDEMNITIES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND DATA ACCURACY. NEARPOD DOES NOT WARRANT THAT THE NEARPOD SERVICE OR ANY OTHER SERVICES PROVIDED BY NEARPOD WILL MEET DISTRICT'S REQUIREMENTS OR THAT THE OPERATION OF THE NEARPOD SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

- 23. Limitation of Liability.**

CONTRACTOR'S AGGREGATE LIABILITY TO THE OTHER, WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, OR ANY OTHER CAUSE OF ACTION, SHALL BE LIMITED TO THE PRICE PAID OR DUE FOR THE NEARPOD SERVICES DURING THE TWELVE MONTHS PRIOR TO WHICH THE INCIDENT RELATES. CONTRACTOR SHALL NOT BE LIABLE TO COOPERATIVE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST INCOME, LOST REVENUE, LOST PROFITS, BUSINESS INTERRUPTION, DAMAGES FOR GOODWILL, PROCUREMENT OF SUBSTITUTE SERVICES, ARISING OUT OR IN ANY WAY RELATED TO THIS AGREEMENT, THE USE OR THE INABILITY TO USE THE NEARPOD SERVICES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH CLAIM. THESE LIMITATIONS WILL APPLY DESPITE THE FAILURE OF ESSENTIAL PURPOSE.

- 24. 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.

25. **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.
26. **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.
27. **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.
28. **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.
29. **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 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.
30. **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, which will not be unreasonably withheld, conditioned, or delayed.

31. **Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the Cooperative. Notwithstanding anything to the contrary in this Agreement or otherwise, Cooperative agrees and consents that Contractor hosts its platform on Amazon Web Services (“AWS”).
32. **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.
33. **Rights and Remedies Cumulative.** Any enumeration of the Cooperative’s or Contractor’s rights and remedies set forth in this Agreement is not exhaustive. The Cooperative’s or Contractor’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 or Contractor’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.
34. **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.
35. **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.
36. **Attachments.** Attachments to this Agreement include the following:

Exhibit A – Scope of Good or Services to be provided to Cooperative & Pricing

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

[THE NEXT PAGE IS THE SIGNATURE PAGE]

COOPERATIVE

By: _____

Name: David Ludwig

Title: Executive Director

Date: _____

CONTRACTOR

By: _____

Name: Felipe Sommer

Title: President

Date: _____

EXHIBIT "A"

SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO MEMBERS AND PRICING

Name of License	Cost (10% Discount from List)	Duration	Number of Licenses Provided Site Licenses based on # of Teachers District Licenses based on # of Teachers	Unlimited Premium Bundle with 4000+ Supplementary Interactive Lessons	Virtual Reality Field Trip Kits	On-Site Training Included
School Site License-Volume 1	\$1,800.00	1 Year	1-25	Yes	6	Yes
School Site License-Volume 2	\$2,700.00	1 Year	26-50	Yes	12	Yes
School Site License-Volume 3	\$4,500.00	1 Year	51-100	Yes	18	Yes
School Site License-Volume 4	\$6,750.00	1 Year	101-150	Yes	18	Yes
School Site License-Volume 5	\$7,650.00	1 Year	151+	Yes	18	Yes
District License with Content-Volume 1	TBD	1 Year	Min. 500 teachers	Yes	50	Yes
District License with Content-Volume 2	TBD	1 Year	Min. 1000 teachers	Yes	50	Yes

List Price ESUCC Member Price ESUCC Rev Share

\$2,000	\$1,800	\$36
\$3,000	\$2,700	\$54
\$5,000	\$4,500	\$90
\$7,500	\$6,750	\$135
\$8,500	\$7,650	\$153