

ESUCC  
Coop Committee Meeting  
Wednesday, March 7, 2018, 2:00 PM  
ESU No. 11, 412 W. 14th Ave., Holdrege, NE 68949

Attendance Taken at 2:04 PM.

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

Attendance Update Taken at 2:08 PM.

Bell ESU 10: Present

Attendance Update Taken at 2:12 PM.

Bell ESU 10: Absent

Bell was not at advertised DL location.

1. Call to Order

2. Roll Call

3. Agenda Item

3.1. Consent Items

3.1.1. Approve Renewal/Extension of Schoology Special Buy contract dated June 1, 2015

3.1.2. Approve Renewal/Extension of World Book Special Buy contract dated March 1, 2015

3.2. Program Updates

3.2.1. Annual/Paper Buy

3.2.2. Specials Buys

3.2.3. AEPA

3.2.3.1. AEPA Assessments

3.2.3.2. New Vendors

3.3. Future Efforts

3.3.1. 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}}



## 2015-2018 SPECIAL BUY AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative"), and Schoology, Inc. ("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, upon the terms and conditions and 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. All prepaid subscription fees paid by the Cooperative or Members to Contractor in accordance with this Agreement are non-refundable.
- 3. Administrative Fee.** Contractor shall submit to the Cooperative as an administrative fee a sum equal to two percent (2%) of the total subscription fees, excluding annual support and maintenance, paid by the Cooperative, ESUs, and Members in accordance with this Agreement. This fee will be submitted to the Cooperative on a quarterly basis beginning three months from the Effective Date of this Agreement for all applicable transactions completed and paid during said quarter.
- 4. Term.** This Agreement is effective on \_\_\_\_\_, 2015 ("Effective Date") and shall continue until 12:00 midnight (CST) on \_\_\_\_\_, 2018, 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 Brown 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.
- H. Any provision of this Agreement which by its nature is intended by the parties to survive termination of this Agreement shall survive such termination for any reason or expiration of this Agreement, including without limitation Sections 2, 3, 5, 6.G, 6.H, 7, 13, 17, 18.B, 19-26 and 29-34.

**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 "Cooperative Indemnities"), against any and all third party claims of injuries, death, damage to property, liabilities, judgments, costs and expenses ("Claims") which may otherwise accrue against Contractor Indemnities to the extent such Claim results from (i) Contractor's material breach of this Agreement or (ii) the gross negligence, willful misconduct or fraud of Contractor in connection with its performance under this Agreement. .
- B. The Cooperative hereby waives and agrees to indemnify and save harmless the Contractor and its officials, agents, employees, and volunteers (hereinafter collectively referred to as "Contractor Indemnities" and, together with the Cooperative Indemnities, the "Indemnities"), against any and all third party Claims which may otherwise accrue against Contractor Indemnities to the extent such Claim results from the Cooperative's or any ESU's or Member's (i) material breach of this Agreement or (ii) use of the Schoology System.
- C. The indemnifying party, as applicable ("Indemnitor"), shall, at his or her own expense, appear, defend and pay all reasonable charges of attorneys and all reasonable costs and other expenses arising therefrom or incurred in connection therewith.
- D. If any judgment shall be rendered against the Indemnities in any such third party Claim, the Indemnitor shall, at his or her own expense, satisfy and discharge the same in accordance with this Section 7.
- E. Any performance bond or insurance protection required by this contract, or otherwise provided by the Indemnitor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.
- F. The Contractor's obligation to indemnify and save harmless any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.

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

- A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per person and \$5,000,000 per occurrence; and
- B. If applicable, workers compensation coverage meeting all statutory requirements.

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

9. **Public Records.** The Contractor acknowledges that the Cooperative must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.
10. **Publicity.** The Cooperative does not endorse the goods or services of the Contractor. Except for listing the Cooperative as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of the Cooperative.
11. **Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on Cooperative, ESU, or Member property or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all Cooperative, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. The Cooperative may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.
12. **Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
13. **Independent Contractor.** Contractor is an independent contractor under this contract and is not a Cooperative, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
14. **Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
15. **Taxpayer Identification.** Contractor's federal employer identification number is:  
\_\_\_\_\_.
16. **Sales Tax.** The Cooperative, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUs and/or Members

will provide the Contractor with applicable sales tax exemption certificates upon written request.

17. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

Cooperative: Nebraska ESUCC Cooperative Purchasing  
Attn: Craig Peterson  
1292 East 4<sup>th</sup> Street  
Ainsworth, NE 69210

With copy to:

Steve Williams, Legal Counsel  
Harding & Shultz, P.C., L.L.O.  
P.O. Box 82028  
Lincoln, NE 68501-2028

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

18. **Warranties and Specifications; Disclaimer.**

A. Contractor warrants to the Cooperative that: (i) Contractor will comply with all applicable laws, rules and regulations, and (b) the learning management system provided by the Contractor (the "Schoolology System") will perform substantially in accordance with its specifications. In the event the Schoolology System fails to conform to these warranties, Contractor will use its best efforts to correct the Schoolology System. If Contractor is unable to correct the error after using its best efforts, Contractor will refund the unused subscription fees paid by the Cooperative, as depreciated over the term of this Agreement on a straight line basis, and terminate this Agreement. The limited warranties provided in this Section are void if the failure of Schoolology System results from (x) use of the Schoolology System in connection with software or hardware not compatible with the Schoolology System or not meeting the technical specifications provided by Contractor; (y) improper or inadequate maintenance of the Cooperative's or any Member's equipment or software; or (z) inadequate Internet connectivity or bandwidth. The Cooperative or the Member is responsible for the results obtained and decisions made from its use of the Schoolology System. The Schoolology System may include open source software components and use of such components may be subject to additional terms and conditions.

B. EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN THIS SECTION 18, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SCHOOLLOGY SYSTEM IS PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR

USE, QUALITY, PRODUCTIVENESS OR CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE SCHOOLGY SYSTEM WILL BE ERROR FREE. EXCEPT AS PROVIDED HEREIN, THE ENTIRE RISK AND LIABILITY ARISING OUT OF THE USE OF THE SCHOOLGY SYSTEM REMAINS WITH THE COOPERATIVE, ESU AND MEMBERS INCLUDING, BUT NOT LIMITED TO, WHEN THE COOPERATIVE'S OR ANY ESU'S OR MEMBER'S PRACTICES ARE INCONSISTENT WITH *THE STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING* (1999) BY THE AMERICAN EDUCATIONAL RESEARCH ASSOCIATION. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY FOR PERFORMANCE ISSUES (I) CAUSED BY FACTORS OUTSIDE OF CONTRACTOR'S REASONABLE CONTROL; OR (II) THAT RESULTED FROM ANY ACTION OR INACTION OF THE COOPERATIVE, OR SUBSCRIBER'S THIRD PARTIES; OR (C) RESULTING FROM SCHEDULED MAINTENANCE PERIODS.

**19. Confidentiality.**

**A. Definition of Confidential Information.** Confidential Information means all confidential information disclosed by the Cooperative to Contractor, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("Confidential Information"). Confidential Information shall also include Cooperative Data and Personally Identifiable Information.

**B. Cooperative Data.** Cooperative Data includes all Personally Identifiable Information and other information that is not intentionally made generally available by Cooperative on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student and personnel data and metadata.

**C. Personally Identifiable Information.** Personally Identifiable Information means any of the following: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as used in Neb. Rev. Stat. § 84-712.05; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g; "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state- or federal-identification numbers such as passport, visa or state identity card numbers.

**D. Protection of Confidential Information.** Contractor will protect the Confidential Information using the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event less than reasonable care). Contractor shall not disclose or use any Confidential Information of the Cooperative for any purpose outside the scope of this Agreement and will not disclose or share such Confidential Information with any third party without the prior written consent of Cooperative, except for the purpose of performing its obligations under this Agreement or as required by law.

Contractor must use best practices to limit access to Confidential Information of Cooperative to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Contractor no less restrictive than the confidentiality terms of this Agreement. Contractor will ensure that employees and subcontractors who perform work under this Agreement have read, understood, and, received appropriate instruction as to how to comply with the Confidential Information protection provisions of this Agreement. If Contractor will have access to "education records" for Cooperative's students as defined under the Family Educational Rights and Privacy Act (FERPA), Contractor acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in the education records, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the FERPA limitations and requirements imposed on school officials. Contractor will use the Education records only for the purpose of fulfilling its duties under this Agreement for Cooperative's and its User's benefit, and will not share such data with or disclose it to any third party except as provided for in this Agreement, required by law, or authorized in writing by the appropriate party.

**E. Exclusions.** Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Cooperative, (ii) was known to the Contractor prior to its disclosure by the Cooperative without breach of any obligation owed to the Cooperative, (iii) is received from a third party without breach of any obligation owed to Cooperative, or (iv) was independently developed by the Contractor without use or access to the Confidential Information. Notwithstanding any of the foregoing, the Contractor may disclose Confidential Information to the extent required by law or court order, but will provide Cooperative with advance notice to seek a protective order.

**F. Security Breach.**

(i) **Response.** Promptly upon becoming aware of a Security Breach (an event in which Confidential Information is exposed to unauthorized disclosure, access, alteration, or use), or of circumstances that are reasonably likely to have resulted in unauthorized access to or disclosure or use of Confidential Information, Contractor will notify Cooperative, fully investigate the incident, and reasonably cooperate with Cooperative's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved or regulatory agencies, without prior written permission from Cooperative.

(ii) **Liability.** In addition to any other remedies available to Cooperative under law or equity, Contractor will reimburse Cooperative in full for all costs reasonably incurred by Cooperative in investigation and remediation of any Security Breach to the extent caused by Contractor or its subcontractors, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of reasonable legal fees, audit costs, fines, and other fees imposed against Cooperative as a result of the Security Breach.

**G. Response to Legal Orders, Demands or Requests for Confidential Information.** Except as otherwise expressly prohibited by law, Contractor will:

- (i) promptly notify Cooperative of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking District Data;
- (ii) consult with Cooperative regarding its response;
- (iii) cooperate with Cooperative's reasonable requests in connection with efforts by Cooperative to intervene and quash or modify the legal order, demand or request; and
- (iv) upon Cooperative's reasonable request, provide Cooperative with a copy of its response.

If Cooperative receives a subpoena, warrant, or other legal order, demand (including requests pursuant to the Nebraska law or requests seeking Confidential Information maintained by Contractor), Cooperative will promptly provide a copy of the request to Contractor. Contractor will promptly supply Cooperative with copies of records or information required for Cooperative to respond, and will cooperate with Cooperative's reasonable requests in connection with its response.

**20. Proprietary Rights.**

Notwithstanding anything to the contrary set forth in this Agreement (including the Exhibits hereto), the Schoology System is owned and copyrighted by Contractor and offered through a subscription, not sold, to the Cooperative, ESU or Members. All right, title, and interest in and to all images, source code, updates, enhancements, modifications, and improvements contained in or related to the Schoology System, along with all intellectual property rights related thereto, shall remain with Contractor, regardless of the source giving rise to the intellectual property and despite any modifications or adaptations made for the benefit of the Cooperative, ESUs or Members. The "Schoology" trademark is protected by United States and international trademark laws and treaties, as well as other intellectual property laws. The Cooperative, ESUs and Members are not granted any license to use any of Contractor's trade or service marks and Contractor retains all right, title, and interest in its trade and service marks. The Cooperative agrees that Contractor may use, without restriction or royalty obligation, any comments, suggestions or contributions provided by the Cooperative, ESUs and Members with respect to the Schoology System during the course of the Cooperative's, ESUs' and Members' use of the Schoology System. The Cooperative, ESUs and Members hereby grants and assigns to Contractor any intellectual property rights that the such party may incidentally obtain or have with respect to any such comments, suggestions or contributions.

**21. Limitation of Liability.** EXCEPT TO THE EXTENT THE FOLLOWING LIABILITY LIMITATION IS PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL A PARTY BE LIABLE TO ANOTHER PARTY FOR, NOR SHALL THE MEASURE OF DAMAGES INCLUDE, ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OR EXPENSES OF ANY KIND WHATSOEVER, IN EACH CASE ARISING OUT OF OR RELATING TO ITS ACTS OR OMISSIONS OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, OR COMPUTER FAILURE OR MALFUNCTION, EXCEPT IN THE LIMITED SITUATIONS

EXPRESSLY PROVIDED IN THIS SECTION 21. A PARTY'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID OR PAYABLE BY THE COOPERATIVE, ESU OR MEMBER FOR THE SERVICES PROVIDED HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. The foregoing limitations of liability shall not apply, however, to liability of a Party arising from (a) defect or deficiency caused by willful misconduct or fraud on the part of such Party; or (b) amounts payable to third parties as a result of such Party's indemnification obligations under this Agreement. The limitations of liability set forth in this Section 21 shall apply even if the breaching party has been advised of the possibility of such damages in connection with this Agreement.

22. **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.
23. **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.
24. **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.
25. **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.
26. **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.
27. **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 such failure or delay is cause by circumstances beyond the non performing party's reasonable 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 the non-performing party.

28. **Assignment.** This Agreement binds the parties and their respective successors and permitted assignees. A party 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 non-assigning party; provided, however, that a party may assign this Agreement in connection with a merger, acquisition, divestiture, sale of business, reorganization or similar corporate transaction of such party without the prior written consent of the non-assigning party.
29. **Subcontractors.** The Contractor will retain all responsibility for the performance of its obligations under this Agreement, regardless of whether or not the Contractor uses subcontractors to perform any such obligations. The Contractor shall be the sole point of contact with the Cooperative with regard to all matters covered by this Agreement.
30. **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.
31. **Rights and Remedies Cumulative.** Any enumeration of a party's rights and remedies set forth in this Agreement is not exhaustive. A party's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of the parties' 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.
32. **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.
33. **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.
34. **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**, each of the Cooperative and Contractor has caused this Agreement to be executed as of the Effective Date by it duly authorized representative.

**Nebraska ESUCC Cooperative Purchasing  
("COOPERATIVE")**

By: David M. Ludwig

Name: D. M. Ludwig

Title: ESUCC Executive Dir.

Date: May 27, 2015

**Schoology, Inc.  
("CONTRACTOR")**

By: \_\_\_\_\_

Name: Amar Shrivastava

Title: VP of Finance and Admin

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


**EXHIBIT "A"**

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

See attached document entitled "Project Team and Implementation Plan"

## Project Team and Implementation Plan

The following table identifies and describes the different roles and included services that will support your Schoolology implementation process, as well how each role fits in to the overall project workflow.

Team Roles	Project Workflow Overview
<ul style="list-style-type: none"> <li>▪ Project Specialist (PS):               <ul style="list-style-type: none"> <li>- Product Subject Matter Expert (SME)</li> </ul> </li> <li>▪ Implementation Engineer (IE):               <ul style="list-style-type: none"> <li>- Technical SME</li> </ul> </li> <li>▪ Professional Development Assistant (PDA):               <ul style="list-style-type: none"> <li>- Training Coordinator</li> </ul> </li> <li>▪ Account Manager (AM):               <ul style="list-style-type: none"> <li>- Long-term relationship manager</li> </ul> </li> </ul>	 <pre> graph TD     PS[Project Specialist] --&gt; IE[Implementation Engineer]     PS --&gt; PDS[PD Specialist]     IE --&gt; AM[Account Manager]     PDS --&gt; AM           </pre>
Services Included	
<ul style="list-style-type: none"> <li>▪ Kickoff Call led by Schoolology team.</li> <li>▪ Regular status calls and communication with Project Specialist.</li> <li>▪ Assistance from Project Specialist with Enterprise Configuration.</li> <li>▪ Custom Branding of your Schoolology site.</li> <li>▪ Domain Customization of Schoolology landing page to your domain or subdomain.</li> <li>▪ Data Consolidation of free Schoolology user data.</li> <li>▪ Technical Planning Call between Implementation Engineer and equivalent at your organization to create a Data Population timeline if needed.</li> <li>▪ Assistance from Implementation Engineer with Data Population provisioning of users, courses, and enrollments if needed.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Assistance with User Authentication via Single Sign-On.</li> <li>▪ Schoolology Enterprise Administration Training delivered by Project Specialist.</li> <li>▪ Assistance with all aspects of the implementation process guidance, documentation, and other non-hands-on help.</li> <li>▪ Guidance and Best Practices for migrating data from existing LMS into Schoolology.</li> <li>▪ Professional Development delivered via Open Enrollment Courses: 2 attendees, 4 hours of training each.</li> <li>▪ Standard Support from Schoolology Client Advisors.</li> </ul>

## **EXHIBIT "B"**

### **1. Payment Terms/ Payment Schedule**

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

### **2. Acceptance of Services or Products:**

- A. The Contractor shall deliver any goods, perform any services or both in accordance with the mutually agreed schedule as set forth in any RFP, purchase order issued by the Cooperative, ESU, or Member and accepted by Contractor, or this Agreement (whichever is later).
- B. Unless otherwise agreed to by the parties, the Contractor shall provide written notification of completion of any deliveries, or performances of services or both, to the Member ("Delivery Notice").
- C. Members shall have sixty (60) days from the date of receipt of the Delivery Notice to provide the Contractor with written notification of acceptance or rejection due to failure of the Schoology System to conform the requirements of this Agreement.
- D. If the Member issues a rejection notice, the Contractor shall as quickly as is practicable, correct or replace all such non-conformities at its expense. The Cooperative 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 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.

See attached document entitled "Education Service Unit Coordinating Council Pricing Schedule"

## Education Service Unit Coordinating Council Pricing Schedule

---

Schoolology offers a complete cloud-based solution so all hardware, database, maintenance and priority support costs are included in the pricing. Education Service Unit Coordinating Council (ESUCC) member organizations will **not** incur costs associated with system upgrades or releases that improve current features. The discount percentage is applied to enterprise services based on the established partnership between Schoolology and ESUCC member organizations. Discount percentages are **not** standard pricing and pertain only to this agreement. This agreement is only valid for the 2015-2016 school year. Subscription price may be subject to change without notice.

**Schoolology will provide ESUCC member organizations the following discounted annual subscription cost structure:**

\*\$4,200 annual subscription fee for districts or schools w/ less than 600 students

\*\$7 per student annual subscription fee for districts or schools w/ 600-5,000 students

\*15% off list price for districts or schools w/ 5,001+ students, please inquire with Schoolology for pricing

**Schoolology will provide ESUCC member organizations the following discounted implementation/training cost structure:**

\*\$2,500 implementation/training fee (one-time cost) for districts or schools w/ less than 2,000 students

\*\$5,500 implementation/training fee (one-time cost) for districts or schools w/ less than 2,001-5,000 students

\*15% off list price for districts or schools w/ 5,001+ students, please inquire with Schoolology for implementation/training pricing

**All district adults (admin, teachers, parents) are included at no additional fee.**

Requirements for discount pricing:

- i. Full school or district implementation
- ii. District or school is not an existing Schoolology subscriber

## Implementation Information

Schoolology has a systematically structured approach to effectively integrate our software into the workflow of districts. Our professional and experienced team will work step-by-step with ESUCC districts through the Project Management, Implementation and Training phases of the project to ensure a smooth installation.

Implementation Specialists from Schoolology will start implementation on or around the contract award date to meet the district's implementation and training schedule. Schoolology will work with each district to design the most efficient and structured implementation methodology for the LMS project. Simultaneously, Schoolology will be working towards the go-live launch which will be completed prior to a district's start date to allow for testing and trial runs. System Admins, School Admins, Educators, Students, and Parents will all have access to the system upon the go-live launch.

Throughout the implementation of the District System, it will be Schoolology's mission to outline the resources that the district will need to successfully implement the solution and achieve the districts desired results.

Schoolology's implementation plan is a phased approach that covers planning, implementation, training, and support. Schoolology will work closely with each district to fully integrate Schoolology across all levels of the institution. There are standard pieces involved in all implementations. Kick-off calls, branding, logins and consulting are part of every implementation.



## 2015-2018 SPECIAL BUY AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative"), and Schoology, Inc. ("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, upon the terms and conditions and 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. All prepaid subscription fees paid by the Cooperative or Members to Contractor in accordance with this Agreement are non-refundable.
- 3. Administrative Fee.** Contractor shall submit to the Cooperative as an administrative fee a sum equal to two percent (2%) of the total subscription fees, excluding annual support and maintenance, paid by the Cooperative, ESUs, and Members in accordance with this Agreement. This fee will be submitted to the Cooperative on a quarterly basis beginning three months from the Effective Date of this Agreement for all applicable transactions completed and paid during said quarter.
- 4. Term.** This Agreement is effective on June 1, 2015 ("Effective Date") and shall continue until 12:00 midnight (CST) on July 31, 2018, 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 Brown 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.
- H. Any provision of this Agreement which by its nature is intended by the parties to survive termination of this Agreement shall survive such termination for any reason or expiration of this Agreement, including without limitation Sections 2, 3, 5, 6.G, 6.H, 7, 13, 17, 18.B, 19-26 and 29-34.

**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 "Cooperative Indemnities"), against any and all third party claims of injuries, death, damage to property, liabilities, judgments, costs and expenses ("Claims") which may otherwise accrue against Contractor Indemnities to the extent such Claim results from (i) Contractor's material breach of this Agreement or (ii) the gross negligence, willful misconduct or fraud of Contractor in connection with its performance under this Agreement. .
- B. The Cooperative hereby waives and agrees to indemnify and save harmless the Contractor and its officials, agents, employees, and volunteers (hereinafter collectively referred to as "Contractor Indemnities" and, together with the Cooperative Indemnities, the "Indemnities"), against any and all third party Claims which may otherwise accrue against Contractor Indemnities to the extent such Claim results from the Cooperative's or any ESU's or Member's (i) material breach of this Agreement or (ii) use of the Schoology System.
- C. The indemnifying party, as applicable ("Indemnitor"), shall, at his or her own expense, appear, defend and pay all reasonable charges of attorneys and all reasonable costs and other expenses arising therefrom or incurred in connection therewith.
- D. If any judgment shall be rendered against the Indemnities in any such third party Claim, the Indemnitor shall, at his or her own expense, satisfy and discharge the same in accordance with this Section 7.
- E. Any performance bond or insurance protection required by this contract, or otherwise provided by the Indemnitor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.
- F. 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:   26-0808340  .
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 4<sup>th</sup> Street  
Ainsworth, NE 69210

With copy to:

Steve Williams, Legal Counsel  
Harding & Shultz, P.C., L.L.O.  
P.O. Box 82028  
Lincoln, NE 68501-2028

Contractor: Schoology  
Attn: Contracts  
115 W 30<sup>th</sup> Street, 10<sup>th</sup> Floor  
New York, NY 10001  
billing@schoology.com

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

18. **Warranties and Specifications; Disclaimer.**

A. Contractor warrants to the Cooperative that: (i) Contractor will comply with all applicable laws, rules and regulations, and (b) the learning management system provided by the Contractor (the "Schoology System") will perform substantially in accordance with its specifications. In the event the Schoology System fails to conform to these warranties, Contractor will use its best efforts to correct the Schoology System. If Contractor is unable to correct the error after using its best efforts, Contractor will refund the unused subscription fees paid by the Cooperative, as depreciated over the term of this Agreement on a straight line basis, and terminate this Agreement. The limited warranties provided in this Section are void if the failure of Schoology System results from (x) use of the Schoology System in connection with software or hardware not compatible with the Schoology System or not meeting the technical specifications provided by Contractor; (y) improper or inadequate maintenance of the Cooperative's or any Member's equipment or software; or (z) inadequate Internet connectivity or bandwidth. The Cooperative or the Member is responsible for the results obtained and decisions made from its use of the Schoology System. The Schoology System may include open source software components and use of such components may be subject to additional terms and conditions.

B. EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN THIS SECTION 18, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SCHOOLGY SYSTEM IS PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND,

EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, QUALITY, PRODUCTIVENESS OR CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE SCHOOLGY SYSTEM WILL BE ERROR FREE. EXCEPT AS PROVIDED HEREIN, THE ENTIRE RISK AND LIABILITY ARISING OUT OF THE USE OF THE SCHOOLGY SYSTEM REMAINS WITH THE COOPERATIVE, ESU AND MEMBERS INCLUDING, BUT NOT LIMITED TO, WHEN THE COOPERATIVE'S OR ANY ESU'S OR MEMBER'S PRACTICES ARE INCONSISTENT WITH *THE STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING* (1999) BY THE AMERICAN EDUCATIONAL RESEARCH ASSOCIATION. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY FOR PERFORMANCE ISSUES (I) CAUSED BY FACTORS OUTSIDE OF CONTRACTOR'S REASONABLE CONTROL; OR (II) THAT RESULTED FROM ANY ACTION OR INACTION OF THE COOPERATIVE, OR SUBSCRIBER'S THIRD PARTIES; OR (C) RESULTING FROM SCHEDULED MAINTENANCE PERIODS.

**19. Confidentiality.**

**A. Definition of Confidential Information.** Confidential Information means all confidential information disclosed by the Cooperative to Contractor, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("Confidential Information"). Confidential Information shall also include Cooperative Data and Personally Identifiable Information.

**B. Cooperative Data.** Cooperative Data includes all Personally Identifiable Information and other information that is not intentionally made generally available by Cooperative on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student and personnel data and metadata.

**C. Personally Identifiable Information.** Personally Identifiable Information means any of the following: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as used in Neb. Rev. Stat. § 84-712.05; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g; "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state- or federal-identification numbers such as passport, visa or state identity card numbers.

**D. Protection of Confidential Information.** Contractor will protect the Confidential Information using the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event less than reasonable care). Contractor shall not disclose or use any Confidential Information of the Cooperative for any purpose outside the scope of this Agreement and will not disclose or share such Confidential

Information with any third party without the prior written consent of Cooperative, except for the purpose of performing its obligations under this Agreement or as required by law. Contractor must use best practices to limit access to Confidential Information of Cooperative to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Contractor no less restrictive than the confidentiality terms of this Agreement. Contractor will ensure that employees and subcontractors who perform work under this Agreement have read, understood, and, received appropriate instruction as to how to comply with the Confidential Information protection provisions of this Agreement. If Contractor will have access to "education records" for Cooperative's students as defined under the Family Educational Rights and Privacy Act (FERPA), Contractor acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in the education records, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the FERPA limitations and requirements imposed on school officials. Contractor will use the Education records only for the purpose of fulfilling its duties under this Agreement for Cooperative's and its User's benefit, and will not share such data with or disclose it to any third party except as provided for in this Agreement, required by law, or authorized in writing by the appropriate party.

**E. Exclusions.** Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Cooperative, (ii) was known to the Contractor prior to its disclosure by the Cooperative without breach of any obligation owed to the Cooperative, (iii) is received from a third party without breach of any obligation owed to Cooperative, or (iv) was independently developed by the Contractor without use or access to the Confidential Information. Notwithstanding any of the foregoing, the Contractor may disclose Confidential Information to the extent required by law or court order, but will provide Cooperative with advance notice to seek a protective order.

**F. Security Breach.**

(i) **Response.** Promptly upon becoming aware of a Security Breach (an event in which Confidential Information is exposed to unauthorized disclosure, access, alteration, or use), or of circumstances that are reasonably likely to have resulted in unauthorized access to or disclosure or use of Confidential Information, Contractor will notify Cooperative, fully investigate the incident, and reasonably cooperate with Cooperative's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved or regulatory agencies, without prior written permission from Cooperative.

(ii) **Liability.** In addition to any other remedies available to Cooperative under law or equity, Contractor will reimburse Cooperative in full for all costs reasonably incurred by Cooperative in investigation and remediation of any Security Breach to the extent caused by Contractor or its subcontractors, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of reasonable legal fees, audit costs, fines, and other fees imposed against Cooperative as a result of the Security Breach.

**G. Response to Legal Orders, Demands or Requests for Confidential Information.** Except as otherwise expressly prohibited by law, Contractor will:

- (i) promptly notify Cooperative of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking District Data;
- (ii) consult with Cooperative regarding its response;
- (iii) cooperate with Cooperative's reasonable requests in connection with efforts by Cooperative to intervene and quash or modify the legal order, demand or request; and
- (iv) upon Cooperative's reasonable request, provide Cooperative with a copy of its response.

If Cooperative receives a subpoena, warrant, or other legal order, demand (including requests pursuant to the Nebraska law or requests seeking Confidential Information maintained by Contractor), Cooperative will promptly provide a copy of the request to Contractor. Contractor will promptly supply Cooperative with copies of records or information required for Cooperative to respond, and will cooperate with Cooperative's reasonable requests in connection with its response.

**20. Proprietary Rights.**

Notwithstanding anything to the contrary set forth in this Agreement (including the Exhibits hereto), the Schoology System is owned and copyrighted by Contractor and offered through a subscription, not sold, to the Cooperative, ESU or Members. All right, title, and interest in and to all images, source code, updates, enhancements, modifications, and improvements contained in or related to the Schoology System, along with all intellectual property rights related thereto, shall remain with Contractor, regardless of the source giving rise to the intellectual property and despite any modifications or adaptations made for the benefit of the Cooperative, ESUs or Members. The "Schoology" trademark is protected by United States and international trademark laws and treaties, as well as other intellectual property laws. The Cooperative, ESUs and Members are not granted any license to use any of Contractor's trade or service marks and Contractor retains all right, title, and interest in its trade and service marks. The Cooperative agrees that Contractor may use, without restriction or royalty obligation, any comments, suggestions or contributions provided by the Cooperative, ESUs and Members with respect to the Schoology System during the course of the Cooperative's, ESUs' and Members' use of the Schoology System. The Cooperative, ESUs and Members hereby grants and assigns to Contractor any intellectual property rights that the such party may incidentally obtain or have with respect to any such comments, suggestions or contributions.

- 21. Limitation of Liability.** EXCEPT TO THE EXTENT THE FOLLOWING LIABILITY LIMITATION IS PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL A PARTY BE LIABLE TO ANOTHER PARTY FOR, NOR SHALL THE MEASURE OF DAMAGES INCLUDE, ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OR EXPENSES OF ANY KIND WHATSOEVER, IN EACH CASE ARISING OUT OF OR RELATING TO ITS ACTS OR OMISSIONS OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION,

LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, OR COMPUTER FAILURE OR MALFUNCTION, EXCEPT IN THE LIMITED SITUATIONS EXPRESSLY PROVIDED IN THIS SECTION 21. A PARTY'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID OR PAYABLE BY THE COOPERATIVE, ESU OR MEMBER FOR THE SERVICES PROVIDED HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. The foregoing limitations of liability shall not apply, however, to liability of a Party arising from (a) defect or deficiency caused by willful misconduct or fraud on the part of such Party; or (b) amounts payable to third parties as a result of such Party's indemnification obligations under this Agreement. The limitations of liability set forth in this Section 21 shall apply even if the breaching party has been advised of the possibility of such damages in connection with this Agreement.

22. **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.
23. **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.
24. **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.
25. **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.
26. **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.
27. **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 such failure or delay is caused by circumstances beyond the non-performing party's reasonable 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 the non-performing party.

28. **Assignment.** This Agreement binds the parties and their respective successors and permitted assignees. A party 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 non-assigning party; provided, however, that a party may assign this Agreement in connection with a merger, acquisition, divestiture, sale of business, reorganization or similar corporate transaction of such party without the prior written consent of the non-assigning party.
29. **Subcontractors.** The Contractor will retain all responsibility for the performance of its obligations under this Agreement, regardless of whether or not the Contractor uses subcontractors to perform any such obligations. The Contractor shall be the sole point of contact with the Cooperative with regard to all matters covered by this Agreement.
30. **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.
31. **Rights and Remedies Cumulative.** Any enumeration of a party's rights and remedies set forth in this Agreement is not exhaustive. A party's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of the parties' 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.
32. **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.
33. **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.
34. **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**, each of the Cooperative and Contractor has caused this Agreement to be executed as of the Effective Date by it duly authorized representative.

**Nebraska ESUCC Cooperative Purchasing  
("COOPERATIVE")**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Schoology, Inc.  
("CONTRACTOR")**

By:  \_\_\_\_\_

Name: Amar Shrivastava

Title: VP of Finance and Admin

Date: June 1, 2015

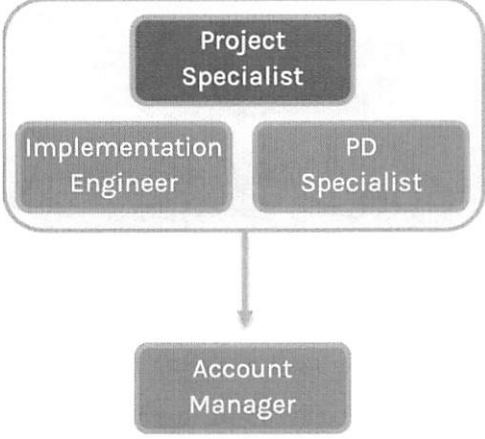
**EXHIBIT "A"**

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

See attached document entitled "Project Team and Implementation Plan"

## Project Team and Implementation Plan

The following table identifies and describes the different roles and included services that will support your Schoology implementation process, as well how each role fits in to the overall project workflow.

Team Roles	Project Workflow Overview
<ul style="list-style-type: none"> <li>▪ Project Specialist (PS):               <ul style="list-style-type: none"> <li>- Product Subject Matter Expert (SME)</li> </ul> </li> <li>▪ Implementation Engineer (IE):               <ul style="list-style-type: none"> <li>- Technical SME</li> </ul> </li> <li>▪ Professional Development Assistant (PDA):               <ul style="list-style-type: none"> <li>- Training Coordinator</li> </ul> </li> <li>▪ Account Manager (AM):               <ul style="list-style-type: none"> <li>- Long-term relationship manager</li> </ul> </li> </ul>	 <pre> graph TD     PS[Project Specialist] --&gt; IE[Implementation Engineer]     PS --&gt; PDS[PD Specialist]     IE --&gt; AM[Account Manager]     PDS --&gt; AM           </pre>
Services Included	
<ul style="list-style-type: none"> <li>▪ Kickoff Call led by Schoology team.</li> <li>▪ Regular status calls and communication with Project Specialist.</li> <li>▪ Assistance from Project Specialist with Enterprise Configuration.</li> <li>▪ Custom Branding of your Schoology site.</li> <li>▪ Domain Customization of Schoology landing page to your domain or subdomain.</li> <li>▪ Data Consolidation of free Schoology user data.</li> <li>▪ Technical Planning Call between Implementation Engineer and equivalent at your organization to create a Data Population timeline if needed.</li> <li>▪ Assistance from Implementation Engineer with Data Population provisioning of users, courses, and enrollments if needed.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Assistance with User Authentication via Single Sign-On.</li> <li>▪ Schoology Enterprise Administration Training delivered by Project Specialist.</li> <li>▪ Assistance with all aspects of the implementation process guidance, documentation, and other non-hands-on help.</li> <li>▪ Guidance and Best Practices for migrating data from existing LMS into Schoology.</li> <li>▪ Professional Development delivered via Open Enrollment Courses: 2 attendees, 4 hours of training each.</li> <li>▪ Standard Support from Schoology Client Advisors.</li> </ul>

## **EXHIBIT "B"**

### **1. Payment Terms/ Payment Schedule**

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

### **2. Acceptance of Services or Products:**

- A. The Contractor shall deliver any goods, perform any services or both in accordance with the mutually agreed schedule as set forth in any RFP, purchase order issued by the Cooperative, ESU, or Member and accepted by Contractor, or this Agreement (whichever is later).
- B. Unless otherwise agreed to by the parties, the Contractor shall provide written notification of completion of any deliveries, or performances of services or both, to the Member ("Delivery Notice").
- C. Members shall have sixty (60) days from the date of receipt of the Delivery Notice to provide the Contractor with written notification of acceptance or rejection due to failure of the Schoology System to conform the requirements of this Agreement.
- D. If the Member issues a rejection notice, the Contractor shall as quickly as is practicable, correct or replace all such non-conformities at its expense. The Cooperative 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 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.

See attached document entitled "Education Service Unit Coordinating Council Pricing Schedule"

## Education Service Unit Coordinating Council Pricing Schedule

---

Schoolology offers a complete cloud-based solution so all hardware, database, maintenance and priority support costs are included in the pricing. Education Service Unit Coordinating Council (ESUCC) member organizations will **not** incur costs associated with system upgrades or releases that improve current features. The discount percentage is applied to enterprise services based on the established partnership between Schoolology and ESUCC member organizations. Discount percentages are **not** standard pricing and pertain only to this agreement. This agreement is only valid for the 2015-2016 school year. Subscription price may be subject to change without notice.

**Schoolology will provide ESUCC member organizations the following discounted annual subscription cost structure:**

\*\$4,200 annual subscription fee for districts or schools w/ less than 600 students

\*\$7 per student annual subscription fee for districts or schools w/ 600-5,000 students

\*15% off list price for districts or schools w/ 5,001+ students, please inquire with Schoolology for pricing

**Schoolology will provide ESUCC member organizations the following discounted implementation/training cost structure:**

\*\$2,500 implementation/training fee (one-time cost) for districts or schools w/ less than 2,000 students

\*\$5,500 implementation/training fee (one-time cost) for districts or schools w/ less than 2,001-5,000 students

\*15% off list price for districts or schools w/ 5,001+ students, please inquire with Schoolology for implementation/training pricing

**All district adults (admin, teachers, parents) are included at no additional fee.**

Requirements for discount pricing:

- i. Full school or district implementation
- ii. District or school is not an existing Schoolology subscriber

## Implementation Information

Schoolology has a systematically structured approach to effectively integrate our software into the workflow of districts. Our professional and experienced team will work step-by-step with ESUCC districts through the Project Management, Implementation and Training phases of the project to ensure a smooth installation.

Implementation Specialists from Schoolology will start implementation on or around the contract award date to meet the district's implementation and training schedule. Schoolology will work with each district to design the most efficient and structured implementation methodology for the LMS project. Simultaneously, Schoolology will be working towards the go-live launch which will be completed prior to a district's start date to allow for testing and trial runs. System Admins, School Admins, Educators, Students, and Parents will all have access to the system upon the go-live launch.

Throughout the implementation of the District System, it will be Schoolology's mission to outline the resources that the district will need to successfully implement the solution and achieve the districts desired results.

Schoolology's implementation plan is a phased approach that covers planning, implementation, training, and support. Schoolology will work closely with each district to fully integrate Schoolology across all levels of the institution. There are standard pieces involved in all implementations. Kick-off calls, branding, logins and consulting are part of every implementation.

**EXTENSION TO 2015-2018 SPECIAL BUY AGREEMENT BETWEEN  
ESUCC COOPERATIVE PURCHASING AND WORLD BOOK INC.**

This Amendment and Extension is made by and between Nebraska ESUCC Cooperative Purchasing ("Cooperative") and World Book Inc. ("Contractor") to the 2015-2018 Special Buy Agreement ("Agreement") signed by the Cooperative on May 27, 2015, and by the Contractor on June 1, 2015. The Addendum is as follows:

**The Terms and Conditions of the Agreement** are amended as follows:

No Changes to Terms and Conditions Agreement.

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

No Changes to Exhibit A.

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

No Changes to Exhibit B.

The Agreement permits amendment and modification by a signed, written agreement by both parties that identifies itself as an amendment. The Cooperative has approved an extension and now desires to extend the Agreement for an additional term of thirty-six (36) months until July 31, 2021. Upon the signature of an authorized officer of the Cooperative and the Contractor, the Agreement is hereby extended.

**COOPERATIVE**

**CONTRACTOR**

---

David Ludwig  
Executive Director

---

Dale Weber  
Nebraska Accounts Manager

Executed on March \_\_\_\_, 2018

Executed on March \_\_\_\_, 2018



**2015-2018  
SPECIAL BUY AGREEMENT**

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative"), and World Book Inc. ("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 March 1, 2015 ("Effective Date") and shall continue until 12:00 midnight (CST) on June 30, 2018, 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 Brown 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. World Book, Inc. agrees to indemnify, defend and save harmless [subscriber], its officers, agents and employees, from all claims and losses whatsoever, including

attorney's fees occurring or resulting to any and all persons, and from any and all claims and losses resulting to any person, firm, or corporation for damages, injury, or death directly arising out of, or connected with World Book's performance of this Agreement.

[Subscriber] agrees to indemnify, defend and save harmless World Book, Inc., its officers, agents, and employees from all claims and losses whatsoever, including attorney's fees occurring or resulting to any and all persons, and from any and all claims and losses resulting to any person, firm or corporation for damages, injury, or death directly arising out of, or connected with [Subscriber's] performance of this Agreement.

- B. 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.
  - C. 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.
  - D. 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 by law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement. The Contractor considers all detailed pricing included in Appendix A as proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose. The Cooperative shall forward any public record request it receives for Appendix A to the Contractor to allow the Contractor to seek protection of the documents from a court of competent jurisdiction.
10. **Publicity.** The Cooperative does not endorse the goods or services of the Contractor. Except for listing the Cooperative as a client during the term of this Agreement, news

releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of the Cooperative.

11. **Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on Cooperative, ESU, or Member property or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all Cooperative, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. The Cooperative may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.
12. **Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
13. **Independent Contractor.** Contractor is an independent contractor under this contract and is not a Cooperative, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
14. **Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
15. **Taxpayer Identification.** Contractor's federal employer identification number is:  
\_\_\_\_\_
16. **Sales Tax.** The Cooperative, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
17. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

Cooperative: Nebraska ESUCC Cooperative Purchasing  
Attn: Craig Peterson  
1292 East 4<sup>th</sup> Street  
Ainsworth, NE 69210

With copy to:

Steve Williams, Legal Counsel  
Harding & Shultz, P.C., L.L.O.  
P.O. Box 82028  
Lincoln, NE 68501-2028

Contractor: World Book Inc.  
Attn: Dale Weber  
233 North Michigan Ave, Suite 200  
Chicago, Illinois 60601

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

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

The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

24. **Force Majeure.** Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non performing party's failure to perform, or delay in performing, any of its obligations contained in this contract (except any obligations to make payments for services rendered or accepted goods received before the failure to perform or the delay in performance), where, in the opinion of the Cooperative, such failure or delay is caused by circumstances beyond the non performing party's control or which make performance commercially impracticable, including but not limited to fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, government regulations or restrictions of any kind or any acts of any government, alien enemy, judicial action, power failure, acts of God, or other natural circumstances. This Force Majeure provision excludes economic hardship, changes in market conditions, and insufficiency of funds on the part of Contractor.
25. **Assignment.** This Agreement binds the parties and their respective successors and assignees. The Contractor shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of the Cooperative.
26. **Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the Cooperative.
27. **Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
28. **Rights and Remedies Cumulative.** Any enumeration of the Cooperative's rights and remedies set forth in this Agreement is not exhaustive. The Cooperative's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of the Cooperative's rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.
29. **Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as may from time to time be provided by written instrument signed by both parties.
30. **Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.

31. **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

CONTRACTOR

By: David Ludwig  
Name: D. Ludwig  
Title: ESUCC Executive Director  
Date: 2-9-15

By: Jim O'Rourke  
Name: Jim O'Rourke  
Title: President  
Date: 2/9/15

**EXHIBIT "A"**

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

Appendix A: Scope of Goods or Services to be Provided to Members



World Book, Inc.  
 Sean Lockwood  
 Vice President, Sales

Dale,  
 We are excited and pleased to continue our relationship with the Nebraska Educational Service Units. Per their request, I am sending you pricing for their members. The prices below continue to offer Nebraska schools with amazing discounts of the retail price for each and every program.

Special Nebraska ESU package – a la carte pricing:

WB Power Pack	WB eBooks	Science Power	Soc. Studies Power
\$0.59/student	\$0.10/student	\$0.18/student	\$0.18/student

Special combo pricing for Nebraska ESU's:

Sci/Social Studies Combo	WB Read and Research Combo	WB Nebraska Power School
\$0.30/student	\$0.65/student	\$0.89/student
<ul style="list-style-type: none"> <li>• Science Power</li> <li>• Social Studies Power</li> </ul>	<ul style="list-style-type: none"> <li>• WB Power Pack</li> <li>• WB eBooks</li> </ul>	<p><b>BEST VALUE!!!</b></p> <ul style="list-style-type: none"> <li>• Power Pack</li> <li>• eBooks</li> <li>• Science Power</li> <li>• Social Studies Power</li> </ul>

## EXHIBIT "B"

### 1. **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.

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

### 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 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.

**EXTENSION TO 2015-2018 SPECIAL BUY AGREEMENT BETWEEN  
ESUCC COOPERATIVE PURCHASING AND WORLD BOOK INC.**

This Amendment and Extension is made by and between Nebraska ESUCC Cooperative Purchasing ("Cooperative") and World Book Inc. ("Contractor") to the 2015-2018 Special Buy Agreement ("Agreement") signed by the Cooperative on February 9, 2015, and by the Contractor on February 9, 2015. The Addendum is as follows:

**The Terms and Conditions of the Agreement** are amended as follows:

No Changes to Terms and Conditions Agreement.

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

No Changes to Exhibit A.

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

No Changes to Exhibit B.

The Agreement permits amendment and modification by a signed, written agreement by both parties that identifies itself as an amendment. The Cooperative has approved an extension and now desires to extend the Agreement for an additional term of thirty-six (36) months until June 30, 2021. Upon the signature of an authorized officer of the Cooperative and the Contractor, the Agreement is hereby extended.

**COOPERATIVE**

**CONTRACTOR**

---

David Ludwig  
Executive Director

---

Dale Weber  
Nebraska Accounts Manager

Executed on March \_\_\_\_, 2018

Executed on March \_\_\_\_, 2018

**AEPA Assessment Invoice**

**2017**

Agency: ESUCC Cooperative Purchasing  
Address: 1292 East 4th Street  
City,State, Zip Ainsworth, NE, 69210  
Contact Name: Craig Peterson  
Contact Email: [craig.peterson@esucc.org](mailto:craig.peterson@esucc.org)  
Contact Phone: 308-995-0665

*Complete the Fees Received Worksheet*

<i>Total Administrative Fees Received (From Fees Received Worksheet)</i>	\$ 76,296.97
Admin Rate 12/31/2017	<u>2%</u>
Total Sales	\$ 3,814,848.50
Assessment Rate	<u>0.0003</u>
Assessment Fee	
Assessment	
Total Amount Due	

I certify that the above information is true and accurate.

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

Return a copy of this invoice and the fees received worksheet with your check made out to AEPA Inc. to:

**AEPA Inc., c/o Kathleen Lane, 7520 Montgomery NE, Bldg E17, Albuquerque, NM 87109**

**Payment is due by April 6, 2018.**

\$ 1,144.45

\$1,500.00

\$2,644.45

---

