

Educational Service Unit Coordinating Council  
Legal Committee Meeting  
Wednesday, September 2, 2020, 3:00 PM  
ESU No. 3, 6949 South 110th Street, Omaha, NE 68128

Attendance Taken at 3:00 PM.

Dan Schnoes (ESU 03):	Present
Gregg Robke (ESU 04):	Present
Dr. John Skretta (ESU 06):	Present
Dr. Larianne Polk (ESU 07):	Absent
Dr Melissa Wheelock (ESU 10):	Present
Greg Barnes (ESU 11):	Present
Dr. Andrew Dick (ESU 13):	Present
Paul Calvert (ESU 15):	Present

1. Call to Order

2. Roll Call

3. Agenda Item

1. COOP

1. Coop Strategic Plan

2. Coop Contracts

1. Approve Contracts/Addendums signed by Executive Director for months May-August

3. Staff Written Reports

1. Peterson Report

1. Annual/Paper Buy

1. Approve Annual Buy Terms and Conditions

2. Specials Buys

3. AEPA

2. Colleen Lentz (Data)

2. Legislative Updates

1. Bromm's Updates

3. Policies and Procedures

1. Policies and Procedures

1. Article 5000's

4. Next Meetings Agenda Items

5. Adjournment

{{Name: Agenda Item Name}}

{{Discussion: Agenda Item Discussion}}

{{Comments: Agenda Item Comments}}

{{Actions: Agenda Item Actions}}

# Nebraska Open Meetings Act

**84-1407. Act, how cited.** Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

**84-1408. Declaration of intent; meetings open to public.** It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret. Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

**84-1409. Terms, defined.** For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

**84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.**

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as: (a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body; (b) Discussion regarding deployment of security personnel or devices; (c) Investigative proceedings regarding allegations of criminal misconduct; (d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting; (e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster; or (f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length. Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes. (4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

**84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.**

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the

agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than one county in this state, of the governing body of a public power and irrigation district having a chartered territory of more than one county in this state, of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, or of a community college board of governors may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if: (a) Reasonable advance publicized notice is given; (b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used; (c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference; (d) At least one member of the state entity, advisory committee, board, council, or governing body is present at each site of the videoconference or telephone conference, except that a member of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis, an organization created under the Municipal Cooperative Financing Act, or a governing body of a risk management pool or an advisory committee of such organization or pool may designate a nonvoting designee, who shall not be included as part of the quorum, to be present at any site; and (e)(i) Except as provided in subdivision (2)(e)(ii) of this section, no more than one-half of the state entity's, advisory committee's, board's, council's, or governing body's meetings in a calendar year are held by videoconference or telephone conference; or (ii) In the case of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis or an organization created under the Municipal Cooperative Financing Act, such organization holds at least one meeting each calendar year that is not by videoconferencing or telephone conferencing. Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, of a community college board of governors, of the governing body of a public power district, of the governing body of a public power and irrigation district, or of the Nebraska Brand Committee may be held by telephone conference call if: (a) The territory represented by the educational service unit, member educational service units, community college board of governors, public power district, public power and irrigation district, Nebraska Brand Committee, or member public agencies of the entity or pool covers more than one county; (b) Reasonable advance publicized notice is given which identifies each telephone conference location at which there will be present: (i) A member of the educational service unit board, council, community college board of governors, governing body of a public power district, governing body of a public power and irrigation district, Nebraska Brand Committee, or entity's or pool's governing body; or (ii) A nonvoting designee designated under subdivision (3)(f) of this section; (c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, or entity or pool or at a place which will accommodate the anticipated audience; (d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used; (e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call; (f) At least one member of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice, except that a member of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis, an organization created under the Municipal Cooperative Financing Act, or a governing body of a risk management pool or an advisory committee of such organization or pool may designate a nonvoting designee, who shall not be included as part of the quorum, to be present at any site; (g) The telephone conference call lasts no more than five hours; and (h) No more than one-half of the board's, council's, governing body's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that: (i) The governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing; and (ii) An organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis or an organization created under the Municipal Cooperative Financing Act may hold more than one-half of its meetings by telephone conference call if the organization holds at least one meeting each calendar year that is not by videoconferencing or telephone conference call. Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified Daily Documentation 1st Quarter in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

**84-1412. Meetings of public body; rights of public; public body; powers**

**and duties.**

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if: (a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction; (b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience; (c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an in-state location to members, the public, or the press, if requested twenty-four hours in advance; (d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state; (e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act; (f) Reasonable arrangements are made to provide viewing at other in-state locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and (g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the in-state location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

**84-1413. Meetings; minutes; roll call vote; secret ballot; when.**

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written, except as provided in subsection (6) of this section, and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

(6) Minutes of the meetings of the board of a school district or educational service unit may be kept as an electronic record.

**84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.**

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Revised 6-3-19



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## **2020-2023 SPECIAL BUY AGREEMENT**

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

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

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

4. **Term.** This Agreement is effective on June 30, 2020 (“Effective Date”) and shall continue until 12:00 midnight (CST) on June 30, 2023, unless terminated earlier as provided by this Agreement or by law.
5. **Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Sarpy County, Nebraska.
6. **Student Privacy Protections.**
  - A. **Definition of Data.** Data include all Personally Identifiable Information (PII), Member Data, and other non-public information. Data include, but are not limited to, student data, metadata, and user content.
  - B. **Definition of Member Data.** Member Data includes all PII and other information that is not intentionally made generally available by ESUCC or its Members on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student and personnel data and metadata.
  - C. **Definition of Personally Identifiable Information.** Personally Identifiable Information includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; “personal information” as used in Neb. Rev. Stat. § 84-712.05 and personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g.
  - D. **Definition of User.** User means a participant, instructor, or administrator of ESUCC or its Members who are authorized with login credentials by ESUCC or its Members to use the goods and/or services provided by this Agreement.
  - E. **Data De-Identification.** Contractor may use deidentified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Contractor agrees not to attempt to re-identify deidentified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt reidentification.
  - F. **Marketing and Advertising.** Contractor will not use any Data to advertise or market to students or their parents. Advertising or marketing may be directed to the ESUCC, Members, or their school districts only if student information is properly de-identified.”
  - G. **Modification of Terms of Service.** Contractor will not change how Data are collected, used, or shared under the terms of this Agreement in any way without

advance notice to and consent from the ESUCC, the Members, and the affected school district(s).

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

- (3) Cooperate with ESUCC's and Member's reasonable requests in connection with efforts by them to intervene and quash or modify the legal order, demand or request; and
- (4) Upon ESUCC's or a Member's request, provide them with a copy of its response.

## **7. Termination.**

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

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

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

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

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

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

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

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

of ESUCC then in its possession, including but not limited to all work in progress as is appropriate in its then existing form to ESUCC.

**8. Indemnification.**

A. The Contractor hereby waives and agrees to indemnify and save harmless ESUCC and the ESUs and their officials, agents, employees, and volunteers (hereinafter collectively referred to as "Indemnities"), against any and all claims of injuries, death, damage to property, liabilities, judgments, costs and expenses which may otherwise accrue against Indemnities in consequence of the granting of this Agreement or which may otherwise result therefrom.

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

C. If any judgment shall be rendered against ESUCC or the ESUs in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same.

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

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

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

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

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

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

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

- 11. Publicity.** ESUCC does not endorse the goods or services of the Contractor. Except for listing ESUCC as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of ESUCC.
- 12. Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on ESUCC, ESU, or Member premises or at ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on ESUCC, ESU, or Member property or at ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all ESUCC, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on ESUCC, ESU, or Member premises or at ESUCC, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. ESUCC may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.
- 13. Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
- 14. Independent Contractor.** Contractor is an independent contractor under this contract and is not an ESUCC, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 15. Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
- 16. Taxpayer Identification.** Contractor's federal employer identification number is: 39-2078076
- 17. Sales Tax.** ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. ESUCC, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.

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

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

With copy to:

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

Contractor: Netsweeper Inc.  
1999 Bryant Street #900  
Dallas, TX 75201-3140

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

**19. Warranties and Specifications.** Contractor shall be responsible for providing to Members all manufacturer warranties on all goods and services. Contractor shall provide Members with all attachments normally supplied by the manufacturer and/or supplier. Complete product specification sheets or brochures must be provided to Members, ESUs, or ESUCC upon request.

**20. Entire Agreement.** The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

**21. Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.

**22. Waivers.** The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay: (1) In exercising any right or remedy, **or** (2) In requiring the satisfaction of any condition under this Agreement, **and** (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in

that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.


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

between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.


- 30. Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as my from time to time be provided by written instrument signed by both parties.
- 31. Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.
- 32. Piggyback Clause.** For the term of the Agreement and any mutually agreed extensions, other public agencies may purchase, lease-purchase, or rent the identical item(s) at the same price and upon the same terms and conditions as provided in this Agreement. The term "public agencies" means any county, city, village, school district, or agency of any state government or of the United States; any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of Nebraska; and any political subdivision of another state.
- 33. Attachments.** Attachments to this Agreement include the following:
- Exhibit A – Scope of Services to be provided to ESUCC and Members
  - Exhibit B – Payment Terms & Schedule
  - Exhibit C – Vendor Software License Agreement

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

**ESUCC**

By:   
Name: Kraig Lofquist  
Title: Executive Director  
Date: May 6, 2020

**CONTRACTOR**

  
By: \_\_\_\_\_  
Name: Perry Roach  
Title: CEO  
Date: 5/1/2020

**SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO MEMBERS**  
**<<VENDOR-INSERT SCOPE OF GOODS>>**

SEE ATTACHED DOCUMENT TITLED

**EXHIBIT A Netsweeper for Education**

**EXHIBIT "B"**

**1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

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

Location	Tier	Deployment Type	License	Org Type	Term	User/Device	Billing Cycle	List Price
North America	1-5,000	Netsweeper's Cloud	Network Filtering	Academic	1 Yr	User	Year	\$3.00
North America	1-5,000	Onsite Deployment	Network Filtering	Academic	1 Yr	User	Year	\$2.00
North America	5000+	Netsweeper's Cloud	Network Filtering	Academic	1 Yr	User	Year	\$2.64
North America	5000+	Onsite Deployment	Network Filtering	Academic	1 Yr	User	Year	\$1.76
North America	1-5,000	Netsweeper's Cloud	Client Filter	Academic	1 Yr	Device	Year	\$2.00
North America	1-5,000	Onsite Deployment	Client Filter	Academic	1 Yr	Device	Year	\$1.50
North America	5000+	Netsweeper's Cloud	Client Filter	Academic	1 Yr	Device	Year	\$1.76
North America	5000+	Onsite Deployment	Client Filter	Academic	1 Yr	Device	Year	\$1.32

Please "add" ESUCC 2% to these above prices.

SEE ATTACHED DOCUMENT TITLED

**EXHIBIT B Netsweeper Price Schedule - (Price to ESUCC)**

- **Netsweeper Inc will send ESUCC 2% fee upon payment received from school district's per contract.**

**2. Payment Terms/ Payment Schedule**

- A. Members will pay Contractor for all undisputed amounts for the goods

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

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

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

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

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

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

**EXHIBIT "C"**

**SOFTWARE LICENSE AGREEMENT**

**<<VENDOR-INSERT SOFTWARE LICENSE AGREEMENT>>**

SEE ATTACHED DOCUMENT TITLED

**EXHIBIT C Netsweeper\_Master\_Purchase\_License Agreement USA**



SOLUTION BRIEF

# Netsweeper for Education

Student Protection for K-12 Schools



## Student Protection

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Today's internet is always changing, and students are more vulnerable online than ever before.

As technologies change quickly, it also means that protecting students online requires a unique skill set and determination to constantly innovate.

Netsweeper has been protecting students online for over 20 years. Our filtering platform is designed to meet the requirements of any educational setting, and is the most complete, flexible, and supported in the industry.

## Complete Policy Management

Netsweeper's easy-to-use WebAdmin interface centralizes policy management and administration. Policy changes are easily configured and seamlessly applied to all policy servers in the cluster whether you are a single school, a large school district, authority, council, or using a service providers filtering service.

Define and manage filtering policies for users, workstations, and groups. User-based rights allow you to personalize access based on IP address, user, group, time of day, and day of week. Time and day-based rights enable you to grant web access on specific days or hours, increasing productivity and reducing

bandwidth to ensure user activity won't be negatively impacted by time-consuming distractions.

Customize your filtering by creating your own lists of URLs you want to block or allow. Define these for the entire filtering cluster or be specific to a group of users. Block specific keywords both in URLs and search engines. Control specific file types, applications, and specific actions on social media platforms.

Use delegated administration to push filtering policy management outside your core operations centre. This reduces overhead and allows you to tailor filtering to your specific needs.

## Student Safeguarding and the Prevent Duty

Keeping Children Safe in Education is a U.K. statutory guidance. It contains legal duties that schools must follow. Radicalization prevention and student safeguarding sets a high standard for online protection.

In the U.K., Keeping Children Safe in Education is a statutory guidance that promotes the welfare of those under the age of 18 attending schools and colleges. Schools are obligated to follow guidelines to protect students.

Other guidance regarding the prevention of radicalization (the Prevent Duty) and student safeguarding, has set a high standard for the protection of students online.

Netsweeper's filtering platform meets the requirements defined in the U.K. and any educational institution across the globe can use our proven student protection solutions.

- Per-user filtering, logging, and reporting
- Create alerts to highlight dangerous incidents
- Industry-leading categorization with accuracy
- Real-time analysis of actual page content
- Protection across all devices, on or off network
- Proven performance for large networks

## SSL Decryption

Encrypting website traffic using HTTPS is essential for protecting privacy online. In the past, encryption protected banking websites and online mail. Social media sites, news sites, and other common websites are now often encrypted.

Encryption presents challenges for network traffic visibility. We recognize the importance of maintaining control of your network traffic. That's why we developed selective SSL decryption. With selective SSL decryption, you can identify specific websites for decryption. You can avoid decrypting users' emails while decrypting social

media sites. This balances the need for visibility with maintaining user privacy.

Decrypted website traffic enables detailed logging, reporting, and policy enforcement. It also provides URL keyword filtering, search keyword filtering, and safe search enforcement. Manage specific website actions on supported social media sites and web applications. For example, you can block a user's ability to post on Twitter or access specific pages. This is all done with performance in mind. Decrypting SSL traffic doesn't have to mean a massive investment in more equipment.

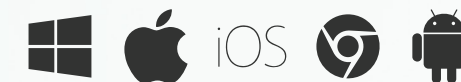
## Off-Network Device Filtering

School-issued laptops and tablets have raised concerns around security and acceptable internet use. Schools provide students with devices to take home for self-guided learning and homework. Those devices must still protect against online threats. Most mobile devices can have Netsweeper's filtering "clients" installed.

You can manage, log, and report off-network internet use the same

as on-network use. Netsweeper's industry-leading web filtering protects school devices taken off-network. This is all done from the same management console. Traffic on mobile devices is not proxied to a central server to perform filtering. This ensures that private data is safe.

Supported operating systems include Windows, Mac OSX, Android, iOS, and Chrome.



WINDOWS, MAC OSX, GOOGLE CHROME  
& CHROMEBOOKS, IOS, ANDROID



## Per-User Authentication and Filtering

Implementing filtering requires the ability to identify users on your network. Our solution provides granular policy management and detailed information on network use. Save time, money, and reduce complexity by using your

existing infrastructure. Integrate with popular directory service systems to provide per-user filtering. You'll also receive administrative authentication and management.



MICROSOFT ACTIVE DIRECTORY/AZURE, NOVELL EDIRECTORY, APPLE OPEN DIRECTORY, GOOGLE DIRECTORY

## Logging and Reporting

Managing a filtering platform means making decisions about filtering policies and incidents. This requires meaningful information about user habits on your network. Netsweeper delivers this information via a powerful reporting framework that enables granular analytics. Netsweeper's logging and reporting framework can scale to the largest networks. The reporting engine can

transform that raw information into insights. Out-of-the box reports are available from initial deployment. You can configure almost any type of report to perform the network analytics you need. You can create reports on-demand or schedule them. View the reports in the WebAdmin interface or have them delivered to users.

## CIPA

CIPA (Children's Internet Protection Act) was enacted by the United States Congress in 2000 over concerns about inappropriate content children have access to online.

Complying with CIPA qualifies schools for the E-rate program. This program helps make communications products and services more affordable.

Netsweeper's Education Solutions meet the requirements of CIPA with the following features:

- Block adult content such as hacking, criminal skills, and illegal activities
- Enforce SafeSearch across popular search engines
- Monitor internet activity
- Create user-based reports
- Create deny and allow lists of URLs
- File type blocking such as zip files and exe files
- Create eSafety awareness campaigns using content-specific block pages
- Protect against web threats like malware and viruses
- Control instant messaging, webmail, and social network applications
- Block applications

## Netsweeper Cloud Solution

Take advantage of Netsweeper's leading web filtering technology without the need for on-premise hardware by using our cloud-based solutions. Our cloud-based web filtering platform is easy to setup and provides unparalleled visibility and control allowing you to create and manage policies, create and review reports, all with per-user granularity. Once the cloud service is active, you can control many locations from one portal, meaning you don't need to worry about installing any onsite software or hardware.



**Netsweeper Canada**  
4-156 Columbia Street West,  
Waterloo, Ontario, Canada,  
N2L 3L3  
Phone: 1-519-772-0889  
Toll Free: 1-866-395-7131  
Fax: 1-519-722-0896

**Netsweeper UK**  
Suite 125-126,  
4100 Park Approach,  
Thorpe Park, Leeds,  
LS15 8GB, United Kingdom  
Phone: +44(0) 1442 800 172

**Netsweeper Digital Security  
Private Limited**  
302, FM House, Anna Salai,  
Teynampet Chennai,  
Chennai - 600006,  
Tamilnadu, India  
Phone: 44 24361030

**Netsweeper Middle East**  
F110-02, HQ Building,  
Dubai Silicon Oasis,  
Dubai, UAE  
Phone: +971 (05) 55368 565

**Netsweeper Cooperatief U.A.**  
The Hague Security Delta, 8th Floor  
Wilhelmina van Pruisenweg,  
104 2595 AN The Hague,  
The Netherlands

 [sales@netsweeper.com](mailto:sales@netsweeper.com)

 [www.netsweeper.com](http://www.netsweeper.com)

Location	Tier	Deployment Type	License	Org Type	Term	User/Device	Billing Cycle	List Price	School/Member Price
North America	1-5,000	Netsweeper's Cloud	Network Filtering	Academic	1 Yr	User	Year	\$3.00	\$3.06
North America	1-5,000	Onsite Deployment	Network Filtering	Academic	1 Yr	User	Year	\$2.00	\$2.04
North America	5000+	Netsweeper's Cloud	Network Filtering	Academic	1 Yr	User	Year	\$2.64	\$2.69
North America	5000+	Onsite Deployment	Network Filtering	Academic	1 Yr	User	Year	\$1.76	\$1.80
North America	1-5,000	Netsweeper's Cloud	Client Filter	Academic	1 Yr	Device	Year	\$2.00	\$2.04
North America	1-5,000	Onsite Deployment	Client Filter	Academic	1 Yr	Device	Year	\$1.50	\$1.53
North America	5000+	Netsweeper's Cloud	Client Filter	Academic	1 Yr	Device	Year	\$1.76	\$1.80
North America	5000+	Onsite Deployment	Client Filter	Academic	1 Yr	Device	Year	\$1.32	\$1.35



# NETSWEEPER, INC.

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1999 Bryant St. STE 900, Dallas, Texas, 75201-3140. USA

[www.netsweeper.com](http://www.netsweeper.com)

## Netsweeper Master Purchase Agreement

Reporting Manager: \_\_\_\_\_

Finance Manager: \_\_\_\_\_

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

PID Number: \_\_\_\_\_



# NETSWEEPER, INC.

1999 Bryant St. STE 900, Dallas, Texas, 75201-3140. USA

www.netsweeper.com

## 1 Purpose

This Netsweeper Purchase Agreement (hereinafter referred to as “**Agreement**”) is concluded by and between:

- (1) **Netsweeper, Inc.,**  
**1999 Bryant St. STE 900, Dallas, Texas, 75201-3140. USA**  
 (hereinafter referred to as “**Netsweeper**”) and

(2)

(hereinafter referred to as “**the Client**”)

Netsweeper and the Client are hereafter individually also referred to as a Party and collectively as Parties.

### Whereas:

- A. Netsweeper is pleased to release for the purpose of providing an Internet Filtering Solution and such other products and/or services offered by Netsweeper to the Client as defined in this Agreement and in Exhibit G, amendments thereof and the like (hereinafter referred to as either the “**System**”, the “**Software**”, or the “**Solution**”) consisting of software, proprietary content, and services for Client’s use and benefit under the terms and conditions as specified in this Agreement.
- B. Netsweeper provides Internet Access Management, internet innovation services, and other products and services to educational institutions, corporations, telecommunications services providers, internet service providers (hereinafter “**ISP**”), regulators and other entities and organizations;
- C. Netsweeper will provide to the Client a solution as specified in Exhibit A inclusive of software, technical and customer support, system maintenance and URL Database updates, that, inter alia, filters content received via the internet onto a networked server running the Netsweeper software (as upgraded, modified or otherwise improved from time to time).
- D. The System will be delivered through one of the following methods:
  - 1. Direct placement of a Netsweeper network server containing the System onto the network of the Client; or



# NETSWEEPER, INC.

1999 Bryant St. STE 900, Dallas, Texas, 75201-3140. USA

[www.netsweeper.com](http://www.netsweeper.com)

2. Configuration of the System onto a server provided by the Client, and subsequently located on the Client's network; or
  3. Placement of a System at the network operation facility of purchased licenced location providing Internet access to the Client, and thereby providing at that point of Internet access; or
  4. "Re-direct" filtering service that re-directs Client's requests from a networked computer workstation or other networked device to a remote Netsweeper server; this Netsweeper server to reside at either Netsweeper's, an affiliate of Netsweeper, or Client's operations centre; and
- E. Parties wish to enter into this Agreement to govern their respective rights and obligations regarding Client's use of the System solution.

*[Rest of the page is left blank intentionally, Terms of the Agreement follow]*



# NETSWEEPER, INC.

1999 Bryant St. STE 900, Dallas, Texas, 75201-3140. USA

www.netsweeper.com

## Terms

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

### 1. Licence.

(a) *Grant of Licence.* Subject to the provisions of this Agreement, Netsweeper grants to the Client and the Client hereby accepts a non-exclusive, non-transferable limited right to use the System pursuant to the terms of this Agreement and any Exhibits and/or Schedules attached hereto;

This Agreement does not entail, nor shall it be read or interpreted as a transfer of intellectual property rights from Netsweeper to the Client.

Parties may add any intellectual property to be obtained or licensed to the Client in the future by amending Exhibit G to this Agreement.

(b) *Restrictions on Licence:*

(i) Client shall use the System solely on the Client's networked server or servers running the Netsweeper software; and operating from that server or servers for use by authorized Users; Users being any authorized individual who may access the Netsweeper product(s) via Web Administration, Secure Shell (SSH), or any other method, for the purpose of administering, and/or operating the Netsweeper products; Specifically, the Client shall not use, utilize, leverage, employ or the like, the System for any purpose or benefit other than that which is expressly stated in this Agreement and as otherwise agreed upon by the Parties and for which the Client has paid for and for no ancillary, related, indirect or other use or purpose regardless whether or not the System has or will have the functionality to do so;

(ii) The Client shall have no right to access, request delivery of, or use the software source code and other proprietary information related to the function of the System. Except if such would be permitted by mandatory law; and

(iii) The Client shall not reverse engineer, disassemble, decompile or decompose the Software or System or make any efforts to do same nor shall permit any other party to do so. Except if such would be permitted by mandatory law.

(c) *Activation.* Activation of a product serial key, enabling full and unhindered operation of the Netsweeper software products, will be provided upon final acceptance of the delivered products and servers as per the term and conditions of this agreement. During the interim period between software delivery and



# NETSWEEPER, INC.

1999 Bryant St. STE 900, Dallas, Texas, 75201-3140. USA

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final acceptance, a time limited product serial key will be delivered to enable the installation, configuration, delivery, preparation, and acceptance testing of the products and services.

(d) *Access.* If applicable, the earlier of (i) the end of the fifteen (15) day evaluation period or (ii) when the Software has been deemed to be accepted, the Client shall contact Netsweeper and obtain a serial server key which provides the access to the System from a secure site.

(e) *End User License Agreement ("EULA").* The Netsweeper EULA governs the terms and conditions of software licensing between Netsweeper and its direct customers; namely, the end users. The Client shall ensure that end-users of their network solution are notified of the material terms and conditions of the EULA as applicable to their access and use of the Netsweeper Software. However, in the event of conflict, the terms and conditions of this Agreement take precedence and govern the commercial and legal relationship between Netsweeper and the Client.

(f) *Powered by Netsweeper.* The grant of rights provided herein shall be subject to the Client's duty to attribute the Software to Netsweeper. Such attribution may take the form of "Powered by Netsweeper", or similar wording to be determined at the sole discretion of Netsweeper. The Client shall display on all packaging, media, covers and decals on the Client's products, services or the like employing the Solution Netsweeper trademarked logo in respect of the Software in a manner and size not less than fifty percent (50%) as prominent as the Client's trademark. The Client shall also state in all its advertising and marketing materials that the Client product or service now contains the Software. The Client shall upon request provide to Netsweeper for prior approval sample copies of all of the Client's advertising, marketing and packaging materials in respect of the Client's product or service that contains or utilizes the Software, except as otherwise advised by Netsweeper.

**2. Term and Renewal.** Subject to Section 3 of this Agreement, this Agreement is concluded for a period of two (2) years (hereinafter the "**Term**"). The Term shall commence on the date of initiation of the Service, which shall begin at the earlier of thirty (30) days deployment of the Software within the Client network or when the Software has been deemed to be accepted. Parties expressly agree that once the Software has been deployed either by being placed into production or placed into acceptance testing by the Client, regardless of being accepted by the Client, that thirty (30) days following this event the Software will be deemed to be accepted by the Client and Netsweeper shall commence billing period for same under the terms of this Agreement. This Agreement will automatically renew for additional twelve (12) month periods, unless either Party informs the other in writing within sixty (60) days prior to the end of the Term.

Parties expressly agree that if by thirty (30) days after deployment of the Netsweeper products within the Client network, the Client has not provided Acceptance, the Netsweeper Products will shut-down and cease operations. This Agreement will then automatically terminate.



# NETSWEEPER, INC.

1999 Bryant St. STE 900, Dallas, Texas, 75201-3140. USA

www.netsweeper.com

### 3. Termination.

In the event of a breach or default of this Agreement by the Client which remains uncured for more than ten (10) days after notice from Netsweeper, in addition to the right to seek other legal remedies, Netsweeper may terminate this Agreement and all rights hereunder by giving the Client written notice of termination; provided, that Netsweeper may immediately shut down or disconnect the Client from the Netsweeper System if reasonable fears exist that the Client will disclose proprietary content without authorization.

In the event of a breach by Netsweeper of the terms and conditions of this Agreement, and if such breach remains uncured for ten (10) business days, the Client may (upon sixty (60) days prior written notice of the termination, which notice shall provide reasonable explanation as to the reasons for the termination) terminate this Agreement upon payment of any Fees still owing to Netsweeper. Upon termination of this Agreement for any reason, the Client shall immediately surrender to Netsweeper all documentation pertaining to the System and agrees to remove all copies of the Software from their computers, servers and systems.

In the event of any material breach of this Agreement by either Party hereto, if such breach is not corrected within thirty (30) days after written notice describing such breach, this Agreement may be terminated forthwith by further written notice to that effect from the Party noticing the breach.

Either Party may terminate this Agreement in writing, without notice, in the event the other Party:

- (a) ceases to carry on business in the normal course, pass a resolution for its winding up other than for the purposes of amalgamation or reconstruction, become insolvent, make a general assignment for the benefit of or any composition with creditors, suffer or permit the appointment of a receiver for its business or assets, or avail itself of, or become subject to, any proceeding under bankruptcy or any other statute relating to insolvency or the protection of rights of creditors;
- (b) Fails to comply with the obligations of confidentiality, proprietary content or intellectual property rights herein.
- (c) Termination for convenience may be exercised after the Initial Term on sixty (60) days written notice;
- (d) Upon termination of this Agreement for any reason:
  - i. the Client shall settle any Fees still owing to Netsweeper as calculated in accordance with Exhibit B; and
  - ii. the Client shall immediately surrender to Netsweeper all documentation pertaining to the System and agrees to remove all copies of the Software from their computers, servers and systems.

**4. Software.** Netsweeper provides software; this machine-readable object code is the software portion of the System and includes the related documentation necessary. This Software and documentation, if any, are included together as a single product. The Software shall operate in a good and workmanlike manner free from defects as of the date of installation or acceptance (whether actual or deemed) and is current to the date of it being deployed by the Client or deemed deployed by Netsweeper. Given the volatile and changing nature of the internet and the various factors associated and affecting same and the like, any



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changes required to the Software as a result of changes to the internet, internet content, internet traffic, internet functionality, and the like will require re-evaluation by the Parties and may require amendments and/or upgrades to the Software not otherwise covered by the terms of this Agreement or any other agreement. For greater clarity, the Software may require product customization based on many factors and the Client can be advised by Netsweeper of same and at an additional cost to be agreed upon by the Parties.

**5. Proprietary Content.** Netsweeper will, through the provision of its System, provide to the Client the use of its proprietary URL database, and/or processes. The Client expressly acknowledges that all proprietary interests in the System or Software or any modifications, enhancements, or improvements thereto shall be the sole and exclusive property of Netsweeper, and that no term of this Agreement shall be construed to convey title in the System or Software to the Client. The Client shall not take any action which purports to create a claim, lien, or encumbrance on the Software, System, or any other confidential information of Netsweeper.

**6. Copyright and Intellectual Property.** The Client acknowledges that the Software, Solution and System and any copies in any form thereof are owned by Netsweeper and are protected by copyright laws and international treaty provisions. Client must treat the Software, Solution and System like any other copyrighted material. Client agrees not to rent, lease, lend, give away, for profit or non-profit, or sell the Software or related documentation to third parties.

The Client shall never register, directly or indirectly, any trademarks, trade names, design or other symbols of Netsweeper (or any name, sign, design or mark which are confusingly similar to those of Netsweeper) anywhere in the world. If the Client acts contrary this obligation, the Client shall assign any such registration to Netsweeper and the Client shall co-operate in any manner necessary to transfer and register any such registration to and in the name of Netsweeper.

If the Client makes improvements the System or develops new applications thereof (contrary to what the Client is allowed to do), the Client shall assign to Netsweeper all right and title to such improvement or new development. Pursuant thereto, the Client herewith assigns (in advance) all right, title and interest to any improvement to the System or new application thereof to Netsweeper and Netsweeper herewith accepts such transfer. The Client shall notify Netsweeper of any improvement or new development by or on behalf of the Client. The Client shall do all that is necessary to affect the transfer as set forth in this paragraph.

**7. Hardware.** Netsweeper may, if applicable and upon request, provide configured server(s) and related hardware equipment (hereinafter the “**Hardware**”) to be located on the Client’s premises as agreed upon in writing. All Hardware and all Software installed on the server remains the property of Netsweeper unless purchased by the Client.

**8. Services.** During the Term, and in accordance with the terms and conditions of this Agreement and related Agreements, Exhibits and Documents, Netsweeper may provide to the Client the following services:



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(a) *Professional Services.* Netsweeper will provide the Client with the initial set-up and configuration of the System as well as ongoing system architecture design and consultancy services at the Fees set out in the attached Schedules or Exhibits but not any customization to same unless otherwise agreed upon in writing, statement of work and change order in accordance to the fee schedule. The set-up services include configuration of the System on a server or servers to be used by the Client and making reasonable efforts to implement the Software for the Client. The Client shall provide a representative of the Client who understands the Client's network and is technically capable of configuring routers, switches, and other equipment already in place on the Client's network to assist in the set up and configuration of the System at the Client's site.

(b) *Category Name Service (CNS)* the Category Name Service (CNS) provides URL categorization services from Netsweeper data centres for the purpose of providing category based URL filtering. This utilizes Netsweeper proprietary technology that integrated with the Netsweeper URL Filtering solution based at the Client site.

(c) *Software customization.* As agreed by a change order and statement of work, priced on the effort at agreed rates.

(d) *Help/Support Services.* Netsweeper will provide Support in accordance with the terms and conditions specified in the attached Exhibit C, Service Level Operating Agreement ("SLA"). Client will provide Netsweeper with full secure access to their local servers as required, to facilitate Support Services in accordance with the SLA. In addition to Standard or Premium Support Services, Netsweeper will, if requested in writing with a minimum of seventy-two (72) hours' notice, Netsweeper will travel to the Client's premises to provide on-site help services at a flat service fee of \$2,500 US per day and a one-day minimum charge will apply. The Client will also be responsible for all reasonable out-of-pocket expenses of Netsweeper associated with such travel, including without limitation, transportation, lodging and meals.

(e) *Fee Adjustment.* All Fees set forth in this Agreement will be reviewed at the end of the Initial Term and any Subsequent Terms and fair and reasonable adjustments in accordance with the fee schedule in such Fees may be made by Netsweeper including without limitation upon any of the following changes:

- i. increases in the size of internet feed/throughput, thus creating more demands on the Netsweeper System requiring additional servers needed to meet the added service load;
- ii. increases in the number of workstations or locations having Internet access;
- iii. additional services provided by Netsweeper to the Client, as requested by Client; or
- iv. charges incurred by the Client for any additional or other use of the Software or System not otherwise *addressed in this Agreement.*

9. **Publicity and Co-Marketing.** Upon deployment of the Solution for the Client (commonly referred to as "go-live"), Netsweeper shall be authorized to publically claim the Client as a customer, by name and through use of the Client's Logo, trademark(s) and/or tradename(s) as appropriate in presentations and on Netsweeper's web site(s). Within ninety (90) days of the execution of this Agreement, or as otherwise agreed



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upon in writing by the parties, the Client and Netsweeper shall collaborate to produce a Netsweeper Case Study which describes the Solution as deployed, the contents of which Netsweeper and/or the Client may re-use in a Press Release. The contents of the Case Study and Press Release(s) shall be subject to prior review and written approval of both Parties, such approval not to be unreasonably withheld or delayed. Nothing in this Agreement shall be construed to prohibit the Client or Netsweeper from accurately attributing Netsweeper with design and manufacture of the platform of the System. Except for such routine attribution by Netsweeper or the Client, all other promotional activity of either Party in which the name or mark of the other Party is included shall be subject to prior review and written approval of such other Party, such approval not to be unreasonably withheld or delayed. Except as set forth in this Section 9, neither Party shall issue any press release regarding this Agreement without the prior written consent of the other Party.

10. **Reports.** The Client shall keep clear and accurate records sufficient to prepare, as appropriate, any needed Fee reports required by this Agreement, described in attached Schedules and Exhibits. The Client and Netsweeper shall collaborate to create and document procedures to ensure that the Client can determine the appropriate Fee payable hereunder. If Fees are variable on a monthly basis, within five (5) days after the end of each month, the Client shall provide a Fee report showing (i) the data regarding the sublicense and/or sale of the Software during such month, (ii) any adjustments due as a result of errors in previous monthly reports, and (iii) the amount of the Fees due for each sublicense and/or sale of the Software during such month.

11. **Audit.** Netsweeper shall have the right, from time to time at its own expense, to conduct during normal business hours an audit of the appropriate records and systems of the Client to substantiate the accuracy of the Client reporting and the use of the System provided by Netsweeper in this regard. Prompt adjustment shall be made by the Client or Netsweeper to compensate for any errors or omissions that are in favour of the other Party as disclosed by such audit. Netsweeper shall be granted temporary access to the Client's computer systems, including Netsweeper Policy Server(s) (NSP) and records for the purposes of performing such audits. Audits will be limited to one per month provided that each audit performed shows no more than five percent (5%) variance between actual and reported results. In the event that the audit reveals unauthorized use of the System and/or Solution, then Netsweeper shall, at its sole discretion, be entitled to render an account for such usage and/or terminate this Agreement without further cause, liability on behalf of Netsweeper or notice to the Client.

12. **NETSWEEPER'S LIMITED WARRANTY.** NETSWEEPER WARRANTS TO THE CLIENT THAT DURING THE TERM, THE NETSWEEPER SYSTEM WILL CONFORM TO ITS DOCUMENTATION AND SPECIFICATIONS WHEN USED IN CONFORMANCE WITH SUCH DOCUMENTATION. IF THE CLIENT SHOULD DISCOVER A WARRANTY CLAIM HEREUNDER, THE CLIENT'S SOLE RECOURSE AND THE MAXIMUM EXTENT OF NETSWEEPER'S LIABILITY WILL BE FOR NETSWEEPER TO CORRECT THE PROBLEM OR REFUND IF APPLICABLE, THE APPLICABLE LICENCE AND/OR SUPPORT FEES WITHIN ONE HUNDRED AND TWENTY (120) DAYS OF RECEIVING WRITTEN NOTICE OF THE WARRANTY CLAIM FROM CLIENT. EXCEPT AS DESCRIBED ABOVE, THE NETSWEEPER SYSTEM IS PROVIDED "AS IS" WITHOUT WARRANTY OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. THE CLIENT ASSUMES ALL RISK AS TO THE RESULTS AND PERFORMANCE OF THE SYSTEM.



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13. **LIMITED LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL NETSWEEPER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, OR ANYONE ELSE INVOLVED IN THE CREATION, PRODUCTION, DELIVERY OR LICENSING OF THE SYSTEM BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR, FOR EXEMPLARY, PUNITIVE, OR AGGRAVATED DAMAGES WHATSOEVER (INCLUDING, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SYSTEM, HOWEVER CAUSED, AND WHETHER OR NOT THE POSSIBILITY OR CAUSE OF SUCH DAMAGES WAS KNOWN TO NETSWEEPER BEFORE HAND.

14. **Client Indemnification.** The Client shall protect, defend, indemnify and hold harmless Netsweeper officers, directors, employees, affiliates, agents and their respective employees from any and all losses, claims, actions, proceedings, expenses, damages or liabilities, including, without limitation, reasonable legal fees and court costs, arising in connection with or incurred by Netsweeper and/or the Client with respect to the possession, licence and the use or return of the System, Hardware and any other equipment.

15. **Payment.** As consideration for Netsweeper's execution and delivery of this Agreement for the use of System, the Client will pay Fees in accordance with applicable Exhibits and Schedules attached hereto and as otherwise billed by Netsweeper. The Fees are payable by the payment methods and schedule(s) as specified in the Exhibits and Schedules. All Fees may be subject to applicable taxes which shall be paid by the Client (which shall include, without limitation, sales, use, service, excise, and personal property taxes, whether collected by withholding or otherwise assessed, and any penalty and interest payments related thereto). In the event Netsweeper is charged such taxes directly, Netsweeper may add the required tax amount (to comply with tax laws) to the Fees owed by the Client hereunder. Any additional Services (such as on-site help services or additional monthly user License Fees) rendered by Netsweeper and purchased by Client will be payable in accordance with the appropriate Exhibits or Schedules. Non-payment of invoice due constitutes adequate breach for the serial key to be disabled and/or deactivated by Netsweeper. Once payment has been received, the serial key will be reactivated after a system check has been conducted. Serial reactivation fee is a minimum of \$2,500 USD per day of non-operating serial and the system check fee is \$2,500 USD per day plus additional Netsweeper expenses. These additional fees and charges are without prejudice to Netsweeper's right to claim full compensation of damages if such damages are higher than the fees that are required to be paid by the Client and Netsweeper may simultaneously with payment of the aforementioned fees, demand compliance/performance with the terms and conditions of this Agreement and this Section.

16. **Confidentiality and Privacy.** Each Party agrees that it will not disclose to any third party any information concerning the customers, trade secrets, methods, processes or procedures, terms of this agreement or any other confidential, financial or business information of the other party, which it learns during the course of its performance of this Agreement, without the prior written consent of the other party. This obligation will survive the cancellation or other termination of this Agreement. Netsweeper keeps all log files and information regarding the Client in trust. All information gathered in the course of service is the property of the Client and will only be used for client related purposes or for Netsweeper to improve its services. Each Party shall treat all Confidential Information received from the other in confidence and shall not use such Confidential Information, or disclose it to any third party, except as required by law (including



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applicable stock exchange rules and regulations) or insofar as strictly necessary for the performance of its obligations hereunder. This undertaking shall not apply to information lawfully received from a source other than the other Party.

Any Confidential Information supplied by one party to the other shall be governed by the following terms and conditions:

- i. each party agrees to protect such Confidential Information with the same degree of care which it uses to protect its own like data and information;
- ii. each party agrees that it shall not disclose to third parties in any manner or form, or otherwise publish such Confidential Information so long as it remains confidential without the explicit authorization of the other party; and
- iii. each party agrees that it shall use such Confidential Information solely in connection with the performance of its obligations under this Agreement unless otherwise explicitly authorized by or on behalf of the other party.

Each party is responsible for ensuring that its employees and all other persons having access to the Confidential Information sign obligations of confidentiality equivalent to those contained in this clause. In the event that a party becomes aware of any breach of confidence by an employee or other person, it shall immediately notify the other party and give that party reasonable assistance in connection with any proceedings, which that party may institute against such person.

The obligations of Confidentiality herein will survive the cancellation or other termination of this Agreement.

17. **Assignment.** The rights in this Agreement are personal to Client and shall not be transferred or assigned to a third party, including to any competitor of Netsweeper whether directly or indirectly or otherwise, without the prior written consent of Netsweeper, which shall not be unreasonably withheld or delayed.

Notwithstanding this clause, Client may assign the rights of this Agreement to an associate or affiliate entity as part of a corporate restructuring.

Any transfer or assignment in violation of this paragraph shall be void and will have no force or effect.

18. **Notices.** Any notices, demands and other communications hereunder shall be in writing and shall be deemed to have been given if delivered or if mailed registered or certified mail by express International registered post or sent by facsimile:

If to Netsweeper, at:

**Netsweeper, Inc.**

1999 Bryant St. STE 900, Dallas, Texas, USA

75201-3140 Facsimile: +1-519-772-0896



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If to the Client, at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile: **TBD**

or at such other address or number as the Party to whom such notice, demand or other communication as may hereafter have designated by notice given in the manner provided in this Section; and (i) if so mailed, addressed as aforesaid, shall be deemed to have been given on the second business day following such mailing unless there is an interruption in the mails, in which case it shall be deemed to have been given when received; or (ii) if so delivered or sent by facsimile, shall be deemed to have been given on the business day following the date of dispatch or the date of transmission, as the case may be.

Facsimile notice may be used only if a means of obtaining an immediate written confirmation of receipt is available and such proof is presented in the event of dispute.

19. **Force Majeure.** Netsweeper's performance of its obligations hereunder shall be subject to force majeure, including without limitation, insurrections, riots, wars and war-like operations, explosions, governmental acts, epidemics, failure of contractors and subcontractors to perform, hydro failures, wireless application failures, strikes, fires, accidents, inability to obtain qualified labour, or any similar occurrence beyond the reasonable control of Netsweeper. Netsweeper shall not be liable for any damages incurred by the Client as a result of such breach or failure, if such breach or failure to perform is caused by circumstances beyond the control of Netsweeper. Netsweeper shall be temporarily excused from performance hereunder by any such circumstances and shall use its best efforts to avoid, remove or cure such circumstances and shall resume performance with utmost dispatch when said circumstances are removed or cured. Netsweeper shall give prompt notice to the Client, claiming the circumstances which as an excuse for delay in performance.

20. **Miscellaneous and Applicable Law.** The terms of this Agreement are binding on the Parties, their subsidiaries, affiliates and any party controlling, controlled by or under common control with, the parties, and their successors, Clients, agents, employees and associated individuals of the parties. The invalidity of enforceability of any provision hereof will in no way affect the validity of enforceability of any other provision This Agreement shall be construed in accordance with Laws of Texas based on US Law and based on Treaties concluded by the US, without regard to principles of conflicts of laws applicable therein, excluding the application of its conflicts of law's provisions. The application of the UN Sales Convention is explicitly excluded. Any dispute arising out of or in connection with this Agreement (including but not limited to claims based on tort) or further agreements resulting there from will be submitted to the exclusive jurisdiction of the competent court in Rotterdam.



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This Agreement and the Schedules constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed, in writing, by a corporate officer of each of the Parties hereto.

21. **Currency.** Unless otherwise specified, the word dollar and the dollar sign (\$) refer to US currency.

22. **Schedules.** The following are the Schedules attached to and incorporated in this Agreement by reference and are deemed to be an integral part hereof:

Exhibit A: Products

Exhibit B: Pricing and Financial terms and conditions.

Exhibit C: Solution Document

Exhibit D: Statement of Work

Exhibit E: Technical Support

Exhibit F: End User License Agreement (EULA)

Exhibit G: Software, System, Solution

*[Rest of this page is left blank intentionally, signature page follows]*



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**IN WITNESS WHEREOF**, the parties hereto have caused this Purchase Agreement to be executed as of the Effective Date.

**Netsweeper, Inc.**

1999 Bryant St. STE 900, Dallas, Texas, 75201-3140

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

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

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

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

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

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

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

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

**Signature:**   
Craig Klofquist (May 6, 2020)

**Email:** klofquist@esucc.org

**Title:** Executive Director

**Company:** ESUCC Cooperative




# 2020-05-05 NetSweeper - ESUCC Special Buy

Final Audit Report

2020-05-06

Created:	2020-05-06
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAtCMe6mBpAyIQkIGHChC3clRHqW8RaNjk

## "2020-05-05 NetSweeper - ESUCC Special Buy" History

-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
2020-05-06 - 2:21:14 PM GMT- IP address: 96.40.5.132
-  Document emailed to Kraig Lofquist (klofquist@esucc.org) for signature  
2020-05-06 - 2:22:50 PM GMT
-  Email viewed by Kraig Lofquist (klofquist@esucc.org)  
2020-05-06 - 5:59:38 PM GMT- IP address: 66.102.7.95
-  Document e-signed by Kraig Lofquist (klofquist@esucc.org)  
Signature Date: 2020-05-06 - 6:00:15 PM GMT - Time Source: server- IP address: 108.167.10.2
-  Signed document emailed to CRAIG PETERSON (craig.peterson@esucc.org), Kraig Lofquist (klofquist@esucc.org), Deb Hericks (dhericks@esucc.org), lance.rosenberg@netsweeper.com, and 1 more  
2020-05-06 - 6:00:15 PM GMT



## 2020-2023 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing (“Cooperative”), and PAPER101 (“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 May 18, 2020 (“Effective Date”) and shall continue until 12:00 midnight (CST) on April 30, 2023, unless terminated earlier as provided by this Agreement or by law.
- 5. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Sarpy County, Nebraska.

**6. Termination.**

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

**7. Indemnification.**

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

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

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

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

12. **Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
13. **Independent Contractor.** Contractor is an independent contractor under this contract and is not a Cooperative, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
14. **Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
15. **Taxpayer Identification.** Contractor's federal employer identification number is: 42-0942393.
16. **Sales Tax.** The Cooperative, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
17. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

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

With copy to:

ESUCC Cooperative Purchasing  
Attn: Craig Peterson  
PO Box 858

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

Contractor: PAPER101  
P.O. BOX 248  
ANKENY IA 50021

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

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


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

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

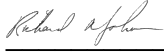
Exhibit A – Scope of Good or Services to be provided to Cooperative  
Exhibit B – Payment Terms & Schedule

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

**COOPERATIVE**

By:  \_\_\_\_\_  
Name: Kraig Lofquist  
Title: Executive Director  
Date: May 20, 2020

**CONTRACTOR**

By:  \_\_\_\_\_  
Name: Richard Johnson  
Title: General Manager  
Date: May 20, 2020

**EXHIBIT "A"**

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

**EXHIBIT "A" ATTACHED**

**EXHIBIT "B"**

**1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

**PRICING INCLUDED WITH EXHIBIT "A"**

**2. Payment Terms/ Payment Schedule**

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

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

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

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

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



P.O. BOX 248 ANKENY IA 50021 ● (800) 217-4440 ● paper101.com ● [paper101@fcdist.com](mailto:paper101@fcdist.com)

May 18, 2020

Craig Peterson  
ESUCC Cooperative Purchasing  
Director  
P.O. Box 858  
412 W. 14th Ave.  
Holdrege, NE 68949

Exhibit A & B

Craig,  
Please accept our quotation for your consideration on the following items:

**Masks**

I783	3PLY FACE MASK WITH EAR LOOPS POLYPROPYLENE 50/BX	
	Pricing for box (50 masks per box) 2 box minimum order	\$46.22 per box
	Pricing for case (40 boxes or 2000 masks)	\$45.00 per box
	Pricing for ½ pallet (25 cases of 40 boxes or 50,000 masks)	\$42.60 per box
	Pricing for 1 pallet (50 cases of 40 boxes or 100,000 masks)	\$39.90 per box

**Wipes w/Bucket**

Wiper and Buckets only

I829	94400 TASK WIPES KIT WITH 1 BUCKET & 1 WIPER ROLL 6.8X6 300/RL 1RL/CS	\$24.50 per case
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Wiper Refills

I830	74491 REFILL FOR TASK WIPE KIT 6 WIPER ROLLS 6.8X6 300/RL 6RL/CS	\$44.00 per case
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**Sanitation Wipes, Disinfectant Pouch w/Bucket— SDS sheets available**

Wipe Buckets with Disinfectant Pouch

I843	94400WC TASK WIPES KIT WITH 1 BUCKET/SANI POUCH/ 1 WIPER ROLL 6.8X6 300/RL	\$31.15 per case
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Wipe and Disinfectant Refills

I844	74491WC REFILL FOR TASK WIPE KIT W/SANI POUCH KIT 6 WIPER/POUCH/CS 300/RL	\$73.88 per case
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**Sanitation Stations for Wipes/Bucket**

See attached sheet

**Disinfectant Products — SDS sheets available**

E454	RA-559 ABC FOAMING LEMON ODOR DISINFECTANT 12/19OZ/CS	\$39.60 per case
E484	R-641 ABC LINEN FRESH SURFACE DISINFECTANT 12/20OZ/CS	\$62.04 per case
I841	6537 ABC RTU TB QUAT DISINFECTANT 12/32OZ/CS	\$53.40 per case
F509	5076 LEMON QUATERNARY AMMONIUM DISINF CLNR 4 GAL/CS	\$71.78 per case
E500	R-571 ABC HOSPITAL SURFACE DISINFECTANT AEROSOL 12/20OZ/CS	\$60.00 per case

Products are FOB: Des Moines, Iowa.

Due to the volatility of the PPE product market, pricing can increase. Currently all product listed is in stock or will be in our warehouse within the next 5 business days.

We will be sending you over product information and pictures in the next few days.

Thanks

Richard Johnson  
General Manager



515-261-3425

[Paper101.com](http://Paper101.com)

[RJohnson@fcdist.com](mailto:RJohnson@fcdist.com)



P.O. BOX 248 ANKENY IA 50021 ● (800) 217-4440 ● paper101.com ● [paper101@fcdist.com](mailto:paper101@fcdist.com)

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May 20, 2020

Craig Peterson  
ESUCC Cooperative Purchasing  
Director  
P.O. Box 858  
412 W. 14th Ave.  
Holdrege, NE 68949

Exhibit A & B

Craig,  
Please accept our quotation for your consideration on the following items:

### Masks

I783	3PLY FACE MASK WITH EAR LOOPS POLYPROPYLENE 50/BX	
	Pricing for box (50 masks per box) 2 box minimum order	\$46.22 per box
	Pricing for case (40 boxes or 2000 masks)	\$45.00 per box
	Pricing for ½ pallet (25 cases of 40 boxes or 50,000 masks)	\$42.60 per box
	Pricing for 1 pallet (50 cases of 40 boxes or 100,000 masks)	\$39.90 per box

### Wipes w/ Bucket

Wiper and Buckets only

I829	94400 TASK WIPES KIT WITH 1 BUCKET & 1 WIPER ROLL 6.8X6 300/RL 1RL/CS	\$24.50 per case
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Wiper Refills

I830	74491 REFILL FOR TASK WIPE KIT 6 WIPER ROLLS 6.8X6 300/RL 6RL/CS	\$44.00 per case
------	--	------------------

### Sanitation Wipes, Disinfectant Pouch w/ Bucket— SDS sheets available

Wipe Buckets with Disinfectant Pouch

I843	94400WC TASK WIPES KIT WITH 1 BUCKET/SANI POUCH/ 1 WIPER ROLL 6.8X6 300/RL	\$31.15 per case
------	--	------------------

Wipe and Disinfectant Refills

I844	74491WC REFILL FOR TASK WIPE KIT W/SANI POUCH KIT 6 WIPER/POUCH/CS 300/RL	\$73.88 per case
------	---	------------------

### Sanitation Stations for Wipes/ Bucket

See attached sheet

### Disinfectant Products — SDS sheets available

E454	RA-559 ABC FOAMING LEMON ODOR DISINFECTANT 12/19OZ/CS	\$39.60 per case
E484	R-641 ABC LINEN FRESH SURFACE DISINFECTANT 12/20OZ/CS	\$62.04 per case
I841	6537 ABC RTU TB QUAT DISINFECTANT 12/32OZ/CS	\$53.40 per case
F509	5076 LEMON QUATERNARY AMMONIUM DISINF CLNR 4 GAL/CS	\$71.78 per case
E500	R-571 ABC HOSPITAL SURFACE DISINFECTANT AEROSOL 12/20OZ/CS	\$60.00 per case

## HAND SANITIZER 70-80% ALCOHOL GEL – SDS sheets available

1837	REJUVIEL HAND SANITIZER 70% ALCOHOL 12OZ FLIP TOP CAP 20/CS	
	Pricing for case (20 Bottles)	\$195.20 per case
	Pricing for 10 cases (200 bottles)	\$175.60 per case
	Pricing for ½ pallet (56 cases or 1,120 bottles)	\$141.50 per case
1864	PURELL ADVANCED HAND SANITIZER REFRESHING GEL 12.6 OZ 12/CS	<b><u>IN STOCK IN JULY</u></b>
	Pricing for case (12 Bottles)	\$117.10 per case
	Pricing for 10 cases (120 bottles)	\$105.36 per case
	Pricing for ½ pallet (50 cases or 600 bottles)	\$ 84.90 per case
1842	PERFECT CARE HAND SANITIZER GEL WITH PUMP 70% ALCOHOL 16.9OZ 20/CS 72CS/PLT	
	Pricing for case (20 Bottles)	\$220.00 per case
	Pricing for 10 cases (200 bottles)	\$195.00 per case
	Pricing for ½ pallet (36 cases or 720 bottles)	\$149.00 per case

## HAND SANITIZER 80% ALCOHOL LIQUID – SDS sheets available

1793	CLEAN & SIMPLE LIQUID HAND SANITIZER POUR GALLON 4GL/CS	
	Pricing for case (4 Gallons)	\$165.70 per case
	Pricing for 10 cases (40 Gallons)	\$145.40 per case

Products are FOB: Des Moines, Iowa.

Due to the volatility of the PPE product market, pricing can increase. Currently all product listed is in stock or will be in our warehouse within the next 5 business days.

We will be sending you over product information and pictures in the next few days.

Thanks

Richard Johnson  
General Manager



515-261-3425  
Paper101.com  
RJohnson@fcdist.com

Signature: 

Email: rjohnson@fcdist.com

Title: General Manager

Company: Paper101

Signature:   
Craig Klofquist (May 20, 2020 15:39 CDT)

Email: klofquist@esucc.org

Title: Executive Director

Company: ESUCC Cooperative









# 2020-05-19 Paper101 - ESUCC Special Buy PPE

Final Audit Report

2020-05-20

Created:	2020-05-20
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAApoymcD3mcCA_8Xb0eaNlsfMTJxZMuf_i

## "2020-05-19 Paper101 - ESUCC Special Buy PPE" History

-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
2020-05-20 - 7:05:08 PM GMT- IP address: 162.127.11.100
-  Document emailed to Richard Johnson (rjohnson@fcdist.com) for signature  
2020-05-20 - 7:07:19 PM GMT
-  Email viewed by Richard Johnson (rjohnson@fcdist.com)  
2020-05-20 - 8:07:05 PM GMT- IP address: 208.69.145.61
-  Document e-signed by Richard Johnson (rjohnson@fcdist.com)  
Signature Date: 2020-05-20 - 8:32:13 PM GMT - Time Source: server- IP address: 208.69.145.61
-  Document emailed to Kraig Lofquist (klofquist@esucc.org) for signature  
2020-05-20 - 8:32:16 PM GMT
-  Email viewed by Kraig Lofquist (klofquist@esucc.org)  
2020-05-20 - 8:39:13 PM GMT- IP address: 64.233.172.223
-  Document e-signed by Kraig Lofquist (klofquist@esucc.org)  
Signature Date: 2020-05-20 - 8:39:41 PM GMT - Time Source: server- IP address: 75.100.220.227
-  Signed document emailed to Richard Johnson (rjohnson@fcdist.com), Kraig Lofquist (klofquist@esucc.org), Deb Hericks (dhericks@esucc.org), CRAIG PETERSON (craig.peterson@esucc.org), and 1 more  
2020-05-20 - 8:39:41 PM GMT



## 2020-2023 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing (“Cooperative”), and The Brenmar Company, 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 June 25, 2020 (“Effective Date”) and shall continue until 12:00 midnight (CST) on June 30, 2023, unless terminated earlier as provided by this Agreement or by law.
- 5. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Sarpy County, Nebraska.

**6. Termination.**

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

**7. Indemnification.**

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

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

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

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

12. **Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
13. **Independent Contractor.** Contractor is an independent contractor under this contract and is not a Cooperative, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
14. **Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
15. **Taxpayer Identification.** Contractor's federal employer identification number is: \_\_\_\_\_47-0720324\_\_\_\_\_.
16. **Sales Tax.** The Cooperative, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
17. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

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

With copy to:

ESUCC Cooperative Purchasing  
Attn: Craig Peterson  
PO Box 858

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

Contractor: The Brenmar Company  
8525 S. 117<sup>th</sup> Street  
LaVista, NE 68128

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.
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20. **Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.
21. **Waivers.** The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay: (1) In exercising any right or remedy, **or** (2) In requiring the satisfaction of any condition under this Agreement, **and** (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.
22. **Severability.** If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.
23. **Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.
24. **Force Majeure.** Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non performing party's failure to perform, or delay in performing, any of its obligations contained in this contract (except any obligations

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

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

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

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

**COOPERATIVE**

By: *Kraig Lofquist*  
Name: Kraig Lofquist  
Title: Executive Director  
Date: Jun 25, 2020

**CONTRACTOR**

By:   
Brian Hytrek (Jun 25, 2020 14:08 CDT)  
Name: Brian Hytrek  
Title: VP  
Date: Jun 25, 2020

## EXHIBIT "A"

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

Brenmar carries a wide variety of products for Food Packaging (eco-friendly and tamper evident), Take Out Supplies (pizza boxes, deli and snack containers), In addition we also carry retail supplies such as bags (eco-friendly, carryout, portion and bakery) and a wide variety of labels. We also can customize many of the products we carry including but not limited to our carryout bags, labels, food packaging, and apparel.

#### Other Available Products:

- Catering Supplies (steam tables, pan liners and apparel)
- PPE (Face masks, hand sanitizers (wipes, stations, bucket and UV light)
- Janitorial Supplies
- Baskets
- Mats (Anti-Fatigue)

Please refer to our catalog for more items <https://www.brenmarco.com>

## EXHIBIT "B"

### 1. Contractor's Pricing

Contractor's Pricing Model under this Agreement is:

**\*10 to 15% Discount (depending on item) with freight negotiable.**

### 2. Payment Terms/ Payment Schedule

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

### 3. Acceptance of Services or Products:

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

### 4. Title and Risk of Loss:

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

Signature:   
Brian Hytrek (Jun 25, 2020 14:08 CDT)

Email: brianh@brenmarco.com

Title: VP

Company: The Brenmar Company

Signature: 

Email: klofquist@esucc.org

Title: Executive Director

Company: ESUCC Cooperative









# 2020-06-24 Brenmar Co-ESUCC Special Buy - Final

Final Audit Report

2020-06-25

Created:	2020-06-25
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXubvJL4HqTRFi7c60lsnhgkHCSekz0MA

## "2020-06-24 Brenmar Co-ESUCC Special Buy - Final" History

-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
2020-06-25 - 0:13:27 AM GMT- IP address: 96.40.5.132
-  Document emailed to Brian Hytrek (brianh@brenmarco.com) for signature  
2020-06-25 - 0:16:29 AM GMT
-  Email viewed by Brian Hytrek (brianh@brenmarco.com)  
2020-06-25 - 1:31:59 AM GMT- IP address: 174.243.96.94
-  Document e-signed by Brian Hytrek (brianh@brenmarco.com)  
Signature Date: 2020-06-25 - 7:08:22 PM GMT - Time Source: server- IP address: 98.175.60.27
-  Document emailed to Kraig Lofquist (klofquist@esucc.org) for signature  
2020-06-25 - 7:08:26 PM GMT
-  Email viewed by Kraig Lofquist (klofquist@esucc.org)  
2020-06-25 - 9:00:05 PM GMT- IP address: 64.233.172.219
-  Document e-signed by Kraig Lofquist (klofquist@esucc.org)  
Signature Date: 2020-06-25 - 9:00:31 PM GMT - Time Source: server- IP address: 174.219.139.25
-  Signed document emailed to CRAIG PETERSON (craig.peterson@esucc.org), Kraig Lofquist (klofquist@esucc.org), Colleen Lentz (clentz@esucc.org), samj@brenmarco.com, and 2 more  
2020-06-25 - 9:00:31 PM GMT



## 2020-2023 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing (“Cooperative”), and Hanesbrands 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 July 23, 2020 (“Effective Date”) and shall continue until 12:00 midnight (CST) on June 30, 2023, unless terminated earlier as provided by this Agreement or by law.
- 5. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Sarpy County, Nebraska.

**6. Termination.**

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

**7. Indemnification.**

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

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

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

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

12. **Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
13. **Independent Contractor.** Contractor is an independent contractor under this contract and is not a Cooperative, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
14. **Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
15. **Taxpayer Identification.** Contractor's federal employer identification number is:  
20-3552316.
16. **Sales Tax.** The Cooperative, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
17. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

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

With copy to:

ESUCC Cooperative Purchasing  
Attn: Craig Peterson  
PO Box 858

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

Contractor: Hanesbrands Inc  
1000 E. Hanes Mill Rd  
Winston Salem, NC 27105

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

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


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

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


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

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

**COOPERATIVE**

By:   
Kraig Lofquist (Jul 27, 2020 12:41 CDT)  
Name: Kraig Lofquist  
Title: Executive Director  
Date: Jul 27, 2020

**CONTRACTOR**

By:   
5FB100B043E0443...  
Name: Jeff Ratliff  
Title: VP, Sales  
Date: July 23, 2020

**EXHIBIT "A"**

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

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

**EXHIBIT "B"**

**1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

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

**2. Payment Terms/ Payment Schedule**

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

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

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

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

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














# 2020-07-27-ESUCC-Hanes-SB

Final Audit Report

2020-07-27

Created:	2020-07-27
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXkD-nKayxYTrnW__e842049AeeKmiF4YM

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-  Document digitally presigned by DocuSign\, Inc. (techops@docusign.com)  
2020-07-24 - 4:27:05 PM GMT- IP address: 162.127.11.100
-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
2020-07-27 - 4:59:36 PM GMT- IP address: 162.127.11.100
-  Document emailed to Kraig Lofquist (klofquist@esucc.org) for signature  
2020-07-27 - 5:01:17 PM GMT
-  Email viewed by Kraig Lofquist (klofquist@esucc.org)  
2020-07-27 - 5:40:17 PM GMT- IP address: 66.102.6.244
-  Document e-signed by Kraig Lofquist (klofquist@esucc.org)  
Signature Date: 2020-07-27 - 5:41:27 PM GMT - Time Source: server- IP address: 75.100.220.227
-  Signed document emailed to CRAIG PETERSON (craig.peterson@esucc.org), Kraig Lofquist (klofquist@esucc.org), james.stagg@hanes.com, Deb Hericks (dhericks@esucc.org), and 1 more  
2020-07-27 - 5:41:27 PM GMT

## SOURCEWELL PARTICIPATING AGREEMENT

This Sourcewell Participating Agreement (“Participating Agreement”) by and between **Nebraska ESUCC** (“Buyer”) and **Staples Contract & Commercial LLC**, (“Staples”) is made effective as of **August 1, 2020** (the Participating Agreement Effective Date) and is attached to and governed by the Sourcewell Agreement(s) specifically marked and identified in Section 3.2 below (“Sourcewell Agreement(s)”) between Staples and Sourcewell. Buyer and Staples are collectively referred to herein as the “Parties”. All capitalized terms used herein shall have the meaning assigned to them in the Sourcewell Agreement unless otherwise defined herein.

**WHEREAS**, Buyer, a member of Sourcewell (as defined below), and Staples desire to enter into this Participating Agreement pursuant to which Buyer may participate in the Sourcewell Program to purchase Products (as defined below).

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

**1.0 Previous Participating Agreement(s).** The Parties acknowledge and agree that this Participating Agreement shall replace and supersede any previous Participating Agreement including any amendments attached thereto as of the Participating Agreement Effective Date set forth in paragraph 1 above.

**2.0 Term.** The term of this Participating Agreement with respect to Buyer shall commence on the Participating Agreement Effective Date and shall terminate upon the earlier of (i) termination or expiration of the Sourcewell Agreement, or (ii) the date at which Buyer ceases to be a Member of Sourcewell (“Participating Agreement Term”). In the event that the Participating Agreement terminates or expires pursuant to (i) or (ii) above, Staples agrees to offer Buyer the option to enter into a separate agreement with Staples only, provided, however, Staples and Buyer mutually agree upon the terms and conditions of such separate agreement.

### **3.0 Definitions.**

3.1 **Sourcewell.** The Sourcewell is public agency serving as a national government/education contracting agency. Sourcewell was created and organized under the “Service Cooperative” section of the Minnesota Statute, M.S. 123A.21. Sourcewell is governed by publicly elected officials while cooperatively serving all municipal and educational agencies nationally under the authority of the Minnesota Joint Exercise of Powers laws M.S. 471.59.

3.2 **Sourcewell Program.** The specific program(s) checked below:

**Supplies Program.** Office, school, and other workplace-related supplies and services offered for sale by Staples to Sourcewell members that are included in the Sourcewell national contract solution for the procurement of OFFICE SUPPLY CATALOG SOLUTIONS pursuant to RFP award #012320-SCC as amended from time to time.

**Furniture Program.** Furniture with related accessories and services offered for sale by Staples to Sourcewell members that are included in the Sourcewell national contract solution for the procurement of FURNITURE WITH RELATED

ACCESSORIES AND SERVICES pursuant to RFP award #121919-SCC as amended from time.

3.3 **Products.** All items included in the Sourcewell Program that Buyer purchases or may purchase from Staples.

3.4 **Purchase Orders.** Unless otherwise agreed by the parties in writing, all purchase orders issued by Member during the Term of this Participating Agreement shall be governed only by the terms and conditions of this Participating Agreement notwithstanding any preprinted language on Member's purchase order or Staples' acknowledgement thereof.

**4.0 Buyer Representations and Warranties.** Buyer hereby represents and warrants that:

4.1 it is a governmental entity as defined in Minnesota Statute 471.59 or it is a nonpublic school administrative unit or non-profit eligible to participate in the Sourcewell Program pursuant to Minnesota Statute 123a.21;

4.2 it is a Sourcewell member and will maintain its Sourcewell membership during the Participating Agreement Term;

4.3 it has the local legal ability to recognize and participate in joint exercise of powers activities under the applicable state and federal procurement laws; and

4.4 as a member of Sourcewell, Buyer may participate in the Sourcewell Program, provided, however, Buyer acknowledges that it (i) will be bound in all respects by the terms and conditions of the Sourcewell Agreement and terms and conditions of this Participating Agreement

**5.0 Prices.** Prices for Products are available at the time of purchase on [www.StaplesAdvantage.com](http://www.StaplesAdvantage.com) or as otherwise provided by the Sourcewell Program.

**6.0 Rebates.**

6.1 In lieu of receiving the standard annual Sourcewell volume rebate for purchases made under the Sourcewell Furniture Program #121919-SCC, Buyer will receive the tiered volume rebate below for those items of such Buyers's Net Sales pursuant to this agreement annually based on an annual period of August 1 through July 31, to be paid within forty-five (45) calendar days after each annual period ending July 31. For the avoidance of doubt, the aforesaid rebate shall not apply to any excluded items. Excluded items include but are not limited to; non-stock or special-order items such as janitorial equipment, technology hardware products, custom print items, custom promotional products, Managed Print Services (MPS), and retail store purchases.

<b>Net Sales</b>	<b>Tiered Volume Rebate</b>
\$ 0.00 - \$ 75,000	0%
\$ 75,000.01 - \$150,000	1%
\$150,000.01 - \$300,000	2%
\$300,000.01 - \$500,000	3%
\$500,000.01 - \$750,000	4%
\$750,000.01 or more	5%

- 6.2 “Net Sales” - Net Sales will be defined as the gross sales price of the applicable products and services sold under this contract, less taxes, duties, any rebates actually paid, discounts and allowances actually taken, rejections and returns to the extent credit is given or paid and also excluding purchases made via staples.com, or any Staples retail channel.
- 6.3 Payment of all discounts, incentives and/or rebates paid hereunder is contingent upon Buyer paying all invoices within the agreed-upon payment terms.
- 7.0 **Conflict.** In the event of conflict between this Participating Agreement and the Sourcewell Agreement, the terms and conditions of this Participating Agreement shall control.
- 8.0 **Termination.** Either Party may terminate this Participating Agreement for any reason upon at least thirty (30) calendar days’ prior written notice to the other Party.

**[Signature page follows.]**

IN WITNESS WHEREOF, the Parties have executed this Participating Agreement under seal as of the Participating Agreement Effective Date.

**NEBRASKA ESUCC**

By its authorized agent:

*Kraig Lofquist*

\_\_\_\_\_  
(Signature)

Name: Kraig Lofquist

Title: Executive Director

Date: Jul 9, 2020

**Address for Notices:**

6949 South 110<sup>th</sup> Street

LaVista, NE 68128

ATTN: Kraig Lofquist

Telephone: 402-597-4915

Facsimile: 402-597-4808

Email: klofquist@esucc.org

**with a copy to:**

ATTN: Craig Peterson

Telephone: 308-995-0665

Facsimile: 308-995-6587

Email: craig.peterson@esucc.org

**Signature:** *Kraig Lofquist*

**Email:** klofquist@esucc.org

**Title:** Executive Director

**Company:** ESUCC Cooperative

**STAPLES CONTRACT & COMMERCIAL LLC**

By its authorized agent:

*James A. McAllister*

\_\_\_\_\_  
(Signature)

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

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

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

**Address for Notices:**

Staples Contract & Commercial LLC

500 Staples Drive

Framingham, MA 01702

ATTN: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

**with a copy to:** General Counsel (Ref: \_\_\_\_\_ )

**Signature:**

**Email:**

**Title:**

**Company:**

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

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

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

**Impero class:room**

Scalable cloud-based classroom management software to keep students safe online, focus digital learning, deliver engaging lessons and improve student achievement. Integration with Microsoft Teams allows you to view and monitor all devices inside a Team, chat, call or video, allowing you to assist students in both fully remote and hybrid learning environments.

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

**Impero class:room - \$3.85 per learner**

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

**COOPERATIVE**

**CONTRACTOR**

*Kraig Lofquist*

*Alex Ball*  
Alex Ball (Aug 13, 2020 15:09 GMT+1)

Kraig Lofquist  
Executive Director

Alex Ball  
VP US Sales

Date Executed Aug 13, 2020

Date Executed Aug 13, 2020

Signature: *Alex Ball*  
Alex Ball (Aug 13, 2020 15:09 GMT+1)

Email: aball@imperosoftware.com

Title: VP US Sales

Company: Impero Solutions Inc

Signature: *Kraig Lofquist*

Email: klofquist@esucc.org

Title: Executive Director

Company: ESUCC Cooperative









# 2020-08-10 Product Addendum to Impero Special Buy Agreement

Final Audit Report

2020-08-13

Created:	2020-08-13
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAADX5p8gYTlrdWMzCNN8uwknHkrLITJo0i

## "2020-08-10 Product Addendum to Impero Special Buy Agreement" History

-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
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-  Document emailed to Alex Ball (aball@imperosoftware.com) for signature  
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-  Signed document emailed to Colleen Lentz (clentz@esucc.org), Deb Hericks (dhericks@esucc.org), Alex Ball (aball@imperosoftware.com), Kraig Lofquist (klofquist@esucc.org), and 1 more  
2020-08-13 - 3:52:02 PM GMT

Coop Directors report to ESUCC Board  
 submitted by: Craig Peterson  
 September 3, 2020

**1. Annual/Paper Buy**

- a. **Definition of the Annual Buy:** This is a line item bid were vendors are awarded by line item. If there is a tie for the bid price then a Nebraska vendor wins over an out of state vendor, otherwise it goes to a coin flip. Bids are sent to registered vendors nation-wide in October. Bid Awards announced in December and January, catalogs with over 4,200 items are published and distributed schools/members in February. The orders are then aggregated by address (all teacher/staff orders for items are aggregated into one line item per address) and sent to vendors in March and April and merchandise is delivered to the Cooperative members during May through July. The product categories offered are as follows: Electronics and Related Supplies, General Supplies, Furniture, Copier Paper, Maintenance-Shop Supplies, Health & Safety Supplies, Athletic Equipment & Supplies, Hot Lunch Equipment & Supplies, Science Equipment & Supplies, and Art Equipment & Supplies.
- b. **Annual Buy Covid-19 Issues**
  - i. We had 129 item Updates, Changes, issues reported this year with 82 directly impacted by Covid-19.
  - ii. Cancelled items included, Disinfecting Wipes, Hand Sanitizer, Hand Sanitizing Wipes, Facial Tissue, Gloves (Nitrile, Flocked, Latex, Disposable, Rubber, Exam, Powder Free Vinyl, Disposable Vinyl) Germicidal Surface Wipes, Plastic Refuse Containers, Toilet Tissue, Foam Footballs, Speed Hurdle, Ankle Stabilizer, Game Cones, Hand Sanitizer
- c. **Review of Sales Data over last four years**
  - i. 2019-20 – Annual Buy \$2,356,150.92; Paper Buy \$856,459.15
  - ii. 2018-19 – Annual Buy \$2,280,138.82; Paper Buy \$957,712.43
  - iii. 2017-18 – Annual Buy \$2,407,565.41; Paper Buy \$866,109.76
  - iv. 2016-17 – Annual Buy \$2,382,736.12; Paper Buy \$790,259.16

**2. ESUCC Marketplace**

- a. ESUCC Marketplace Sales
  - i. January 1, 2020 to August 24, 2020 - \$4,856,000.43
  - ii. January 1, 2019 to December 31, 2019 - \$4,470,323.01
  - iii. January 1, 2018 to December 31, 2018 - \$4,449,044.40
  - iv. January 1, 2017 to December 31, 2017 - \$3,863,795.56
  - v. January 1, 2016 to December 31, 2016 - \$4,070,589.58
- b. **Year over Year Marketplace purchases: includes year-round, Paper, and Annual Buy's**

	April	May	June	Jul
2016	\$ 2,657,808.25	\$ 104,289.71	\$ 38,602.03	\$ 61,078.34
2017	\$ 2,450,067.97	\$ 138,069.29	\$ 69,283.33	\$ 64,325.47
2018	\$ 2,513,162.25	\$ 214,344.20	\$ 245,532.73	\$ 97,504.18
2019	\$ 2,439,624.59	\$ 361,882.45	\$ 138,845.70	\$ 112,280.48
2020	\$ 2,589,289.80	\$ 359,748.36	\$ 200,182.23	\$ 380,141.63

### 3. Food Buy

- a. This will be the last year before the Food Buy is rebid. Coop staff will begin the process this by reviewing the timeline and updating any new USDA requirements for the bid. I would like to have the bid ready to publish by Fall so we can make awards the first of January and have renewals ready for the next year by the end April.

### 4. Special Buys

- a. **Definition Special Buy:** Contracts are negotiated agreements with exclusive pricing to ESUCC Cooperative Purchasing members. These contracts may range from one to three years. Within the agreement, terms shall be explicitly defined as to both parties' expectations and the scope of the agreement.
- b. Infobase/Learn360
  - i. 103 Entities
  - ii. Sales - \$51,357
  - iii. List Price - \$0.77 (Highest tiered price)
  - iv. Savings off list price - \$41,708.20
- c. Swank – Movie Licensing
  - i. 419 Buildings
  - ii. Sales - \$145,138
  - iii. List Price - Varies by building size \$429-\$758
  - iv. Savings off list price - Varies by building size \$144-\$255 for every building license sold
- d. World Book – Meets Rule 10 requirement of having an updated encyclopedia
  - i. 136 Entities
  - ii. Sales - \$125,562.82
  - iii. List Price - Varies on product - \$1.69 - \$2.54
  - iv. Savings off List price 35% - \$1.10 - \$1.65 for every license sold
- e. Securly
  - i. 44 Entities
  - ii. Sales - \$179,645.75
  - iii. List Price - \$7 Filter - Variable on each product
  - iv. Savings off list price (filtering product only) - \$429,931
- f. Adobe VIP
  - i. 164 Entities
  - ii. Sales - \$113,385
  - iii. List Price - \$2,450 Building - \$12,250 District
  - iv. Savings off list price
    1. Calculated as Building - \$401,800 Minimum Savings (#Entities \* \$2,450 building cost if bought on their own)
    2. Calculated by District - \$2,009,000 (#Entities \* \$12,250 District cost if bought on their own)
- g. Impero
  - i. 9 Entities
  - ii. Sales - \$16,002.50
- h. Edgenuity \$6,500.00 in orders to date

- i. Odysseyware \$81,900.00 in orders to date
- j. Newsela \$ 6,650.00 in orders to date
- k. Wyebot \$27,900 in orders to date
- l. Articulate \$12,691.16 in orders to date
- m. IXL \$21,580.50 in orders to date

**5. AEPA**

- a. **Definition of AEPA:** The Association of Educational Purchasing Agencies (AEPA) is a group of Educational Service Agencies/political subdivisions organized through a Memorandum of Understanding between all participating states for the purpose of securing combined volume purchasing contracts based on potential sales by qualifying customers in participating states. Of the many advantages to this unique purchasing group, are the combined human resources representing purchasing/bidding expertise, current and past vendor relationships, past experience and overall vision with regard to the needs of the qualified customers within each represented state. Nebraska is a founding member of AEPA, which started with ten states in 2000 and now has grown to 29 states. AEPA is a voluntary run organization and asks for volunteers from the membership to complete work in Bid Oversight, Administrative Committees, Marketing, Website management, Reporting and other areas as required.
- b. **IFB #021 Bids released on July 20 in the following categories**
  - i. Athletic Facility Lighting
  - ii. Hardwood & Synthetic Sports Flooring
  - iii. Copiers, Multi-Function Printers, Print & Managed Services
  - iv. Roofing Envelope Services
  - v. HVAC and Mechanical Products & Solutions
- c. **RFP #021 Proposals released on July 20 in the following categories**
  - i. Disaster Recovery Services
  - ii. Security Solutions
- d. **Virtual Meeting** - The Winter meeting scheduled in Orlando, FL on December 1-2 will be held over Zoom given the uncertainty of the pandemic.

**6. Additional Information**

- i. Communications with the following vendors/organizations throughout the Summer: Many schools about PPE items, Impero, Hanes, Brenmar, Paper101, Netsweeper, Staples, Worth Ave Group, Aramark, Aristotle



## Invitation for Bid Terms & Conditions

# *ESUCC-20210*

### 1. Issuing Agency

1.1 Nebraska ESUCC - Cooperative Purchasing is requesting online Bids from qualified vendors for the following: **Coop Annual Buy ESUCC-20210**.

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

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

#### 1.3.1 Extended Purchasing Window

1.3.1.1 Vendors may, at their option, elect to offer awarded items to Nebraska schools for an extended purchasing window that will run from June 1 through December 31 of the following year. Schools will submit orders during this purchasing window, for immediate direct delivery and billing. All orders will be submitted through the ESUCC Marketplace, as defined in the bid. The 5% Administrative Fee, as defined in the Bid, applies to all orders and will be invoiced and paid annually in January. Note: this is optional, vendors may elect to participate or not.

#### 1.3.2 Catalog Discount Pricing – Punchout Catalog

1.3.2.1 Vendors that have received a line item award will have the option of offering to members their entire product(s) ~~line~~ in addition to line items awarded on the Annual Buy.

1.3.2.1.1. ~~to the ESUCC membership after June 1 and until~~ This offering will be made available to ESUCC members on Punchout Enablement date June 1 and until the Re-enablement date January 31 of each year. ~~January 1 of the following year.~~

1.3.2.1.1.1. Vendor must receive line item awards for the current year in order for their punchout to be re-enabled.

1.3.2.2 –This offering must be in the format utilizing cXML punch-out technology either through their own punch-out or through an ESUCC provided interface that the vendor maintains all catalog updates through.

1.3.2.3 –The bid attribute "Catalog Discount Pricing" is reflective of the bid response for "Vendor chooses to offer entire product(s) line in addition to line items awarded in the ESUCC Annual Buy Bid.

1.3.2.3.1. Please provide definition of pricing term(s). ie. Single primary discount rate or multiple discount rates by category."

1.3.2.4 –Vendors will pay a 2% administrative fee for items not awarded on the ESUCC-20210 bid and offered through a punch-out catalog. This fee will be assessed on an quarterly-annual basis in September for the previous year.

1.3-1.3.2.5 Vendors are not required to elect the Extended Purchasing Window to be eligible for this option.

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

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

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

2.2 Sourcewell, ~~formerly National Joint Powers Alliance (NJPA)~~

2.2.1 Member Name: ESU Coordinating Council

2.2.2 ~~NJPA-Sourcewell~~ Member Number: 128838

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

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

**3. Time Lines**

3.1 Bids must be received on or before Friday, December ~~46th, 2020~~ with the exception of the Electronics section which will be due on or before Friday, January ~~8th, 2021~~. The bid closing time is 3:00 p.m., Central Standard Time. Be advised that any bid being submitted online at the closing time runs the risk of being disqualified if the bid closes while the bid is being uploaded. Bidders should allow ample time to submit bids.

3.2 All bids must be submitted electronically using the Nebraska ESUCC - Cooperative Purchasing sourcing application. Submitting your bid through this application will signify your authorized signature and acceptance of all Bid Terms and Conditions for the ESUCC-202~~10~~ bid.

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

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

**3.5 Key RFP Dates**

3.5.1 Public Announcement of RFP

October ~~68, 2020~~ 9:00 a.m. CST

- 3.5.2 Conference Call October ~~157, 202019~~ 2:00 p.m. CST
- 3.5.3 Deadline for Questions November ~~168, 202019~~ 4:00 p.m., CST
- 3.5.4 RFP Due Date & Time December ~~46, 202019~~ 3:00 p.m. CST  
(Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
- 3.5.5 Deadline for Bid Bonds received December ~~46, 202019~~  
(Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
- 3.5.6 ~~Preliminary-Awards-Available~~ing of Bids December ~~14-1716, 202019~~  
(Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
- 3.5.7 ~~Preliminary Awards & Vendor Review Period-of-Awards~~ December ~~2116, 202019~~ –  
~~December 31, 2019~~January 3, 2021  
(Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
- 3.5.8 Vendor Dispute Period January ~~1-34-6, 20210~~—  
(Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
- 3.5.9 Awards Finalized January ~~76, 20210~~  
(Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
- 3.5.10 RFP Due Date & Time January ~~810, 20210~~ 3:00 p.m. CST (100 Electronics Section)
- 3.5.11 Deadline for Bid Bonds received January ~~810, 20210~~ (100 Electronics Section)
- 3.5.12 Electronics Section Awarded January ~~113-124, 20210~~
- 3.5.13 Electronics Dispute/Review Period January ~~135-157, 20210~~
- 3.5.14 Electronics Awards Finalized January ~~1921, 20210~~
- ~~3.5.143.5.15~~ ~~Punchout Re-enablement~~ January 31, 2021
- 3.5.16 Paper Buy Catalog Opens February ~~23, 20210~~
- ~~3.5.153.5.17~~ ~~Bill Extended Catalog Orders~~ By January 31, 2021
- 3.5.18 Annual Buy Catalog Opens February ~~167, 20210~~
- ~~3.5.163.5.19~~ ~~Bill Punchout Catalog Orders~~ By February 28, 2021
- ~~3.5.173.5.20~~ Paper Orders sent to vendors March ~~189, 20210~~
- ~~3.5.183.5.21~~ First Day for 400 Paper delivery April ~~912, 20210~~
- ~~3.5.193.5.22~~ Annual Buy orders sent to VendorsApril ~~212, 20210~~
- ~~3.5.203.5.23~~ Paper Buy Admin Fees billed By April ~~1522, 20210~~
- ~~3.5.213.5.24~~ First Day for Annual Buy delivery May ~~242, 20210~~  
(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
- ~~3.5.223.5.25~~ Annual Buy Admin Fees billed By June ~~12, 20210~~
- ~~3.5.233.5.26~~ Delivery Deadline for 400 Paper June ~~89, 20210~~
- ~~3.5.243.5.27~~ Late delivery penalty 2% on Paper June ~~910, 20210~~
- ~~3.5.253.5.28~~ ~~Notification to ESUCC Coop by Vendors of Outstanding items yet to be shipped and Backordered items.Vendor Notifies ESUCC of Outstanding/Backordered Items~~ June ~~245, 20210~~
- ~~3.5.263.5.29~~ Paper Admin Fees due to ESUCC July ~~12, 20210~~
- ~~3.5.273.5.30~~ Earliest Possible payment due date July ~~86, 20210~~  
(45 Days from First Day for Delivery of Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
- ~~3.5.283.5.31~~ Delivery Deadline Annual Buy Items July ~~234, 20210~~  
(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
- ~~3.5.293.5.32~~ Late delivery penalty 2% July ~~267, 20210~~  
(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
- ~~3.5.303.5.33~~ Deadline to pay Admin Fees paid to ESUCC August ~~101, 20210~~
- ~~3.5.313.5.34~~ Late delivery penalty 4% August ~~267, 20210~~  
(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
- ~~3.5.323.5.35~~ Late delivery penalty 6% September ~~278, 20210~~  
(Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
- ~~3.5.333.5.36~~ ~~Awarded-v~~Vendor Bid bonds returned September 1, 20210
- ~~3.5.343.5.37~~ Overages picked up by Vendors October 1, 20210

#### **4. Questions**

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

#### **5. Bidder Qualifications**

- 5.1 All bidders that are awarded individual item contracts by Nebraska ESUCC - Cooperative Purchasing, shall comply and conform to all applicable Nebraska and Federal laws, regulations, standards, orders, or requirements including but not limited to the following:
  - 5.1.1 Equal Employment Opportunity: The Bidder shall comply with the Equal Employment Opportunity Clause required under Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
  - 5.1.2 Copeland "Anti-Kickback" Act: The Bidder shall comply with the Copeland "Anti-Kick Back" Act (40 U.S.C. 3145), as supplemented in Department of Labor regulations (29 CFR 3).
  - 5.1.3 Lobbying: The Bidder agrees and understands that under the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) that Bidders that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
  - 5.1.4 Contract Work Hours and Safety Standards Act: The Bidder agrees to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5).
  - 5.1.5 Patent Rights: The USDOE's and any other federal agency's requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course or under this Agreement include, but are not necessarily limited to, 34 CFR Part 80.
  - 5.1.6 Copyrights and Right in Data: The USDOE's and any other federal agency's requirements and regulations pertaining to copyrights and rights in data include, but are not necessarily limited to, 34 CFR Part 80.
  - 5.1.7 Access to Documents: The Parties and their grantees, the USDOE and/or other federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Bidder which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.
  - 5.1.8 Energy Policy and Conservation Act: The parties shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
  - 5.1.9 Clean Air and Federal Water Pollution Control Acts: The parties shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
  - 5.1.10 USDA Nondiscrimination Statement: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.
  - 5.1.11 Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.
  - 5.1.12 To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- 5.1.12.1 Mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
- 5.1.12.2 Fax: (202) 690-7442; or
- 5.1.12.3 Email: [program.intake@usda.gov](mailto:program.intake@usda.gov).
- 5.1.13 Buy American: To the maximum extent practicable, the Bidder will purchase domestic commodities or products produced in the United States or processed substantially using commodities produced in the United States
- 5.1.14 Minority Business Owners: ESUCC will contract with minority-owned businesses, women's business enterprises, and labor surplus firms when possible. Steps to ensure compliance with this provision will include:
  - 5.1.14.1 Qualified small, minority, and women's businesses on solicitation lists so that when such businesses are potential vendors, they are included in ESUCC solicitations.
  - 5.1.14.2 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation for such businesses.
  - 5.1.14.3 Establishing delivery schedules, where requirement permits, which encourage such enterprises
  - 5.1.14.4 Use services of Small Business Administration, Minority Development Agency, or similar state agency to maximize participation.
  - 5.1.14.5 Require vendor, if subcontracts are to be let, to follow the above steps
- 5.1.15 Debarment and Suspension: The parties agree and understand that under Executive Orders 12549 and 12689 that a contract award (see 2 CFR 180.220) must not be made to any party listed on the government-wide Excluded Parties List System in the System for Award Management (SAM). The Bidder, by signature to this RFP, certifies that neither the Bidder nor its key employees are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The Bidder also agrees to include the above requirements in any and all sub-contracts into which it enters. The Bidder shall immediately notify the ESUCC if, during the term of this contract, Bidder becomes debarred. The ESUCC may immediately terminate consideration of the Bidder by providing Bidder written notice if Bidder becomes debarred during the term of the potential contract.
- 5.1.16 State Letting Law - Neb. Rev. Stat. § 73-101 et seq. Vendors awarded a contract for a public work shall file with Nebraska ESUCC - Cooperative Purchasing a statement as required by Neb. Rev. Stat. § 73-102. The statement shall indicate that the bidder is complying with and will continue to comply with fair labor standards in the pursuit of its business and in the execution of the contract upon which it is bidding. Failure to provide such a statement may result in the bid being disqualified. As used herein, "fair labor standards" means such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the companies in the same business or field of endeavor as the bidder. If the requirements of this provision would increase the cost to the cooperative of merchandise, materials, supplies or services, this provision shall not be a requirement for bidding. Written Notification required from bidders opting out of this requirement due to increased costs to be received prior to bid close.
- 5.1.17 Conflict of Interest - By submitting a proposal, Bidder certifies that there does not now exist any relationship between the Bidder and any person or entity which is or gives the appearance of a conflict of interest related to this Request for Proposal. The Bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest. The Bidder certifies that it will not employ any individual known by Bidder to have a conflict of interest.
- 5.1.18 Personnel Recruitment Prohibition - The Bidder shall not, at any time, recruit or employ any employee or agent who has worked on the Request for Qualification or project, or who had any influence on decisions affecting the Request for Proposal or project.
- 5.1.19 The submission of the offer did not involve collusion or other anti-competitive practices. Neither signatory nor any person on his behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the matter of the bidding or award of a contract under this solicitation.
- 5.1.20 Bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

- 5.1.21 Neither Bidder, nor any officer, director, partner, member or associate of Bidder, nor any of its employees directly involved in obtaining contracts with the State of Nebraska, ESUCC, or any subdivision of the state has been convicted of false pretenses, attempted false pretenses, or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985
- 5.1.22 Reporting Notice - The parties shall adhere to the United States Department of Education, and any other federal agency's requirements and regulations that pertain to reporting. This includes, but is not limited to, 34 CFR Part 80.
- 5.1.23 Record Retention - The parties shall retain all required records for at least three (3) years after the the purchasing party makes final payment and all other pending matters are closed.

## **6. Bid Submission**

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

### 6.2 Special Notes:

- 6.2.1 Orders will be submitted directly from Nebraska Schools, ESUs, or other member agencies. Orders may be submitted by School District, Building, College Campus(s), or other Agencies. Vendors may receive multiple purchase orders from School Districts/Members and multiple ship to locations per School District/Campus/Members. A list of the previous year's ship to locations will be provided as an attachment to the bid for bidder reference. Additional locations may be added without notifying winning bidder. Please plan accordingly.
- 6.2.2 Bidders awarded item 400140(per case), 400141(per pallet), and/or 400135 agree to provide orders shipped to Cass, Douglas, Sarpy and Washington County a \$.50 per case freight discount from awarded price on these items.
- 6.2.3 Special Notes for cut paper (400 section): Vendors may begin delivery of paper on the date for "First Day for 400 Paper delivery" defined in the "Key RFP Dates". Late deliveries will be subject to late delivery penalties (2% per month). Payment terms are Net 45 days upon completion of entire PO.
- 6.2.4 Vendors must identify all miscellaneous packaging with labels or markings on the boxes. Nebraska ESUCC affiliated Schools and members will not be responsible for erroneous reporting of shortages due to unidentified miscellaneous packaging.
- 6.2.5 Vendors must deliver ordered quantities ONLY. Bidders are responsible for picking-up all overages by date defined in the "Key RFP Dates" section. All overages not picked-up by this date will be retained at no cost by ESUCC or its affiliate members.
- 6.2.6 Vendors must deliver all required cables, straps, and accessories with the respective product. Do not ship accessories on separate delivery dates or packaged with unrelated items.

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

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

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

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

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

## 8. Bid Bond Requirement

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

Bid Bonds should be mailed to:  
ESU Coordinating Council  
1292 East 4th Street  
Ainsworth, NE 69210

## 9. Terms and Conditions

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

### 9.1 Delivery

9.1.1 All items bid upon are for FOB Destination Tailgate delivery to participating school districts and/or individual school buildings of the Nebraska ESU’s or any entity by statute ESU’s/ESUCC may serve. A listing of all member cities and counties but not limited to can be found in the City-ESU-County Listing PDF document along with a list of the previous year’s ship to addresses accessible through the ESUCC sourcing solution. Winning bidders, in compliance with bid bond requirements, may begin deliveries no earlier than “First Day for Delivery” defined in the “Key RFP Dates.

9.1.2 ~~Shipper~~ Vendor must notify the respective “ship to” destination 48 hours in advance of delivery to schedule and insure a delivery time. Failure to schedule a delivery appointment with 48-hour lead-time may result in refusal to receive shipment until appropriate arrangements can be made. Nebraska ESUCC - Cooperative Purchasing, Schools, or members and its receiving locations will not be responsible for any costs incurred for winning bidder’s and/or their designated shipper’s failure to make delivery appointments.

### 9.2 Package/Lot Bids

9.2.1 When a Package/Lot BID is requested, a respondent is expected to bid each and every item within the Package/Lot, and the award will be made based upon the "Total Package Bid" calculation for the stipulated Package. The calculation for “PACKAGE BIDS” will be evaluated on a weighted average basis based on the previous year’s sales volume. Each bidder will be responsible for the accuracy of each "Total Bid Package”. If the package bid for the current year does not have previous year sales volumes to compare then the package will be awarded based on the low bid of the entire package.

9.2.2 In the event that not all items within a Package/Lot can be sourced by the respondent, Nebraska ESUCC - Cooperative Purchasing reserves the right to omit items from the calculation in the event that the removal from the package/ lot is in the best interest of the previous year’s order quantities and the pricing calculation.

### 9.3 Quantities

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

### 9.4 Bid Award Determination

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

### 9.5 Warranties and Specifications

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

### 9.6 Product Safety Information

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

### 9.7 Service Manuals and Product Nomenclature

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

## 9.8 “Equivalent to” Item Specifications

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

## 9.9 Samples

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

## 9.10 Payment Terms

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

## 9.11 Lost and Damaged Merchandise

- 9.11.1 The awarded vendor shall accept full responsibility and pay for return shipping charges on any item received by a school, Educational Service Unit, or member that is found to be deficient in quality, defective in

packaging, fails to meet specifications or is an unauthorized substitution so as to render the item unsuitable for its intended purpose.

#### 9.12 Discontinued Items/Model Changes/Cancellations

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

#### 9.13 Late Shipments

- 9.13.1 Vendor is responsible to notify, in writing, Nebraska ESUCC - Cooperative Purchasing [coop@esucc.org](mailto:coop@esucc.org) of any late or delayed shipments as soon as the vendor is aware of this information. On date noted in “Key RFP Dates”, vendors must submit to Nebraska ESUCC - Cooperative Purchasing a complete list of all items that have yet to be shipped and an estimate, by line item and delivery location, of expected delivery dates.
- 9.13.2 Nebraska ESUCC - Cooperative Purchasing and its affiliates reserve the right to cancel the whole or any part of this agreement due to failure by the vendor to carry out any obligation, term or condition of the agreement.
- 9.13.3 Nebraska ESUCC - Cooperative Purchasing will issue written notice to the vendor for acting or failing to act in any of the following:
  - 9.13.3.1 The vendor provides material that does not meet the specifications of the agreement;
  - 9.13.3.2 The vendor fails to adequately perform the services set forth in the specifications of the agreement.
  - 9.13.3.3 The vendor fails to observe any of the terms and conditions of the agreement.
  - 9.13.3.4 The vendor fails to follow the established procedure for purchase orders, invoices, and receipt of funds as stipulated by Nebraska ESUCC - Cooperative Purchasing.
- 9.13.4 Nebraska ESUCC - Cooperative Purchasing reserves the right to cancel, or suspend the use thereof, any agreement resulting from this IFB if the vendor files bankruptcy protection, or is acquired by an independent third party. Upon receipt of the written notice, the vendor shall have ten (10) business days to provide a satisfactory response to Nebraska ESUCC - Cooperative Purchasing. Failure on the part of the vendor to address adequately all issues of concern may result in cancellation of the agreement.

#### 9.14 Inspections and Acceptance

- 9.14.1 Inspection and acceptance will be at the member delivery destination unless specified otherwise, and will be made at the ship to address by a duly authorized representative. Until delivery and acceptance, and after any rejection, risk of loss will be the vendors unless loss results from negligence by the receiver.

#### 9.15 Electronic Procurement System

- 9.15.1 Nebraska ESUCC - Cooperative Purchasing and its members will issue orders for supplies, equipment and services utilizing an electronic procurement system.

#### 9.16 General Information

- 9.16.1 Sales Summary Reports will be provided reflecting a vendor's total catalog sales upon request only.

#### 9.17 Multiple Awards

- 9.17.1 In order to assure that any bid award will allow Nebraska ESUCC - Cooperative Purchasing to fulfill current and future requirements, Nebraska ESUCC - Cooperative Purchasing reserves the right to award bids to multiple vendors. The actual use of any bid award will be at the sole discretion of Nebraska ESUCC - Cooperative Purchasing affiliated schools, ESU's or members. Each vendor should take into account the

fact that Nebraska ESUCC - Cooperative Purchasing may consider multiple awards. It is at the discretion of Nebraska ESUCC - Cooperative Purchasing to make multiple bid awards, to award only one bid, or to make no awards.

#### 9.18 Bid Preparation and Submission

9.18.1 All bids must be submitted through the Nebraska ESUCC - Cooperative Purchasing's hosted sourcing application service at <http://www.neesucoop.org> via the Internet. All vendors will be able to access the bid from the system as long as you have pre-registered with ESUCC Cooperative Purchasing. Submitting a bid using the hard copy will render the bid non-responsive and therefore disqualified. All bids are to be prepared on a prepaid, FOB Destination Tailgate basis. No payments for transportation charges, of any kind, will be allowed, unless otherwise specified.

#### 9.19 Governing Law

9.19.1 This IFB, any resulting contracts, and the vendor's performance will be governed by and construed in accordance with the laws of the State of Nebraska.

#### 9.20 Publicity

9.20.1 ESUCC does not endorse the goods or services of the vendors. Except for listing ESUCC as a client during the term of any award or related contract, news releases or other publicity concerning the award or contract must not be made by the vendor without the prior written approval of ESUCC.

#### 9.21 Nondiscrimination

9.21.1 By submitting a bid, the vendor agrees that it and its subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of any bid award with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

#### 9.22 Employment Eligibility Verification

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

#### 9.23 Disqualification of Bidders

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

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

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

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

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

#### 9.24 Non-Responsive Bids

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

#### 9.25 Debarment

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

## 9.26 Public Records

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

## 9.27 Electronic Bid Protocol

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

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

## 9.28 Piggyback Clause.

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

## 10. Indemnification

10.1 Bidder agrees to indemnify, defend, and hold harmless the ESUCC and/or its member agencies against any and all claims, suits, and/or judgments, including costs, expenses, damages, and reasonable legal fees based upon and arising from Bidder's violation of the rights of others and/or by reason of a breach of any of the foregoing warranties.

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

## 11. Tariffs

11.1 In the event of significant delay or price increase of materials or goods occurring during the performance of the contract due to a tariff that goes into effect after the execution of this contract, the contract price/sum, time of performance, or contract requirements shall be equitably adjusted by written amendment of the contract. A change in price of an item of material or good shall be considered significant when the price of an item increases 5 percent between the date of execution of the contract and the date of catalog opening February 1, 2020. The price amendment shall be effective only as long as the tariff is in effect. The intent of the adjustment is to hold the vendor harmless from the impact of the tariff, but the price adjustment is in no way intended to provide or guarantee the same percentage of profit. The vendor shall provide documentation that is satisfactory to ESUCC to support any claim under this section. In addition, ESUCC shall have the right to request a cost analysis vs. price analysis for each change in tariff adjustment request. In the event that the parties are unable to reach an agreement regarding a contract amendment under this section, either party has the option to terminate the contract, bid award or re-award the item to the next low bid.

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

Kraig Lofquist

Executive Director

Terms and Conditions reviewed on: September 9, 202019

Sales- Revenue-Savings Summary	2016-17	2017-18	2018-19	2019-20	Completed years)Delta	2017-18 Svgs by ESU	2017-18 Sales	2017-18 Savings	2018-19 Sales	2018-19 Savings	2019-20 Sales	2019-20 Savings
<b>Total Coop Sales</b>	15,640,253.67	16,446,634.93	15,927,976.44	16,712,750.28	784,773.84	<b>ESU 00</b>	442,448.99	129,946.16	336,713.12	83,617.39	403,707.17	180,981.72
<b>Total Coop Savings</b>	4,067,170.89	5,554,935.24	5,781,329.42	5,314,179.89	-467,149.53	<b>ESU 01</b>	1,363,591.22	437,455.33	1,298,948.95	368,411.62	1,984,598.19	500,724.37
<b>Total Expected Sales Revenue [1]</b>	411,118.23	431,226.15	416,013.62	433,827.97	17,814.35	<b>ESU 02</b>	1,728,281.20	534,212.40	1,740,404.70	443,553.34	1,730,952.33	462,865.97
<b>Total Paid Revenue</b>	414,212.56	431,397.44	421,280.19	344,072.58	-77,207.61	<b>ESU 03</b>	2,337,948.75	819,821.41	2,246,325.27	639,143.39	2,149,119.56	655,791.05
<b>Sales By Program</b>						<b>ESU 04</b>	595,928.57	226,270.78	657,946.88	233,986.88	739,175.86	252,646.13
Annual/ Paper Buy	3,172,995.28	3,273,675.17	3,237,851.25	3,212,610.07	-25,241.18	<b>ESU 05</b>	693,046.43	192,924.50	711,552.00	174,296.50	653,531.61	152,914.86
Annual Buy Punch-out			15,133.72	9,199.67	-5,934.05	<b>ESU 06</b>	1,636,623.29	489,346.14	1,633,221.98	486,424.10	1,704,920.14	566,742.19
AEPA	3,939,001.37	3,769,550.58	3,685,080.29	3,779,092.80	94,012.51	<b>ESU 07</b>	1,155,653.78	397,165.30	1,138,410.76	408,013.88	1,131,289.33	361,178.19
Special Buys	1,719,292.64	2,196,965.45	2,126,586.20	2,352,061.94	225,475.74	<b>ESU 08</b>	802,765.96	311,899.32	802,353.94	262,148.66	781,643.11	265,620.83
Food Program	5,006,128.75	5,405,047.05	5,340,878.66	5,630,776.46	289,897.80	<b>ESU 09</b>	630,189.68	195,633.03	917,100.22	236,124.73	680,490.70	221,122.87
Custodial	1,798,612.51	1,788,954.99	1,514,159.30	1,711,664.21	197,504.91	<b>ESU 10</b>	1,518,719.48	639,823.25	1,327,655.45	507,598.11	1,966,523.82	727,857.82
Extended Buys	4,223.12	12,441.69	8,287.02	17,345.13	9,058.11	<b>ESU 11</b>	948,854.08	297,181.32	800,343.64	207,194.59	716,108.95	216,424.81
<b>Savings By Program [2]</b>						<b>ESU 13</b>	1,239,940.12	371,974.85	827,742.42	319,495.11	771,792.83	309,535.75
Annual/ Paper Buy	1014533.12	1,414,177.87	1,145,774.52	1,142,688.31	-3,086.21	<b>ESU 15</b>	162,278.39	86,952.16	191,135.60	80,395.54	171,979.07	68,764.53
Annual Buy Punchout			6,485.88	3,314.77	-3,171.11	<b>ESU 16</b>	309,090.63	139,132.34	439,145.13	137,729.23	292,968.92	104,996.89
AEPA	1,254,655.49	1,260,045.63	1,708,496.04	1,534,069.98	-174,426.06	<b>ESU 17</b>	181,350.85	73,495.04	210,224.98	71,142.43	240,153.80	89,467.02
Special Buys	811,891.94	1,330,973.87	881,746.51	982,165.54	100,419.03	<b>ESU 18</b>	51,794.77	24,762.05	57,483.53	25,258.19	50,439.25	20,218.05
Food Program	750,919.31	954,392.21	1,417,516.59	902,692.31	-514,824.28	<b>ESU 19</b>	438,649.72	126,094.02	264,783.77	82,541.74	301,538.88	85,796.43
Custodial	233,819.63	590,507.22	618,609.14	744,912.69	126,303.55	<b>ESU 20</b>	207,816.92	58,937.84	303,733.66	70,890.90	219,317.86	66,490.03
Extended Buys	1,351.40	4,838.44	2,700.74	4,336.28	1,635.54	<b>ESUCC</b>	1,662.09	1,488.61	22,750.44	14,842.44	22,402.35	4,025.94
<b>Expected Revenue by Program</b>						<b>Total Sales By ESU</b>		<b>16,446,634.92</b>	<b>Total Sales By ESU</b>	<b>15,927,976.44</b>	<b>Total Sales By ESU</b>	<b>16,712,750.30</b>
Annual & Paper Buy	158,649.76	163,683.76	161,892.56	160,630.50	-1,262.06	<b>Total Svgs By ESU</b>		<b>5,554,515.85</b>	<b>Total Savings By ESU</b>	<b>4,852,808.77</b>	<b>Total Savings By ESU</b>	<b>5,314,179.89</b>
Annual Buy Punchout			302.67	183.99	-118.68	<b>4 Year Savings Total</b>	<b>19,789,094.79</b>					
AEPA	78,780.03	75,391.01	70,747.40	74,992.88	4,245.48	<b>2019-20 Sales/ Savings By Program [3]</b>						
Special Buys	37,382.45	47,649.26	45,555.87	50,304.52	4,748.65	<b>Program</b>	<b>Total Sales</b>	<b>Total Savings</b>				
Food Program	100,122.58	108,100.94	106,817.57	112,615.53	5,797.96	Annual/Paper Buy	3,212,610.07	1,142,688.31				
Custodial	35,972.25	35,779.10	30,283.19	34,233.28	3,950.10	AEPA	3,779,092.80	1,534,069.98				
Extended Buys	211.16	622.08	414.35	867.26	452.91	Special Buys	2,352,061.94	982,165.54				
<b>Sales Statistics</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>		<b>YOY Delta</b>	Food Program	5,630,776.46	902,692.31				
<b>Total Number of Purchasing Schools [4]</b>	424	402	402	401	-1	Custodial	1,711,664.21	744,912.69				
<b>Food Program Participants</b>	111	114	114	113	-1	Extended Buys	17,345.13	4,336.28				
<b>Food Program Purchasing Schools</b>	107	109	108	108	0	Annual Buy Punchout	9,199.67	3,314.77				
<b>Annual- Paper Buy Purchasing Schools [5]</b>	273	261	250	263	13	<b>Total Sales</b>	<b>16,712,750.28</b>	<b>5,314,179.89</b>				
<b>Annual Buy Items Offered [6]</b>	3227	3917 [7]	4258 [8]	4201	-57	<b>Total % Savings</b>	<b>31.80%</b>					
<b>Annual Buy Items Ordered [9]</b>	2328	2659	2429	2626	197	<b>2018-19 Sales/ Savings By Program [15]</b>						
<b>Paper Buy Items Offered [10]</b>	149 [11]	115 [12]	194 [13]	188 [14]	-6	<b>Program</b>	<b>Total Sales</b>	<b>Total Savings</b>				
<b>Paper Buy Items Ordered</b>	131	107	150	144	-6	Annual/Paper Buy	3,237,851.25	1,145,774.52				
<b>Total Number of Annual Buy Bidding Vendors</b>	29	31	27	26	-1	AEPA	3,685,080.29	1,261,429.99				
<b>Total Number of Annual Buy Awarded Vendors</b>	27	29	26	22	-4	Special Buys	2,126,106.20	887,281.66				
<b>Total Number of Marketplace Shoppable Vendors</b>			39	42	3	Food Program	5,341,358.66	930,298.19				
<b>Total Number of Contracts [16]</b>	93	95	102	114	12	Custodial	1,514,159.29	618,852.71				
<b>Total Number of Vendors</b>			96	99	3	Extended Buys	23,420.74	9,171.72				
<b>Total Number of vendors/contracts w/ sales [17]</b>	52	54	60	72	12	<b>Total Sales</b>	<b>15,927,976.43</b>	<b>4,852,808.79</b>				
						<b>Total % Savings</b>	<b>30.47%</b>					



[1] Microsoft Office User:  
Revenue based on sales- not actual paid

[2] Manually entered from FM Excel Spreadsheet

[3] From Coop Programs Sales & Savings 2018-19 in Data\_Collection Folder

[4] created a pivot table from excel data base

[5] Pivot table program & school copy list from AB & PB put in a sheet in 1 column> highlight column>conditional format> highlight cell rules>find dup's>data tab>remove dups

[6] Use excel spreadsheet from PQ total orders, create pivot table for offered and ordered

[7] 300's- 893 items

[8] 300's- 1406 items- added many new chairs/ desks. Got no bids on file cabinets

[9] Used AB Final Order>Pivot>item description>

[10] Use excel spreadsheet from PQ total orders, create pivot table for offered and ordered

[11] 400140-white copy paper 26.50 case  
400141 white copy paper 999.60 pallet

[12] 400140-white copy paper 27.00 case  
400141 white copy paper 996.00 pallet

[13] 400140-white copy paper 32.60 case  
400141 white copy paper 1,255.20 pallet

[14] 400140-white copy paper 28.25 case  
400141 white copy paper 1,130.00pallet

[15] From Coop Programs Sales & Savings 2018-19 in Data\_Collection Folder

[16] IonWave/Contracts/Active/Type-does not incld interlocals, sub's  
+ AB awarded vendors

[17] pivot table from excel database + add in AEPA sales from mult contracts for 1 vendor