

Educational Service Unit Coordinating Council  
Legal Committee Meeting  
Wednesday, September 1, 2021, 3:00 PM  
ESU No.10, 76 Plaza Blvd, Kearney, NE 68845

Posted Locations:

Springview Herald  
Valentine Midland News  
Red Cloud Leader  
Ainsworth News  
ESUCC webpage  
NE Public Meetings

Posted Date: 8/25/21

Attendance Taken at 3:01 PM.

Dan Schnoes (NE) (ESU 03):	Present
Brenda A McNiff (ESU 05):	Present
Dr John Skretta (ESU 06):	Present
Dr. Larianne Polk (ESU 07):	Present
Dr Melissa Wheelock (ESU 10):	Present
Greg Barnes (ESU 11):	Absent
Paul Calvert (ESU 15):	Absent

Attendance Update Taken at 3:28 PM.

Drew Harris (ESU 09):	Present
Paul Calvert (ESU 15):	Present

1. Call to Order
2. Roll Call
3. Agenda Item
  - 3.1. COOP
    - 3.1.1. Coop Strategic Plan
    - 3.1.2. Coop Contracts

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

3.1.2.2. Approve Special Buy Agreement with Syscloud

3.1.2.3. Approve Special Buy agreement with 3rd Millennium

3.1.2.4. Approve Annual Buy Terms and Conditions

3.1.2.5. Approve Addendum with Impero

3.1.3. Staff Written Reports

3.1.3.1. Peterson Report

3.1.3.2. Colleen Lentz (Data)

3.2. Legislative Updates

3.2.1. Bromm's Updates

3.3. Policies and Procedures

3.3.1. 1017 Participation by the Public Policy Review

3.3.1.1. Update Request to Be Heard

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) Virtual conferencing means conducting or participating in a meeting electronically or telephonically with interaction among the participants subject to subsection (2) of section 84-1412.

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

(1)(a) Each public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.

(b) (i) Except as provided in subdivision (1)(b)(ii) of this section, in the case of a public body described in subdivision (1)(a)(i) of section 84-1409 or such body's advisory committee, such notice shall be published in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's web site.

(ii) In the case of the governing body of a city of the second class or village or such body's advisory committee, such notice shall be published by:

(A) Publication in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's web site; or

(B) Posting written notice in three conspicuous public places in such city or village. Such notice shall be posted in the same three places for each meeting.

(iii) In the case of a public body not described in subdivision (1) (b)(i) or (ii) of this section, such notice shall be given by a method designated by the public body.

(c) In addition to a method of notice required by subdivision (1)(b) (i) or (ii) of this

section, such notice may also be provided by any other appropriate method designated by such public body or such advisory committee.

(d) Each public body shall record the methods and dates of such notice in its minutes.

(e) 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 (i) twenty-four hours before the scheduled commencement of the meeting or (ii) 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) The following entities may hold a meeting by means of virtual conferencing if the requirements of subdivision (2)(b) of this section are met:

(i) A state agency, state board, state commission, state council, or state committee, or an advisory committee of any such state entity;

(ii) An organization, including the governing body, created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act;

(iii) The governing body of a public power district having a chartered territory of more than one county in this state;

(iv) The governing body of a public power and irrigation district having a chartered territory of more than one county in this state;

(v) An educational service unit;

(vi) The Educational Service Unit Coordinating Council;

(vii) An organization, including the governing body, of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act;

(viii) A community college board of governors;

(ix) The Nebraska Brand Committee;

(x) A local public health department;

(xi) A metropolitan utilities district;

(xii) A regional metropolitan transit authority;

(xiii) A natural resources district; and

(xiv) The Judicial Resources Commission.

(b) The requirements for holding a meeting by means of virtual conferencing are as follows:

(i) Reasonable advance publicized notice is given as provided in subsection (1) of this section, including providing access to a dial-in number or link to the virtual conference;

(ii) In addition to the public's right to participate by virtual conferencing, reasonable arrangements are made to accommodate the public's right to attend at a physical site and participate as provided in section 84-1412, including reasonable seating, in at least one designated site in a building open to the public and identified in the notice, with: At least one member of the entity holding such meeting, or his or her designee, present at each site; a recording of the hearing by audio or visual recording devices; and a reasonable opportunity for input, such as public comment or questions, is provided to at least the same extent as would be provided if virtual conferencing was not used;

(iii) At least one copy of all documents being considered at the meeting is available at any physical site open to the public where individuals may attend the virtual conference. The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act; and

(iv) Except as otherwise provided in this subdivision or subsection (4) of section 79-2204, no more than one-half of the meetings of the state entities, advisory committees, boards, councils, organizations, or governing bodies are held by virtual conferencing in a calendar year. 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, the organization may hold more than one-half of its meetings by virtual conferencing if such organization holds at least one meeting each calendar year that is not by virtual conferencing. 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 virtual conferencing if the governing body's quarterly meetings are not held by virtual conferencing.

(3) Virtual conferencing, 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 virtual conferencing. 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 to appear before the public body by means of virtual conferencing.

(7) (a) Notwithstanding subsections (2) and (5) of this section, if an emergency is declared by the Governor pursuant to the Emergency Management Act as defined in section 81-829.39, a public body the territorial jurisdiction of which is included in the emergency declaration, in whole or in part, may hold a meeting by virtual conferencing during such emergency if the public body gives reasonable advance publicized notice as described in subsection (1) of this section. The notice shall include information regarding access for the public and news media. In addition to any formal action taken pertaining to the emergency, the public body may hold such meeting for the purpose of briefing, discussion of public business, formation of tentative policy, or the taking of any action by the public body.

(b) The public body shall provide access by providing a dial-in number or a link to the virtual conference. The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act. Reasonable arrangements shall be made to accommodate the public's right to hear and speak at the meeting and record the meeting. Subsection (4) of this section shall be complied with in conducting such meetings.

(c) The nature of the emergency shall be stated in the minutes. Complete minutes of such meeting specifying the nature of the emergency and any formal action taken at the meeting shall be made available for inspection as provided in subsections (5) and (6) of section 84-1413.

**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, a 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, including meetings held by virtual conferencing. 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 shall require any member of the public desiring to address the body to identify himself or herself, including an address and the name of any organization represented by such person unless the address requirement is waived to protect the security of the individual.

(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 virtual conferencing 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; and

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

(8) Public bodies shall make available at the meeting or the in-state location for virtual conferencing as required by subdivision (6)(c) of this section, 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, either in paper or electronic form. 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.

(7) Beginning July 31, 2022, the governing body of a natural resources district, the city council of a city of the metropolitan class, the city council of a city of the primary class, the city council of a city of the first class, the county board of a county with a population greater than twenty-five thousand inhabitants, and the school board of a school district shall make available on such entity's public web site the agenda and minutes of any meeting of the governing body. The agenda shall be placed on the web site at least twenty-four hours before the meeting of the governing body. Minutes shall be placed on the web site at such time as the minutes are available for inspection as provided in subsection (5) of this section. This information shall be available on the public web site for at least six months.

**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  
06/2021



PERRY, GUTHERY, HAASE & GESSFORD, P.C., L.L.O.  
233 South 13th Street, Suite 1400,  
Lincoln, NE 68508  
(402) 476-9200  
perrylawfirm.com



Nebraska Council  
of School Administrators  
455 South 11<sup>th</sup> Street, Suite A  
Lincoln, NE 68508  
(402) 476-8055  
ncsa.org



Association of Educational  
PURCHASING AGENCIES

## Part E – Signature Forms

AEPA 021.75

HVAC and Mechanical Products and Solutions

### Instructions

Contained herein are forms that **require a signature** from an authorized person at your company. All items found within this document are **mandatory**. Failure to sign the required areas, sections, or signature lines will allow AEPA to consider your company's proposal as **non-responsive**.

To submit the required signed forms, follow these steps:

1. Read the documents in their entirety.
2. Complete all forms and sign when required.
3. Return the forms and pages in their correct order and scan one (1) single PDF format titled "Part E – Signature Forms – Name of Bidding Company" (i.e. one PDF document for all signature forms).
4. Submit Part E, along with other required documents in Public Purchase.

\*Note, a bid checklist has been provided to review with your submission.

The following sections will need to be completed prior to submission as one (1), single PDF titled "Part E – Signature Forms – Name of Bidding Company".

Uniform Guidance "EDGAR" Certification Form – \*signature required

Bid Affidavit – \*signature required

Acceptance of Bid & Contract Award – \*signature required

# Uniform Guidance “EDGAR” Certification Form

## 2 CFR Part 200

When a purchasing agency seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200, referred to as the “Uniform Guidance” or new “EDGAR”. All Respondents submitting proposals must complete this EDGAR Certification form regarding the Respondent’s willingness and ability to comply with certain requirements, which may apply to specific agency purchases using federal grant funds.

For each of the items below, the Respondent will certify its agreement and ability to comply, where applicable, by having the Respondent’s authorized representative check, initial the applicable boxes, and sign the acknowledgment at the end of this form. If a Respondent fails to complete any item of this form, AEPA will consider and may list the response, as the Respondents are unable to comply. A “No” response to any of the items below may influence the ability of a purchasing agency to purchase from the Respondent using federal funds.

### 1. Violation of Contract Terms and Conditions

Provisions regarding Respondent default are included in AEPA’s terms and conditions. Any contract award will be subject to such terms and conditions, as well as any additional terms and conditions in any purchase order, ancillary agency contract, or construction contract agreed upon by the Respondent and the purchasing agency, which must be consistent with and protect the purchasing agency at least to the same extent as AEPA’s terms and conditions. The remedies under the contract are in addition to any other remedies that may be available under law or in equity.

### 2. Termination for Cause of Convenience

For a participating agency purchase or contract in excess of \$10,000 made using federal funds, you agree that the following term and condition shall apply:

The participating agency may terminate or cancel any purchase order under this contract at any time, with or without cause, by providing seven (7) business days in advance written notice to the Respondent. If this agreement is terminated in accordance with this paragraph, the participating agency shall only be required to pay Respondent for goods and services delivered to the participating agency prior to the termination and not otherwise returned in accordance with the Respondent’s return policy. If the participating agency has paid the Respondent for goods and services provided as the date of termination, Respondent shall immediately refund such payment(s).

If an alternate provision for termination of a participating agency’s purchase for cause and convenience, including how it will be affected and the basis for settlement, is in the participating agency’s purchase order, ancillary agreement or construction contract agreed to by the Respondent, the participating agency’s provision shall control.

### 3. Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all participating agency purchases or contract that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Respondent agrees that such provision applies to any participating agency purchase or contract that meets the definition of

“federally assisted construction contract” in 41 CFR Part 60-1.3 and Respondent agrees that it shall comply with such provision.

#### **4. Davis Bacon Act**

When required by Federal program legislation, Respondent agrees that, for all participating agency contracts for the construction, alteration, or repair (including painting and decorating) of public buildings or public works, in excess of \$2,000, Respondent shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, Respondent is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specific in a wage determinate made by the Secretary of Labor. Also, Respondent shall pay wages not less than once a week.

Current prevailing wage determinations issued by the Department of Labor are available at [www.wdol.gov](http://www.wdol.gov). Respondent agrees that, for any purchase to which this requirement applies, the award of the purchase to the Respondent is conditioned upon Respondent’s acceptance of wage determination.

Respondent further agrees that is shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each construction completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled under his contract of employment, shall be defined under this titled or imprisoned not more than five (5) years, or both.

#### **5. Contract Work Hours and Safety Standards Act**

Where applicable, for all participating agency purchases in excess of \$100,000 that involve the employment of mechanics or laborers, Respondent agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Respondent is required to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of the 40 U.S.C. 3704 applies to construction work and provides that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchase of supplies, materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

#### **6. Right to Inventions Made Under a Contract or Agreement**

If the participating agency’s federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experiments, developmental or research work under the “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

#### **7. Clean Air Act and Federal Water Pollution Control Act**

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to 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). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). When required, Respondent agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

## **8. Debarment and Suspension**

Debarment and Suspension (Executive Orders 12549 and 12689), a contract award (see 2 CFR 180.222) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Respondent certifies that the Respondent is not currently listed and further agrees to immediately notify AEPA and all participating agencies with pending purchases or seeking to purchase from the Respondent if Respondent is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under state statutory or regulatory authority other than Executive Order 12549.

## **9. Byrd Anti-Lobbying Amendment**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), Respondents that apply or bid for an award exceeding \$100,000 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. Each tier must also disclose any lobbying with non-Federal funds that take place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

## **10. Procurement of Recovered Materials**

For participating agency purchases utilizing Federal funds, Respondent agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as a participating agency may require to confirm estimates and otherwise comply. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **11. Profit as a Separate Element of Price**

For purchases using federal funds in excess of \$150,000, a participating agency may be required to negotiate profit as a separate element of the price. See 2 CFR 200.323(b). When required by a participating agency, Respondent agrees to provide information and negotiate with the participating agency regarding profit as a separate element of the price for a particular purchase. However, Respondent agrees that the total price, including profit, charged by the Respondent to the participating agency shall not exceed the awarded pricing, including any applicable discount, under the Respondent's contract with AEPA.

## **12. General Compliance with Participating Agencies**

In addition to the foregoing specific requirements, Respondent agrees, in accepting any purchase order from a participating agency, it shall make a good faith effort to work with a participating agency to provide such information and to satisfy requirements as may apply to a particular purchase or purchases including, but not limited to, applicable record keeping and record retention requirements as noted in the Federal Acquisition Regulation, FAR 4.703(a).

**By initialing the table (1-12) and signing below, I certify that the information in this form is true, complete and accurate and that I am authorized by my business to make this certification and all consents and agreements contained herein.**

<b>Respondent Certification (By Item)</b>	<b>Respondent Certification: YES, I agree or NO, I do NOT agree</b>	<b>Initial</b>
1. Violation of Contract Terms and Conditions	Yes	JBS
2. Termination for Cause of Convenience	Yes	JBS
3. Equal Employment Opportunity	Yes	JBS
4. Davis-Bacon Act	Yes	JBS
5. Contract Work Hours and Safety Standards Act	Yes	JBS
6. Right to Inventions Made Under a Contract or Agreement	Yes	JBS
7. Clean Air Act and Federal Water Pollution Control Act	Yes	JBS
8. Debarment and Suspension	Yes	JBS
9. Byrd Anti-Lobbying Amendment	Yes	JBS
10. Procurement of Recovered Materials	Yes	JBS
11. Profit as a Separate Element of Price	Yes	JBS
12. General Compliance with Participating Agencies	Yes	JBS

Carrier Corporation

Name of Business



Signature of Authorized Representative

J.B. Spillane

Printed Name


May 28, 2021

Date

# Solicitation Affidavit

**Instructions:** This form must be signed by the business's authorized representative and notarized below. If awarded, the Respondent is required to produce a copy of this document for each Member Agency with which it contracts.

1. The undersigned, is duly authorized to represent the persons, business and corporations joining and participating in the submission of the foregoing bid (such persons, business and corporations hereinafter being referred to as the Respondent), being duly sworn, on his/her oath, states that to the best of his/her belief and knowledge no person, business or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing bid, has directly or indirectly entered into any agreement or arrangement with any other Respondents, or with any official of the **Member Agency**, or any employee thereof, or any person, business or corporation under contract with the **Member Agency** whereby the Respondent, in order to induce the acceptance of the foregoing bid by the **Member Agency**, has paid, or is to pay to any other Respondent, or to any of the aforementioned persons, anything of value whatever, and that the Respondent has not, directly nor indirectly entered into any arrangement, or agreement, with any other Respondent or Respondents which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing bid.
2. This is to certify that the Respondent, or any person on his/her behalf, has not agreed, connived, or colluded to produce a deceptive show of competition in the manner of the bidding, or award of the referenced contract.
3. This is to certify that neither I, nor to the best of my knowledge, information and belief, the Respondent, nor any officer, director, partner, member or associate of the Respondent, nor any of its employees directly involved in obtaining contracts with the **Member Agency**, 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.
4. This is to certify that the Respondent or any person on his behalf has examined and understands the terms, conditions, the scope of work and specifications, and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the bid submittal.
5. This is to certify that if awarded a contract, the Respondent will provide the equipment, commodities, and/or services to members and affiliate members of the Agency in accordance with the terms, conditions, the scope of work and specifications and other documents of this solicitation in the following pages of this bid.
6. This is to certify that the Respondent is authorized by the manufacturer(s) to sell all proposed products on a national basis.
7. This is to certify that we have completed, reviewed, approved, and have included all information that is required of these bid forms.

J.B. Spillane	30 South Meridian Street
Authorized Representative (Please print or type)	Mailing Address
Managing Director of Light Commercial	Indianapolis, IN 46202
Title (Please print or type)	City, State, Zip
	May 28, 2021
Signature of Authorized Representative	Date

Subscribed and sworn to before me this 28<sup>th</sup> day of May, 2021.

Notary Public in and for County of Marion, State of Indiana.

My Commission Expires: 9.14.24 *Michelle Bodem*





## Acceptance of Solicitation & Contract

**Instructions:** PART I of this form is to be completed by the Respondent and signed by its Authorized Representative. PART II will be completed by the AEPA Member Agency only upon the occasion of the bid award. If approved by AEPA, the Respondent is required to produce a copy of the document for each of the AEPA Member Agency with which it contracts.

### PART I: RESPONDENT

In compliance with the Published Solicitation (IFB OR RFP), the undersigned warrants that I/we have examined all Instructions to Respondents, associated documents, and being familiar with all of the conditions of the solicitation, hereby offer and agree to furnish all labor, materials, supplies, and equipment incurred in compliance with all terms, conditions, specifications, and amendments associated with this IFB OR RFP and any written exceptions to the bid. The signature also certifies understanding and compliance with the certification requirements of the AEPA Member Agency's Terms and Conditions and/or Special Terms and Conditions. The undersigned understands that their competence, ability, capacity and obligations to offer and provide the proposed tangible personal property, professional services, construction services, and other services on behalf of the Vendor Partner as well as other factors of interest to the AEPA Member Agency as stated in the evaluation section, will be a consideration in making the award.

<b>Business Name</b>	<u>Carrier Corporation</u>	<b>Date</b>	<u>May 28, 2021</u>
<b>Address</b>	<u>Indianapolis, IN 46202</u>	<b>City, State Zip</b>	<u>30 South Meridian Street</u>
<b>Contact Person</b>	<u>Samuel Moreland</u>	<b>Title</b>	<u>Strategic Account Manager</u>
<b>Authorized Signature</b>	<u>J .B. Spillane</u>	<b>Title</b>	<u>Managing Director of Light Commercial</u>
<b>Email</b>	<u>james.spillane2@carrier.com</u>	<b>Phone</b>	<u>317-240-2928</u>

### PART II: AWARDING MEMBER AGENCY

Your bid response for the above-identified bid is hereby accepted. As a Vendor Partner, you are now bound to offer and provide the products and services identified within this solicitation, your response, and approved by AEPA, including all terms, conditions, specifications, exceptions, and amendments. As a Vendor Partner, you are hereby not to commence any billable work or provide any products or services under this contract until an executed purchase order is received from the AEPA Member Agency or Participating Entities. This contract intends to constitute the final and complete agreement between the AEPA Member Agency and Vendor Partner, and no other agreements, oral or otherwise, regarding the subject matter of this contract, shall bind any of the parties hereto. No change or modification of this contract shall be valid unless in writing and signed by both parties to this contract. If any provision of this contract is deemed invalid or illegal by any appropriate court of law, the remainder of this contract shall not be affected thereby. The initial term of this contract shall be for up to fifteen (15) months and will commence on the date indicated below and continue until May 31, 2022, unless terminated, canceled, or extended. By mutual written agreement, the contract may be extended for three (3) additional 12-month periods after this initial contract term. In the event the AEPA Board does not recommend renewal of the contract, it may be extended month by month up to six (6) months by an AEPA state.

**Awarding Agency** ESU Coordinating Council

**Authorized Representative**   
Craig Lorquists (Jul 27 2021 17:57 CDT)

<b>Awarded this</b>	<u>1st</u>	<b>day of</b>	<u>July</u>	<b>Contract Number</b>	<u>Carrier 2021.75A</u>
<b>Contract to commence</b>				<b>OR</b>	
<b>(Member Agency to select)</b>			<u>7/1/21</u>		

## Solicitation Checklist

**Instructions:** Utilize the checklist below, reviewing to confirm that all the required documents have been uploaded to Public Purchase, in their specified/required format, by the due date and time listed for this solicitation. Submissions not following the specified/required format may result in being marked non-responsive and may not be considered for evaluation. Respondents are reminded that failure to follow, comply with, and adhere to the enclosed instructions of this solicitation may result in their response being deemed non-responsive. AEPA, its Member Agencies, affiliate agencies, and authorized representatives are not responsible for bid proposals that are incomplete, unreadable, or received after the solicitation deadline submission date.

"x"	Document Title, Uploaded to Public Purchase <i>(Respondent must submit documents in the required title/format)</i>	Format of Uploaded Document	Notes
X	<b>Bid Bond – if Required, see Part B if applicable.</b>	Upload PDF copy. The original must be received by Lakes Country Service Cooperative by due date and time.	Send to Lakes Country Service Cooperative.
X	<b>Part C – State-Specific Forms – <i>Name of Responding Company</i></b>	Single, Scanned PDF	<b>Required.</b> Signatures Required.
X	<b>Part D - Questionnaire – <i>Name of Responding Company</i></b> Includes: <ul style="list-style-type: none"> <li>• Company Information</li> <li>• Service Questionnaire</li> <li>• Exceptions</li> <li>• Deviations</li> </ul>	Single, Scanned PDF	<b>Required.</b>
X	<b>Part E – Signature Forms – <i>Name of Responding Company</i></b> Includes: <ul style="list-style-type: none"> <li>• Uniform Guidance “EDGAR” Certification</li> <li>• Bid Affidavit</li> <li>• Acceptance of Bid &amp; Contract Award</li> </ul>	Single, Scanned PDF	<b>Required.</b> Signatures required.
X	<b>Part F – Pricing Schedule – <i>Name of Responding Company</i></b>	Excel Workbook	<b>Required.</b>
X	<b>Price List/Catalog – <i>Name of Responding Company</i></b>	Upload PDF	<b>Required.</b>
X	<b>Exhibit A – Financial Health Document(s) – <i>Name of Responding Company</i></b>	Scanned PDF	<b>Required.</b> Not provided by AEPA, Respondent Created
X	<b>Exhibit B – Marketing Plan – <i>Name of Responding Company</i></b>	Scanned PDF	<b>Optional.</b> Not provided by AEPA, Respondent Created
X	<b>Exhibit C – Warranties, Additional Services – <i>Name of Responding Company</i></b>	Scanned PDF	<b>Optional.</b> Not provided by AEPA, Respondent Created
	<b>Exhibit D – Additional Discounts – <i>Name of Responding Company</i></b>	Scanned PDF	<b>Optional.</b> Not provided by AEPA, Respondent Created

**Signature:**   
Kraig Lofquist (Jul 2, 2021 17:57 CDT)

**Email:** klofquist@esucc.org

**Title:** Executive Director

**Company:** ESUCC Cooperative

# AEPA 021.75-A Part E - Signature Forms - HVAC - 5-28-21(signed JBS)

Final Audit Report

2021-07-02

Created:	2021-07-01
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAp-fFlubgyF9GO-_L0pR_TcwXoYGoUj0S

## "AEPA 021.75-A Part E - Signature Forms - HVAC - 5-28-21(signed JBS)" History

-  Document created by CRAIG PETERSON (craig.peterson@esucc.org)  
2021-07-01 - 8:48:20 PM GMT- IP address: 162.127.11.100
-  Document emailed to Kraig Lofquist (klofquist@esucc.org) for signature  
2021-07-01 - 8:49:21 PM GMT
-  Email viewed by Kraig Lofquist (klofquist@esucc.org)  
2021-07-01 - 11:48:34 PM GMT- IP address: 174.198.84.38
-  Email viewed by Kraig Lofquist (klofquist@esucc.org)  
2021-07-02 - 10:57:07 PM GMT- IP address: 69.130.41.214
-  Document e-signed by Kraig Lofquist (klofquist@esucc.org)  
Signature Date: 2021-07-02 - 10:57:50 PM GMT - Time Source: server- IP address: 69.130.41.214
-  Agreement completed.  
2021-07-02 - 10:57:50 PM GMT

# PART E – SIGNATURE FORMS – FLAGHOUSE

**AEPA 021.75 HVAC and Mechanical Products and Solutions**

By initialing the table (1-12) and signing below, I certify that the information in this form is true, complete and accurate and that I am authorized by my business to make this certification and all consents and agreements contained herein.

Respondent Certification (By Item)	Respondent Certification: YES, I agree or NO, I do NOT agree	Initial
1. Violation of Contract Terms and Conditions	Yes	Ke
2. Termination for Cause of Convenience	Yes	Ke
3. Equal Employment Opportunity	Yes	Ke
4. Davis-Bacon Act	Yes	Ke
5. Contract Work Hours and Safety Standards Act	Yes	Ke
6. Right to Inventions Made Under a Contract or Agreement	Yes	Ke
7. Clean Air Act and Federal Water Pollution Control Act	Yes	Ke
8. Debarment and Suspension	Yes	Ke
9. Byrd Anti-Lobbying Amendment	Yes	Ke
10. Procurement of Recovered Materials	Yes	Ke
11. Profit as a Separate Element of Price	Yes	Ke
12. General Compliance with Participating Agencies	Yes	Ke

FLAGHOUSE INC  
Name of Business

  
Signature of Authorized Representative

Kathy Chichester  
Printed Name

5/26/21  
Date

# Solicitation Affidavit

**Instructions:** This form must be signed by the business's authorized representative and notarized below. If awarded, the Respondent is required to produce a copy of this document for each Member Agency with which it contracts.

1. The undersigned, is duly authorized to represent the persons, business and corporations joining and participating in the submission of the foregoing bid (such persons, business and corporations hereinafter being referred to as the Respondent), being duly sworn, on his/her oath, states that to the best of his/her belief and knowledge no person, business or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing bid, has directly or indirectly entered into any agreement or arrangement with any other Respondents, or with any official of the **Member Agency**, or any employee thereof, or any person, business or corporation under contract with the **Member Agency** whereby the Respondent, in order to induce the acceptance of the foregoing bid by the **Member Agency**, has paid, or is to pay to any other Respondent, or to any of the aforementioned persons, anything of value whatever, and that the Respondent has not, directly nor indirectly entered into any arrangement, or agreement, with any other Respondent or Respondents which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing bid.
2. This is to certify that the Respondent, or any person on his/her behalf, has not agreed, connived, or colluded to produce a deceptive show of competition in the manner of the bidding, or award of the referenced contract.
3. This is to certify that neither I, nor to the best of my knowledge, information and belief, the Respondent, nor any officer, director, partner, member or associate of the Respondent, nor any of its employees directly involved in obtaining contracts with the **Member Agency**, 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.
4. This is to certify that the Respondent or any person on his behalf has examined and understands the terms, conditions, the scope of work and specifications, and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the bid submittal.
5. This is to certify that if awarded a contract, the Respondent will provide the equipment, commodities, and/or services to members and affiliate members of the Agency in accordance with the terms, conditions, the scope of work and specifications and other documents of this solicitation in the following pages of this bid.
6. This is to certify that the Respondent is authorized by the manufacturer(s) to sell all proposed products on a national basis.
7. This is to certify that we have completed, reviewed, approved, and have included all information that is required of these bid forms.

Kathy Chichester

Authorized Representative (Please print or type)

601 Rt 46 West

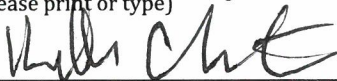
Mailing Address

Sales Manager

Title (Please print or type)

Hasbrouck Hts, NJ 07604

City, State, Zip



Signature of Authorized Representative

5/26/21

Date



### Acceptance of Solicitation & Contract

**Instructions:** PART I of this form is to be completed by the Respondent and signed by its Authorized Representative. PART II will be completed by the AEPA Member Agency only upon the occasion of the bid award. If approved by AEPA, the Respondent is required to produce a copy of the document for each of the AEPA Member Agency with which it contracts.

#### PART I: RESPONDENT

In compliance with the Published Solicitation (IFB OR RFP), the undersigned warrants that I/we have examined all Instructions to Respondents, associated documents, and being familiar with all of the conditions of the solicitation, hereby offer and agree to furnish all labor, materials, supplies, and equipment incurred in compliance with all terms, conditions, specifications, and amendments associated with this IFB OR RFP and any written exceptions to the bid. The signature also certifies understanding and compliance with the certification requirements of the AEPA Member Agency's Terms and Conditions and/or Special Terms and Conditions. The undersigned understands that their competence, ability, capacity and obligations to offer and provide the proposed tangible personal property, professional services, construction services, and other services on behalf of the Vendor Partner as well as other factors of interest to the AEPA Member Agency as stated in the evaluation section, will be a consideration in making the award.

Business Name	<u>Flaghouse Inc</u>	Date	<u>5/26/21</u>
Address	<u>6001 Rt 46 W</u>	City, State Zip	<u>Harborville HTS NJ 07604</u>
Contact Person	<u>Kathy Chichester</u>	Title	<u>Sales Manager</u>
Authorized Signature	<u>Kathy Chichester</u>	Title	<u>Sales Manager</u>
Email	<u>Kathy.chichester@flaghouse.com</u>	Phone	<u>201 329 7518</u>

#### PART II: AWARDING MEMBER AGENCY

Your bid response for the above-identified bid is hereby accepted. As a Vendor Partner, you are now bound to offer and provide the products and services identified within this solicitation, your response, and approved by AEPA, including all terms, conditions, specifications, exceptions, and amendments. As a Vendor Partner, you are hereby not to commence any billable work or provide any products or services under this contract until an executed purchase order is received from the AEPA Member Agency or Participating Entities. This contract intends to constitute the final and complete agreement between the AEPA Member Agency and Vendor Partner, and no other agreements, oral or otherwise, regarding the subject matter of this contract, shall bind any of the parties hereto. No change or modification of this contract shall be valid unless in writing and signed by both parties to this contract. If any provision of this contract is deemed invalid or illegal by any appropriate court of law, the remainder of this contract shall not be affected thereby. The initial term of this contract shall be for up to fifteen (15) months and will commence on the date indicated below and continue until May 31, 2022, unless terminated, canceled, or extended. By mutual written agreement, the contract may be extended for three (3) additional 12-month periods after this initial contract term. In the event the AEPA Board does not recommend renewal of the contract, it may be extended month by month up to six (6) months by an AEPA state.

Awarding Agency ESU Coordinating Council

Authorized Representative   
Kraig Lofquist (Jul 20 2021 17:57 CDT)

Awarded this 1st day of July Contract Number Flaghouse 2021.75-A  
Contract to commence (Member Agency to select) 7/1/21 OR

**Signature:**   
Kraig Lofquist (Jul 27, 2021 17:57 CDT)

**Email:** klofquist@esucc.org

**Title:** Executive Director

**Company:** ESUCC Cooperative

# PartE-Signature Forms - FlagHouse

Final Audit Report

2021-07-02

Created:	2021-07-01
By:	CRAIG PETERSON (craig.peterson@esucc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAbGZ0WEvW1mflHjnh5X1vsrB826wjThqH

## "PartE-Signature Forms - FlagHouse" History

 Document created by CRAIG PETERSON (craig.peterson@esucc.org)

2021-07-01 - 8:53:06 PM GMT- IP address: 162.127.11.100

 Document emailed to Kraig Lofquist (klofquist@esucc.org) for signature

2021-07-01 - 8:53:40 PM GMT

 Email viewed by Kraig Lofquist (klofquist@esucc.org)

2021-07-01 - 11:48:31 PM GMT- IP address: 174.198.84.38

 Email viewed by Kraig Lofquist (klofquist@esucc.org)

2021-07-02 - 10:56:18 PM GMT- IP address: 69.130.41.214

 Document e-signed by Kraig Lofquist (klofquist@esucc.org)

Signature Date: 2021-07-02 - 10:57:01 PM GMT - Time Source: server- IP address: 69.130.41.214

 Agreement completed.

2021-07-02 - 10:57:01 PM GMT



## 2021-2024 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and SysCloud, 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 244 school districts and more than 325,000 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, 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 September 02, 2021 ("Effective Date") and shall continue until 12:00 midnight (CST) on September 1., 2024, 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 the Cooperative, ESUCC, ESUs, 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 the Cooperative, ESUCC, or its Members who are authorized with login credentials by the Cooperative 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 Cooperative, 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 Cooperative, 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 Cooperative under the direction of the Cooperative 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 the Cooperative and Members of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking Data;
  - (2) Consult with the Cooperative and Members regarding its response;

- (3) Cooperate with the Cooperative'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 the Cooperative's or a Member's request, provide them with a copy of its response.

**7. 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.

- **SysCloud requires 30 days of advance notice before the expiration of the service period if there is no intention to renew on account of budgetary constraints.**

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.

- **SysCloud will not refund any fees paid. The customer will have to pay the entire fees due for the contracted service period.**

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.

## 8. Indemnification.

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

- **SysCloud can accept limited liability capped to the extent of the fees paid for the particular service period. SysCloud will accept the same if there is an act of negligence by SysCloud in the discharge of it's contractual obligations.**
- **SysCloud will add ESUCC as an additional insured in our existing policies.**

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

- **SysCloud can accept limited liability capped to the extent of the fees paid for the particular service period. SysCloud will accept the same if there is an act of negligence by SysCloud in the discharge of its contractual obligations.**
- **SysCloud will add ESUCC as an additional insured in our existing policies.**

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.

Commented [1]: Steve Williams, is this acceptable or not.

Commented [2R2]: However, I would not agree to a cap on any damages.

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 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.

- **SysCloud will provide the COI listing all the Insurances that we have in the current year. SysCloud requests the customer to review the attached COI.**

10. **Public Records.** The Contractor acknowledges that the Cooperative, ESUCC, ESUs, and Members 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.** 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.

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 Cooperative, ESUCC, ESU, or Member premises or at Cooperative, 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 Cooperative, ESUCC, ESU, or Member property or at Cooperative, ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all Cooperative, ESUCC, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on Cooperative, ESUCC, ESU, or Member premises or at Cooperative, ESUCC, 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.

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,

**Commented [3]:** Steve Williams, please review the attached COI. It appears they may be short on coverage based on what is laid out above. Would they only be covered up to \$2M per occurrence OR \$4M and \$1M per person?

**Commented [4R4]:** Insurance. Their insurance levels are sufficient.

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 a Cooperative, 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: 462012920
- 17. Sales Tax.** The Cooperative, ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, 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: SysCloud, Inc.  
125 Half Mile Road Suite 200  
Red Bank, NJ 07701

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, ESUCC, or the Cooperative 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 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.

- 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 the Cooperative.
- 27. Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the Cooperative.
- 28. Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
- 29. Rights and Remedies Cumulative.** Any enumeration of the 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.
- 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 may 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 Goods or Services to be provided to ESUCC and Members
- Exhibit B – Payment Terms & Schedule
- Exhibit C – Summary of Project Deliverables
- Exhibit D - Vendor Software License Agreement

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

**CONTRACTOR**

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

**COOPERATIVE**

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

**EXHIBIT "A"**

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

**SysCloud will offer the options of backup for Google Workspace and/or Office 365. This service provides an air gapped backup for each of these cloud service providers in order to create an adequate disaster recovery solution. This service comes with free onboarding, support, and training sessions for the life of the service contract (and beyond if renewals continue).**

**EXHIBIT "B"**

**1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

**\*\*Minimum 3 Year Contract for Discounts to Apply\*\***

*Office 365 Backup Retail Cost  
\$12/Staff/Year  
\$1/Student/Year*

*Google Workspace Backup Retail Cost  
\$12/Staff/Year/Module  
\$1/Student*

**Discounts per tier:**

1. Staff License count from 0 - 5000 across all ESUCC associated organizations.
  - 5% Discount on yearly premium
  - 3 Year agreement paid annually or upfront
  
2. Staff License Count 5,001+ across all ESUCC associated organizations.
  - 15% Additional Discount (Total of 20%) on yearly premium
  - 3 Year agreement paid annually or upfront

<u>Unique Part Number</u>	<u>Item Description</u>	<u>Price to ESUCC Members</u>
<u>ESUCC-OFF365-1YR-Staff5000</u>	<u>SysCloud Office 365 0-5000 Users – Staff Backup 1 year</u>	<u>\$12</u>
<u>ESUCC-OFF365-1YR-Staff5001</u>	<u>SysCloud Office 365 5001 Plus Users – Staff Backup 1 year</u>	<u>\$12</u>
<u>ESUCC-OFF365-1YR-Student5000</u>	<u>SysCloud Office 365 0-5000 Users – Student Backup 1 year</u>	<u>\$1</u>
<u>ESUCC-OFF365-1YR-Student5001</u>	<u>SysCloud Office 365 5001 Plus Users – Student Backup 1 year</u>	<u>\$1</u>
<u>ESUCC-OFF365-3YR-Staff5000</u>	<u>SysCloud Office 365 0-5000 Users – Staff Backup 3 year</u>	<u>\$11.40</u>
<u>ESUCC-OFF365-3YR-Staff5001</u>	<u>SysCloud Office 365 5001 Plus Users – Staff Backup 3 year</u>	<u>\$9.60</u>
<u>ESUCC-OFF365-3YR-Student5000</u>	<u>SysCloud Office 365 0-5000 Users – Student Backup 3 year</u>	<u>\$.95</u>
<u>ESUCC-OFF365-3YR-Student5001</u>	<u>SysCloud Office 365 5001 Plus Users – Student Backup 3 year</u>	<u>\$.80</u>
<u>ESUCC-GOOGLE-1YR-Staff5000</u>	<u>SysCloud Google 0-5000 Users - Staff Backup 1 year</u>	<u>\$12</u>
<u>ESUCC-GOOGLE-1YR-Staff5001</u>	<u>SysCloud Google 5001 Plus Users – Staff Backup 1 year</u>	<u>\$12</u>
<u>ESUCC-GOOGLE-1YR-Student5000</u>	<u>SysCloud Google 0-5000 Users - Student Backup 1 year</u>	<u>\$1</u>

<u>ESUCC-GOOGLE-1YR-Student5001</u>	<u>SysCloud Google 5001 Plus Users – Student Backup 1 year</u>	<u>\$1</u>
<u>ESUCC-GOOGLE-3YR-Staff5000</u>	<u>SysCloud Google 0-5000 Users - Staff Backup 3 year</u>	<u>\$11.40</u>
<u>ESUCC-GOOGLE-3YR-Staff5001</u>	<u>SysCloud Google 5001 Plus Users – Staff Backup 3 year</u>	<u>\$9.60</u>
<u>ESUCC-GOOGLE-3YR-Student5000</u>	<u>SysCloud Google 0-5000 Users - Student Backup 3 year</u>	<u>\$.95</u>
<u>ESUCC-GOOGLE-3YR-Student5001</u>	<u>SysCloud Google 5001 Plus Users – Student Backup 3 year</u>	<u>\$.80</u>

**\*\*If 3 year agreement is not plausible for any purchaser, we will work with them on a case by case basis to determine what discount if any will apply. Our suggestion is always to consider this a long term purchase. We are 90% K12 focused, we've been around for 8 years.**

**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 the Cooperative, 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. 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, ESUCC, Cooperative.

B. Insurance during shipment and until the goods are accepted by the Cooperative, ESUCC, ESU, or Member is the responsibility of the Contractor.

## EXHIBIT "C"

### SUMMARY OF PROJECT DELIVERABLES

#### 1. Order Delivery Method Options

1. Members will submit orders direct to Vendor
2. ESUCC Marketplace is the preferred method for order placement

#### 2. Electronic Orders

- a. Vendor Capable of receiving orders electronically? Yes:  No:
- b. If "Yes", Order receipt method: Email:  cXML: 
  - i. If "Email" address to deliver orders to: jake@syscloud.com
  - ii. If "cXML" provide the following IT contact information  
Contact (First, Last name): \_\_\_\_\_  
Contact email address: \_\_\_\_\_  
Contact Phone: \_\_\_\_\_
- c. If "No, Alternate method will be determined

#### 3. Sales Representative Contact

- a. First, Last name: Jake Latyschow
- b. Title: Senior Account Executive
- c. Phone: 877-464-2930 x 707
- d. Email: jake@syscloud.com

#### 4. Invoice Method

- a. Vendor invoices Members direct

#### 5. Sales Reporting

- a. Vendor to submit quarterly sales report to ESUCC at [coop@esucc.org](mailto:coop@esucc.org)
- b. Vendor contact information for sales report questions:  
Contact (First, Last name): Jake Latyschow  
Contact email address: Jake@syscloud.com
- c. Sales report must include the following
  - Member Name
  - Member City
  - List Price
  - Member Cost
  - Member Savings
  - Admin Fee Amount Due
- d. ESUCC Admin Fee
  - Vendor must submit payment of Admin Fee to ESUCC quarterly
  - Admin Fee is equal to percentage of total sales (as defined in **Administration Fee** section of agreement)
  - Remit Admin Fee payment to:  
ESUCC  
1292 East 4<sup>th</sup> Street  
Ainsworth, NE 69210

#### Questions Contact:

Craig Peterson  
308-995-0665  
[craig.peterson@esucc.org](mailto:craig.peterson@esucc.org)

## **EXHIBIT "D"**

### **SOFTWARE LICENSE AGREEMENT**

#### **Terms and conditions of service agreement - online services**

The terms and conditions of sale, set forth herein ("Terms and Conditions"), shall apply to all products sold (the "Products") by SysCloud, Inc., a Delaware corporation ("SysCloud" or the "Company") to you (the "Purchaser") and shall constitute an agreement between SysCloud and you (the "Agreement"). These Terms and Conditions are a binding agreement between SysCloud and you. SysCloud and you are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party."

#### **Definition of terms**

By using the site or online service, as a representative of a company or legal entity, you represent that you have the authority to enter into this agreement on behalf of that company or entity. The terms "you" and "your" refer to your company or legal entity or individual. The terms "SysCloud," "Company" and "we" refer to SysCloud, Inc., a Delaware corporation.

#### **Overview of SysCloud**

SysCloud delivers backup, disaster recovery and migration solutions for home, business, and managed service providers. Our portfolio of products includes complete protection solutions for Google and Office365 Apps for business in both virtual and physical environments.

#### **Services overview**

The backup service enables the user to retrieve data from their Google and Office365 Apps domain user accounts and store it ("data") during the service period on Amazon Cloud infrastructure. The amount of storage space used depends entirely on the plan purchased. The migration service enables the user to migrate from one Google and Office365 Apps domain to another including data and settings ("migration data") wherever applicable.

#### **Description of service provided**

Online domain level backup (software as a service) provides for automated backup and restore for unlimited domains and users for Google and Office365 Apps data with encryption (the "Backup Service").

Fully automated online domain level migration (software as a service) service allows you to migrate your Google and Office365 Apps data and settings from one domain to another domain (the "Migration Service").

SysCloud Backup and Security application help understand how data is being shared both within your organization and outside. We scan your documents to generate detailed security reports. This scan can be turned off in the settings page during onboarding or later.

#### **Data collection and privacy policy**

If we require information from you, you agree to provide completely accurate information. The

SysCloud Privacy Policy describes how we use this information. See "Privacy Policy" on our site. You agree that, by purchasing applications online from us, you have accepted these Terms and Conditions and our Privacy Policy.

#### **Confidentiality policy**

The Confidentiality Policy applies to all the documents that are classified as confidential under our Data Classification Policy, SysCloud. (Please Note that Personal Identifiable Information ("PII") is covered under our Privacy Policy). The Confidentiality Policy may undergo modifications reflecting the changes that are made to SysCloud applications and services. All the modifications made in this policy will be updated on our website. Please kindly visit our site regularly to be aware of the changes in the Confidentiality Policy. For queries related to Confidentiality Policy modifications write to [support@syscloud.com](mailto:support@syscloud.com).

#### **Service Period**

The "service period" will commence on the date you activate the service. It will continue for the period agreed upon.

#### **Your Conduct**

You are solely responsible for ensuring that your use of the online service is in compliance with all applicable laws. You agree not to remove or alter the company's labeling of its applications. You agree neither to undertake any effort nor allow any third party to reverse engineer the products or any component of the products. SysCloud may terminate your use if you: backup illegal files, files with viruses, worms, corrupted files, files protected by intellectual property rights of a third party (unless you own or have rights), tamper with our service, misrepresent your identity, interfere with another person's use, access another user's data. SysCloud shall not be liable for any damages, liabilities, losses, fines, costs resulting from your violation of these terms.

#### **User accounts and passwords**

You will be solely responsible for keeping your username and/or password secure. If you lose your username and/or password, you will not be able to access your data. We do not guarantee that you can retrieve lost username and/or passwords. We do not store your login password but instead use encrypted one-way security token based partly on your username/password. We are not liable if your password is lost or forgotten by you and you are unable to login. We don't guarantee that you can retrieve lost or forgotten passwords via the forgot password feature.

#### **Service availability**

SysCloud will not be liable for any downtime due to maintenance, or forces beyond our reasonable control. Please read our Service Level Agreement (SLA) for services related to SysCloud. The company agrees to use commercially reasonable efforts to provide and maintain the services/applications in accordance with the specifications specified herein.

#### **Payment**

You will be charged in advance using the payment method you agree upon and authorize SysCloud to automatically charge your credit card for all payments owed by you. You agree that the information you supply is correct and will notify SysCloud when billing or payment

information changes.

**Non-payment**

You agree that we may terminate/suspend your access to our online service if, at any time, you have not paid all fees that you owe to us.

**Refunds**

You agree that all our service plans are either a one-time service (migration) or based on monthly service (backup) periods and we do not give refunds.

**Security**

You acknowledge that SysCloud's online service is not invulnerable to security breaches or other threats and agree that if we believe that an account is being used for any illegal purpose, we have the right to inspect and/or deny access to any backup and/or migration data. If you have any concerns related to security, availability, confidentiality, and integrity, please contact us via email to [incident@syscloud.com](mailto:incident@syscloud.com).

**Access of backup data**

You agree that SysCloud may terminate your access at any time, for any reason, in our sole discretion.

SysCloud will not be liable to anyone for any termination or deletion of backed up data. Access to data is not guaranteed and SysCloud is not liable: If Amazon cloud infrastructure where our servers and storage is present has an outage or there is a cloud outage. Our site/services are down due to maintenance or any other reason beyond our control:

if any software/hardware/operator failure results in deletion of your backup data or accounts at our site or services;

if we have not completed backup and/or migration of your data whether it is the first time or incrementally,

if you change your domain security key (OAuth) or we have been restricted/denied access to your data:

if Google and Office365 restricts or denies access to your data for us to backup;

or if your subscription terminates or is suspended.

**Proprietary rights**

You acknowledge and agree that SysCloud owns all legal right, title, and interest in and to the online service. You acknowledge that the online service provided may contain information designated confidential by SysCloud and you shall not disclose such information without SysCloud's prior written consent. Unless agreed to in writing by SysCloud, nothing in this agreement gives you the right to use any of SysCloud's trademarks, logos etc. Use, reproduction or representation (in whole or in part) of these logotypes, trademarks, product names or the applications themselves regardless of in what form it occurs, is prohibited unless such use is approved in writing in advance by the company.

You acknowledge that the company disclaims any and all written or verbal, explicit or implied warranties on intellectual property infringements with respect to the use of the

applications.

Any feedback that you provide to us shall be considered confidential information. You agree that you irrevocably transfer all intellectual property rights arising out of such feedback.

At all times during the service, the data received from customer domains remains the property of the customer.

**Exclusion of warranties**

Nothing in these Terms and Conditions shall exclude or limit SysCloud's warranty or liability for losses which may not be lawfully excluded or limited by applicable law.

**Disclaimer of warranties**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, THAT THE CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OPERABILITY AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE. USE OF ANY MATERIAL DOWNLOADED OR OBTAINED THROUGH THE USE OF THE SERVICES SHALL BE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR DATA THAT RESULTS FROM THE USE OF THE SERVICES OR THE DOWNLOAD OF ANY SUCH MATERIAL. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PERFORMANCE OF THE SERVICE OTHER THAN AS PROVIDED IN THIS AGREEMENT.

**Limitation of liability**

YOU AGREE THAT WE WILL, IN NO EVENT, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS OR DAMAGE WHATSOEVER OR FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. YOU AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH US RELATED TO ANY OF THE SERVICES WILL BE TERMINATION OF SUCH SERVICE. IN NO EVENT WILL OUR LIABILITY TO YOU WITH RESPECT TO ANY SERVICE, WHETHER DIRECT OR INDIRECT, EXCEED THE FEES PAID BY YOU FOR SUCH SERVICE.

**Intellectual property rights**

You may not sell, assign, or transfer any right in SysCloud's online service.

**Copyright and trademark policies**

You agree that SysCloud trademarks, service marks, trade names, or logos are copyrighted

and may not be modified, copied, reproduced, without prior written permission.

#### **Exclusions and limitations**

Nothing in the terms of service is intended to exclude or limit any condition, warranty, or liability which may not be lawfully excluded or limited.

#### **Termination**

Upon expiration of the service period, your right to use our online service will terminate and we will delete your account data and backup data. SysCloud may suspend/terminate use if we believe that you have failed to comply with these terms and conditions. On service period expiration/ termination

SysCloud will not maintain/store/forward your data to another account or alternate provider. SysCloud is not responsible for any deleted data. Please read our Data Retention Policy to learn more about our data retention policy.

#### **Indemnification**

You agree to indemnify SysCloud, our parents, subsidiaries, affiliates, officers, directors, co-branders, partners, employees, consultants and agents from all third-party claims, liabilities, losses, costs, resulting from: Your backup data or migration data/settings, use of the site or services, and violation of these terms of use.

#### **Changes to the service**

SysCloud may, at its discretion, change the features of its online service. You agree that SysCloud shall not be liable for any loss arising from such changes.

#### **Changes to the terms and conditions of service**

SysCloud may, at its discretion, change the terms of service by publishing at the site. You acknowledge and agree that you will review and if you disagree with the changes, you will terminate your subscription immediately. If you continue your service, you agree to the changes to the Terms and Conditions.

#### **Electronic communications**

By purchasing an application from us, you agree to receive communications from us in an electronic form and that all communication provided to you electronically will satisfy all legal requirements as such as if it were in writing. If you want to discontinue communications from us, you must contact us at [incident@syscloud.com](mailto:incident@syscloud.com).

#### **Miscellaneous**

You and SysCloud agree to execute any and all necessary documents and to take such further action as may reasonably be necessary to carry out the terms and intent of this agreement. This agreement shall be binding upon, and inure to the benefit of SysCloud and you, their legal representatives, successors and assigns. However, no assignment shall be made of the rights hereunder without the prior written consent of the other Party.

This agreement embodies and constitutes the entire understanding between the Parties with respect to the transactions contemplated herein. All prior or contemporaneous

agreements, understandings, representations, oral or written, are superseded by this agreement unless explicitly included as an attachment.

Neither this agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated.

All notices that are required to be given hereunder will be deemed to have been properly given and will be effective when and if sent by U.S. regular mail, postage prepaid, U.S. certified mail, electronic mail, and/or by personal delivery or by courier, to the address of the other Party.

Except as otherwise provided for in this section, we and you agree that any and all controversies or claims arising out of or relating to this agreement, or any alleged breach hereof, shall be resolved by binding arbitration as prescribed herein. A single arbitrator engaged in the practice of law, who is knowledgeable about crypto currencies and financial markets, and shall conduct the arbitration under the current rules of the American Arbitration Association ("AAA"), unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the city of San Jose, California, and all expedited procedures prescribed under the AAA rules shall apply. There shall be no discovery other than the exchange of information, which is provided to the arbitrators by the Parties. The arbitrator shall only have authority to award compensatory damages and shall not have authority to award punitive damages, other non-compensatory damages or any other form of relief. Each Party shall bear its own costs and attorneys' fees and disbursements. The arbitrator's decision and award shall be final and binding, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

The provisions of this agreement are for the benefit only of the Parties, and no third party may seek to enforce or benefit from these provisions.

If one or more provisions of this agreement are held to be unenforceable under applicable law, such provision shall be excluded from this agreement and the balance of the agreement shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.



## 2021-2024 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and **3<sup>rd</sup> Millennium Classrooms** ("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 244 school districts and more than 325,000 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, 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 **August 15th**, 2021 (“Effective Date”) and shall continue until 12:00 midnight (CST) on **August 15th**, 2024, 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 the Cooperative, ESUCC, ESUs, 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 the Cooperative, ESUCC, or its Members who are authorized with login credentials by the Cooperative 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 Cooperative, 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 Cooperative, 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 Cooperative under the direction of the Cooperative 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 the Cooperative and Members of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking Data;
  - (2) Consult with the Cooperative and Members regarding its response;

- (3) Cooperate with the Cooperative'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 the Cooperative's or a Member's request, provide them with a copy of its response.

## **7. 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.

**8. Indemnification.**

A. The Contractor hereby waives and agrees to indemnify and save harmless the Cooperative, 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 the Cooperative, 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 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.

**10. Public Records.** The Contractor acknowledges that the Cooperative, ESUCC, ESUs, and Members 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.** 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.
- 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 Cooperative, ESUCC, ESU, or Member premises or at Cooperative, 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 Cooperative, ESUCC, ESU, or Member property or at Cooperative, ESUCC, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all Cooperative, ESUCC, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on Cooperative, ESUCC, ESU, or Member premises or at Cooperative, ESUCC, 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.
- 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 a Cooperative, 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: **84-1520147**

- 17. Sales Tax.** The Cooperative, ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, 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: 3<sup>rd</sup> Millennium Classrooms  
15900 La Cantera Parkway Suite 20265  
San Antonio, TX 78256

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, ESUCC, or the Cooperative 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 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.
- 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 the Cooperative.
- 27. Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the Cooperative.
- 28. Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.

- 29. Rights and Remedies Cumulative.** Any enumeration of the 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.
- 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 may 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 Goods or Services to be provided to ESUCC and Members
- Exhibit B – Payment Terms & Schedule
- Exhibit C – Summary of Project Deliverables
- Exhibit D - Vendor Software License Agreement

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

**CONTRACTOR**

**COOPERATIVE**

By: \_\_\_\_\_  
 Name: Katie McCall  
 Title: CEO  
 Date: 8/9/2021

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

## EXHIBIT "A"

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

<<VENDOR-INSERT SCOPE OF GOODS>>

We combine evidence-based preventions and interventions using the latest technology to effectively reach teens and young adults with our online programs. The cornerstone of 3<sup>rd</sup> Millennium Classrooms is the personalized feedback component integrated into all our courses through an exclusive partnership with eCHECKUP TO GO at San Diego State University Research Foundation. Our programs are highly personalized and incorporate interactive exercises in a motivational interviewing style. This process engages individuals in a powerful learning experience that impacts behavior.

\* See attached booklets for:

1. Court / Agency Booklet
2. College Booklet
3. Secondary School Booklet

## EXHIBIT "B"

### 1. Contractor's Pricing

Contractor's Pricing Model under this Agreement is:

<<VENDOR-INSERT PRICING>>

\* See attached:

1. Court / Agency Pricing Guide
2. College Pricing Guide
3. Secondary School Pricing Guide

### 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 the Cooperative , 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. 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, ESUCC, Cooperative.
- B. Insurance during shipment and until the goods are accepted by the Cooperative, ESUCC, ESU, or Member is the responsibility of the Contractor.

## EXHIBIT "C"

### SUMMARY OF PROJECT DELIVERABLES

#### <<TO BE COMPLETED BY VENDOR>>

#### 1. Order Delivery Method Options

1. Members will submit orders direct to Vendor
2. ESUCC Marketplace is the preferred method for order placement

#### 2. Electronic Orders

- a. Vendor Capable of receiving orders electronically? Yes:  No:
- b. If "Yes", Order receipt method: Email: dmiller@3rdmil.com cXML: dmillerinfo@3rdmil.com
  - i. If "Email" address to deliver orders to: dmillerinfo@3rdmil.com
  - ii. If "cXML" provide the following IT contact information  
Contact (First, Last name): \_\_\_\_\_  
Contact email address: \_\_\_\_\_  
Contact Phone: \_\_\_\_\_
- c. If "No, Alternate method will be determined

#### 3. Sales Representative Contact

- a. First, Last name: Diana Miller
- b. Title: National Sales Director
- c. Phone: 210-745-0618
- d. Email: dmiller@3rdmil.com

#### 4. Invoice Method

- a. Vendor invoices Members direct

#### 5. Sales Reporting

- a. Vendor to submit quarterly sales report to ESUCC at [coop@esucc.org](mailto:coop@esucc.org)
- b. Vendor contact information for sales report questions:  
Contact (First, Last name): Diana Miller  
Contact email address: dmiller@3rdmil.com
- c. Sales report must include the following
  - Member Name
  - Member City
  - List Price
  - Member Cost
  - Member Savings
  - Admin Fee Amount Due
- d. ESUCC Admin Fee
  - Vendor must submit payment of Admin Fee to ESUCC quarterly
  - Admin Fee is equal to percentage of total sales (as defined in **Administration Fee** section of agreement)
  - Remit Admin Fee payment to:  
ESUCC  
1292 East 4<sup>th</sup> Street  
Ainsworth, NE 69210

Questions Contact:  
Craig Peterson  
308-995-0665  
[craig.peterson@esucc.org](mailto:craig.peterson@esucc.org)

**EXHIBIT "D"**






**SOFTWARE LICENSE AGREEMENT**

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

**N/A - Not Software**

# 2021 COLLEGE PRICING GUIDE 3rd Millennium Classrooms

## PREVENTION COURSES

-  Alcohol-Wise
-  Alcohol-Wise 21+
-  Marijuana-Wise
-  Other Drugs
-  Greek-Wise

<b>SMALL CAMPUSES</b>	OR	<b>LARGE CAMPUSES</b>
\$8 <small>PER STUDENT</small>		\$13,000 <small>UNLIMITED USE</small>

 **MOST COST EFFECTIVE!**

## BUNDLING OPTIONS


### COMBINE WITH ADDITIONAL PREVENTION COURSES

<b>SMALL CAMPUSES</b>	OR	<b>LARGE CAMPUSES</b>
+\$1 <small>PER ENROLLMENT PER ADD-ON</small>		+\$1,000 <small>PER COURSE</small>

### ADD UNLIMITED INTERVENTION COURSES

<b>SMALL CAMPUSES</b>	OR	<b>LARGE CAMPUSES</b>
+\$3 <small>PER STUDENT</small>		+\$3,000 <small>UNLIMITED USE</small>

## INTERVENTION COURSES

-  Under the Influence
-  Conflict-Wise
-  Marijuana 101
-  Greek-Wise
-  Other Drugs
-  Nicotine 101
-  Alcohol-Wise 21+

<b>INSTITUTION PREPAYS</b>	<b>INSTITUTION BILLED MONTHLY</b>	 <b>MOST POPULAR!</b> <b>STUDENT PAYS ONLINE</b>
----------------------------	-----------------------------------	--

- \$35** PER ENROLLMENT
- \$25** PER ENROLLMENT  
50+ enrollments
- \$20** PER ENROLLMENT  
100+ enrollments
- \$15** PER ENROLLMENT  
300+ enrollments

 **BULK PRICING DISCOUNT**

## TITLE IX COURSE

### Consent & Respect

	<b>SMALL CAMPUSES</b>	OR	<b>LARGE CAMPUSES</b>
<small>STAND ALONE unlimited enrollments</small>	<b>\$2,000</b>		<b>\$5,000</b>
<small>BUNDLED with any prevention course, unlimited enrollments</small>	<b>+\$1,000</b>		<b>+\$3,000</b>
<small>BUNDLED with any prevention course, incoming freshmen ONLY</small>	<b>+\$1 per enrollment</b>		<b>+\$1,000</b>

## STAFF TRAINING







-  **Red Flags Human Trafficking Awareness Training**.....\$60 / +\$30 CEUs
-  **Motivational Interviewing Training**.....FREE
-  **Consent & Respect Staff**  
For faculty and staff.....FREE with C&R Student

There are no minimum usage requirements and there is never any licensing fee or contract to sign.

# 2021 COURT PRICING GUIDE 3rd Millennium Classrooms

## ADULTS

### INDIVIDUAL COURSES \$60

-  Conflict-Wise
-  Under the Influence
-  Marijuana 101
-  STOPLifting
-  3rdMil DWI/DUI Assessment
-  Other Drugs

### COMBINED COURSES \$90

- Marijuana 101 + Under the Influence
- Under the Influence + Other Drugs
- Marijuana 101 + Other Drugs

### EXTENDED INTERVENTIONS \$80

- Under the Influence + Extended Interventions
- Marijuana 101 + Extended Interventions

**-NO COST TO COURT OR AGENCY-**

## JUVENILES

### INDIVIDUAL COURSES \$60

-  Conflict-Wise JV
-  Under the Influence JV
-  Marijuana 101 JV
-  STOPLifting JV
-  Respect & Resolve
-  Nicotine 101

### COMBINED COURSES \$90

- Marijuana 101 + Under the Influence

### EXTENDED INTERVENTIONS \$80

- Under the Influence JV + Extended Interventions
- Marijuana 101 JV + Extended Interventions



**-NO COST TO COURT OR AGENCY-**

## ALWAYS INCLUDED:

- Access to free **Parent-Wise** course
- 7-Day support for students & staff
- **Student Management System** access for staff
- Best practices consultation
- Student instruction sheets and brochures

**(888) 810-7990**




## STAFF TRAINING

-  **Red Flags Training**.....\$60 / +\$30 CEUs
-  **Motivational Interviewing Training**.....FREE

**Never any licensing fee  
or contract to sign.**

# 2021 SECONDARY SCHOOL PRICING GUIDE 3rd Millennium Classrooms

## PREVENTION

-  Alcohol-Wise HS
-  Marijuana-Wise HS
-  Respect & Resolve

-  Other Drugs
-  Nicotine 101

### OPTION 1

#### EACH COURSE

**\$20** PER ENROLLMENT  
1-50 enrollments

**\$15** PER ENROLLMENT  
51-99 enrollments

**\$12** PER ENROLLMENT  
100-150 enrollments

**\$10** PER ENROLLMENT  
151-200 enrollments

**\$7** PER ENROLLMENT  
201+ enrollments

### OPTION 2

#### BUNDLE IT!







ADD ANOTHER  
COURSE FOR  
**\$1** PER ENROLLMENT

## INTERVENTION

### OPTION 1

#### EACH COURSE

**\$60** PER ENROLLMENT

-  Under the Influence HS
-  Nicotine 101
-  Marijuana 101 HS
-  Conflict-Wise JV
-  Respect & Resolve
-  Other Drugs

### OPTION 2

#### BUNDLE IT!

CHOOSE ANY PREVENTION PLAN,  
GET THE INTERVENTION COURSES FOR  
**\$35** PER ENROLLMENT

Intervention courses can be paid by parent/student or school

## UNLIMITED USE SUBSCRIPTION




**\$2,500**  
PER SCHOOL

Unlimited use of all courses for one academic year

-  Alcohol-Wise HS
-  Marijuana-Wise HS
-  Respect & Resolve
-  Under the Influence HS
-  Marijuana 101 HS
-  Parent-Wise
-  Conflict-Wise JV
-  Nicotine 101
-  Motivational Interviewing
-  Other Drugs

## STAFF TRAINING

 Red Flags Training  
\$60 / +\$30 CEUs

 Motivational Interviewing  
Training  
FREE

## FREE PROGRAMS

 Parent-Wise

## ALWAYS INCLUDED:

- Access to our free programs with any purchased course
- 7-Day support for students & staff
- Student Management System account for administrators
- Best practices consultation

There is never any licensing fee or contract to sign.

**(888) 810-7990**

**EARLY PREVENTION  
AND  
INTERVENTION**  
FOR SECONDARY SCHOOLS

# ABOUT OUR **COMPANY**

We combine evidence-based preventions and interventions using the latest technology to effectively reach teens and young adults with our online programs. The cornerstone of 3rd Millennium Classrooms is the personalized feedback component integrated into all our courses through an exclusive partnership with **eCHECKUP TO GO** at San Diego State University Research Foundation. Our programs are highly personalized and incorporate interactive exercises in a motivational interviewing style. This process engages individuals in a powerful learning experience that impacts behavior.

3rd Millennium Classrooms was founded in 1999 when we introduced **Under the Influence**, the very first online alcohol intervention course in the country.

Today, our company serves over 4,000 high schools, colleges and courts in all 50 states.

**3rd Millennium Classrooms**  
15900 La Cantera Parkway, Ste. 20265  
San Antonio, TX 78256  
(888) 810-7990  
3rdmil.com

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# OUR CORE STRENGTHS



Research shows that students respond best to interventions that provide feedback, emphasize personal responsibility, give several options for changing high-risk behavior, and are non-judgmental.<sup>12</sup> Having been featured in 13 published studies in peer-reviewed journals and in five studies presented at professional conferences, 3rd Millennium courses utilize proven strategies.



We partner with you through the entire course selection and implementation process. No contract required. We want our superior value and not merely a contractual obligation to be the reason you continue with us.



We work with each school—no matter the size—to provide a customized plan that meets budget requirements. The best part is, our low-cost pricing is transparent: there are no hidden fees.



Because we are the experts on our courses, we do not use a third party provider to respond to customer support requests. Our support team is available seven days a week to provide full service support to administrators and students. Because of our high standard of customer service, we boast a 97% customer retention rate.



We are the exclusive provider of the **eCHECKUP TO GO** brief intervention tool through our partnership with San Diego State University Research Foundation.

# THE GENERATION OF YOUNG PEOPLE TODAY

## WHY ONLINE PREVENTION & INTERVENTION?

 **73%** of teens have access to a mobile phone<sup>9</sup>

**83%** U.S. households own a computer or other internet-connected device<sup>9</sup>



**1 IN 8** HIGH SCHOOL SENIORS drove behind the wheel after marijuana use<sup>20</sup>



rode with a driver who had been using marijuana<sup>16, 17</sup>

## HIGH SCHOOL SENIORS WHO SMOKE MARIJUANA



are **2X** more likely to receive a traffic ticket



are **65%** more likely to get in a car crash

**THAN THOSE WHO DO NOT SMOKE<sup>16, 20</sup>**

**40%**

of high school students used marijuana before they entered college.<sup>16</sup>



In 2013, **908,000** youths ages 12 to 17 years old needed treatment for an illicit drug use problem.<sup>17</sup>



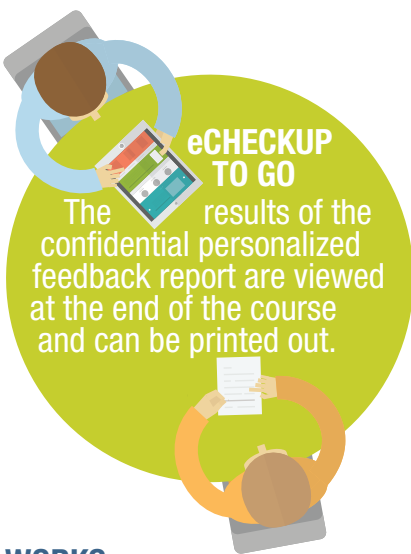
Only **90,000** received treatment at a specialty facility.



# EVIDENCE-BASED STRATEGIES

San Diego State University Research Foundation designed **eCHECKUP TO GO** with evidence-based strategies that challenge social norms and perceptions of risk, address behavioral strategies, and motivate individuals to change. The combination of these strategies built into a prevention and intervention program indicate favorable outcomes in reduction and prevention of substance use.<sup>1, 2, 3, 5, 6, 7, 8, 15, 19</sup>

To date, studies on the efficacy of **eCHECKUP TO GO** have been published in 13 studies and presented in five professional conferences. Results demonstrate a reduction in alcohol and drug use among high school and college students.



## HOW IT WORKS

The **eCHECKUP TO GO** appears in all of our alcohol and drug programs. After completion of the program, the **eCHECKUP TO GO** summarizes the student's responses in a personalized feedback report. The report is unique to each student.

For a non-user, the report explains the risks and consequences of use and supports the choice of abstinence.

An early user will receive more intervention and behavioral strategies to adopt healthy habits, behaviors, and attitudes with the goal of abstinence.

**Sobering Up**

Once alcohol is in your bloodstream, there is nothing that you can do to speed up the process of elimination. In your case:  
 With your typical weekly BAC of 0, it would take for your BAC to return to zero (0).  
 With your highest reported BAC of 0, it would take for your BAC to return to zero (0).  
 Your body gets rid of alcohol at a relatively constant rate. However, that rate is not the same for everyone. Men and women, for example, typically metabolize alcohol at different rates. However, some things often believed to help a person sober up actually have **NO EFFECT ON BAC AT ALL**. They only give the person a false impression of feeling more awake and alert, creating what has been called a "Wife awake drunk."

**Smoking**

In a typical MONTH, you smoke: 0 cigarettes.  
 You have smoked for: 0 years.  
 In your LIFETIME, you have smoked about: 0 cigarettes.  
 You spend about \$0 (0%) yearly on cigarettes.

Most people are aware of the risk for disease associated with cigarettes and use. What people may not know is that the combination of tobacco and alcohol greatly increases the risk for lung and stomach cancers. While drinking alcohol may increase smoking, the reverse leads to increased drinking.

Those who choose to smoke should be aware of the impact of passive smoke on smoking refers to those who are exposed to environmental (second-hand) tobacco for an estimated 53,000 deaths per year in the United States among non-smokers (legal drug use and murders combined). Those concerned about the effects of air exposure, and that may include avoiding drinking and drinking environments.

**Family Risk**

Based on your family risk level, your risk of developing future alcohol dependence or related problems is: Medium.

Family Risk Scale:

10	Very High Risk
9	High Risk
8	Medium Risk
7	Low Risk
6	Very Low Risk

People with a history of alcohol or drug problems among their closest relatives are at higher risk themselves. The more relatives with alcohol problems you have, the higher your risk for problems with alcohol.

Your risk increases if your relatives with alcohol problems are the same gender and/or are more closely related.

Your score is calculated based on the National Institute on Alcohol Abuse and Alcoholism's Project MATCH system.

**Per YEAR**

You spend about \$281,279,886.00 per year on alcohol and/or cigarettes...

**Physical Costs**

How many cheeseburgers did you drink last month?  
 Each standard drink also contains approximately 100 to 140 calories. Given the number of reported drinking, in ONE month you drank about 0 calories, or the equivalent of 0 cheeseburgers.

If you ran at a pace of 6 miles per hour (a 10-minute mile) you would have to run for 0 hours off all of the calories you accumulated from drinking alcohol.

**Alcohol takes effect more quickly when mixed with carbonated/caffeinated beverages.**

ANSWER: TRUE

Drinking alcohol in combination with carbonated beverages speeds at which your body absorbs alcohol. Carbonated (fizz) on the stomach and increases the rate of alcohol absorption and alcohol does not reduce the effects of alcohol intake.

Mixing caffeine with alcohol also increases the risk of the levels of caffeine can increase your heart rate and blood pressure. Also, like alcohol, caffeine is a diuretic, and the risk of dehydration.

**The body uses the calories in alcohol as a source of energy in the same way it does in other kinds of food.**

ANSWER: FALSE

Alcohol is metabolized by the liver into acetate that can be used for energy.

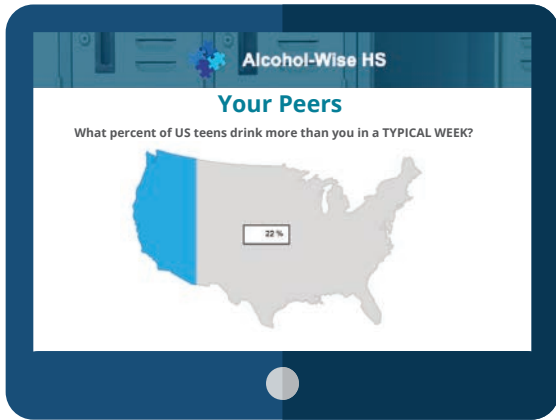
**Risk Factors**

Early alcohol users are more likely to be alcohol dependent.

More than one-third (38%) of persons who began drinking at age 15 were alcohol dependent at some point in their lifetime.

Dependent in Lifetime

Age Began Drinking	Dependent in Lifetime (%)
15	38%
16	30%
17	25%
18	20%
19	15%
20	10%
21	5%
22	2%
23	1%
24	0%



## NORMATIVE PERCEPTIONS

*A person's perception of what they think other people are doing is challenged against what peers are actually doing.*

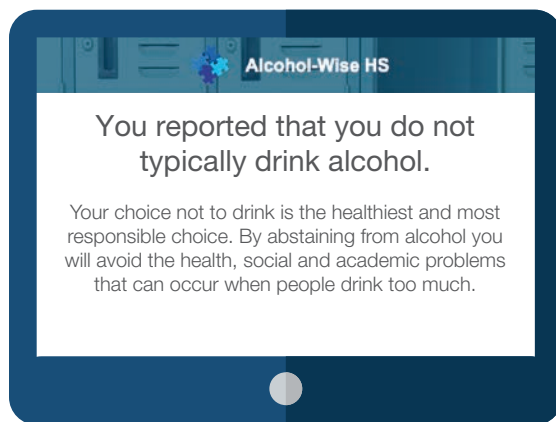
We challenge a student's perceptions of alcohol or drug use with actual statistics of their peers as a way for them to recognize their own misconceptions. Not every one is 'doing it'. This strategy dispels exaggerated beliefs of peer use by correcting such misconceptions of prevalence.<sup>4, 5, 19</sup>



## RISK PERCEPTION

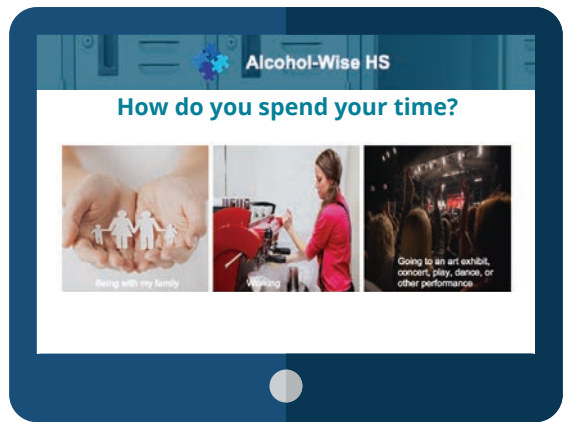
*Unhealthy habits and behaviors believed to be low-risk are challenged against actual high-risk consequences.*

Individuals who believe that alcohol and drug use have little to no risks are more likely to be involved in high-risk behaviors.<sup>2, 5, 7</sup> We counter their beliefs by aligning risks with negative consequences, such as hangovers, injuries, missing classes, legal consequences, substance dependency, poisoning, and overdose.



## MOTIVATIONAL INTERVIEWING

The style of motivational interviewing is integrated in the delivery of our programs. This increases the student's motivation to adopt to healthy behaviors, beliefs, and attitudes, especially if there is ambivalence to change.<sup>14, 15</sup>



## BEHAVIORAL STRATEGIES

*Strategies to reinforce behaviors with positive outcomes are presented as a way to prevent high-risk behaviors.*

Since drug use and underage drinking is illegal, our programs teach a range of protective behaviors such as refusal skills.



# EARLY PREVENTION COURSES FOR LARGE STUDENT GROUPS



## ALCOHOL-WISE HS

Interactive curriculum and eCHECKUP TO GO are combined as an educational and prevention solution for underage drinking.

- Health or life skills class
- Incoming students
- Student groups such as band and athletics



## MARIJUANA-WISE HS

Interactive curriculum and eCHECKUP TO GO are combined as an educational and prevention solution for marijuana use.

- Health or life skills class
- Incoming students
- Student groups such as band and athletics



## RESPECT & RESOLVE \*

Focuses on all aspects of creating safe and healthy relationships. Topics include building self-esteem, emotional health, communication and conflict resolution skills, awareness of types of abuse in relationships, and strategies for recognizing coercive tactics.

- Health or life skills class
- Incoming students
- Student groups such as band and athletics
- Part of a sex education curriculum, covering topics such as abstinence, consent, avoiding coercion, and other life skills



## NICOTINE 101 \*

Addresses the impact of smoking, vaping, dipping and other nicotine-containing products.

- Health or life skills class
- Incoming students
- Student groups such as band and athletics



Includes personalized feedback report.



## READ OUR WHITE PAPERS

Learn more about features, learning outcomes, and options for each course by reviewing our white papers.



## OTHER DRUGS \*

Focuses on the effects, risks, and consequences of illicit drug use and prescription drug misuse.

- For referrals because of a prescription or illicit drug violation



# INTERVENTION COURSES FOR INDIVIDUAL REFERRALS



## UNDER THE INFLUENCE HS

Provides relevant alcohol and drug information by describing how alcohol affects the student's health, academic progress, and social behavior. The course also provides strategies such as refusal skills and how to avoid high-risk situations.

- For individuals with an alcohol code of conduct violation.



## NICOTINE 101 \*

Addresses the impact of smoking, vaping, dipping and other nicotine-containing products. It facilitates a quitting plan for smokers by allowing them to decide on their own strategies.

- Used as a referral for campus violations
- Facilitates a plan to quit



## MARIJUANA 101

Describes how marijuana affects the student's health, academic progress, and social behavior. The courses also provides strategies such as refusal skills and how to avoid high-risk situations.

- For individuals in violation of a marijuana or drug policy.



## OTHER DRUGS

Focuses on the effects, risks, and consequences of illicit drug use and prescription drug misuse.

- For referrals because of a prescription or illicit drug violation



## CONFLICT-WISE

Addresses issues related to sexting, bullying and cyberbullying. Provides strategies and tools to manage aggressive behavior and training for anger management and conflict resolution.

- For individuals with a conduct violation related to aggressive behavior, bullying, or cyberbullying.



## RESPECT & RESOLVE \*

Focuses on all aspects of creating safe and healthy relationships. Topics include building self-esteem, emotional health, communication and conflict resolution skills, awareness of types of abuse in relationships, and strategies for recognizing coercive tactics.

- For individuals with a conduct violation related to sexting or coercive behaviors

\* Respect & Resolve, Other Drugs, and Nicotine 101 can be used for prevention or intervention applications.



# STAFF & PARENT TRAINING



## RED FLAGS

Human Trafficking Awareness Training

Learn how to identify the signs of grooming and trafficking in young people. Experts in the field provide invaluable feedback during realistic, scenario-based training on the identification of the ABC's of trafficking: Appearance, Behavior, Communication

Customizable "next steps" ensure that your staff receive relevant information for reporting of suspected trafficking victims.



## MOTIVATIONAL INTERVIEWING

Staff training series on how to conduct Motivational Interviewing in coaching sessions with students. Motivational Interviewing expert, Scott Walters, explains step-by-step how to conduct a successful session using this interviewing technique. Includes a Motivational Interviewing Handbook for staff.

Engaging the student using Motivational Interviewing can reduce recidivism and reinforce plans for positive change in attitudes, behaviors, and perceptions.



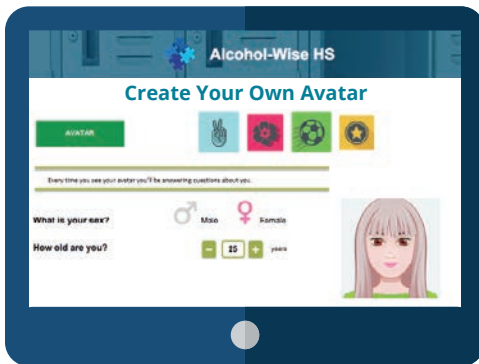
## PARENT-WISE

Parent-Wise equips parents to help their teen navigate issues like alcohol, vaping, marijuana, and prescription drug misuse, as well as commonly faced pressures in relationships and on social media. It covers how to improve communication and manage conflict and anger. It provides suggestions for setting boundaries with teens and encourages discussion.

- For parents of teens

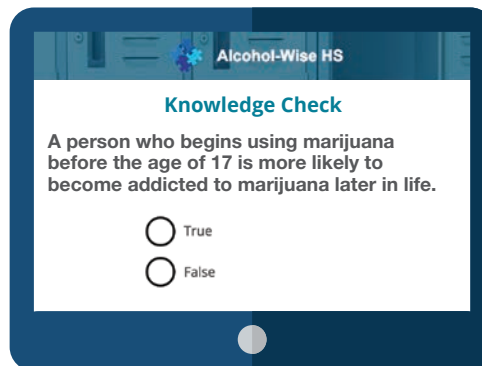


# PERSONALIZED FEATURES



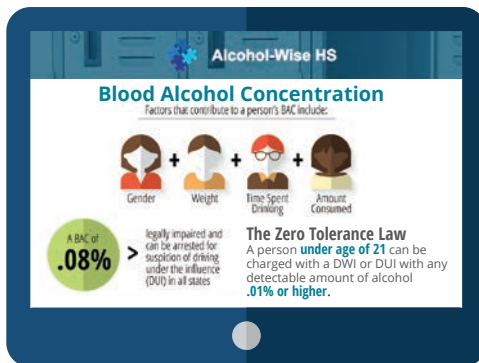
## STUDENTS STAY ENGAGED

Every lesson includes videos, animation, narration, and knowledge checks to continually engage the student as they proceed through the modules. The videos are short and to the point.



## LEARNING

Knowledge checks examine what students have learned in each section. For the student to proceed to the next lesson, they must have a passing score.



## EACH STUDENT'S FEEDBACK IS INDIVIDUALIZED

The student will receive a confidential personalized feedback report that is unique to the way they respond. For example, a drinker will receive more intervention than a non-drinker.



## ADD CAMPUS RESOURCES

School and community resources can be added in custom sections of the course as a way to inform students of any help and assistance available to them.



# HOW IT WORKS

## OUR PREVENTION PROGRAMS

3rd Millennium Classrooms impacts individuals and organizations alike by:

- Addressing behavioral health using practical scenarios
- Using the latest technology to make courses easy to access and complete
- Incorporating a comprehensive style of motivational interviewing that's personal and relevant to the student
- Emphasizing both short- and long-term behavioral change through education and awareness
- Equipping individuals with the tools, resources, and life skills for healthier and safer living

## ALCOHOL AND DRUG PREVENTION PROGRAMS

These issues are critical in high school for these reasons:

- Research indicates that early first use can lead to addiction and dependency in adulthood.<sup>11, 17</sup>
- Substance use during the formative years adversely affects the development of the brain, leading to long-term behavioral and mental health issues.<sup>10</sup>
- The rates of drug and alcohol use gradually increase as students progress and transition to higher grades.<sup>6, 11</sup>

The goal of all our programs is to challenge ambivalence and help individuals consider their options. We accomplish this by integrating personalized feedback through **eCHECKUP TO GO** into a knowledge-based curriculum. Students have time to process the information based on their own input and history, staying active and engaged throughout the course.

## OUR INTERVENTION PROGRAMS

All interventions focus on the individual's behavioral and attitude change as it relates to their substance use.

These courses are usually given as a referral from an administrator, counselor, campus resource officer, or athletic coach.

**MY SUMMARY** is a confidential personalized feedback report on the student's substance use after answering questions about their usage. The summary is comprised of AUDIT (Alcohol Disorders Identification Test) and MATCH (Matching Alcoholism Treatment to Client Heterogeneity) validated measures, as well as components from **eCHECKUP TO GO**.

### ADVANTAGES:

- The printable version gives the student an opportunity to read through their findings and reflect on their use and how it impacts their knowledge, beliefs, attitudes, behaviors, and experiences.
- The student may use the feedback to self-improve.
- A list of customized resources may be provided by the school.

### HOW IT WORKS:



1. Student takes course independently.
2. Student and staff/counselor meet. Although the report is confidential, the student may choose to share it with the counselor, and if so, the counselor can help the student determine the appropriate next steps for treatment and intervention.

## ADMINISTRATORS

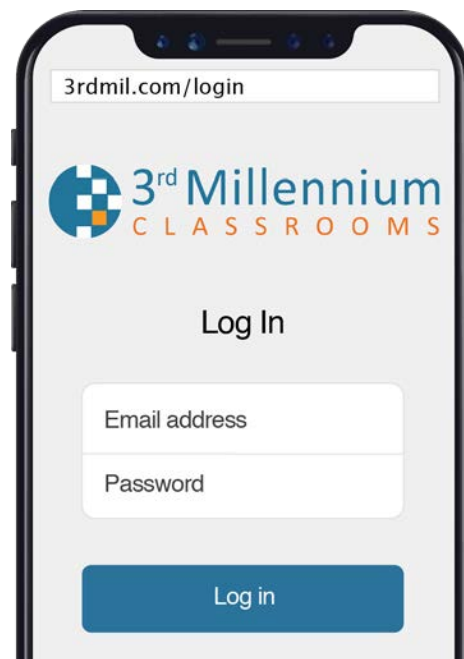
School administrators have access to the online Student Management System (SMS). This is a database of students enrolled in 3rd Millennium Classrooms courses specifically at your school. You can add administrators as needed.

SMS features for administrators:

- View enrollment and completion records
- View grades and login times
- Send email reminders to students

Implementation steps:

1. We provide student instructions for your school.
2. School administration provides instructions to students for course requirements.
3. Student logs in to 3rd Millennium Classrooms and enrolls in the course.
4. Student completes course.
5. Administrator reviews SMS for completion and compliance.

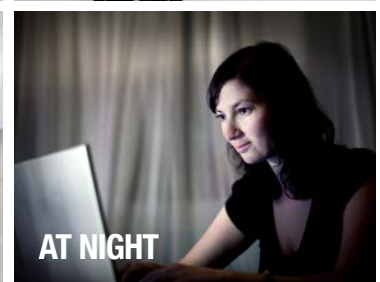
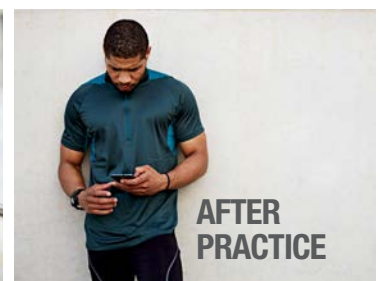


## STUDENTS

Our courses are designed to be taken independently, to fully maximize the learning experience. We recommend the student take the course on their own, in a private area with no distractions. If you will be using a computer lab, students should use earbuds to minimize distractions. Most students take the course as homework.

Features for students:

- Courses can be taken using any internet-connected device such as a desktop computer, laptop, tablet or smart phone.
- The student can log in and out of a course at any time, resuming where they left off.
- The courses are available 24 hours a day, seven days a week.
- The student can contact our support team for help at: **info@3rdmil.com** or **(888) 810-7990**.





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## BEST PRACTICES NEXT STEPS IMPLEMENTATION

Thank you for choosing our evidence-based online programs for your students.

The **Alcohol-Wise HS**, **Marijuana-Wise HS**, **Other Drugs**, **Nicotine 101**, and **Respect & Resolve** courses are five high school prevention programs designed around our time-tested college models. These courses encourage abstinence, explain the negative consequences of high-risk drinking, and marijuana and nicotine use, and promote healthy relationships. The utilization of our evidence-based prevention programs in your high school will produce the best outcomes.

3rd Millennium Classrooms recommends that schools utilize the High School Programs for incoming freshmen, health education classes, and students participating in sports or extra-curricular activities.



The subscription-based pricing model provides the best value for schools with a student population of 200 or more students. This will provide unlimited use of the suite of 3rd Millennium programs throughout the academic year.

## TO GET STARTED

1. Fill out the **Add Your School** form at [hub.3rdmil.com/addyourschool](http://hub.3rdmil.com/addyourschool)
2. We set up your account and send you an email confirming that you are ready to start making referrals.
3. When you are ready, start making referrals using the instructions sheets we provide for you.
4. Log in to the **Student Management System** to track course enrollments and completions.

Call your representative to get all of your questions answered.

**888-810-7990**  
**info@3rdmil.com**

## PRICING

### PREVENTION

FROM **\$7 - \$20** PER ENROLLMENT  
ALCOHOL-WISE HS  
MARIJUANA-WISE HS  
NICOTINE 101  
RESPECT & RESOLVE  
OTHER DRUGS

### INTERVENTION & INDIVIDUAL REFERRAL COURSES \*

**\$60** PER ENROLLMENT  
UNDER THE INFLUENCE HS  
MARIJUANA 101 HS  
NICOTINE 101  
RESPECT & RESOLVE  
OTHER DRUGS  
CONFLICT-WISE

**\*CHOOSE ANY PREVENTION PLAN,  
GET THE INTERVENTION COURSES FOR  
\$35 PER ENROLLMENT**

### STAFF COURSES

RED FLAGS  
**\$60** PER ENROLLMENT. **\$90** W/CEU CREDIT

### FREE PROGRAMS

PARENT-WISE  
MOTIVATIONAL INTERVIEWING COURSE



### UNLIMITED SUBSCRIPTION USE

**\$2,500** PER SCHOOL  
Unlimited use of all student courses for one academic year

**\$500** PER SCHOOL  
Unlimited use of all staff courses for one academic year

## FEEDBACK FROM **ADMINISTRATORS**

*"Thank you for making the process easy!"*

*-- Catholic high school administrator, Illinois*

*"Gosh, I wish that I would have heard of your group sooner!*

*You are one efficient machine!"*

*-- Public high school principal, Wisconsin*

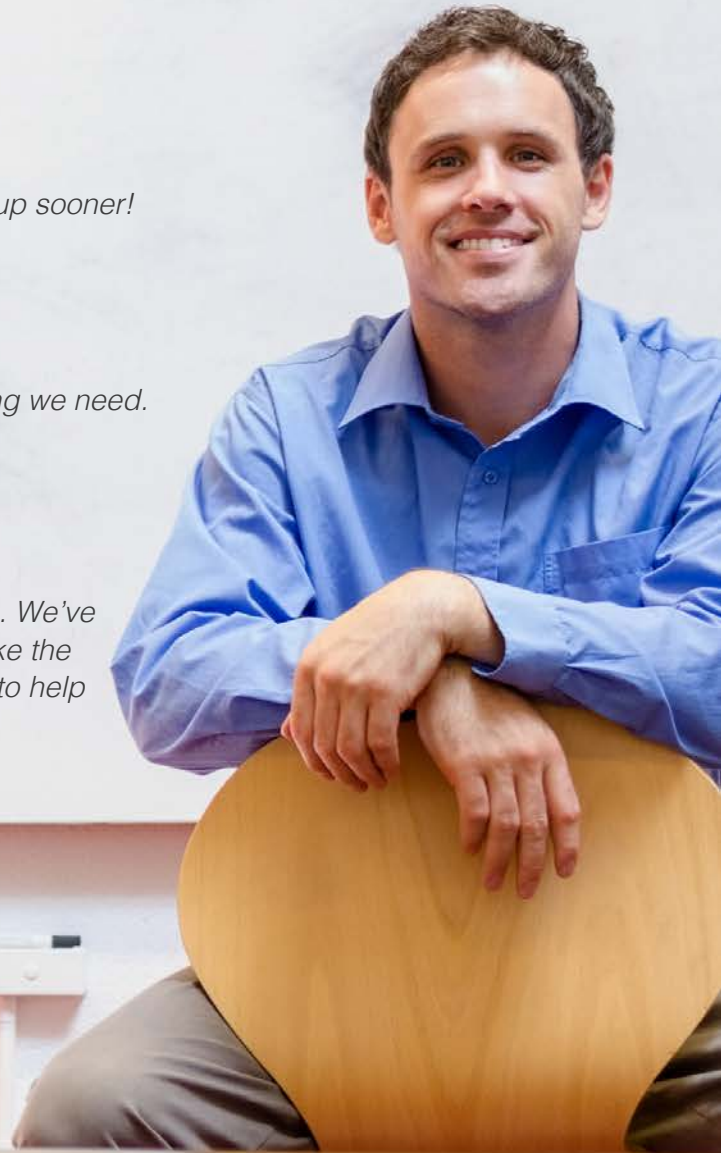
*"Your company is quick to respond with everything we need.*

*Thanks again."*

*-- Alternative school teacher, California*

*"I want to thank you for the programs you offer us. We've seen such great results from the students who take the online courses. I truly appreciate the opportunity to help them through 3rd Millennium."*

*-- Michelle H., Behavior Specialist, Salem OR HS*





## Invitation for Bid Terms & Conditions

# *ESUCC-202~~21~~*

### 1. Issuing Agency

- 1.1 ~~Nebraska ESUCCESUCC~~ - Cooperative Purchasing is requesting online Bids from qualified vendors for the following: **Coop Annual Buy ESUCC-202~~21~~2022**.
- 1.2 ~~Nebraska ESUCCESUCC~~ - Cooperative Purchasing utilizes an online sourcing application suite through Ion Wave. All bidding initiated by ~~Nebraska ESUCCESUCC~~ - 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 ESUCCESUCC~~ - Cooperative Purchasing website at <http://www.neesucoop.org/> under the Vendor area or the direct URL at <https://esucc.ionwave.net/VendorRegistration/RegisterStart.aspx>.
- 1.3 ~~Nebraska ESUCCESUCC~~ - 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 IFB Dates". The administrative fee must be paid to ESU Coordinating Council (ESUCC) by dates defined in the "Key IFB 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 by selecting an option from the Attribute "Extended Purchasing Window" (Participant OR Non-Participant) and then answering Attributes Extended Purchasing Participant, Extended Pricing Percentage, Extended Pricing Minimum order amount if applicable for each.
  - 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) catalog in addition to line items awarded on the Annual Buy.
      - 1.3.2.1.1. This offering will be made available to ESUCC members on the Punchout Enablement date June 1 and until the Re-enablement date January 31 of each 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 that 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). i.e. 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-~~2021~~2022 bid and offered through a punch-out catalog. This fee will be assessed on an annual basis in February for the previous year.

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

1.4 ~~Nebraska ESUCCESUCC~~ - Cooperative Purchasing represents 17 Educational Service Units statewide who in turn service Nebraska school districts with over 325,000 students. ~~Nebraska ESUCCESUCC~~ - Cooperative Purchasing is currently in its 5th decade of operation. ~~Nebraska ESUCCESUCC~~ - 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

2.2.1 Member Name: ESU Coordinating Council

2.2.2 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 ESUCCESUCC~~ - Cooperative Purchasing reserves the right to award to multiple vendors if it is in the best interest of the ~~Nebraska ESUCCESUCC~~ - Cooperative Purchasing or its ESUs, schools, ~~or and~~ other members.

2.3.1 Vendors will agree to offer their product at a unique price to ~~Nebraska ESUCCESUCC~~ - 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, Municipalities 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 ~~10~~<sup>14</sup>th, ~~2020~~2021 with the exception of the Electronics section which will be due on or before Friday, January ~~7~~<sup>8</sup>, ~~2021~~2022. 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 ESUCCESUCC~~ - 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-~~2021~~2022 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 IFB Dates" or as soon as possible thereafter, in the Office of ~~Nebraska ESUCCESUCC~~ - Cooperative Purchasing Directors office, Ainsworth 412 W. 14<sup>th</sup> Ave. Holdrege, NE. Bids will also be awarded on dates defined in "Key IFB 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 IFB Dates", or as soon as possible thereafter, in the Office of ~~Nebraska ESUCCESUCC~~ - Cooperative Purchasing

Directors office, 412 W. 14<sup>th</sup> Ave, Holdrege, Ainsworth, NE. Bids for Electronics will also be awarded on dates defined in “Key IFB Dates” below, except as otherwise provided in this document.

### 3.5 Key IFB Dates

3.5.1 Public Announcement of IFB	October <u>56, 20202021</u> 9:00 a.m. CST
3.5.2 Conference Call	October <u>145, 20202021</u> 2:00 p.m. CST
3.5.3 Deadline for Questions	November 1 <u>56, 20202021</u> 4:00 p.m., CST
3.5.4 IFB Due Date & Time	December <u>104, 20202021</u> 3:00 p.m. CST (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.5 Deadline for Bid Bonds received	December <u>104, 20202021</u> (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.6 Awarding of Bids	December <u>1413-1716, 20202021</u> (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.7 Preliminary Awards & Review Period	December <u>204, 20202021</u> – January 3, <u>20212022</u> (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.8 Vendor Dispute Period	January <u>34-56, 20212022</u> (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.9 Awards Finalized	January <u>67, 20212022</u> (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
3.5.10 IFB Due Date & Time	January <u>78, 20212022</u> 3:00 p.m. CST (100 Electronics Section)
3.5.11 Deadline for Bid Bonds received	January <u>78, 20212022</u> (100 Electronics Section)
3.5.12 Electronics Section Awarded	January <u>104-112, 20212022</u>
3.5.13 Electronics Dispute/Review Period	January <u>123-145, 20212022</u>
3.5.14 Electronics Awards Finalized	January <u>189, 20212022</u>
3.5.15 Punchout Re-enablement	January 31, <u>20212022</u>
3.5.16 Bill Extended Catalog Orders	By January 31, <u>20212022</u>
3.5.17 Paper Buy Catalog Opens	February 2, <u>20212022</u>
3.5.18 Annual Buy Catalog Opens	February 16, <u>20212022</u>
3.5.19 Bill Punchout Catalog Orders	By February 28, <u>20212022</u>
3.5.20 Paper Orders sent to vendors	March <u>178, 20212022</u>
3.5.21 First Day for 400 Paper delivery	April <u>112, 20212022</u>
3.5.22 Paper Buy Admin Fees billed	By April <u>145, 20212022</u>
3.5.23 Annual Buy orders sent to Vendors	April <u>204, 20212022</u>
3.5.24 First Day for Annual Buy delivery	May <u>234, 20212022</u> (Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
3.5.25 Annual Buy Admin Fees billed	By June 1, <u>20212022</u>
3.5.26 Delivery Deadline for 400 Paper	June <u>148, 20212022</u>
3.5.27 Late delivery penalty 2% on Paper	June <u>159, 20212022</u>
3.5.28 Vendor Notifies ESUCC of Outstanding/Backordered Items	June <u>234, 20212022</u>
3.5.29 Paper Admin Fees due to ESUCC	July <u>74, 20212022</u>
3.5.30 Earliest Possible payment due date	July <u>78, 20212022</u> (45 Days from First Day for Delivery of Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
3.5.31 Delivery Deadline Annual Buy Items	July <u>223, 20212022</u> (Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)

3.5.32 Late delivery penalty 2% 900)	July <del>256, 2021</del> 2022 (Sections 100, 200, 300, 500, 600, 700, 800, 850,
3.5.33 Deadline to pay Admin Fees	August <del>910, 2021</del> 2022
3.5.34 Late delivery penalty 4% 900)	August <del>256, 2021</del> 2022 (Sections 100, 200, 300, 500, 600, 700, 800, 850,
3.5.35 Vendor Bid bonds returned	September 1, <del>2021</del> 2022
3.5.36 Late delivery penalty 6% 900)	September <del>267, 2021</del> 2022 (Sections 100, 200, 300, 500, 600, 700, 800, 850, 900)
3.5.37 Overages picked up by Vendors	October 1, <del>2021</del> 2022

#### 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 IFB Dates".

#### 5. Bidder Qualifications

- 5.1 All bidders that are awarded individual item contracts by ~~Nebraska ESUCC~~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 IFB, 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~~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 Invitation for Bid. 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 Invitation for Bid 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 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-~~2021~~2022 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 IFB 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/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 IFB 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 and Supplies
- 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 and members 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 and other members 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 IFB Dates” section. Any vendor that can receive purchase orders via cXML data will be assisted to accommodate this process by Nebraska ESUCCE SUCC - 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 by replying to the Attribute “Order Delivery Contact Email”.

## 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 ESUCCE SUCC - 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 ESUCCE SUCC~~ - 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 IFB Dates.
- 9.1.2 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 ESUCCE SUCC~~ -

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 ESUCCESSUC~~ - 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 ESUCCESSUC~~ - 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 ESUCCESSUC~~ - 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 ESUCCESSUC~~ - 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 ESUCCESSUC~~ - Cooperative Purchasing.
- 9.4.3 Preliminary awards will be available during the "Vendor Review Period of Awards" defined in "Key IFB 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 ESUCCESSUC~~ - Cooperative Purchasing will be closed. Vendors may formally dispute awards, in writing, to ~~Nebraska ESUCCESSUC~~ - Cooperative Purchasing during the "Vendor Dispute Period" defined in "Key IFB Dates". Disputes will be reviewed and vendors will be notified of decisions. Final Bid Awards will be available as defined in "Key IFB 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 ESUCCESSUC~~ - Cooperative Purchasing Item Number.

## 9.6 Product Safety Information

9.6.1 Bidders are responsible to ensure that all equipment meets applicable safety codes and that all electrical equipment bids will be Underwriters Laboratory ~~Approved~~Certified. 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 ESUCCESUCC~~ - 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 if an alternate hasn't been enabled through the sourcing application.

9.8.2 ~~Nebraska ESUCCESUCC~~ - 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: <https://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/manufacture submitting the sample for consideration and the ~~Nebraska ESUCCESUCC~~ - 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 ESUCCESUCC~~ - 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 is defined in "Key IFB Dates", and, the earliest payment due date is also defined in "Key IFB 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 IFB 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 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 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 IFB Dates” and any ~~Nebraska ESUCCE~~SUCC - 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 ESUCCE~~SUCC - 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 ESUCCE~~SUCC - 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 ESUCCE~~SUCC - Cooperative Purchasing, of any model changes prior to shipment of product, addressed to coop@esucc.org. These written notifications are subject to approval from ~~Nebraska ESUCCE~~SUCC - 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 ESUCCE~~SUCC - 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 ESUCCE~~SUCC - 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 IFB Dates”, vendors must submit to ~~Nebraska ESUCCE~~SUCC - 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 ESUCCE~~SUCC - 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 ESUCCE~~SUCC - 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 ESUCCE~~SUCC - Cooperative Purchasing.

9.13.4 ~~Nebraska ESUCCE~~SUCC - 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 ESUCCE~~SUCC - 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 ESUCCE~~SUCC - 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 ESUCCE~~SUCC - Cooperative Purchasing to fulfill current and future requirements, ~~Nebraska ESUCCE~~SUCC - 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 ESUCCE~~SUCC - Cooperative Purchasing affiliated schools, ESU's or members. Each vendor should take into account the fact that ~~Nebraska ESUCCE~~SUCC - Cooperative Purchasing may consider multiple awards. It is at the discretion of ~~Nebraska ESUCCE~~SUCC - 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 ESUCCE~~SUCC - Cooperative Purchasing's hosted sourcing application service at <http://www.neesueoop.org> ~~https://esucc.ionwave.net/~~ 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 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~~Close Date & Time" time will be displayed for all types of bids. No bid can be received or modified after the "~~Bid Submittal Deadline~~Close Date & Time" designated for whatever reason.

- 9.27.2 Because of the availability of electronic bidding, ~~Nebraska ESUCC~~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~~ESUCC - Cooperative Purchasing ~~either through USPS, FedEx, UPS, other courier services or through the ESUCC~~ sourcing application. ~~Official-A Digital signatures are required~~is required to validate the bid. ~~By submitting your response, you certify that you are authorized to represent and bind your company.~~ Neglecting to provide the information requested on the "Response Submission" ~~tab of each bid constitutes a Digital Signature~~ ~~-will and 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 Invitation for Bid 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-publishing~~ February 1, ~~2021~~2022. 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: \_\_\_\_\_

**ADDENDUM TO 2021-2024 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 2021-2024 Special Buy Agreement signed by the Cooperative on June 29, 2021, and by the Contractor on June 30, 2021. The Addendum is as follows:

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

Impero Wellbeing - provides a further level of internet safety for schools with powerful, keyword detection tools to capture, record and identify early warning signs of harmful online behavior.

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

Impero Wellbeing – \$3.50 per learner

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

**CONTRACTOR**

**COOPERATIVE**



Stephanie Wonser  
Global Head of Account Management

Kraig Lofquist  
Executive Director

Date Executed 8/26/2021

Date Executed \_\_\_\_\_

Coop Directors report to ESUCC Board  
submitted by: Craig Peterson  
September 1, 2021

## 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 134 item Updates, Changes, issues reported this year with 37 directly impacted by Covid-19, down from 82 last year.
  - ii. Cancelled items (45 total) included the following due to numerous factors including Manufacturer Discontinued, shortage of shipping containers, congested ports, shortage of trucking transports, extended lead times, Manufacturer impacted by workforce, Manufacturer out of stock with no expected delivery date, Manufacturer continues to push deliver date into the Fall, Increase in cost for raw materials or demand, Vendor incorrectly bid item :
    1. Construction Paper, Artco Bell Laminate Desks, Artco Bell Tables, Artco Bell Cantilever Chairs, Hi-Lighter Pens, Desk Tray, Hand Sanitizer with Aloe, White Board Cleaner – Towelettes, Nitrile Exam Gloves, Nebraska Flag, Digital Thermocouple Thermometer, Foam Bowls, Stirring Straws, Surface Disinfectant System Wiper Bucket for Food-service, Football Helmet Chinstrap, Playground Ball, Laminated Foam Plates, Paper Food Trays, Food Storage Containers, Drinking Straws,
- c. **Review of Sales Data over last Five years**
  - i. 2020-2021 – Annual Buy \$2,190,174.03; Paper Buy \$672,037.21
  - ii. 2019-20 – Annual Buy \$2,356,150.92; Paper Buy \$856,459.15
  - iii. 2018-19 – Annual Buy \$2,280,138.82; Paper Buy \$957,712.43
  - iv. 2017-18 – Annual Buy \$2,407,565.41; Paper Buy \$866,109.76
  - v. 2016-17 – Annual Buy \$2,382,736.12; Paper Buy \$790,259.16

## 2. ESUCC Marketplace

- a. ESUCC Marketplace Sales
  - i. January 1, 2021 to August 17, 2021 - \$4,086,802.79
  - ii. January 1, 2020 to December 31, 2020 - \$4,989,205.11
  - iii. January 1, 2019 to December 31, 2019 - \$4,470,323.01

- iv. January 1, 2018 to December 31, 2018 - \$4,449,044.40
- v. January 1, 2017 to December 31, 2017 - \$3,863,795.56
- vi. 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	\$ 359,508.36	\$ 200,182.23	\$ 379,309.39
2021	\$ 2,367,812.50	\$ 202,009.76	\$ 146,301.82	\$ 85,270.34

**3. 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. 30 Entities, 4 ESUs
  - ii. Sales - \$43,010.69
  - iii. List Price - \$0.77 (Highest tiered price)
  - iv. Savings off list price - \$30,061.68
- c. Swank – Movie Licensing
  - i. 433 Buildings
  - ii. Sales - \$145,476
  - 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. 125 Entities
  - ii. Sales - \$132,700.22
  - 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. 49 Entities
  - ii. Sales - \$189,284.70
  - iii. List Price - \$7 Filter - Variable on each product
  - iv. Savings off list price (filtering product only) - \$5.25 per license sold
- f. Adobe VIP
  - i. 180 Entities
  - ii. Sales - \$126,215
  - iii. List Price - \$2,450 Building - \$12,250 District
  - iv. Savings off list price

1. Calculated as Building - \$441,000 Minimum Savings (#Entities \* \$2,450 building cost if bought on their own)
2. Calculated by District - \$2,205,000 (#Entities \* \$12,250 District cost if bought on their own)

g. Impero

- i. 9 Entities
- ii. Sales - \$11,599

h. Odysseyware \$5,850 Marketplace orders to date

i. Wyebot \$2,100 Marketplace orders to date

j. Articulate \$26,651.70 Marketplace orders to date

k. IXL \$19,125 Marketplace orders to date

**4. 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 #022 Solicitations released on July 20 in the following categories**

- i. Furniture
- ii. Institutional Kitchen Equipment
- iii. LED Lighting
- iv. Event Seating & Staging Solutions
- v. Technology Catalog

c. **RFP #022 Proposals released on July 20 in the following categories**

- i. Health & Wellness

d. **Winter 2021 Meeting** - The Winter meeting scheduled in Houston, TX on November 29 – December 1. The above categories for Solicitations will be recommended for approval by the AEPA member states.

**5. Additional Information**

- i. Communications/Zoom with the following vendors/organizations throughout the Summer: Infobase, School Health, Cyber Security Training meetings & NOC meetings, Service Master, Quill, GEER/Broadband meetings, School Specialty, Navigate360, BMS CAT, AEPA Website/CRM meetings, Lenovo, Phil Long Dealership, Staples/Aeromax, Staples Technology Solutions, Remind, Kyocera, Impero, Softchoice, HTRS Adobe Setup, Cisco/Duo
- ii. Conferences: NDE Day, NCSA Administrator Days

## **2020-21 Sales Update (not final)**

Total Sales: \$21,467,676.44 (up \$4.7m from 2019-20)

Total Savings: \$6,428,709.00 (up 1.5 m from 2019-20)

\*\*\*GEERS Sales: \$3,364,052.68 (Staples \$1,054,880.42 not included in above reported sales)

## **2021-22 Food Program Participation Summary**

- **2021-22 Participants: 118**
  - **Spend Commitment:** \$7,980,667.30
  - **Non-Renewals: 3**
    - Bennington Public Schools
    - Brady Public Schools
    - Crawford Public Schools
  - **New Participants: 9**
    - Centennial Public School
    - Christ Lutheran School- Norfolk
    - Hemingford Public Schools
    - Humboldt-Table Rock- Steinauer USD #7
    - Nebraska Christian Schools- Central City
    - Pleasanton Public Schools
    - St Michael's Elementary School- McCook
    - Tekamah-Herman Public School
    - Zion Classical Academy- Hastings

## **Previous Years**

- **2020-21 Participants: 111**
  - **Spend Commitment:** \$7,101,491.30
  - **Actual Total Sales:** \$6,492,727.97
  - **Number of purchasing schools:** 108
  - **1% Rebate Paid:** \$39,371.26
    - **Total # Schools Qualified for rebate:** 52
- **2019-20 Participants: 113**
  - **Spend Commitment:** \$7,121,155.26
  - **Actual Total Sales:** \$5,630,776.46
  - **% of sales/ commit:** 79%
- **2018-19 Participants: 114**
  - **Spend Commitment:** \$7,507,251.19
  - **Total Sales:** \$5,351,985.00

- **% of sales/ commit: 71%**
- **2017-18 Participants: 114**
  - **Spend Commitment: \$7,101,278.38**
  - **Total Sales: \$5,392,099.59**
- **2016-1 Participants: 111**
  - **Spend Commitment: \$6,892,280.20**
  - **Total Sales: \$5,017,842.73**