

ESUCC
Legal Committee Meeting
Tuesday, November 16, 2021, 3:00 PM
ESU No. 3, 6949 South 110th Street, Omaha, NE 68128

Posted Locations:

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

Posted Date: 11/10/21

Attendance Taken at 3:00 PM.

Dan Schnoes (NE) (ESU 03):	Present
Dr. Brenda McNiff (ESU 05):	Present
Dr John Skretta (ESU 06):	Present
Dr. Larianne Polk (ESU 07):	Present
Drew Harris (ESU 09):	Present
Dr Melissa Wheelock (ESU 10):	Present
Greg Barnes (ESU 11):	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 Special Buy agreement with B&H Photo

3.1.2.2. Approve Special Buy agreement with Backupify

- 3.1.2.3. Approve Addendum to contract with Scholastic Inc.
- 3.1.2.4. Approve Amendment to Agreement with Staples Contract & Commercial
- 3.1.2.5. Approve Special Buy Agreement with Noodletools
- 3.1.2.6. Approve Extension to 2015-2018 Special Buy agreement with hand2mind
- 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
 - 3.2.2. Legislative Day - February 8, 2022
 - 3.2.2.1. Legislative Theme - What we do (Nebraska Revised Statutes Sections 79-1245 through 79-1249)?
- 3.3. Policies and Procedures
- 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 11th Street, Suite A
Lincoln, NE 68508
(402) 476-8055
ncsa.org



2021-2024 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative"), and B&H Photo and Electronics Corp. ("Contractor"). The Cooperative is an organization founded in 1968 with the purpose of providing the Educational Service Unit (ESU) member school districts ("Members") of Nebraska an opportunity to secure the maximum procurement value through cooperative synergies. The Educational Service Unit Coordinating Council (ESUCC) Advisory group serves as the steering committee for new and future cooperative buys statewide under its direction. A chief executive officer coordinates the statewide purchasing agreement between service units and their school districts and other serviceable entities. The Director manages the program with the guidance of the ESUCC, Advisory Board, and the Fiscal Agent. Nebraska ESUCC Cooperative Purchasing serves 17 ESUs that provide a statewide network of educational opportunities to approximately 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, ESUs, and Members. This fee will be submitted to the Cooperative on a quarterly basis beginning three months from the Effective Date of this Agreement for all transactions completed and paid during said quarter.
- 4. Term.** This Agreement is effective on November 17, 2021 ("Effective Date") and shall continue until 12:00 midnight (CST) on November 16, 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. 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 non-defaulting party may authorize in writing.
- C. Each party may terminate this Agreement by written notice if federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- D. The Cooperative may terminate this Agreement, in whole or in part, by written notice to the Contractor and may regard the Contractor in default of this Agreement if the Contractor becomes:
 - (1) Insolvent;
 - (2) Makes a general assignment for the benefit of creditors;
 - (3) Files a voluntary petition of bankruptcy;
 - (4) Suffers or permits the appointment of a receiver for its business or assets;
 - (5) Becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or
 - (6) Has wound up or liquidated, voluntarily or otherwise.
- E. The Cooperative may terminate this Agreement, in whole or in part, immediately, without notice, if the Contractor is debarred or suspended from performing services on any public contracts.
- F. The parties may terminate this Agreement without cause by mutual written consent or by either party with a minimum of 90 days written notice.
- G. Upon the termination for any reason or expiration of this Agreement, the Contractor promptly must return to the Cooperative all papers, materials and other property of the Cooperative then in its possession, including but

not limited to all work in progress as is appropriate in its then existing form to the Cooperative.

7. Indemnification.

- A. The Contractor hereby waives and agrees to indemnify and save harmless the Cooperative and the ESUs and their officials, agents, employees, and volunteers (hereinafter collectively referred to as "Indemnities"), against any and all claims of injuries, death, damage to property, liabilities, judgments, costs and expenses which may otherwise accrue against Indemnities in consequence of the granting of this Agreement or which may otherwise result therefrom.
- B. The Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith.
- C. If any judgment shall be rendered against the Cooperative or the ESUs in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same.
- D. Any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.
- E. The Contractor's obligation to indemnify and save harmless any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.

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

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

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

9. Public Records. The Contractor acknowledges that the Cooperative must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

- 10. Publicity.** The Cooperative does not endorse the goods or services of the Contractor. Except for listing the Cooperative as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of the Cooperative.
- 11. Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on Cooperative, ESU, or Member property or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all Cooperative, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. The Cooperative may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.
- 12. Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
- 13. Independent Contractor.** Contractor is an independent contractor under this contract and is not a Cooperative, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 14. Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
- 15. Taxpayer Identification.** Contractor's federal employer identification number is: **132768071**_____.
- 16. Sales Tax.** The Cooperative, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.

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

Cooperative: ESUCC
Attn: Kraig Lofquist
6949 South 110th Street
LaVista, NE 68128

With copy to:

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

Contractor:
B&H Photo & Electronics Corp.
ATTN: Legal Department
420 Ninth Ave
New York NY 10001

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

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

18. Warranties and Specifications. Merchandise sold under this agreement is only covered by the manufacturer's warranty, if any. B&H disclaims all warranties, including without limitation that of merchantability or fitness for a particular purpose. Purchaser may return products to B&H consistent with B&H's return policy available at <https://www.bhphotovideo.com/find/HelpCenter/ReturnExchange.jsp>.

Commented [DC1]: Added original statement from previous contract

~~18.~~

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

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

IN WITNESS WHEREOF the parties have executed this Agreement on the date 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

<<VENDOR-INSERT SCOPE OF GOODS>>

B & H Photo & Electronics Corp. is a Retailer of Equipment & Accessories for Photo, Video, Pro Audio, Visual, Computers, Software, Binoculars, Night Vision, Scopes, Ophthalmic Goods, Theatrical Supplies, Musical Instruments, Audio, Security, Portable Entertainment, Home Theater, Pro Projectors, Projector Screens, Cables, Used Equipment. A complete catalog of all goods that are available to members can be found at www.bhphotovideo.com.

B&H is the Professional Source for Photo, Video, Audio & all the latest technology. Our dedicated team of knowledgeable Federal Government & Organizational Sales Professionals will address your specific needs, and a personal Account Manager will serve as your point of contact to handle your requests.

B&H provides the finest service to Federal, GSA Contracts, State, & Local Governments. We also serve a wide range of Corporate Accounts & Educational Institutions, including K-12's, School Districts & Universities. Special consideration will be given for contracts, substantial requests for quotes & high-volume bids.

EXHIBIT "B"

1. Contractor's Pricing

Contractor's Pricing Model under this Agreement is:

<<VENDOR-INSERT PRICING>>

Prices will be based on a cost + markup structure (based upon dealer book net price). Pricing terms shall be cost plus 11%. (The maximum discount provided under these pricing terms is 25% off B&H's retail sales price but not less than .2% off B&H's retail sales price). The pricing terms of this Section do not apply to used equipment, B&H gift cards, or B&H kits

2. Payment Terms/ Payment Schedule

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

3. Acceptance of Services or Products:

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

4. Title and Risk of Loss:

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

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: cXML:
 - i. If "Email" address to deliver orders to: nebraska@bhphoto.com
 - ii. If "cXML" provide the following IT contact information
Contact (First, Last name): _____
Contact email address: [e-
procurementsupport@bhphoto.com](mailto:procurementsupport@bhphoto.com)
Contact Phone: [212-239-7500](tel:212-239-7500)
- c. If "No, Alternate method will be determined

3. Sales Representative Contact

- a. First, Last name: _____
- b. Title: _____
- c. Phone: _____
- d. Email: _____

4. Invoice Method

- a. Vendor invoices Members direct

5. Sales Reporting

- a. Vendor to submit quarterly sales report to ESUCC at coop@esucc.org
- b. Vendor contact information for sales report questions:
Contact (First, Last name): [Benjamin Steinmetz](#)
Contact email address: benjs@bhphoto.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 4th Street

Ainsworth, NE 69210

Questions Contact:

Craig Peterson

308-995-0665

craig.peterson@esucc.org



2021-2024 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and [REDACTED] ("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 [REDACTED], 2021 (“Effective Date”) and shall continue until 12:00 midnight (CST) on [REDACTED], 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.

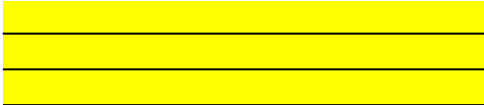
- 11. Publicity.** The Cooperative does not endorse the goods or services of the Contractor. Except for listing the Cooperative as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval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

- 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 110th Street
LaVista, NE 68128

With copy to:

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

Contractor: 

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: _____
Title: _____
Date: _____

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>>

EXHIBIT "B"

1. Contractor's Pricing

Contractor's Pricing Model under this Agreement is:

<<VENDOR-INSERT PRICING>>

2. Payment Terms/ Payment Schedule

- A. Members will pay Contractor for all undisputed amounts for the goods and/or services identified in Exhibit A and provided by Contractor under this Agreement within 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: _____ cXML: _____
 - i. If "Email" address to deliver orders to: _____
 - 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: _____
- b. Title: _____
- c. Phone: _____
- d. Email: _____

4. Invoice Method

- a. Vendor invoices Members direct

5. Sales Reporting

- a. Vendor to submit quarterly sales report to ESUCC at coop@esucc.org
- b. Vendor contact information for sales report questions:
Contact (First, Last name): _____
Contact email address: _____
- 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 4th Street
Ainsworth, NE 69210

Questions Contact:
Craig Peterson
308-995-0665
craig.peterson@esucc.org

EXHIBIT "D"

SOFTWARE LICENSE AGREEMENT

<<VENDOR-INSERT SOFTWARE LICENSE AGREEMENT>>

**ADDENDUM TO 2019-2022 SPECIAL BUY AGREEMENT BETWEEN
ESUCC COOPERATIVE PURCHASING AND SCHOLASTIC LIBRARY
PUBLISHING INC.**

THIS ADDENDUM is made by and between Nebraska ESUCC Cooperative Purchasing ("Cooperative") and **Scholastic Library Publishing, Inc.** ("Contractor") to the 2019-2022 Special Buy Agreement signed by the Cooperative on December, 12 2019, and by the Contractor on December, 10 2019. The Addendum is as follows:

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

No Changes (deletions or additions) for the goods and service

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

Discounts remain unchanged but prices are subject to an increase annually (maximum of 5%)

All other terms and conditions of the 2019-2022 Special Buy Agreement shall remain in full force and effect.

CONTRACTOR

COOPERATIVE



Toni Abrahams
Vice President of Operations

Kraig Lofquist
Executive Director

Date Executed 11/11/2021

Date Executed _____

AMENDMENT TO AGREEMENT

This First Amendment ("Amendment") is made as of October 29, 2021 to the Sourcewell Participating Agreement effective as of August 1, 2020 ("Agreement") by and between Nebraska ESUCC ("Buyer") and Staples Contract & Commercial LLC (f/k/a Staples Contract & Commercial, Inc.) ("Seller"). Buyer and Seller are collectively referred to herein as the "Parties". All capitalized terms used herein shall have the meaning assigned to them in the Agreement, unless otherwise defined herein.

WHEREAS, Buyer and Seller wish to amend certain terms and conditions of the Agreement, and Buyer and Seller consent to and approve the amendment of the Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Effective Date.** The Effective Date of this Amendment shall be October 29, 2021.
2. **Section 6.1 Rebates** of the Agreement is hereby amended by adding the following to the end of such provision:

"STS Technology Products Rebate

Buyer will receive the rebates below based on Buyer's Net Sales of STS Technology Products ("STS Technology Products") during each calendar quarterly period. Such rebate will be paid forty-five (45) calendar days after the end of each calendar quarterly period. STS Technology Products is defined as technology products that Buyer purchases under Sourcewell Supplies Program #012320-SCC and that are ordered, fulfilled, billed and shipped from the Staples Technology Solutions' billing system or the Staples Technology Solutions' On-line Ordering Site.

Chromebook and Laptop purchases: 1%
Other STS Technology Products: 2%"

Unless otherwise modified by this Amendment, all terms and conditions contained in the Agreement shall continue in full force and effect. The preparation, revision or delivery of this Amendment for discussion is not an offer to enter into any agreement and is merely a part of the negotiations between the Parties. Neither party shall have any obligation or liability to the other whatsoever at law or in equity (including without limitation, any claims for detrimental reliance or promissory estoppel) relating to the subject matter hereof unless and until such time as both Parties shall have executed this Amendment (the date on which the last party signs this Amendment is hereinafter referred to as the "Execution Date"). For the avoidance of doubt and notwithstanding anything to the contrary herein, no terms (including pricing) shall apply prior to the Execution Date. Seller reserves the right to revoke any offer at any time prior to the Execution Date. In the event Seller executes this Amendment and Buyer fails to countersign within sixty (60) calendar days therefrom, Seller's offer shall automatically lapse and become null and void, unless otherwise agreed by Seller.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

Staples Contract & Commercial LLC		Buyer Name:	Nebraska ESUCC
By its authorized agent:		By its authorized agent:	
Name:		Name:	<u>Kraig Lofquist</u> <u>counterpartySignerName]</u>
Title:		Title:	<u>{Executive</u> <u>DirectorcounterpartySignerTextField]</u>
Date:		Date:	
Address for notices:	Staples Contract & Commercial LLC 500 Staples Drive Framingham, MA 01702	Address:	<u>ESUCC</u> <u>{e6949 South 110th Street</u> <u>LaVista, NE</u> <u>68128unterpartySignerTextField]]]</u>

ADDITIONAL PROVISIONS

Effective as of: October 29, 2021

Any additional terms or conditions applicable to this Program Exhibit only are set forth in this Attachment 1.

Definitions

1.1 Technology Products or Products. The business machines, computers, consumer electronics, networking, peripherals, storage and technology related supplies that Buyer purchases from Seller on the designated e-commerce platform pursuant to this Program Exhibit.

Supplemental Terms.

2.1 General Rebate and Incentive Requirements. Payment of all incentives and/or rebates paid hereunder is contingent upon Buyer paying all invoices within the agreed-upon payment terms.



2021-2024 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and ~~NoodleTools, 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 , ~~Nov. 17,~~ 2021 ("Effective Date") and shall continue until 12:00 midnight (CST) on , ~~Aug. 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.

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

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: _____ By: _____
Name: _____: **Damon Abilock** Name: Kraig Lofquist
Title: _____ **President** Title: Executive Director
Date: _____ Date: _____

EXHIBIT "A"

SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO MEMBERS

<<VENDOR-INSERT SCOPE OF GOODS>>

Designed by educators, NoodleTools is an online platform promoting authentic research and original writing. Students and teams can collaborate in real-time, using integrated tools for source evaluation and citation, note-taking and outlining. Students produce accurate MLA, APA and Chicago-style citations, assisted by intelligent import of database metadata as well as expert help from NoodleTools librarians. Scaffolded notecards prompt original analysis and ideas. Students tag and pile notecards, then organize them into an outline to jump-start writing. Teachers can view and provide targeted feedback directly into student work throughout the research process.

EXHIBIT "B"

1. Contractor's Pricing

Contractor's Pricing Model under this Agreement is:

<<VENDOR-INSERT PRICING>> [ATTACHED]

ESUCC Pricing

Pricing offered here to ESUCC member schools represents at least a 20% discount as compared to our regular, non-discounted pricing.

Single-campus pricing

Discounted pricing for individual elementary, middle, or high schools with a student enrollment in grades 5 and up of up to 4,000 is shown here (grades under 5 are not counted in the pricing calculation).

<u>Single-campus enrollment (grades 5+)</u>	<u>ESUCC cost</u>
<u><= 250</u>	<u>\$176.00</u>
<u>251 - 1000</u>	<u>\$288.00</u>
<u>1001 - 2000</u>	<u>\$376.00</u>
<u>2001 - 3000</u>	<u>\$464.00</u>
<u>3001 - 4000</u>	<u>\$552.00</u>

Full-district pricing

For full-district licenses (definition: all middle and high schools in the district are participating), an additional discount of 10-40% is available (depending on district size) and elementary schools are included free.

District license discount (relative to single-campus pricing):

<u>Number of middle and high schools</u>	<u>Added Discount</u>
<u>2-3</u>	<u>10%</u>
<u>4-7</u>	<u>20%</u>
<u>8-15</u>	<u>30%</u>
<u>16+</u>	<u>40%</u>

Example calculation for a full district:

District with 2 high schools (each with enrollment of 1,800), 2 middle schools (each with enrollment of 800), and 4 elementary schools.

$$\text{Cost} = ((\$376 * 2) + (\$288 * 2)) * 0.80 = \$1062.40/\text{yr}$$

Note: 0.80 is the 20% district-wide license discount (for a district with 4-7 middle and high schools). Elementary schools are included free with the district license.

Pricing for an entire ESU

A number of the ESU Systems have subscribed as a whole, for all of their member schools.

[Pricing for this scenario is calculated with additional discounts. Please contact Damon Abilock at damon@noodletools.com to obtain a quote.](mailto:damon@noodletools.com)

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: cXML:
 - i. If "Email" address to deliver orders to: orders@noodletools.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: Damon Abilock
- b. Title: President
- c. Phone: 650-561-4071
- d. Email: damon@noodletools.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
- b. Vendor contact information for sales report questions:
Contact (First, Last name): Damon Abilock
Contact email address: damon@noodletools.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 4th Street
Ainsworth, NE 69210

Questions Contact:
Craig Peterson
308-995-0665
craig.peterson@esucc.org

EXHIBIT "D"

SOFTWARE LICENSE AGREEMENT

<<VENDOR-INSERT SOFTWARE LICENSE AGREEMENT>>

**EXTENSION TO 2015-2018 SPECIAL BUY AGREEMENT BETWEEN
ESUCC COOPERATIVE PURCHASING AND hand2mind Inc.**

This Amendment and Extension is made by and between Nebraska ESUCC Cooperative Purchasing ("Cooperative") and hand2mind Inc. ("Contractor") to the 2015-2018 Special Buy Agreement ("Agreement") signed by the Cooperative on November 19, 2015, and by the Contractor on November 11, 2015. The Addendum is as follows:

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

No Changes to Terms and Conditions Agreement.

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

No Changes to Exhibit A.

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

No Changes to Exhibit B.

The Agreement permits amendment and modification by a signed, written agreement by both parties that identifies itself as an amendment. The Cooperative has approved an extension and now desires to extend the Agreement for an additional term of thirty-six (36) months until December 1, 2024. Upon the signature of an authorized officer of the Cooperative and the Contractor, the Agreement is hereby extended.

COOPERATIVE

CONTRACTOR hand2mind, Inc.

Kraig Lofquist
Executive Director

Elizabeth Rodriguez

Name: Elizabeth Rodriguez
Title: Bids, Quotes, and Contracts Administrator

Date: _____

Date: 11/11/2021

Coop Directors report to ESUCC Board
submitted by: Craig Peterson
November 17, 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 4,600 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.

i. 2022 ESUCC-Annual Buy

1. Bids close December 10, 2021 (200,300,400,500,600,700,800,850,900 sections) and January 7, 2022 (100 section).

ii. 2022 Annual Buy Key dates for schools

1. Paper Buy Catalog Opens - February 2, 2022
2. Paper Buy Order Deadline Schools/Members – March 9, 2022
3. Annual Buy Catalog Opens - February 16, 2022
4. First Day for 400 Paper delivery - April 11, 2022
5. Annual Buy Teacher/Staff deadline – April 8, 2022
6. First Day for Annual Buy delivery - May 23, 2022
7. Delivery Deadline for 400 Paper - June 14, 2022
8. Delivery Deadline Annual Buy Items - July 22, 2022

iii. Impact for Annual Buy prices

1. I have had some conversations with vendors and their concern over the number of price changes they have recently been receiving. The following are questions we received on the Annual Buy bids.

“In Regards to 11.1 Tariffs, I think if we took the word Tariff out of this, I think the conditions are reasonable, unfortunately we are in a situation where this has nothing to do with Tariffs, we can not possibly know what our cost of goods will be come spring. We are getting weekly price increases. as well as being able to meet the delivery times as those are extremely problematic as well. Will there be any flexibility on delivery dates. some items are already 36 wks out.”

“Guaranteeing pricing for your bid will be more difficult this year as well as getting product. Just wanted you to be aware of this situation. Can this be addressed in our bid showing the current pricing but then

showing you documentation on the price increases if there are more when it actually ships? Otherwise, we need to use our crystal ball to guess on costs, which could be higher than needs to be.”

Other vendors have also voiced these same concerns in either email or phone calls that we have had. We are currently working with Legal on how we may be able to address the language in the Terms & Conditions of the Annual Buy agreement.

2. Prices will more than likely be higher this year with vendors no knowing when price spikes will end.

2. Special Buys

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

- i. **B&H Photo –**

1. B&H Photo Video is an American photo and video equipment retailer founded in 1973, based in Manhattan, New York City. B&H conducts business through online e-commerce consumer sales, business to business sales, and its one retail location.
 2. ESUCC has had a special Buy contract and punch-out with B&H Photo up until May 2021 when it expired with no response from B&H Photo to renew. I recently attended the NETA Fall conference and was asked by a District Technology Coordinator about why they were no longer available in the ESUCC Marketplace. I reached out again and received a response from B&H Photo and scheduled a Zoom meeting.

- ii. **Backupify -**

1. Automated, Enterprise backup for Google Workspace & Microsoft 365.
 2. A [Datto](#) owned company
 3. Recommendation came from multiple sources (ESU 11, Lincoln Lutheran, NETA Tech Coordinators listserv)

- iii. **Scholastic -**

1. Scholastic is the world's largest publisher and distributor of children's books, connecting educators and families through accessibility, engagement, and expertise.
 2. Addendum is to update pricing and add additional product.

- iv. **Staples -**

1. Addendum to add Technology items that were no part of the original Sourcewell contract.

v. **NoodleTools -**

1. NoodleTools is an online research management platform that promotes critical thinking and authentic research. Students stay organized as they evaluate information, build accurate citations, archive source material, take notes, outline topics, and prepare to write. Three differentiated levels support individual students across grades and abilities. The classroom environment allows librarians and teachers to provide feedback, monitor individual contributions to group work, and view statistics about source use. In contrast to an auto-cite, auto-evaluate product, we support students to engage deeply in research and produce original work.
2. Recommendation came from multiple sources (ESU 3 Kate Carlson, ESU 13 B.J. Peters, ESU 16 Melissa Engel)

vi. **hand2mind –**

1. This contract has been in place since November 2015. The vendor provides a selection of manipulative based educational resources for PreK through grade 12 teachers.

3. 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.
 - i. **2022 AEPA Bid** Opening happened on September 14, 2021. Vendors that were responsive will move forward to the appropriate bid committees for evaluation of proposals and recommendations for awards at the AEPA Winter meeting November 29 - December 1, 2021.
 1. 022-A Furniture
 2. 022-B Health & Wellness
 3. 022-C Institutional Kitchen Equipment (Re-bid)
 4. 022-E LED Lighting
 5. 022-F Event Seating & Staging Solutions
 6. 022-G Technology Catalog

- ii. **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.

4. Additional Information

- a. Amazon Business
 - i. Followed up with Frank Krimowski at Amazon on November 8, 2021. He said “I’ll ping legal again. I submitted the contract and received a few questions. Waiting for a draft to share with you.”
 - ii. Frank responded to the request on November 11, 2021 and said that he had met with legal. His request was one of several similar proposals and the legal/finance teams need to set policy for the Terms of Amazon Business participation across the board. He has no timeline at this point but will notify me once he hears anything.
- b. Zoom communications with the following vendors/organizations throughout the Month:
 - 1. Call with Apple about processing Apple devices for the GEER exempt School/Student devices. Apple wouldn’t allow EDU pricing/ordering because they weren’t going to an EDU institution. After our order hit CDW-G last month Apple began getting question from their higher echelons of management why they were not cooperating with ESUCC on this order. Apple will now process these orders with us direct through cooperation of the Retail Sales division to be able to deliver to residential addresses.
 - 2. Coordination with the AEPA Reporting committee to collect and process reports for Q1-Q3 Sales and Signed Contracts.
 - a. Prepare reporting forms for AEPA membership (29 states) to report their Q1-Q3 sales and Admin fees received from participating vendors.
 - b. Prepare reporting forms for AEPA membership (29 states) to report their 2021 Signed Contracts with vendors.
 - c. Work with website developer to verify collected data and import into the AEPA CRM.
 - d. Meeting with Reporting Committee to coordinate dates/deadlines and processes for next year.
 - 3. Call with Backupify to discuss ESUCC Special Buy agreement
 - 4. Call with KnowBe4, ESUCC staff (Scott Isaacson, Craig Peterson), ESU 6 (Jamen Hall), and ESU 7 (Dan Ellsworth) staff to discuss a statewide buy for KnowBe4. A follow up call with Knowbe4’s legal council to discuss what ESU’s/ESUCC was trying to accomplish in a Special Buy with KnowBe4.
 - 5. Softchoice monthly meeting and Fireeye Webinar (October 13)
 - 6. AEPA Equal Level Users group – where we discuss Marketplace items, issues or plans to utilize the Equal Level marketplaces.
 - 7. Technical meeting with AmTab to discuss if they have the capability for a punchout with ESUCC.

8. Troubleshooting session with Arlington Public Schools, utilizing Adobe Creative Suite.
9. Call with Syscloud to discuss webinar on December 7 and a campaign that could be sent to members.
10. Call with NoodleTools to discuss a Special Buy agreement.
11. Meetings with ESUCC Staff to discuss moving the Coop website to the ESUCC Coop site.
 - a. We will be transitioning the Coop website to the following URL over the next month or so <https://www.esucc.org/cooperative-purchasing/>
 - b. Staff has been working to condense current website and make the new pages more concise.
12. Call with Frontline Education to discuss a Special Buy agreement.
13. Call with CDW-G about new Nebraska contact, order delivery, and AEPA process
14. Future Ready Meeting to discuss goals for Nebraska over the next several years.
15. School Specialty Webinar to discuss their eprocurement upgrades.
16. Call with Newsela contact to discuss Marketing and hosting a webinar for Nebraska schools.
17. Call with B&H Photo to discuss renewing Special Buy Contract with ESUCC.
18. Call with new Scholastic representative to make first contact and possible price changes through the Addendum process.
19. Call with ETA hand2mind to discuss extending contract.
 - ii. NETA Fall conference: Kearney
- c. GEERs - have been working with Scott Isaacson, Deb Hericks, and Priscilla Quintana on Exempt School/Student orders. Submitted the Apple device orders to CDW-G only to have Apple contact us to tell us they won't be processing these. Orders have since then been placed with Apple direct and should start shipping soon, hopefully the week of this board meeting.

November 2021

Food Audit: 2021-22 Food program audit completed

Q3 2020 Sales: Overall sales down **\$76k** from Q3 2020

- * Special Buys: down **\$339k**
- * AEPA: up \$154k
- * Food Buy: up \$369k
- * Custodial: down **\$259k**
- * Annual Buy Punch Out: down **\$1k**