

ESUCC  
Legal Committee Meeting  
Tuesday, October 4, 2022, 2:00 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: 09/28/22

Attendance Taken at 2:00 PM.

Dan Schnoes (ESU 03):	Present
Dr. Brenda McNiff (ESU 05):	Present
Dr John Skretta (ESU 06):	Absent
Dr Larianne Polk (ESU 07):	Present
Drew Harris (ESU 09):	Present
Dr Melissa Wheelock (ESU 10):	Present
John Poppert (ESU 11):	Present
Paul Calvert (ESU 15):	Present

1. Call to Order

2. Roll Call

3. Consent Agenda Items

3.1. Coop Contracts

3.1.1. Approve Special Buy agreement with Kami

3.1.2. Approve Special Buy agreement with ResoluteGuard

3.1.3. Approve Special Buy agreement with Springshare for LibGuide

3.1.4. Approve Special Buy agreement with Bluum Technology

## 4. Agenda Item

### 4.1. COOP

4.1.1. Coop Strategic Plan

4.1.2. Staff Written Reports

4.1.2.1. Peterson Report

4.1.2.2. Colleen Lentz (Data)

### 4.2. Legislative Updates

4.2.1. Bromm's Updates

4.2.2. AESA Call to Action

4.2.3. Blood-Pillen Forum

### 4.3. Policies and Procedures

## 5. Next Meetings Agenda Items

## 6. 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, (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, and (iii) the Judicial Resources Commission or subcommittees or subgroups of the commission;

(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; virtual conferencing authorized; requirements; 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 website. (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 website; 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; and (xiii) A natural resources district. (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 subsection (5) of section 84-1413. (8) In addition to any other statutory authorization for virtual conferencing, any public body not listed in subdivision (2)(a) of this section may hold a meeting by virtual conferencing if: (a) The purpose of the virtual meeting is to discuss items that are scheduled to be discussed or acted upon at a subsequent non-virtual open meeting of the public body; (b) No action is taken by the public body at the virtual meeting; and (c) The public body complies with subdivisions (2)(b)(i) and (2)(b)(ii) of this section.

**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; agenda and minutes; required on website; 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 or kept as an electronic record and shall be 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 or keeping the minutes is absent due to a serious illness or emergency.

(6) 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 website the agenda and minutes of any meeting of the governing body. The agenda shall be placed on the website at least twenty-four hours before the meeting of the governing body. Minutes shall be placed on the website 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 website 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.

**84-1415. Open Meetings Act; requirements; waiver; validity of action.** No motion, resolution, rule, regulation, ordinance, or formal action made, adopted, passed, or taken at a meeting as defined in section 84-1409 of a public body as defined in such section shall be invalidated because such motion, resolution, rule, regulation, ordinance, or formal action was made, adopted, passed, or taken at a meeting or meetings on or after March 17, 2020, and on or before April 30, 2021, pursuant to a Governor's Executive Order which waived certain requirements of the Open Meetings Act.

Revised  
4-2022



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## 2022-2025 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and Notable, 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 October 1st, 2022 (“Effective Date”) and shall continue until 12:00 midnight (CST) on September 30th, 2025, 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: 38-3952286
17. **Sales Tax.** The Cooperative, ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUCC, ESUs, and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
18. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

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

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

Contractor: Notable, Inc  
8605 Santa Monica Blvd PMB 57387  
West Hollywood, California 90069-4109 US

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: Maxine R. Kalnitz \_\_\_\_\_

Name: Kraig Lofquist \_\_\_\_\_

Title: VP of Sales \_\_\_\_\_

Title: Executive Director \_\_\_\_\_

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

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

**EXHIBIT "A"**

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

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

Kami is a versatile annotation tool that helps users critically connect with content in both remote and in-person learning environments. Kami is delivered via a Chrome extension or Microsoft Underline, Strikethrough Add Text Box Text Comment  
Voice and Video Comment  
Screen Capture Comment  
Annotation Bank (Teachers only)  
Insert Shapes  
Insert Images  
Insert Videos  
Insert Stickers  
Insert Signature  
Add Equations via an Editor  
Add a Page (Blank, Grid, Lined, and Music) Freehand Drawing  
Active Stylus Support  
Integrations with Google Classroom, Schoology, and Canvas Auto-Save  
Dictionary  
Text to Speech (in multiple languages) SpeechEdge extension and website application that integrates with Google Classroom, Schoology, Canvas, and Microsoft Teams.

Kami will be responsible for supplying each user (students, teachers, staff) with a Kami license attached to their district email/login account. This license enables users to access the features and operations of Kami Premium.

Kami Premium features include:

Highlight, to Text  
Scanned Documents (OCR) Split and Merge Documents  
Onboarding training for staff (PD)

## **EXHIBIT "B"**

### **1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

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

## SCHOOLS - OPTION 1

### Schools and Districts

#### Tiered per-user Pricing Table (available for a minimum of 200 users)

No. of users		Price per User p.a.		
from	to	Private or Charter	Public School	ESUCC
200	499	\$7.00	\$6.00	\$5.35
500	749	\$5.50	\$5.00	\$4.50
750	999	\$4.50	\$4.00	\$3.55
1000	4999	\$3.50	\$3.00	\$2.75
5000	9999	\$3.00	\$2.50	\$2.25
10000	49999	\$2.50	\$2.00	\$2.00
50000		\$2.00	\$2.00	\$2.00

## 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: andy@kamiapp.com
  - ii. https://kami.app/form/po-form
  - iii. 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: Andy Hogan
- b. Title: Account Executive
- c. Phone: 619-363-1994
- d. Email: andy@kamiapp.com

**4. Invoice Method**

- a. Vendor invoices Members direct

**5. Sales Reporting**

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

Ainsworth, NE 69210

Questions Contact:

Craig Peterson

308-995-0665

[craig.peterson@esucc.org](mailto:craig.peterson@esucc.org)

## EXHIBIT "D"

### SOFTWARE LICENSE AGREEMENT

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

Please see attached document Kami Standard Terms of Service <https://www.kamiapp.com/terms-of-service/>



## 2022-2025 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and ResoluteGuard, LLC ("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 October 5, 2022, 2022 (“Effective Date”) and shall continue until 12:00 midnight (CST) on December 31, 2025, 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-occurrence~~ and \$25,000,000 per ~~occurrence aggregate~~; 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: 45-0595681
- 17. Sales Tax.** The Cooperative, ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUCC, ESUs, and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
- 18. Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier

(with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

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

With copy to:

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

Contractor: [ResoluteGuard, LLC](#)  
[417 Crescent Pkwy](#)  
[Sea Girt, NJ 08750](#)

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: Jeffrey Schobel

By:

Name: [Redacted]

Name: Kraig Lofquist

Title: [Redacted]

Title: Executive Director

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

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

**EXHIBIT "A"**

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

## **DESCRIPTION OF SERVICES**

### **Comprehensive Internal/External Assessment and Improvement**

Based on NIST-CSF Controls

Web Meeting to Outline Onboarding and Setup for assessment software installation

- Discuss assessment information requirements
- Screenshare with Technical staff to implement scanning software
- Share best practices for optimal scanning results

### **SMART- Cyber Action Plan (SMART-CAP) and Assessments Results**

Web Meeting to review SMART-CAP and Assessment Results

Step by Step Action Plans prioritized by risk of loss occurrence

- User Assignment
- Help/Support Documentation
- Align Policy and Solution Activities

Review Assessment Reports

Prioritize Network Action Plan by risk of potential loss occurrence  
Network Management Plan

- User-Friendly Detailed Remedial Actions

Consolidated Risk Report

- Network Security Summary
- Create Inventory Management Summary
- Establish Network Documentation

Review Excel Export

- Server Aging Report
- Workstation Aging Report
- Includes: Discovery Tasks, User Information, Disc Capacity, and more

### **Policies and Procedures**

Per insurance and NIST Requirements

Prioritize Policy Action Plan for Documenting Best Practices

- Support for modifying policy templates

-Align Policy creation and Solution Activities

**Each Subsequent 90 Day Comprehensive  
Internal/External Assessment SMART-Cyber  
Action Plan (SMART-CAP) and Assessment  
Results**

-Web Meeting to review CAP and Assessment Results

-Step by Step Action Plans re-prioritized by risk of loss occurrence

-User Assignment

-Help/Support Documentation

-Re-align Policy and Solution Activities

-Review Assessment Reports

Re-prioritize Network Action Plan by risk of potential loss occurrence

-Review Change and Progress Reports

Network Management Plan

-User-Friendly Detailed Remedial Actions

-Change and Progress

Consolidated Risk Report

-Network Security Summary

-Updated Inventory Management Summary

-Updated Network Documentation

-Change and Progress

Review Excel Export

-Server Aging Report

-Workstation Aging Report

-Includes: Discovery Tasks, User Information, Disc Capacity, and more

-Change and Progress

## **Policies and Procedures**

Per NIST-CSF Requirements

Re-prioritize Policy Action Plan for Documenting Best Practices

-Support for modifying policy templates

-Align Policy Creation and Solution Activities

## **EXHIBIT "B"**

### **1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

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

## *Smart- Cyber Action Plan Fees*

### 4 Continuous Improvement Quarterly Scans During the Contract Year- \$4950

\*Each additional Network Domain- \$1250

\*Each additional 250 endpoints \$1250

### 2 Continuous Improvement Semi-Annual Scans During the Contract Year- \$3950

\*Each additional Network Domain- \$1250

\*Each additional 250 endpoints \$1250

### One-time Scan Annually or When Requested- \$2950

\*Each additional Network Domain- \$1250

\*Each additional 250 endpoints \$1250

## **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 "D"

### SOFTWARE LICENSE AGREEMENT

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

#### SERVICES AGREEMENT

This Services Agreement (this "**Agreement**"), dated as of \_\_\_\_\_ (the "**Effective Date**"), is entered into by and between **RESOLUTEGUARD LLC**, a New Jersey limited liability company, with offices located at 417 Crescent Parkway, Sea Girt, New Jersey 08750 ("**Service Provider**"), and \_\_\_\_\_ with offices located at \_\_\_\_\_ ("**Customer**").

1. Services. Service Provider shall provide to Customer the services (the "**Services**") set out in **Exhibit A**. Service Provider shall provide the Services in accordance with the terms and subject to the conditions set forth in this Agreement.

2. Fees and Expenses. For the Services to be performed hereunder, Customer shall pay to Service Provider the fixed fee set out in Service Provider's fee schedule set forth on **Exhibit A** (the "**Fee**"). Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder. Except for payments that the Customer has successfully disputed, all late payments shall bear interest at the lesser of the rate of 2.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Service Provider for all costs incurred in performing the Services and collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Service Provider does not waive by the exercise of any rights hereunder), Service Provider shall be entitled to suspend the provision of any Services if Customer fails to pay any amounts when due hereunder and such failure continues for 10 days following written notice thereof.

3. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of Service Provider in the course of performing the Services (collectively, the "**Deliverables**") except for any Confidential Information of Customer or customer-provided materials shall, as between Customer and Service Provider, be owned

exclusively by Service Provider. Service Provider hereby grants Customer a license (or if applicable, a sublicense) to use all Intellectual Property Rights in the Deliverables free of additional charge (other than the Fees) and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free and perpetual basis, solely to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

4. Confidentiality. From time to time during the Term of this Agreement, either party (as the "**Disclosing Party**") may disclose or make available to the other party (as the "**Receiving Party**"), non-public, proprietary, and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within 10 days thereafter, is summarized in writing and confirmed as confidential ("**Confidential Information**"); provided, however, that

Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 4; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section 4 only, Receiving Party's Group shall mean the Receiving Party's affiliates and its or their employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, service providers, sublicensees, subcontractors, attorneys, accountants, and financial advisors.

Provided however, this Section 4 shall not prohibit or otherwise prevent Service Provider from extracting, compiling, synthesizing, and analyzing data provided by Customer to Service Provider in connection with the delivery of the Services to the extent such data or information does not identify or is otherwise attributable to Customer, Customer's operations, or its systems or networks or any person (collectively, "Anonymous Data"). Without limiting the foregoing, Service Provider represents and warrants to Customer that it will not identify you as the source of any Anonymous Data.

Certain Information provided by ResoluteGuard contains documentation on the design and deployment of your network and should be protected as Tier 1 Confidential Information. ResoluteGuard transfers Tier 1 information via a secure transfer that meets NIST-CSF controls. Your Cybersecurity Officer or Designated Contact should be sure to store, secure, provide access, process and/or transmit this information as they do other electronic Tier 1 Confidential information.

5. Term. This Agreement shall commence as of the Effective Date and, unless sooner terminated as provided in this Agreement, will remain in full force and effect for an initial term equal to one (1) year from the Effective Date (the "Initial Term") after which the term shall automatically renew for additional 12-month periods (collectively with the Initial Term, the "Term") unless a party provides written notice to the other party of that party's intention to not renew this Agreement at least thirty (30) days prior to the expiration of the then current Term.

6. Termination. Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party: (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach; (b) becomes insolvent or admits its inability to pay its debts generally as they become due; (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing; (d) is dissolved or liquidated or takes any corporate action for such purpose; (e) makes a general assignment for the

benefit of creditors; or (f) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. Notwithstanding anything to the contrary in this section, Service Provider may terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due hereunder: (a) and such failure continues for 10 days after Service Provider's written notice to Customer of nonpayment; or (b) more than 2 time in any 1 year period.

7. Independent Contractor. The details of the method and manner for performance of the Services by Service Provider shall be under its own control, Customer being interested only in the results thereof. The Service Provider shall be solely responsible for supervising, controlling and directing the details and manner of the completion of the Services. Nothing in this Agreement shall give Customer the right to instruct, supervise, control, or direct the details and manner of the completion of the Services. Service Provider is for all purposes hereunder an independent contractor and in no event will Service Provider be considered an agent or employee of Customer or any of its subsidiaries or affiliates for any purpose.

8. [Reserved.]

9. Limited Warranty. Service Provider warrants that it shall perform the Services, which includes the delivery of a vulnerability assessment to Customer, in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services. SERVICE PROVIDER (a) MAKES NO WARRANTIES EXCEPT FOR THAT SET OUT ABOVE; AND (b) DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Without limiting the generality of the foregoing, Service Provider makes no representations or warranties with respect to any third party software or Deliverables provided to Customer with respect to the Services, nor does Service Provider provide to Customer any representations, warranties, assurances or promises that Customer's operations during or following the delivery of the Services will meet any or all regulatory compliance requirements (or other requirements of applicable laws). Service Provider's sole and exclusive liability and Customer's sole and exclusive remedy for breach of the limited warranty set out in this Section shall be reperformance of the affected services. If Service Provider cannot reperform the services in compliance with the warranty set forth above within a reasonable time (but no more than 30 days) after Customer's written notice of such breach, Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 6. Service Provider shall within 30 days after the effective date of such termination, refund to Customer a portion of the fees previously paid by Customer as of the date of termination corresponding to the defective Services.

10. Limitation of Liability. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR

ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS

FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER IN THE 1 YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. General. Each of the parties hereto shall use commercially reasonable efforts to, from time to time at the request and sole expense of the other party, furnish the other party such further information or assurances, execute and deliver such additional documents, instruments, and conveyances, and take such other actions and do such other things, as may be reasonably necessary or appropriate to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby. Each party shall deliver all communications in writing either in person, by certified or registered mail, return receipt requested and postage prepaid, by facsimile or email (with confirmation of transmission), or by recognized overnight courier service, and addressed to the other party at the addresses set forth above (or to such other address that the receiving party may designate from time to time in accordance with this Section). This Agreement and all matters arising out of or relating to this Agreement, including tort and statutory claims are governed by, and construed in accordance with the laws of New Jersey, (including its statutes of limitations), without giving effect to any conflict of laws provisions thereof that would result in the application of the laws of a different jurisdiction. Except as otherwise set forth in Section 12 below, either party shall institute any legal suit, action, or proceeding arising out of or relating to this Agreement in the federal or state courts in each case located in Sea Girt, New Jersey. SUBJECT TO SECTION 12 BELOW, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE AFOREMENTIONED COURTS; (B) WAIVES ANY OBJECTION TO THAT CHOICE OF FORUM BASED ON VENUE OR TO THE EFFECT THAT THE FORUM IS NOT CONVENIENT; (C) WAIVES ANY RIGHT TO TRIAL BY JURY; AND (D) WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT, OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY NEW JERSEY LAW. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral understandings, agreements, representations, and warranties with respect to such subject matter. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. The parties may not amend this Agreement except by written instrument signed by the parties. No waiver of any right, remedy, power, or privilege under this Agreement ("**Right(s)**") is effective unless contained in a writing signed by the party charged with such waiver. No failure to exercise, or delay in exercising, any Right operates as a waiver thereof. No single or partial exercise of any Right precludes any other or further exercise thereof or the exercise of any other Right. The Rights under this Agreement are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise;

provided that, the parties intend that the remedy set out in Section 8 (Limited Warranty) is Customer's exclusive remedy for the Service Provider's breach of the limited warranty set out in Section 8. Neither party may directly or indirectly assign, transfer, or delegate any of or all of its

rights or obligations under this Agreement, voluntarily or involuntarily, including by change of control, merger (whether or not such party is the surviving entity), operation of law, or any other manner, without the prior written consent of the other party. Any purported assignment or delegation in violation of this Section shall be null and void. Service Provider, however, may subcontract the Services. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. Except for the parties, their successors and permitted assigns, there are no third party beneficiaries under this Agreement. Any provision that, in order to give proper effect to its intent, should survive the expiration or termination of this Agreement, will survive such expiration or termination for the period specified therein, or if nothing is specified for a period of 12 months after such expiration or termination. This Agreement may be executed in counterparts.

12. Dispute Settlement/Arbitration. Prior to bringing any action as contemplated in Section 11 above, the parties agree to make good faith efforts to amicably resolve all controversies, claims and matters of difference arising under this Agreement. If they are unable to do so, either party may demand in writing that a specified dispute be submitted to non-binding mediation to be conducted by the American Arbitration Association (or similar commercial dispute resolution center) in Newark, New Jersey, within 30 days of such demand. If such mediation does not result in settlement of the dispute, the dispute shall be submitted to arbitration. Arbitration shall be conducted in Newark, New Jersey area (unless otherwise agreed by the parties), in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules conflict with the express provisions of this Section. Arbitration hereunder shall be by three independent and impartial arbitrators. Each of the parties shall appoint one arbitrator within 30 days after one party gives notice of a claim to be arbitrated hereunder. The two arbitrators so appointed shall select a third arbitrator within 45 days after such notice, failing which the American Arbitration Association shall select the third arbitrator. The three arbitrators shall conduct a hearing no later than 60 days after such notice, and the arbitrators shall render a decision within 30 days of the hearing. At the hearing, the parties shall present such evidence and witnesses as they may choose, with or without counsel. The arbitration panel shall consider any evidence and testimony that it determines to be relevant, in accordance with procedures that it determines to be appropriate. Any award entered shall be made by a written opinion stating the reasons for the award made. The arbitrators may award legal or equitable relief; including but not limited to specific performance, and may award the costs and fees, including attorneys' fees, arbitrators and expert witness fees, to the prevailing party. Such award shall be final and binding on all parties, and shall not be appealable. Each party shall continue to perform its obligations under this Agreement and notwithstanding any other provision of this Agreement, neither party shall have the power to terminate this Agreement, nor shall this Agreement automatically terminate by its own provisions, pending conclusion of the arbitration.

13. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Service Provider hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's

("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": ( a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether

war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 10 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 10 consecutive days following written notice given by it under this Section, either party may thereafter terminate this Agreement upon 10 days' written notice.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

RESOLUTEGUARDLLC

By \_\_\_\_\_

Name: Jeffrey

Schobel Title:

CEO

Member

By \_\_\_\_\_

Name:

Title:



## 2022-2025 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and Springshare, LLC ("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 **October 1,** 2022 ("Effective Date") and shall continue until 12:00 midnight (CST) on **September 30**, 2025, 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~~ \$2,000,000 per occurrence; and

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

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

**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:  
27-3852735

- 17. **Sales Tax.** The Cooperative, ESUCC, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUCC, ESUs, and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
- 18. **Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

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

With copy to:

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

Contractor: Springshare, LLC  
801 Brickell Ave., FL 8  
Miami, FL 33131-

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: **Mazen Khoury** \_\_\_\_\_  
\_\_\_\_\_

Name: Kraig Lofquist

Title: Vice President

Title: Executive Director

Date: September 29, 2022

Date:

## EXHIBIT "A"

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

<<VENDOR-INSERT SCOPE OF GOODS>>

#### **LibGuides: Curate Resources, Share Knowledge, and Publish Content**

LibGuides is an easy-to-use content management system deployed at thousands of libraries worldwide. Librarians use it to curate knowledge and share information, organize class and subject specific resources, and to create and manage websites. Increase the usage of your library's resources and content by showcasing them in LibGuides.

#### **LibCal: Event Calendars, Appointments, and Space Booking**

LibCal is an affordable, easy-to-use web platform designed to handle libraries' calendaring needs. Its four distinct modules work together to provide an integrated solution. Hours and Locations Management; Room and Equipment Reservations; Event Registration and Management; and Librarian Appointment Scheduler.

#### **LibWizard: Forms, Surveys, Quizzes, and Tutorials**

Feedback and Assessment Tools for your Library in one fully features, secure package. Effortlessly create various forms and surveys to emded in your library website or build gradable quizzes and interactive, self paced tutorials.

**EXHIBIT "B"**

**1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

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

**Over 25 Districts (Threshold Must be Met by December 28)**

<u>Single School</u>	<u>LibGuides</u>	<u>\$799</u>	
<u>Single School</u>	<u>LibGuides CMS</u>	<u>\$1,299</u>	
			<b><u>SUITE INCLUDES</u></b>
<u>Single School</u>	<u>K12 Springshare Suite</u>	<u>\$1,299</u>	<u>LibGuides, LibCal 5 and LibWizard</u>
<u>Single School</u>	<u>K12 Springshare CMS Suite</u>	<u>\$1,999</u>	<u>LibGuides CMS, LibCal 5, LibWizard</u>
			<b><u>DISTRICT SIZE</u></b>
<u>District CMS 1 (2-3 Schools)</u>	<u>LibGuides CMS</u>	<u>\$1,499</u>	
<u>District CMS 2 (4-6 Schools)</u>	<u>LibGuides CMS</u>	<u>\$1,999</u>	
<u>District CMS 3 (7-10 Schools)</u>	<u>LibGuides CMS</u>	<u>\$2,499</u>	
<u>District CMS 4 (11-15 Schools)</u>	<u>LibGuides CMS</u>	<u>\$2,999</u>	
<u>District CMS 5 (16-20 Schools)</u>	<u>LibGuides CMS</u>	<u>\$3,499</u>	
<u>District CMS 6 (21-30 Schools)</u>	<u>LibGuides CMS</u>	<u>\$3,999</u>	
<u>District CMS 7 (31-40 Schools)</u>	<u>LibGuides CMS</u>	<u>\$4,499</u>	
<u>District CMS 8 (41-50 Schools)</u>	<u>LibGuides CMS</u>	<u>\$4,999</u>	
<u>District CMS 9 (51+ Schools)</u>	<u>LibGuides CMS</u>	<u>\$5,499</u>	

**Over 50 Districts**

<u>Single School</u>	<u>LibGuides</u>	<u>\$599</u>	
<u>Single School</u>	<u>LibGuides CMS</u>	<u>\$999</u>	
			<b><u>SUITE INCLUDES</u></b>
<u>Single School</u>	<u>K12 Springshare Suite</u>	<u>\$999</u>	<u>LibGuides, LibCal 5 and LibWizard</u>
<u>Single School</u>	<u>K12 Springshare CMS Suite</u>	<u>\$1,499</u>	<u>LibGuides CMS, LibCal 5, LibWizard</u>
			<b><u>DISTRICT SIZE</u></b>
<u>District CMS 1 (2-3 Schools)</u>	<u>LibGuides CMS</u>	<u>\$1,099</u>	
<u>District CMS 2 (4-6 Schools)</u>	<u>LibGuides CMS</u>	<u>\$1,499</u>	
<u>District CMS 3 (7-10 Schools)</u>	<u>LibGuides CMS</u>	<u>\$1,899</u>	

<u>District CMS 4 (11-15 Schools)</u>	<u>LibGuides CMS</u>	<u>\$2,299</u>
<u>District CMS 5 (16-20 Schools)</u>	<u>LibGuides CMS</u>	<u>\$2,699</u>
<u>District CMS 6 (21-30 Schools)</u>	<u>LibGuides CMS</u>	<u>\$3,099</u>
<u>District CMS 7 (31-40 Schools)</u>	<u>LibGuides CMS</u>	<u>\$3,499</u>
<u>District CMS 8 (41-50 Schools)</u>	<u>LibGuides CMS</u>	<u>\$3,899</u>
<u>District CMS 9 (51+ Schools)</u>	<u>LibGuides CMS</u>	<u>\$4,299</u>

**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 Kevon@springshare.com  
cXML:
  - i. If "Email" address to deliver orders to: Kevon@springshare.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: Kevon Petralia
- b. Title: Regional Sales Manager
- c. Phone: \_\_\_\_\_
- d. Email: kevon@springshare.com

**4. Invoice Method**

- a. Vendor invoices Members direct

**5. Sales Reporting**

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

6. **Product Information URL:** www.springshare.com



**EXHIBIT "D"**

**SOFTWARE LICENSE AGREEMENT**

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

[See Attached](#)



## 2022-2025 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative"), and Bluum Technology ("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 October 5, 2022 ("Effective Date") and shall continue until 12:00 midnight (CST) on October 4, 2025, 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.



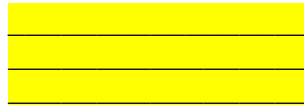
- 17. Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent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

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

With copy to:

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

Contractor:

A yellow rectangular redaction box covering three lines of text, likely the contractor's name and contact information.

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

- 18. Warranties and Specifications.** Contractor shall be responsible for providing to Members all manufacturer warranties on all goods and services. Contractor shall provide Members with all attachments normally supplied by the manufacturer and/or supplier. Complete product specification sheets or brochures must be provided to Members, ESUs, or the Cooperative upon request.
- 19. Entire Agreement.** The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.
- 20. Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.
- 21. Waivers.** The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay: (1) In exercising any right or remedy, **or** (2) In requiring the satisfaction of any condition under this Agreement, **and** (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective

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

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

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

**29. Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as may from time to time be provided by written instrument signed by both parties.

**30. Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.

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

**32. Attachments.** Attachments to this Agreement include the following:

- Exhibit A – Scope of 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

Bluum is a solution provider for every room in a school. From classrooms to auditoriums, sports stadiums to computer labs, cafeterias to TV studios, they offer technology that empowers students and accelerates learning. Bluum offers a vast selection of products from leading manufacturers, and complete technology solutions including design, integration, installation, free product orientation, and professional development/training. With a foundation in the traditional AV space, Bluum is also focused on emerging technologies including one to one (mobile learning) to address K-12's common core requirements. <<VENDOR-INSERT SCOPE OF GOODS>>

Categories under contract can include but are not limited to:

3D Printers, Assessment Management, Buyback Program, Chromebooks, Cloud Computing, Computers & Laptops, Data Management, Disaster Recovery & Backup, Furniture, Instructional & Office Supplies, Interactive Touch Screens, Internet Provider, Leasing Services, Mobile Device Management, Networking & Security, Online Curriculum & Resources, Printers, Copiers & Scanners, Software & Apps, STEM/STEAM, Tablets, Web Filters, etc.

## **EXHIBIT "B"**

### **1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:

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

### **2. Payment Terms/ Payment Schedule**

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

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

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

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

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

**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](mailto: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 4<sup>th</sup> Street  
Ainsworth, NE 69210

**6. Product Information URL: \_\_\_\_\_**

Coop Directors report to ESUCC Board  
submitted by: Craig Peterson  
October 5, 2022

**1. Annual/Paper Buy**

- a. **Definition of the Annual Buy:** This is a line item bid were vendors are awarded by line item. If there is a tie for the bid price then a Nebraska vendor wins over an out of state vendor, otherwise it goes to a coin flip. Bids are sent to registered vendors nation-wide in October. Bid Awards announced in December and January, catalogs with over 4,200 items are published and distributed schools/members in February. The orders are then aggregated by address (all teacher/staff orders for items are aggregated into one line item per address) and sent to vendors in March and April and merchandise is delivered to the Cooperative members during May through July. The product categories offered are as follows: Electronics and Related Supplies, General Supplies, Furniture, Copier Paper, Maintenance-Shop Supplies, Health & Safety Supplies, Athletic Equipment & Supplies, Hot Lunch Equipment & Supplies, Science Equipment & Supplies, and Art Equipment & Supplies.
- b. **2023 ESUCC-Annual Buy**
  - i. Bid opens on October 5, 2022 at 9:00 a.m
  - ii. Time has been spent on updating Bid Event Details, Attachments (Terms & Conditions, 2022 shipping locations, 2022 Final Order Quantities, and Section Template), Attributes (Questions to be asked of each vendor) and updating/adding of specifications for line items.
  - iii. This year we worked with IonWave to define a process of including and updating the previous year's Catalog Description as an attribute in the bid. This will then be extracted with the bid and included as part of our catalog build file. The hope is we will save time creating the catalog and won't need to lookup, copy and paste every description from the previous year's catalog (4,388 times) for each item.
    1. This item is part of our Coop Goal this year to "Improve on and create more efficient processes for Cooperative Purchasing staff".
  - iv. **2023 Annual Buy Timeline, Bolded items are ones you can share with your schools**
    1. Public Announcement of IFB - October 5, 2022 9:00 a.m. CST
    2. IFB Due Date & Time - December 9, 2022 3:00 p.m. CST (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
    3. Awards Finalized - January 5, 2023 (Sections 200, 300, 400, 500, 600, 700, 800, 850, 900)
    4. RFP Due Date & Time - January 6, 2023 3:00 p.m. CST (100 Electronics Section)
    5. Awards Finalized - January 17, 2023 (100 Electronics Section)
    6. **Paper Buy Catalog Opens - February 2, 2023**
    7. **Annual Buy Catalog Opens - February 16, 2023**
    8. **Paper Buy Order Deadline Schools/Members – March 9, 2023**

9. Paper Orders sent to vendors - March 17, 2023
10. First Day for 400 Paper delivery - April 11, 2023
11. **Annual Buy Teacher/Staff deadline – April 6, 2023**
12. Annual Buy orders sent to Vendors - April 21, 2023
13. First Day for Annual Buy delivery - May 23, 2023
14. **Delivery Deadline for 400 Paper - June 14, 2023**
15. **Delivery Deadline Annual Buy Items - July 24, 2023**
16. Overages picked up by Vendors - October 1, 2023

## 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.
  1. Notable Inc. for Kami – Kami is an interactive learning platform empowering students and enhancing the way teachers teach, feedback, and assess. Meaning “paper” in Japanese, the vision was to help users transition to paperless work.
    - a. Transform all your static documents, PDFs, images, or other learning resources into an interactive experience ready for expression, analysis, or debate.
    - b. Create, send, and grade assignments all from one place.
    - c. Kami works seamlessly with Google Classroom, Canvas, and Schoology Learning Management Systems.
    - d. Kami works online or offline for students without reliable network access.
    - e. Universal learning environment, enabling students to interact with teachers, resources, and each other in their preferred medium – text, freehand, audio, voice-typing, or video.
    - f. Lincoln Public Schools has licensed the application for staff and students. In 2022 Kami hit the 30 Million user mark.
  2. RoluteGuard –conducts Confidential Risk Assessments using several applicable frameworks (NIST Cybersecurity Framework, CMMC, Critical Security Controls, GDPR, HIPAA, ISO 27001/27002, PCI/DSS) to help organizations determine which key assets and sensitive data are vulnerable to cyberattack.
    - a. Services
      - i. Vulnerability Assessment & Gap Analysis
      - ii. Regulatory Compliance
      - iii. Application Security
      - iv. Information Security
      - v. Network Security
      - vi. Operational Security
      - vii. Incident Response
      - viii. Employee Training

- ix. Managed Detection & Response
- x. Penetration Testing
- 3. Springshare for LibGuide - LibGuides is an easy-to-use content management system deployed at thousands of libraries worldwide. Librarians use it to curate knowledge and share information, organize class and subject specific resources, and to create and manage websites. Increase the usage of your library's resources and content by showcasing them in LibGuides.
  - a. Create Subject, Course, or Topic Guides.
  - b. Supplement Information Literacy Efforts.
  - c. Conduct Library Instruction Programs.
  - d. Manage A-Z Databases List.
  - e. Create and Maintain Library Websites and Blogs.
  - f. Build a Cloud-based, Secure Staff Intranet.
  - g. Request made by ESU 6 Lynn Herr and their Media/Librarians

### 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. **2021 AEPA Sales/Revenue (January 1 to December 31, 2021)**
    - 1. \$712 Million in Sales as an AEPA Organization.
      - a. AEPA's goal was \$619 Million by 2023, met the goal two years prior
    - 2. ESUCC has 58 Signed AEPA Contracts (10 additional from previous year)
    - 3. ESUCC had \$7,447,503.37 Total Sales compared to \$4,180,171.03 in 2020
    - 4. ESUCC earned \$117,331.02 2021 Total AEPA Revenue compared to \$63,842.96 in 2020
    - 5. \$5,106.63 Assessment Fees paid to AEPA for dues.
      - a. Assessments are based on a \$2,500 flat rate for all members plus .00035\*Total Sales to equal the State Members Assessment Fee.

- b. Fees are collected in April of each year for the previous year's sales.
- c. 2019 was the first year of the increased \$2,500 flat rate cost it was previously \$1,500. According to records, I could find this formula has been utilized dating back to 2012.
- d. 2021 fees increased from .0003 to .00035
- 6. **2021 Top 5 AEPA Vendors (All States Sales)**
  - a. CDW-G \$298,727,189
  - b. WTI/Tremco - \$128,786,770
  - c. Field Turf - \$58,974,608
  - d. Quill - \$36,545,744
  - e. School Specialty - \$34,403,274
  - f. Konica Minolta - \$24,322,942
- 7. **2021 Top 5 AEPA Vendors for ESUCC**
  - a. CDW-G \$4,197,014.02 compared to \$1,123,949 in 2020
  - b. School Specialty \$1,526,415.16 compared to \$914,545.89 in 2020
  - c. Quill \$586,576.38 compared to \$503,757.79 in 2020
  - d. Makin \$396,724.81 compared to \$117,661.77 in 2020
  - e. WTI/Tremco \$333,487.50 compared to \$423,315.78 in 2020
- ii. **2023 AEPA Bid** Opening happened on September 13, 2022. 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 28 - 30, 2022.
  - 1. 023-A MRO
  - 2. 023-B Custodial Catalog
  - 3. 023-C Office Supply Catalog
  - 4. 023-D School and Instructional Supplies
  - 5. 023-D School and Instructional Supplies
  - 6. 023-D School and Instructional Supplies
- iii. Winter 2022 Meeting - The Winter meeting scheduled in Atlanta, GA November 28 – 30. The above categories for Solicitations will be recommended for approval by the AEPA member states.

#### 4. Marketing

- a. 9 Campaigns sent since last month
  - i. [JourneyEd – Crowdstrike](#) 32.1% open rate
  - ii. [Hubert – Institutional Kitchen Equipment](#) – 38.1% open rate
  - iii. [Medicaleshop – Special Needs Equipment](#) –34.3% open rate
  - iv. [Sanzonate – Aqueous Ozone on Demand for Nebraska Schools](#) – 15.1% open rate
  - v. [Busch Systems Recycling at the Office](#) – 34.3% open rate
  - vi. [Renaissance - MyON Webinar September 22nd - Still Time To Register](#) – 32.4% open rate
  - vii. [Best Plumbing - September 2022 New Items](#) – 33.1% open rate

- viii. [Kajeet - September 22 Newsletter – 35.3% open rate](#)
- ix. [Formative - Webinar October 5, 2022](#)

**5. Additional Information & Meetings**

- i. Communications with the following vendors/organizations throughout the month: Pitsco Education, AEPA Reporting Committee, Iowa AEA, Formative, Medicaleshop, Two Rivers Health Department, Sargent Public Schools, Overton Public Schools, Weeping Water Public Schools, Fullerton Public Schools, Deshler Public Schools, Hastings Public Schools, Cody-Kilgore Public School, Quest Forward Academy, Seward Public Schools, ResoluteGuard, AEPA Webiste Committee, World Book, Diode Technologies, Kajeet, Scottsbluff Public Schools, Paper101, Chase County Public Schools, Litchfield Public Schools, Kenesaw Public Schools, Morrill Public Schools, Springshare (LibGuides), Keya Paha County, JourneyEd, Mueller Sports, IonWave, North Platte Public Schools, Notable Inc.
- ii. Conferences/Webinars:
  - 1. Ionwave Webinar – Adding Line Items
  - 2. Flocabulary Webinar
  - 3. [Renaissance myON Webinar](#)
  - 4. Integrating Adobe Acrobat Sign e-signatures and Microsoft solutions
  - 5. Ionwave Webinar – Awarding a Bid