



Legal Committee Meeting  
Tuesday, May 7, 2024 10:00 AM  
ESU No.10  
76 Plaza Blvd  
Kearney, NE 68845

1. Call to Order  
Committee Chair
2. Roll Call  
Committee Chair
3. Consent Agenda Items  
Committee Chair
  - 3.1. Coop Contracts  
Committee Chair
    - 3.1.1. Special Buy with Insight Public Sector, Inc.  
Committee Chair
    - 3.1.2. AEPA 021.5, 021.75, 022.5, 023.5 Extensions  
Committee Chair
    - 3.1.3. Approve Special Buy agreement with Securly  
Committee Chair
    - 3.1.4. Special Buy agreement with Infobase Learning  
Committee Chair
    - 3.1.5. Special Buy agreement with Renaissance Learning  
Committee Chair
4. Agenda Item  
Committee Chair
  - 4.1. COOP  
Committee Chair
    - 4.1.1. Coop Strategic Plan  
Committee Chair
    - 4.1.2. Approve Interlocal with the Village of Orchard  
Committee Chair
    - 4.1.3. Staff Written Reports  
Committee Chair
      - 4.1.3.1. Craig Peterson Report  
Committee Chair

4.1.3.2. Colleen Lentz (Data)

4.2. Legislative Updates

Committee Chair

4.2.1. Bromm's Updates

Curt and Jason Bromm

4.3. Policies and Procedures

Committee Chair

5. Next Meetings Agenda Items

Committee Chair

6. Adjournment

Committee Chair

# 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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# NEBRASKA OPEN MEETINGS ACT

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**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.

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(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; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.**

(1) Until January 1, 2025:

(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 or the governing body of a rural or suburban fire protection district, 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, village, or district. 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.

(iv) In case of refusal, neglect, or inability of the newspaper to timely publish the notice, the public body shall (A) post such notice on its website, if available, and (B) post such notice in a conspicuous public place in such public body's jurisdiction. The public body shall keep a written record of such posting. The record of such posting shall be evidence that such posting was done as required and shall be sufficient to fulfill the requirement of publication.

(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) Beginning January 1, 2025:

(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 (2)(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 committees, such notice shall be given by:

(A)(I) Publication in a newspaper of general circulation within the public body's jurisdiction that is finalized for printing prior to the time and date of the meeting, (II) posting on such newspaper's website, if available, and (III) posting on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers. Such notice shall be placed in the newspaper and on the websites by the newspaper; or

(B)(I) Posting to the newspaper's website, if available, and (II) posting to a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers if no edition of a newspaper of general circulation within the public body's jurisdiction is to be finalized for printing prior to the time and date of the meeting. Such notice shall be placed in the newspaper and on the websites by the newspaper.

(ii) In the case of the governing body of a city of the second class or village, any advisory committee of such governing body, or the governing body of a rural or suburban fire protection district, such notice shall be given by:

(A)(I) Publication in a newspaper of general circulation within the public body's jurisdiction that is finalized for printing prior to the time and date of the meeting, (II) posting on such newspaper's website, if available, and (III) posting on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers. Such notice shall be placed in the newspaper and on the websites by the newspaper;

(B)(I) Posting to the newspaper's website, if available, and (II) posting on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers if no edition of a newspaper of general circulation within the public body's jurisdiction is to be finalized for printing prior to the time and date of the meeting. Such notice shall be placed in the newspaper and on the websites by the newspaper; or

(C)(III) Posting written notice in three conspicuous public places in such city, village, or district. Such notice shall be posted by the public body in the same three places for each meeting.

(iii) In the case of a public body not described in subdivision (2)(b)(i) or (ii) of this section, such notice shall be given by a method designated by the public body.

(iv) In case of refusal, neglect, or inability of the newspaper to publish the notice, the public body shall (A) post such notice on its website, if available, (B) submit a post on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers, and (C) post such notice in a conspicuous public place in such public body's jurisdiction. The public body shall keep a written record of such posting. The record of such posting shall be evidence that such posting was done as required and shall be sufficient to fulfill the requirement of publication.

(3)(a) The following entities may hold a meeting by means of virtual conferencing if the requirements of subdivision (3)(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 subsections (1) and (2) 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 (A) an organization created under the Interlocal Cooperation Act that sells electricity or natural gas, (B) an organization created under the Municipal Cooperative Financing Act, (C) a governing body of a risk management pool and any advisory committee of such governing body, or (D) any advisory committee of any state entity created in response to the Opioid Prevention and Treatment Act, such organization, governing body, or committee 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.

(4) 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.

(5) 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.

(6) 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 (5) 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.

(7) 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.

(8)(a) Notwithstanding subsections (3) and (6) 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 subsections (1) and (2) 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 (5) 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.

(9) In addition to any other statutory authorization for virtual conferencing, any public body not listed in subdivision (3)(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 (3)(b)(i) and (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.**

(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.

**Operative**  
**4/17/24**



**PERRY, GUTHRIE, HAASE & GESSFORD, P.C., L.L.O.**  
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## 2024-2027 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative"), and Insight Public Sector, Inc. ("Contractor"). The Cooperative is an organization founded in 1968 with the purpose of providing the Educational Service Unit (ESU) member school districts ("Members") of Nebraska an opportunity to secure the maximum procurement value through cooperative synergies. The Educational Service Unit Coordinating Council (ESUCC) Advisory group serves as the steering committee for new and future cooperative buys statewide under its direction. A chief executive officer coordinates the statewide purchasing agreement between service units and their school districts and other serviceable entities. The Director manages the program with the guidance of the ESUCC, Advisory Board, and the Fiscal Agent. Nebraska ESUCC Cooperative Purchasing serves 17 ESUs that provide a statewide network of educational opportunities to approximately 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 calendar quarter basis beginning from the Effective Date of this Agreement for all transactions completed and paid during said quarter.
- 4. Term.** This Agreement is effective on [REDACTED], 2024 ("Effective Date") and shall continue until 12:00 midnight (CST) on [REDACTED], 2027, unless terminated earlier as provided by this Agreement or by law. Notwithstanding the effective date of termination of this Agreement, Contractor agrees to comply with Paragraph 5 of this Agreement.

- 5. Duration of Services Purchased.** If this Agreement, for any reason, terminates before the service end date of any agreement or license between a Member and the Contractor, the Contractor shall continue, maintain, and make such Services available to such Member until the agreed upon date between the Contractor and Member or until the term for the service expires. For example, if the Contracted Services allow a Member to purchase or license Services for a certain period of time, but this Agreement expires prior to the end of the service period, the Contractor agrees to maintain such Contracted Services until the expiration of said period of service and in accordance with the terms and provisions of the purchase or license.
- 6. 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.
- 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 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.

**8. 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.

**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 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, ESU, or Member premises or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on Cooperative, ESU, or Member property or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all Cooperative, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. The Cooperative may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.
- 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, 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



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

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

**CONTRACTOR**

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

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

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

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

**COOPERATIVE**

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

Name: Kraig Lofquist

Title: Executive Director

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

## EXHIBIT "A"

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

~~<<VENDOR-INSERT SCOPE OF GOODS>>~~ Contractor shall offer all computer hardware, software, related maintenance and support, third party branded services, and cloud computing offerings ("Products") and IT services performed by Contractor and set forth in any statement of work ("Services").

**EXHIBIT "B"**

**1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is as follows:s-

<b>All Products (except AWS, GCP, Cisco, Microsoft Software)</b>	
<u>Product Category</u>	<u>Discount off Insight List Price</u>
<u>Accessories, Boards, Cables, Consumables, Desktops, Handhelds, Notebooks, Licensing, Media, Memory, Displays, Networking, POS, Power, Printers, Servers, Software, Storage, Third Party Branded Services (includes Warranties and Training Courses)</u>	<u>3.0%</u>
<u>All Other Products</u>	<u>3.0%</u>

<b>AWS</b>	
<u>Product Category</u>	<u>Discount off AWS MSRP</u>
<u>All</u>	<u>1.0%</u>

<b>Google Cloud Platform (GCP)</b>	
<u>Product Category</u>	<u>Discount off GCP MSRP</u>
<u>All</u>	<u>1.0%</u>

<b>Cisco</b>	
<u>Product Category</u>	<u>Discount off Cisco MSRP</u>
<u>Cisco Core &amp; Cisco Compute Products</u>	<u>36.0%</u>
<u>Cisco Market Products</u>	<u>10.0%</u>
<u>Cisco Technical &amp; Maintenance Services (SKU Based)</u>	<u>8.0%</u>
<u>Cisco Learning Credits, Training, Advanced &amp; Technical Services (SOW Based) &amp; Net Products</u>	<u>0.0%</u>
<u>Cisco SMARTnet</u>	<u>25.0%</u>

<b>Microsoft Software</b>	
<u>Product Category</u>	<u>Cost Plus Percentage</u>
<u>Microsoft Software (including cloud)</u>	<u>3.5%</u>
<u>Microsoft CSP</u>	<u>15.0%</u>

Pricing for Services shall be as negotiated between Member and Contractor in a statement of work.

Products shall not be eligible for the discounts listed above when 1) Insight receives no discounts from the manufacturer or 2) the Member has negotiated pricing directly with the manufacturer.

**<<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-thirty~~ (6030) 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-thirty~~ (6030) 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. Enable vendor items listed in Exhibit B to be placed in the ESUCC Marketplace for electronic orders? \_\_\_\_\_ Yes:  No:
- c. If "Yes", Order receipt method: Email:  cXML: \_\_\_\_\_
  - i. If "Email" address to deliver orders to: b2bsupport@insight.com
  - ii. If "cXML" provide the following IT contact information  
Contact (First, Last name): \_\_\_\_\_  
Contact email address: \_\_\_\_\_  
Contact Phone: \_\_\_\_\_
- d. If "No, Alternate method will be determined

#### 3. Sales Representative Contact

- a. First, Last name: \_\_\_\_\_ Jeff Cannon
- b. Title: \_\_\_\_\_ Client Executive
- c. Phone: \_\_\_\_\_ 480-366-7224
- d. Email: \_\_\_\_\_ jeff.cannon2@insight.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) no later than the 30<sup>th</sup> day following the end of the quarter
- b. Vendor contact information for sales report questions:  
Contact (First, Last name): \_\_\_\_\_ Virginia Mace  
Contact email address: [SLEDreporting@insight.com](mailto:SLEDreporting@insight.com)
- c. Sales report must include the following
  - Member Name
  - Member City
  - [Insight List Price or MSRP \(when available\)](#)
  - Member ~~Cost~~Price
  - Member Savings (when available)
  - Admin Fee Amount Due
- d. ESUCC Admin Fee
  - Vendor must submit payment of Admin Fee to ESUCC quarterly no later than the 30<sup>th</sup> day following the end of the quarter
  - 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.ips.insight.com](http://www.ips.insight.com)

**AEPA #021.5-B Disaster Recovery**

**EXTENSION OF AGREEMENT**

made by and between

**ServiceMaster (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director

Typed Name Kraig Lofquist Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #021.5-B Disaster Recovery**

**EXTENSION OF AGREEMENT**

made by and between

**Signal USA (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director

Typed Name Kraig Lofquist Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #021.5-C E-Rate Consulting**

**EXTENSION OF AGREEMENT**

made by and between

**E-Rate Elite (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director

Typed Name Kraig Lofquist Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #021.5-C E-Rate Consulting**

**EXTENSION OF AGREEMENT**

made by and between

**Kellogg & Sovereign (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director

Typed Name Kraig Lofquist Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #021.5-C E-Rate Consulting**

**EXTENSION OF AGREEMENT**

made by and between

**E-Rate Central (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director

Typed Name Kraig Lofquist Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #021.5-D Mobile/Cellular Connectivity**

**EXTENSION OF AGREEMENT**

made by and between

**Kajeet (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director

Typed Name Kraig Lofquist Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #021.75-A HVAC**

**EXTENSION OF AGREEMENT**

made by and between

**Carrier (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director

Typed Name Kraig Lofquist Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #022.5-B Career & Technical Education**

**EXTENSION OF AGREEMENT**

made by and between

**Blick Art Materials (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director \_\_\_\_\_

Typed Name Kraig Lofquist \_\_\_\_\_ Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #022.5-B Career & Technical Education**

**EXTENSION OF AGREEMENT**

made by and between

**Midwest Technology Products (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director \_\_\_\_\_

Typed Name Kraig Lofquist \_\_\_\_\_ Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #022.5-B Career & Technical Education**

**EXTENSION OF AGREEMENT**

made by and between

**Pitsco Education (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director \_\_\_\_\_

Typed Name Kraig Lofquist \_\_\_\_\_ Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #022.5-C Institutional Kitchen Equipment**

**EXTENSION OF AGREEMENT**

made by and between

**Hubert (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director \_\_\_\_\_

Typed Name Kraig Lofquist \_\_\_\_\_ Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #023.5-B Playground and Recreation Structures**

**EXTENSION OF AGREEMENT**

made by and between

**RCP Shelters (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director \_\_\_\_\_

Typed Name Kraig Lofquist \_\_\_\_\_ Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**AEPA #023.5-B Playground and Recreation Structures**

**EXTENSION OF AGREEMENT**

made by and between

**Romtec (Vendor)**

and

**ESU Coordinating Council, NE (Member)**

AEPA has approved the extension of this Agreement. The Member and Vendor hereby agree to extend the Agreement for an additional contract term, which will begin immediately upon the expiration of the previous contract term. Upon the execution from authorized officers of the Member and the Vendor, this Agreement is hereby extended. This extension shall be subject to the same Terms and Conditions as contained in the original AEPA solicitation, and subject to the Bylaws, Policies and Procedures of AEPA in addition to the Member Terms and Conditions.

Contract Term: June 1, 2024 - May 31, 2025

The Vendor hereby agrees to provide complete information of any deleted and new products or prices as allowed under headings (Product Addition/Discontinuation) and (New Catalogs/Price Changes) of the AEPA solicitation.

**Member**

Authorized Signature \_\_\_\_\_ Title Executive Director \_\_\_\_\_

Typed Name Kraig Lofquist \_\_\_\_\_ Date \_\_\_\_\_

**Vendor**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_

**Discontinue: We, the Vendor, desire to discontinue the contract.**

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Typed Name \_\_\_\_\_ Date \_\_\_\_\_



## 2024-2027 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and Securly 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:

- **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.
- **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.
- **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 calendar quarter basis beginning from the Effective Date of this Agreement for all transactions completed and paid during said quarter.

- **Term.** This Agreement is effective on July 1, 2024 (“Effective Date”) and shall continue until 12:00 midnight (CST) on June 30, 2027, unless terminated earlier as provided by this Agreement or by law. Notwithstanding the effective date of termination of this Agreement, Contractor agrees to comply with Paragraph 5 of this Agreement.
  
- **Duration of Services Purchased.** If this Agreement, for any reason, terminates before the service end date of any agreement or license between a Member and the Contractor, the Contractor shall continue, maintain, and make such Services available to such Member until the agreed upon date between the Contractor and Member or until the term for the service expires. For example, if the Contracted Services allow a member to purchase or license Services for a certain period of time, but this Agreement expires prior to the end of the service period, the Contractor agrees to maintain such Contracted Services until the expiration of said period of service and in accordance with the terms and provisions of the purchase or license.
  
- **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.
  
- **Student Privacy Protections.**
  - **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.
  
  - **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.
  
  - **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.
  
  - **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.

- **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.
- **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.”
- **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).
- **Data Collection.** Contractor will only collect Data necessary to fulfill its duties as outlined in this Agreement.
- **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.
- **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.
- **Data Sharing.** Data cannot be shared with any additional parties without prior written consent of the User except as required by law.
- **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.
- **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.

- **Access.** Any Data held by Contractor will be made available to a Member upon request by the Member.
- **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.
- **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.

- **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.

- **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.

- **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.

- **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.
- **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.
- **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.

- **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.
- **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.
- **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.
- **Taxpayer Identification.** Contractor's federal employer identification number is: 46-0789922
- **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.
- **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: Securly  
Dept LA 24957  
Pasadena CA 91185

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

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

- **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.
- **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.
- **Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the Cooperative.
- **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.
- **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.
- **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.
- **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.

- **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.
- **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: Michaelann Carlin  
 Name: Michaelann Carlin  
 Title: Director of Revenue Operations  
 Date: 5/3/2024

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

## EXHIBIT "A"

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

**AWARE** is a student safety and wellness solution that uses natural language processing, sentiment analysis, and keyword analysis to identify students at risk of self-harm, suicide, depression, violence, and bullying. It analyzes various digital activities to give schools unprecedented visibility into students' mental health and wellness. The data can help schools support students who demonstrate concerning behaviors and intervene quickly when wellness levels drop. The platform also offers a comprehensive scanning of students' online activities and a dashboard to monitor wellness levels.

**CLASSROOM** is a cloud-based classroom management tool that helps teachers:

- Minimize distractions to keep their students engaged in learning
- Push lesson content directly to student screens, so they get the most out of class time
- Connect and communicate with students in new ways, whether in-person or remote

**Discern** is a groundbreaking AI that examines your students' digital footprint to produce comprehensive K-12 data for educational leaders. From social-emotional learning (SEL) insights to understanding student interests and school climate, Discern provides a wealth of actionable information to support administrative decision-making and foster a thriving learning environment for all students.

**Filter** is a cloud-based web filtering solution developed specifically for schools. Customers gain the flexibility and ease of use they need to keep their students safe and out of harm's way, regardless of location or device.

**Flex** is a tool that simplifies the implementation of personalized learning in schools. It helps combat learning loss, support social and emotional development, and prepare students for college and careers. Teachers can customize flex period offerings, provide individualized support, and reduce administrative workloads. Students can select activities from teacher-provided offerings, gaining voice and choice in their education. Securly Flex offers customization, restriction rules, student search, and attendance tracking features.

**MDM** is a Cloud-based mobile device management for iPads and other Apple devices. As an MDM for education, we've built every feature with your needs in mind. Our MDM for schools includes classroom device management tools to keep students on task.

**Pass** is an electronic hall pass system for K-12 schools, designed to take the headache out of hall passes and simplify hall monitoring.

- Maximize in-class time, and regain control of your hallways.
- Gain more visibility and control over student movement.
- Know who has hall passes and where students are—without asking.
- Ensure that students are getting the most out of their class time by limiting unnecessary hall pass usage.
- Limit vaping, vandalism, and mischief and keep students accountable for their hall pass usage.

**Reveal** is a tool that provides schools and districts with visibility into application, website, and device analytics to make data-supported decisions and ensure a return on their edtech investment. It helps reduce wasted technology spend, identify opportunities for additional tech training and PD, and provides on-demand access to real-time student usage data. The tool works by automatically collecting activity data for student devices, websites, and apps, and integrates with student information systems to streamline implementation and ensure accurate class rostering.

**Rhithm** is an app that helps students and staff develop self-awareness and emotion regulation skills through a quick and easy check-in tool using an emoji-based self-reporting questionnaire. The app provides evidence-based learning activities to teach essential life skills based on users' answers. Rhithm enables the identification of struggling students and offers actionable insights into school climate and wellness trends, along with customizable surveys and assessments.

**Visitor** is a visitor management system tailored to K-12 schools. It simplifies the visitor management process, authenticates visitor identities, and performs background checks. It also confirms that visitors are authorized to pick up students and alerts security personnel to unwelcome or potentially dangerous visitors. The system features customizable health screening questionnaires, prints visitor badges with guest photos, and offers quick access and search of visitor logs. Securly Visitor is a valuable tool for schools to ensure the safety of their students and staff.

**Home** is a parental control platform designed to manage children's online activity on school-issued devices at home. It enables parents to schedule offline times, customize filtering rules, pause internet access, and receive weekly email reports. The level of control for parent visibility and filtering rules can be customized by admins. It helps to maintain a healthy balance between technology use and other aspects of life. Request a demo is available on the website.

**On-Call** is a service to help student services team shoulder the responsibility of responding to Aware alerts. On-Call is a team of highly trained student safety analysts who analyze Aware alerts and notify school designated personnel immediately—within 5 minutes or less—of extreme risk situations. They're on-call and ready to assist when needed—whether 24/7, during school hours, or anywhere in between.

**EXHIBIT "B"**

**1. Contractor's Pricing**

Contractor's Pricing Model under this Agreement is:



RECURRING CHARGE PRODUCTS								
PRODUCT	PRODUCT NAME	LICENSE BAND	1YR	ESUCC 1 year	3YR	Per Yr	ESUCC 3 Year	Per Yr
Filter Premium	Securly Filter Premium	1-9999	\$ 9.90	\$ 3.03	\$ 26.73	\$ 8.91	\$ 8.18	\$ 2.73
	Securly Filter Premium	10000+	\$ 4.95	\$ 2.23	\$ 13.37	\$ 4.46	\$ 6.02	\$ 2.01
Aware Premium	Securly Aware Premium	1-9999	\$ 3.70	\$ 2.14	\$ 9.99	\$ 3.33	\$ 5.77	\$ 1.92
	Securly Aware Premium	10000+	\$ 1.85	\$ 1.57	\$ 5.00	\$ 1.67	\$ 4.25	\$ 1.42
On-Call	Securly On-Call	1-9999	\$ 7.70	\$ 4.45	\$ 20.79	\$ 6.93	\$ 12.02	\$ 4.01
	Securly On-Call	10000+	\$ 3.85	\$ 3.27	\$ 10.40	\$ 3.47	\$ 8.84	\$ 2.95
Home	Securly Home	1-9999	\$ 2.00	\$ 0.61	\$ 5.40	\$ 1.80	\$ 1.65	\$ 0.55
	Securly Home	10000-19999	\$ 1.00	\$ 0.45	\$ 2.70	\$ 0.90	\$ 1.22	\$ 0.41
MDM	Securly MDM	1-9999	\$ 5.50	\$ 3.18	\$ 14.85	\$ 4.95	\$ 8.59	\$ 2.86
	Securly MDM	10000-19999	\$ 2.75	\$ 2.34	\$ 7.43	\$ 2.48	\$ 6.32	\$ 2.11
Classroom Premium	Securly Classroom Premium	1-9999	\$ 7.75	\$ 4.48	\$ 20.93	\$ 6.98	\$ 12.10	\$ 4.03
	Securly Classroom Premium	10000-19999	\$ 3.88	\$ 3.30	\$ 10.46	\$ 3.49	\$ 8.89	\$ 2.96
Rhithm Premium	Securly Rhithm Premium	1-9999	\$ 7.00	\$ 3.33	\$ 18.90	\$ 6.30	\$ 9.00	\$ 3.00
	Securly Rhithm Premium	10000-19999	\$ 3.50	\$ 2.45	\$ 9.45	\$ 3.15	\$ 6.62	\$ 2.21
Pass Core	Securly Pass Core	1-9999	\$ 3.50	\$ 2.87	\$ 9.45	\$ 3.15	\$ 7.74	\$ 2.58
	Securly Pass Core	10000-19999	\$ 2.80	\$ 2.52	\$ 7.56	\$ 2.52	\$ 6.80	\$ 2.27
Pass Premium	Securly Pass Premium	1-9999	\$ 5.00	\$ 4.10	\$ 13.50	\$ 4.50	\$ 11.06	\$ 3.69
	Securly Pass Premium	10000-19999	\$ 4.00	\$ 3.60	\$ 10.80	\$ 3.60	\$ 9.72	\$ 3.24
Flex Core	Securly Flex Core	1-9999	\$ 6.00	\$ 4.91	\$ 16.20	\$ 5.40	\$ 13.27	\$ 4.42
	Securly Flex Core	10000-19999	\$ 4.80	\$ 4.32	\$ 12.96	\$ 4.32	\$ 11.66	\$ 3.89
Flex Premium	Securly Flex Premium	1-499	\$ 7.50	\$ 6.15	\$ 20.25	\$ 6.75	\$ 16.59	\$ 5.53
	Securly Flex Premium	10000-19999	\$ 6.00	\$ 5.40	\$ 16.20	\$ 5.40	\$ 14.58	\$ 4.86
Discern (Aware/Filter compatible)	Securly Discern	per student, no volume tiers	\$ 5.00	\$ 4.50	\$ 13.50	\$ 4.50	\$ 12.50	\$ 4.17
Discern Additional Data (Aware/Filter compatible)	Securly Discern - Additional Data	per student, no volume tiers	\$ 1.00	\$ 0.90	\$ 2.70	\$ 0.90	\$ 2.43	\$ 0.81
Video Scanning (Aware add-on)	Video Scanning	per student, no volume tiers	\$ 0.50	\$ 0.40	\$ 1.35	\$ 0.45	\$ 1.08	\$ 0.36
PROFESSIONAL SERVICES								
Learning Portal Core	Learning Portal Core for Classroom, Aware, and Rhithm	ALL	10% of subscription	10% of subscription				
Personalized VILT: Aware for School Based Staff	Personalized Virtual Instructor Led Training: Aware for School Based Staff	ALL	\$ 800	\$ 640				
Personalized VILT: Aware Office Hour	Personalized Virtual Instructor Led Training: Aware Office Hour	ALL	\$ 500	\$ 400				
Personalized VILT: Classroom for Teachers	Personalized Virtual Instructor Led Training: Classroom for Teachers	ALL	\$ 800	\$ 640				
Personalized VILT: Classroom Quick Start	Personalized Virtual Instructor Led Training: Classroom Quick Start	ALL	\$ 500	\$ 400				
Personalized VILT: Classroom Office Hour	Personalized Virtual Instructor Led Training: Classroom Office Hour	ALL	\$ 500	\$ 400				
Personalized VILT: Rhithm for School Based Staff	Personalized Virtual Instructor Led Training: Rhithm for School Based Staff	ALL	\$ 675	\$ 540				
Personalized VILT: Rhithm for Teachers	Personalized Virtual Instructor Led Training: Rhithm for Teachers	ALL	\$ 675	\$ 540				
Personalized VILT: Rhithm Custom Assessments	Personalized Virtual Instructor Led Training: Rhithm Custom Assessments	ALL	\$ 675	\$ 540				
Personalized VILT: Rhithm Office Hour	Personalized Virtual Instructor Led Training: Rhithm Office Hour	ALL	\$ 500	\$ 400				
IMPLEMENTATION SERVICES								
Implementation: Classroom Self Serve	Classroom Implementation/Self Serve	ALL	\$ -	\$ -				
Implementation: Classroom Standard	Classroom Implementation/Standard	ALL	\$ 500	\$ 400				
Implementation: Aware Standard	Implementation: Aware Standard	ALL	\$ 1,000	\$ 800				
Implementation: On-Call Standard	Implementation: On-Call Standard	ALL	\$ 500	\$ 400				
Implementation: MDM Self Serve	Implementation: MDM Self Serve	ALL	\$ -	\$ -				
Implementation: MDM Standard	Implementation: MDM Standard	ALL	\$ 1,000	\$ 800				
Implementation: Rhithm Full Service	Implementation: Rhithm Full Service	ALL	\$ 1,000	\$ 800				
Implementation: Pass Self Serve	Implementation: Pass Self Serve	ALL	\$ -	\$ -				
Implementation: Pass Standard	Implementation: Pass Standard	ALL	\$ 500	\$ 400				
Implementation: Pass Full Service	Implementation: Pass Full Service	ALL	\$ 2,000	\$ 1,600				
Implementation: Flex Full Service	Implementation: Flex Full Service	ALL	\$ 2,000	\$ 1,600				

**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**

- **Order Delivery Method Options**
  - Members will submit orders direct to Vendor
  - ESUCC Marketplace is the preferred method for order placement
- **Electronic Orders**
  - Vendor Capable of receiving orders electronically? Yes:  No:

- Enable vendor items listed in Exhibit B to be placed in the ESUCC Marketplace for electronic orders Yes: X No: [redacted]
- If "Yes", Order receipt method: Email: nebraska@securly.com cXML: [redacted]
  - If "Email" address to deliver orders to: nebraska@securly.com [redacted]
  - If "cXML" provide the following IT contact information
    - Contact (First, Last name): [redacted]
    - Contact email address: [redacted]
    - Contact Phone: [redacted]
  - If "No, Alternate method will be determined
- **Sales Representative Contact**
  - First, Last name: Vinh Trinh [redacted]
  - Title: Regional Sales Manager [redacted]
  - Phone: 408-215-5192 [redacted]
  - Email: nebraska@securly.com [redacted]
- **Invoice Method**
  - Vendor invoices Members direct
- **Sales Reporting**
  - Vendor to submit quarterly sales report to ESUCC at [coop@esucc.org](mailto:coop@esucc.org)
  - Vendor contact information for sales report questions:
    - Contact (First, Last name): Vinh Trinh [redacted]
    - Contact email address: nebraska@securly.com [redacted]
  - Sales report must include the following
    - Member Name
    - Member City
    - List Price
    - Member Cost
    - Member Savings
    - Admin Fee Amount Due
  - 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
- **Product Information URL:** [www.securly.com](http://www.securly.com) [redacted]

## EXHIBIT "D"

### SOFTWARE LICENSE AGREEMENT

Securly Inc.

## Terms and Conditions of Service

Effective Date: December 2020

This agreement applies to the order form to which these Terms and Conditions of Service are attached (collectively, the "Agreement"). This Agreement is made by and between Securly, Inc. ("Company" or "Securly"), a Delaware corporation with offices at 111 North Market Street, 4th Floor, Suite 400, San Jose, CA 95113, and its customer listed on the order ("Customer"). The effective date of the Agreement is referred to herein as the "Effective Date."

### 1. Services

Company will provide to Customer the cloud-based software products and services identified in the purchase order (the "Order") that incorporates these terms and conditions (collectively, the "Services" and, each, a "Service"). If there is a conflict or ambiguity between any term of this Agreement and the Order, the terms and conditions of the Order shall control. The Services may include, without limitation, Company's cloud-based web filtering, online activity monitoring for cyberbullying, auditing software, mobile device management software, tablet, and other computer asset location tracking software, device control software for teacher classroom management, and any other software or services offered by Company, including all updates thereto and related documentation. Company shall provide all necessary user identifications and passwords for the Services for use by Customer's employees, agents, independent contractors, students and parents/guardians ("Users").

### 2. Security

Company represents and covenants that it maintains appropriate administrative, technical and physical security measures to protect Customer data and personal information, including User Data (as defined in Section 4 below), to the extent reasonably necessary for the performance of the Services consistent with all applicable state and federal laws and regulations. In the event of a breach or suspected breach of any privacy or security measures described herein that has become known to Company, Company will immediately notify Customer thereof, and use its commercially reasonable efforts to remedy such breach.

### 3. Support Services

Company shall provide Customer with support services as specified in the Order (the "Support Services").

### 4. Ownership

(a) Ownership of the Service; Intellectual Property. Company shall retain all title to and ownership of and all proprietary rights with respect to the Services (including all software used to provide the Services and all portions

thereof (including all derivatives or improvements thereof), whether or not incorporated into or used with other software as a service, software or hardware. Customer's use of the Services does not constitute a sale of any of such software or any portion thereof. Company's name, logo, and the product names associated with the Services are trademarks of Company or third parties, and no right or license is granted herein to use them. Company hereby grants Customer, solely during the term of this Agreement, a limited, royalty-free, revocable license to use and install the Company provided software (which may include certificates and pack files) solely on Customer's machines and devices and only as necessary or appropriate to receive the Services (the "Client Software").

(b) Ownership of User Data. The Services may allow Customer to track and gather a range of data and information regarding its Users ("User Data"). Customer shall retain all title to and ownership of and all proprietary rights with respect to User Data, and shall be solely responsible for its use thereof. Customer is also responsible for securing and backing up its User Data and Company shall only restore lost User Data to its last-backup point if the loss was due to a fault in Company's Services or Support Services. Customer hereby grants Company a worldwide, royalty-free, and non-exclusive license to access and use User Data for the sole purpose of enabling Company to provide the Services, and for the limited purposes set forth in Company's Privacy Policy (described below).

(c) Data Use. To the extent Company receives any personal information (as such term or any analogous term may be as defined under applicable law) from or on behalf of Customer in connection with Company's provision of Services to Customer under the Agreement ("Customer personal information"), Company will only use, retain, disclose and otherwise process such Customer personal information for the purpose of providing the Services or in order to comply with the law. Company may disclose Customer personal information to its service providers as necessary for Company to provide the services to Customer. Company will however not otherwise retain, use, or disclose Customer personal information for any purpose other than to perform the Services or outside of the direct business relationship between Customer and Company. Specifically, it will not sell, rent, release, disclose, disseminate, make available, transfer or otherwise communicate Customer personal information to any third party for monetary or other valuable consideration. Company certifies that it understands and will comply with the restrictions on the processing of Customer personal information as set forth in this Section 4 (a).

(d) Data sources. Customer acknowledges that, dependent on the type of Services Company provides to Customer, Company may rely on publicly available or third-party data in order to provide the Services. Customer understands and agrees that Company has no responsibility for the accuracy, availability, reliability, or integrity of such data.

(e) Ownership of Reports and Analyses. Company may provide Customer with certain reports and analyses as part of the Services ("Reports"). Company shall retain all title to and ownership of and all proprietary rights with respect to such Reports. Company hereby grants Customer a non-exclusive, non-sublicensable, and non-transferable license, for the term of this Agreement, to use Reports strictly for Customer's own internal, legitimate, non-commercial, educational purposes.

(f) Mobile App and Parent/Guardian Usage. Customer acknowledges that Users may need to download the Company's mobile application from the relevant major mobile device provider app stores (iTunes or Google Play) and that use of the Company's mobile application or website by parents/guardians is subject to Company's terms of service and Privacy Policy.

(g) Feedback. If Customer provides any ideas, suggestions or recommendations to Company regarding Company's software, products, services or technology ("Feedback"), such Feedback is provided on a non-confidential basis to Company and Company is free to retain, disclose, use and incorporate such Feedback in Company's and/or its affiliates' products and services, without payment of royalties or other consideration to Customer. Customer understands and agrees that Company is not obligated to use, display, reproduce, or distribute any such Feedback, and that it has no right to compel such use, display, reproduction, or distribution. Nothing herein shall be interpreted as imposing an obligation on Customer to provide Feedback to Company.

## 5. Privacy Policy

(a) The parties agree that Customer is an educational institution, that Company is a service provider to Customer, and that Company's collection and use of the personally identifiable User Data of children under the age of 18 ("Minor User Data") is conducted on behalf of and with the authorization of Customer, in order to provide the Services requested by Customer. Customer has received and reviewed Company's Privacy Policy, Children's Privacy Policy and Notice of Privacy Practices (together the "Privacy Policy"), which include a privacy policy and direct notice of privacy practices as required by the Children's Online Privacy Protection Act Rule, 16 C.F.R. 313 ("COPPA"). Customer expressly consents to the collection, use and disclosure of Minor User Data as set forth in the Privacy Policy as applicable to those Services requested by Company. For the purposes of COPPA, Customer acknowledges that it is an educational institution, that it plans to use the Services in its capacity as an educational institution, and that it is authorized to consent to Company's collection, use and disclosure of Minor User Data by Company in order to provide the Services to Customer. Customer further acknowledges, and Company agrees to provide, Customer an opportunity to review the Minor User Data, and to request that such data be deleted and/or no longer collected or used (which may impact the availability of the Services). By executing this Agreement, Customer expressly acknowledges that it has received and reviewed the Privacy Policy, and grants its consent to Company's collection, use and disclosure of Minor User Data in accordance with the Privacy Policy, which may be updated from time to time, provided Customer will be notified of any material changes.

(b) Notwithstanding Section 5(b), Customer expressly agrees that Company may de-identify or aggregate User Data and Minor User Data so that it no longer identifies an individual under the age of 18 ("Aggregate Data"), and may maintain and use such data for its own purposes as set forth in the Privacy Policy, provided it has implemented reasonable safeguards to prevent the re-identification of Aggregate Data.

## 6. Customer Responsibilities, Warranties and Restrictions

(a) Customer agrees that it shall not do any of the following: (i) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services (including any Client Software), or in any way attempt to reconstruct or discover any source code or underlying ideas or algorithms of any part of the Services (including any Client Software); (ii) access or use the Services (including any Client Software) in order to build a similar or competitive product or service or for the purposes of bringing an intellectual property infringement claim against Company; (iii) except as expressly stated herein, copy, reproduce, distribute, republish, download, display, post or transmit in any form or by any means any of the Services (including any Client Software); (iv) attempt to gain unauthorized access to the Services (and Customer shall make commercially reasonable efforts to prevent unauthorized third parties from accessing the Services (including any Client Software)); or (v) exceed the permitted number of devices, active users or students, teachers, faculty and staff in a school or district, in each case as specified in an Order.

(b) Customer shall not (i) access or attempt to access the administrative interface of the Services by any means other than through the interface that is provided by Company in connection with the Services, unless otherwise agreed in writing or (ii) intentionally engage in any activity that interferes with or disrupts the Services (or any servers or networks that are connected to the Services).

(c) Customer is responsible for all activity occurring under Customers' accounts for the Services by its authorized users. Customer shall notify Company within a commercially reasonable time of any unauthorized use of any user account or any unauthorized use of the Services. Customer may not access the Company Services in a manner intended to avoid incurring fees or provide incorrect information for an Order for purposes of reducing amounts payable to Company.

(d) Customer represents, covenants, and warrants that Customer will use the Services only in compliance with the terms and conditions of this Agreement and all applicable laws and regulations. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it reasonably believes may be (or is alleged to be) in violation of this Agreement or applicable laws and regulations.

(e) If Customer is a government entity, unit, agency, organization, entity or party (including a school or school district), then Customer represents, warrants and covenants that Customer has taken all actions, complied with all requirements, obtained all prior consents and reviews, and otherwise satisfied all prerequisites that may be necessary or appropriate to enable Customer to enter into and perform this Agreement in accordance with its terms and conditions.

(f) Where Customer's uses the Services to send emergency notifications, alerts or other messages to recipients, including via text/SMS, phone, prerecorded message, email or other electronic communication ("Electronic Communication"), Customer represents, warrants and covenants that: (i) it has provided (and will continue to provide) adequate notices and has obtained (and will continue to obtain) the necessary permissions and consents from each recipient to receive such Electronic Communications from or on behalf of Securly, including as required by the Telephone Consumer Protection Act ("TCPA") and the CAN-SPAM Act, each as amended and including the regulations, guidance, and orders promulgated pursuant to such each; (ii) it will not send any Electronic Communication to a recipient that has not consented to receive such communications from Customer; (iii) it will not send any Electronic Communication to any recipient that has specifically opted out of receiving Electronic Communications from Company; (iv) not send, direct Securly to send or otherwise direct or cause to be sent any Electronic Communication in violation of applicable law or this Section 6(f); (iv) it will maintain adequate records of consents and its compliance with this Section 6(f) and shall provide upon request any such records to Securly for inspection; and (vi) it will only send, direct to be sent or otherwise cause to be sent Electronic Messages to (A) students, parents, guardians, personnel and other authorized parties, and (B) only for emergency purposes (as defined pursuant to the TCPA).

(g) Where Customer's use of the Services include visitor management, verification and tracking of visitors and other individuals, and related services or applications ("VMS"): Customer represents, warrants and covenants that: (i) it is responsible for ensuring that its collection, use and disclosure of all information (including personal information) and its instructions to Securly comply with applicable laws; (ii) that has provided (and will continue to provide) adequate notices and has obtained (and will continue to obtain) the necessary permissions and consents from each relevant individual to the collection, use, disclosure and/or storage of their information; (iii) it will not use the VMS (or any other of the Services) for the purposes of obtaining or conducting, background checks, employment verification, hiring, promotion, retention, termination, or reassignment decisions including but not limited to with respect to vendors, employees, contractors, providers, volunteers or other personnel; or otherwise engaging in any activities that are regulated by the Fair Credit Reporting Act (as amended) and the regulations, guidance, and orders promulgated thereto ("FCRA") or other state or federal laws or regulations related to consumer credit reports and background checks.

(h) There is no applicable law, regulation, rule, or other governmental requirement (A) which in any way restricts or limits the duty of Customer to fully perform and comply with all obligations of Customer as set forth in this Agreement, or (B) which impairs the rights of Company as set forth in this Agreement; and (iii) the software for the

Services provided under this Agreement will be treated as “commercial computer software” and “commercial computer software documentation” under any applicable governmental laws, regulations or rules.

(i) If any software or documentation is acquired by or on behalf of a unit or agency of the United States Government, Customer agrees that such software or documentation is “commercial computer software” or “commercial computer software documentation” and that, absent a written agreement with Company to the contrary, Customer’s rights with respect to such software and documentation are, in the case of civilian agency use, Restricted Rights (as defined in FAR §52.227.19), and, if for DoD use, limited by the terms of this Agreement, pursuant to DFARS §227.7202.

## 7. Confidential Information

(a) “Confidential Information” means any and all non-public information provided or revealed by one party (“Discloser”) to the other party (“Recipient”) or otherwise learned by a party during the course of performance under this Agreement, including without limit software, programs, prices, processes, documentation, financial, marketing and other business information, and all other material or information that is identified at the time of disclosure as confidential or proprietary or which otherwise would reasonably be expected to be kept confidential. Confidential Information shall also include: (i) the Discloser’s planned or existing computer systems and systems architecture, including computer hardware, computer software, source code, object code, documentation, methods of processing and operational methods; (ii) the Discloser’s customer lists, sales, profits, organizational structure and restructuring, new business initiatives and finances; (iii) the Discloser’s services and products, product designs, and how such products are administered and managed; and (iv) the Discloser’s User Data. Recipient’s obligations of confidentiality shall not apply to information that: (1) is or becomes public through no fault or breach by Recipient, (2) is or becomes known to Recipient (either directly or rightfully through a third party) without an obligation of confidentiality, or (3) is independently developed by Recipient without use of or access or reference to Discloser’s Confidential Information.

(b) During the Term of this Agreement and for a period of five (5) years following the termination or expiration of this Agreement, or with respect to any Confidential Information that constitutes a trade secret of the Discloser, for so long as such information constitutes a trade secret, Recipient shall hold Discloser’s Confidential Information in confidence and will not disseminate or disclose the Confidential Information to any third party except its Personnel, as set forth herein, unless required by applicable law to do so. Recipient will protect Discloser’s Confidential Information with the same degree of care it uses to protect its own confidential information of a similar nature, but in no event will Recipient use less than a reasonable degree of care. Recipient will use Discloser’s Confidential Information solely to the extent necessary to exercise its rights and obligations under this Agreement and will ensure that Confidential Information is disclosed only to its employees, contractors and other personnel (individually and collectively, “Personnel”) with a bona fide need to know and who are under binding written obligations of confidentiality with Recipient to protect Discloser’s Confidential Information substantially in accordance with the terms and conditions of this Agreement. The Recipient shall be responsible for any breach of this Section 7 by any Personnel. In addition, Recipient will implement and maintain appropriate technical and organizational measures to protect Confidential Information against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the Confidential Information to be protected. Recipient may disclose Confidential Information to the limited extent required to by the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the Recipient notifies the Discloser in writing in advance of such disclosure (unless prohibited by law from doing so) and provides the Discloser with copies of any related information so that the Discloser may take appropriate action to protect its Confidential Information.

(c) All Confidential Information is and shall remain the sole property of Discloser, and Recipient shall not acquire any rights or licenses therein except as expressly set forth in this Agreement. Recipient shall return to Discloser (or at Discloser's option, destroy) any and all Confidential Information and any other information and materials that contain such Confidential Information (including all copies in any form) immediately upon Discloser's written request, or upon the termination of this Agreement. Within ten (10) days following Discloser's written request, Recipient will provide Discloser with a written certification, as signed by an officer or executive level employee of Recipient, certifying compliance with this Section 7.

(d) Recipient acknowledges that the disclosure of Confidential Information in breach of the terms of this Section 7 may cause Discloser irreparable injury and damages that may be difficult to ascertain. Therefore, Discloser, upon a disclosure or threatened disclosure of any Confidential Information by Recipient or any Personnel, will be entitled to injunctive relief (without being required to post bond), including, but not limited to, a preliminary injunction upon an ex parte application by the Discloser to protect and recover its Confidential Information, and the Recipient will not object to the entry of an injunction or other equitable relief against the Discloser on the basis of an adequate remedy at law, lack of irreparable harm or any other reason. Without limiting the foregoing, the Recipient will advise the Discloser immediately in the event that it learns or has reason to believe that any person or entity that has had access to Confidential Information, directly or indirectly, through the Receiver, has violated or intends to violate the terms of this Agreement. This provision will not in any way limit such other remedies as may be available to the Discloser, whether under this Agreement, at law, or in equity.

## 8. Billing and Payment

(a) The amount of the recurring fees associated with the use of the Services and the Support Services by Customer shall be as set forth in the Order (the "Fees"). Fees for Services may be charged based on the number of (i) devices or active Users, (ii) the number of students in a school or district, or (iii) students, teachers, faculty and staff in a school or district, as specified in an Order. Additionally, there may be other basis for calculating the Fees, as specified in the Order. The Fees exclude all applicable sales, use, and other taxes, fees, duties and similar charges ("Taxes"), and Customer will be responsible for payment of all such Taxes (other than taxes based on Company's income) and any penalties or charges that accrue with respect to the non-payment of any Taxes as well as government charges, and all reasonable expenses and attorneys' fees Company incurs collecting late amounts. All amounts payable under this Agreement will be payable in U.S. Dollars within thirty (30) days of receipt of invoice, unless specified otherwise in the Order or Customer is purchasing the Services and Support Services through an authorized reseller and the parties have agreed that Customer is to pay the authorized reseller directly. Payment of fees shall be made by the Customer prior to receiving the Services. The payment may be made by check or wire transfer. Late payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less). To the fullest extent permitted by law, Customer waives all (i) claims relating to charges unless claimed within sixty (60) days after invoicing, and (ii) refunds under any situations aside from those contemplated in this Agreement. Notwithstanding any fees for services posted on Company's website or otherwise published by Company, the parties acknowledge and agree that the Fees may only be modified as set forth below in the "Modification; Waiver" section of this Agreement.

(b) Assignment. Company may assign to a third party (an "Assignee") all of its right, title and interest in all or any of the Fees at any time. Upon any such assignment, Company will give Customer written notice thereof (a "Notice of Assignment"). The Notice of Assignment shall provide the name and contact information for the Assignee and shall instruct Customer to make payment of the assigned Fees to the Assignee. Upon receipt of a Notice of Assignment, (i) Customer shall sign the acknowledgement provision in such Notice of Assignment and return it to Company as provided in such Notice of Assignment and (ii) Customer shall be obligated to make all payments of the assigned Fees to the Assignee, notwithstanding the Order's payment instructions for such Fees.

(c) If Customer is purchasing the Services or Support Services (or both) through an authorized reseller, Customer shall pay the fees for the Services and Support Services, as applicable, on a timely basis directly to the authorized reseller. Without limiting Company's remedies under this Agreement, at law or in equity, Company reserves the right to suspend provision of the Services or Support Services (or both) and to terminate this Agreement should Customer fail to pay the authorized reseller on time, regardless of the reason.

## 9. Term and Termination

(a) This Agreement commences on the Effective Date and, unless terminated earlier in accordance with its terms and conditions, shall remain in effect for the initial period specified in the Order (or, if no period is specified in the Order, then for an initial period of twelve (12) months) (the "Initial Term"). This Agreement will thereafter continue for successive twelve (12) month periods (each, a "Renewal Term"), unless either party gives the other party written notice of non-renewal at least 30 days prior to the end of the then-current term. The Initial Term, together with all Renewal Terms, are collectively referred to as the "Term".

(b) Either party may terminate this Agreement by giving written notice to the other party upon the occurrence of an Event of Default by the other party. For purposes of this Agreement, "Event of Default" means a breach by a party of any of its representations, warranties, or obligations under this Agreement, if such breach remains uncured for a period of thirty (30) days following receipt of written notice from the other party.

(c) Any and all provisions in this Agreement which would reasonably be expected to be performed after the termination or expiration of this Agreement shall survive and be enforceable after such termination or expiration, including without limitation provisions relating to confidentiality, ownership of materials, payment, taxes, representations and warranties, indemnification, limitations of liability, effects of termination, and governing law.

## 10. Company Warranties, Company Disclaimers, and Exclusive Remedies

(a) Company warrants to Customer that it will provide the Services in all material respects as described in the applicable end user documentation, if any, and will provide such Services in a professional manner and in accordance with generally accepted industry practices. If the Services provided to Customer are not performed as warranted, Customer agrees that it must promptly provide a written notice to Company that describes the deficiency in the Services.

(b) COMPANY DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT COMPANY WILL CORRECT ALL ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER'S CONTENT OR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY COMPANY, AND (C) THE SERVICES WILL MEET CUSTOMER'S OR ITS USERS' NEEDS, REQUIREMENTS, SPECIFICATIONS, OR EXPECTATIONS. CUSTOMER ACKNOWLEDGES THAT COMPANY DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF

SUCH COMMUNICATIONS FACILITIES. COMPANY IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER'S CONTENT OR APPLICATIONS, OR THIRD PARTY CONTENT (INCLUDING PUBLICLY AVAILABLE DATA OR OTHER THIRD PARTY DATA) OR SERVICES, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT OR SERVICES.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, COMPANY DOES NOT GUARANTEE OR WARRANT (A) THAT THE SERVICES WILL COMPLY WITH THE REQUIREMENTS OF THE CHILDREN'S INTERNET PROTECTION ACT, (B) THAT THE SERVICES WILL FUNCTION TO PREVENT MINORS FROM BEING EXPOSED TO INAPPROPRIATE, HARMFUL, UNSAFE, OR OBSCENE CONTENT ONLINE, (C) THAT THE SERVICES WILL PREVENT OR OTHERWISE DISCOURAGE CYBERBULLYING OR SELF-HARM BY STUDENTS, (D) THAT THE SERVICES WILL DETECT ALL CYBERBULLYING AND SELF-HARM BY STUDENTS, OR (E) ALL SOCIAL MEDIA SITES, STREAMING MEDIA, WEB-BASED EMAIL SERVICES, CLOUD STORAGE SITES, OTHER INTERNET SITES (INCLUDING PORN, GAMBLING AND OTHER INAPPROPRIATE SITES FOR MINORS), DIRECT MESSAGES AND ELECTRONIC DOCUMENTS AND FILES WILL BE BLOCKED OR MONITORED OR (F) THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES INCLUDING BUT NOT LIMITED TO AND THIRD PARTY DATA OR THE RESULTS OF ANY QUERIES OR SEARCHES SUBMITTED BY CUSTOMER FOR PURPOSES OF SCREENING VISITORS, OR (G) THE SERVICES WILL DETECT OR PREVENT FROM ENTERING SCHOOL PREMISES ANY OR ALL INDIVIDUALS THAT ARE UNAUTHORIZED OR OTHERWISE PROHIBITED BY APPLICABLE LAW OR CUSTOMER POLICY FROM ENTERING OR VISITING CUSTOMER PREMISES OR PROPERTY.

(d) FOR ANY BREACH OF THE SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF COMPANY CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER (AS DETERMINED SOLELY BY COMPANY IN ITS REASONABLE DISCRETION), THEN CUSTOMER MAY TERMINATE THE SERVICES AND COMPANY WILL REFUND TO CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO COMPANY FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION. IN SUCH AN EVENT, COMPANY SHALL ALSO EXERCISE COMMERCIALY REASONABLE EFFORTS TO PROVIDE CUSTOMER WITH REASONABLE OPPORTUNITY TO ACCESS THE SERVICES FOR THE PURPOSES OF SECURING AND BACKING UP CUSTOMER'S USER DATA.

(e) TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER WARRANTIES, AND COMPANY HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

## 11. Limitation of Liability

BOTH PARTIES EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOSS OF TIME OR LOST PROFITS) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITH THE EXCEPTION OF WILLFUL OR GROSSLY NEGLIGENT BREACHES OF SECTION 7, AND WITHOUT AFFECTING THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 10, IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY OF ANY TYPE UNDER THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE. THIS PARAGRAPH DOES NOT APPLY TO CUSTOMER'S VIOLATION OF COMPANY'S INTELLECTUAL PROPERTY RIGHTS.

## 12. Indemnification

(a) Customer Obligations. Customer shall defend Company against any claim, cause of action, suit or proceeding (each a "Claim") made or brought against Company by a third party arising out of or attributable to Customer's use of the Service (other than as expressly set forth in Section 12(b) below), and shall indemnify Company for any damages finally awarded against, and for reasonable attorney's fees incurred by, Company in connection with the Claim, on condition that Company (a) promptly gives Customer written notice of the Claim; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally release Company of all liability); and (c) provides reasonable assistance in connection with the defense (at Customer's reasonable expense).

(b) Company Obligations. Company shall defend Customer against any Claim made or brought against Customer by a third party alleging that Customer's use of the Service infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with the Claim, on condition that Customer (a) promptly gives Company written notice of the Claim; (b) gives Company sole control of the defense and settlement of the Claim (provided that Company may not settle any Claim unless the settlement unconditionally release Customer of all liability); and (c) provides reasonable assistance in connection with the defense (at Company's reasonable expense). If a Claim is brought or threatened, or Company believes is likely to occur, Company may, at its option, (i) procure for Customer the right to use the Service, (ii) replace the Service with other suitable products, or (iii) refund any prepaid fees that have not been earned and terminate this Agreement upon notice. Company will have no liability under this Agreement or otherwise to the extent a Claim is based upon (a) use of the Service in combination with software, hardware or technology not provided by Company, if infringement would have been avoided in the absence of the combination, (b) modifications to the Service not made by Company, if infringement would have been avoided by the absence of the modifications, (c) use of any version other than a current release of the Service, if infringement would have been avoided by use of a current release, or (d) any action or omission of Customer for which Customer is obligated to indemnify Company under this Agreement. This Section 12(b) states the Company's sole liability to, and the Customer's exclusive remedy against, the Company for any type of intellectual property infringement claim.

## 13. Advertising and Public Announcements

Neither party will use the other party's name or marks, refer to or identify the other party in any advertising or publicity releases or promotional or marketing correspondence to others without such other party's written approval. Notwithstanding the foregoing, Company may publish Customer's name as part of a publicly-available list of Company's customers.

## 14. Relationship of the Parties

The parties are independent contractors with respect to each other, and nothing in this Agreement shall be construed as creating an employer- employee relationship, a partnership, fiduciary, or agency relationship or any association or joint venture between the parties.

## 15. Force Majeure

Except payment obligations, any delay in or failure of performance by a party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such party, provided that the party affected by such event will immediately notify the other party and begin or resume performance as soon as practicable after the event has abated. If the act or condition beyond a party's reasonable control that prevents such party from performing any of its obligations under this Agreement continues for thirty (30) days or more, then the other party may terminate this Agreement immediately upon written notice to the non-performing party. Without limitation, act or condition beyond Company's reasonable control include all acts and omissions of Company's service providers. In the event of such termination by Customer, Company shall refund to Customer such fees for the terminated services that Customer pre-paid to Company for the period following the effective date of termination, and shall also exercise commercially reasonable efforts to provide Customer with reasonable opportunity to access the Services for the purpose of retrieving User Data. In all other instances of delay or failures on the part of Company under this Section 15 (i.e. wherein Customer does not or otherwise cannot terminate this Agreement pursuant to this Section 15), Customer shall not be entitled to any service credit or refund.

## 16. Binding Effect; Assignment; Third Parties

The terms and conditions of this Agreement shall be binding on the parties and all successors and permitted assigns of the foregoing. Customer may not assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the Company's prior written consent. Company may freely assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the Customer's consent, and nothing shall prohibit Company from hiring qualified subcontractors to perform any of the Services or Support Services, as provided herein. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void. This Agreement is intended for the sole and exclusive benefit of the parties, is not intended to benefit any third party, and only the parties may enforce this Agreement.

## 17. Modification; Waiver

All modifications to or waivers of any terms and conditions of this Agreement (including any exhibit) must be in a writing that is signed by the parties hereto and expressly references this Agreement. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

## 18. Governing Law

This Agreement and all actions arising out of or in connection with this Agreement shall be construed under and governed by and interpreted in accordance with the laws of the State of California, without regard to the conflicts of law provisions thereof.

## 19. Severability

In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court with jurisdiction over the parties to this Agreement, such invalid, illegal, or unenforceable provision shall be deleted from the Agreement, which shall then be construed to give effect to the remaining provisions thereof.

## 20. Notices

All notices, consents and approvals under this Agreement must be delivered in writing by personal delivery, courier, express mail service, or by certified or registered mail, (postage prepaid and return receipt requested) or by e-mail, with reasonable confirmation of receipt, to the other party at the address set forth on at the beginning of this Agreement (in the case of Company) or the Order (in the case of Customer), or such other address as a party may designate from time to time by written notice to the other party. Notice given by mail shall be effective five (5) days after the date of mailing, postage prepaid and return receipt requested. Notice by personal delivery, courier service, or express mail service shall be effective upon delivery.

## 21. Interpretation

This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. The section headings and captions in this Agreement are for convenience of reference only and have no legal effect.

## 22. Entire Agreement

This Agreement and the Privacy Policy constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous oral or written representations, agreements or communications, including, without limitation, any quotations or proposals submitted by Company that are not shown in the Order or any policies or terms for the Services posted on [www.securly.com](http://www.securly.com) other than the Privacy Policy.



## 2024-2027 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and **Infobase Learning** ("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 calendar quarter basis beginning from the Effective Date of this Agreement for all transactions completed and paid during said quarter.

4. **Term.** This Agreement is effective on August 1, 2024 ("Effective Date") and shall continue until 12:00 midnight (CST) on July 31, 2027, unless terminated earlier as provided by this Agreement or by law. Notwithstanding the effective date of termination of this Agreement, Contractor agrees to comply with Paragraph 5 of this Agreement.
  
5. **Duration of Services Purchased.** If this Agreement, for any reason, terminates before the service end date of any agreement or license between a Member and the Contractor, the Contractor shall continue, maintain, and make such Services available to such Member until the agreed upon date between the Contractor and Member or until the term for the service expires. For example, if the Contracted Services allow a member to purchase or license Services for a certain period of time, but this Agreement expires prior to the end of the service period, the Contractor agrees to maintain such Contracted Services until the expiration of said period of service and in accordance with the terms and provisions of the purchase or license.
  
6. **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.
  
7. **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.

## **8. 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.

## **9. 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.

## **10. 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.

- 11. 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.
- 12. 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.
- 13. 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.
- 14. 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.
- 15. 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.

**16. 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.

**17. Taxpayer Identification.** Contractor's federal employer identification number is:  
[REDACTED]

**18. 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.

**19. 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: [REDACTED]  
[REDACTED]  
[REDACTED]

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

**20. 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.

- 21. 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.
- 22. 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.
- 23. 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.
- 24. 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.
- 25. 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.
- 26. 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.

- 27. 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.
- 28. Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the Cooperative.
- 29. 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.
- 30. 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.
- 31. 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.
- 32. 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.
- 33. 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.
- 34. Attachments.** Attachments to this Agreement include the following:
- Exhibit A – Scope of Goods or Services to be provided to ESUCC and Members
  - Exhibit B – Payment Terms & Schedule
  - Exhibit C – Summary of Project Deliverables
  - Exhibit D - Vendor Software License Agreement

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

**CONTRACTOR**

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

**COOPERATIVE**

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

**EXHIBIT "A"**

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

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

## **EXHIBIT "B"**

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

Contractor's Pricing Model under this Agreement is:

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

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

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

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

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

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

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

**EXHIBIT "C"**

**SUMMARY OF PROJECT DELIVERABLES**

**<<TO BE COMPLETED BY VENDOR>>**

**1. Order Delivery Method Options**

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

**2. Electronic Orders**

- a. Vendor Capable of receiving orders electronically? Yes:  No:
- b. Enable vendor items listed in Exhibit B to be placed in the ESUCC Marketplace for electronic orders Yes:  No:
- c. 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:
- d. 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:**

**EXHIBIT "D"**

**SOFTWARE LICENSE AGREEMENT**

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



## 2024-2027 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative") and Renaissance Learning, 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 calendar quarter basis beginning from the Effective Date of this Agreement for all transactions completed and paid during said quarter.

4. **Term.** This Agreement is effective on July 1, 2024 (“Effective Date”) and shall continue until 12:00 midnight (CST) on June 30, 2027, unless terminated earlier as provided by this Agreement or by law. Notwithstanding the effective date of termination of this Agreement, Contractor agrees to comply with Paragraph 5 of this Agreement.
  
5. **Duration of Services Purchased.** If this Agreement, for any reason, terminates before the service end date of any agreement or license between a Member and the Contractor, the Contractor shall continue, maintain, and make such Services available to such Member until the agreed upon date between the Contractor and Member or until the term for the service expires. For example, if the Contracted Services allow a member to purchase or license Services for a certain period of time, but this Agreement expires prior to the end of the service period, the Contractor agrees to maintain such Contracted Services until the expiration of said period of service and in accordance with the terms and provisions of the purchase or license.
  
6. **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.
  
7. **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.

## 8. 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.

## **9. 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.

## **10. 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.

- 11. 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.
- 12. 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.
- 13. 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.
- 14. 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.
- 15. 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.

**16. 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.

**17. Taxpayer Identification.** Contractor's federal employer identification number is: 39-1559474

**18. 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.

**19. 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: Renaissance Learning, Inc.  
Attn: General Counsel  
PO Box 8036  
Wisconsin Rapids, WI 54495-8036

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

**20. 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.

- 21. 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.
- 22. 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.
- 23. 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.
- 24. 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.
- 25. 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.
- 26. 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.

- 27. 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.
- 28. Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the Cooperative.
- 29. 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.
- 30. 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.
- 31. 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.
- 32. 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.
- 33. 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.
- 34. Attachments.** Attachments to this Agreement include the following:
- Exhibit A – Scope of Goods or Services to be provided to ESUCC and Members
  - Exhibit B – Payment Terms & Schedule
  - Exhibit C – Summary of Project Deliverables
  - Exhibit D - Vendor Software License Agreement

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

**CONTRACTOR**

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

**COOPERATIVE**

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

**EXHIBIT "A"**

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

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

## **EXHIBIT "B"**

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

Contractor's Pricing Model under this Agreement is:

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

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

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

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

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

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

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

**EXHIBIT "C"**

**SUMMARY OF PROJECT DELIVERABLES**

**<<TO BE COMPLETED BY VENDOR>>**

**1. Order Delivery Method Options**

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

**2. Electronic Orders**

- a. Vendor Capable of receiving orders electronically? Yes:  No:
- b. Enable vendor items listed in Exhibit B to be placed in the ESUCC Marketplace for electronic orders Yes:  No:
- c. 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:
- d. 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:**

**EXHIBIT "D"**

**SOFTWARE LICENSE AGREEMENT**

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

## **INTERLOCAL AGREEMENT FOR COOPERATIVE PUBLIC/GOVERNMENTAL PURCHASING**

This Interlocal Agreement ("Agreement") is made and entered into under the provisions of the Nebraska Interlocal Cooperation Act, NEB. REV. STAT. §§ 13-801 to 13-827 ("Act"), between the Educational Service Unit Coordinating Council, commonly known as ESUCC ("ESUCC"), and Village of Orchard, commonly known as Village of Orchard. The parties are referred to collectively as "Agencies."

WHEREAS, the Act, provides that two or more public agencies may enter into an agreement for joint or cooperative action, and this Agreement is made and entered into pursuant to the provisions of that Act; and

WHEREAS, each entity is a "public agency" pursuant to NEB. REV. STAT. § 13-803(2), as amended;

WHEREAS, the ESUCC and Village of Orchard desire to jointly bid and contract, for supplies, materials, equipment, and services through the ESUCC's Cooperative Purchasing Program;

WHEREAS, each party agrees to extend to the other party the right to purchase pursuant to such bids and contracts to the extent permitted by law, and to the extent agreed upon between each party and the bidder, contractor, vendor, supplier, or service provider;

WHEREAS, the Agencies desire to make the most efficient use of their taxing authority and other powers to enable them to cooperate with each other and other entities as further agreed on the basis of mutual advantage to provide goods, services, and facilities in a manner and pursuant to forms of governmental organization that will accord the best results in terms of geographic, economic, population, and other factors that will influence the needs and development of the Agencies;

WHEREAS, the ESUCC will provide organizational and administrative structure for sourcing/bidding; provide marketing of Nebraska ESUCC Cooperative Purchasing to expand membership, awarded contracts, and commodity categories; and provide members with current awarded vendor contracts, instructions for obtaining quotes

and ordering procedures;

WHEREAS, Village of Orchard commits to participate in the Nebraska ESUCC Cooperative Purchasing program by purchasing goods and services from awarded contracts when in the best interest of the entity and to pay awarded vendors in a timely manner per the Terms & Conditions of the contract for all goods and services received and

WHEREAS, the Agencies have passed resolutions authorizing each Agency to approve and enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by the parties as follows:

**1. Recitals.** The foregoing Recitals are hereby incorporated into and made a part of this Agreement.

**2. No Separate Legal Entity.** This Agreement does not establish a separate legal or joint entity.

**3. Purpose.** The purposes of this Agreement are as provided in the Recitals and paragraph 6.

**4. Term.** This Agreement shall remain in full force and effect until terminated or modified by mutual agreement of the parties.

**5. Administration.** The ESUCC Executive Director shall be responsible for administering the cooperative undertaking described in this Agreement. The Administrator may take any action authorized, either explicitly or implicitly, by the Interlocal Cooperation Act, including any action that may be necessary to perform the duties and functions as provided in this Agreement.

**6. Bids and Contracts.** Each party from time to time may solicit public bids and enter into contracts on its own behalf to purchase supplies, material, equipment, and services. Each of the parties agrees to extend to the other party the right to purchase pursuant to such bids and contracts to the extent permitted by law, and to the extent agreed upon between each party and the bidder, contractor, vendor, supplier, or service provider. Each of the parties shall contract directly with the bidder, contractor, vendor, supplier, or service provider, and pay directly in accordance with its own payment procedures for its own

purchases. Any purchase made pursuant to this Agreement is not a purchase from either of the parties. This Agreement shall create no obligation for either of the parties to purchase any particular good or service, nor create to either of the parties any assurance, warranty, or other obligation from the other party with respect to purchasing or supplying any good or service.

**7. Manner of Acquiring, Holding, and Disposing of Real and Personal Property.** The Agencies do not anticipate a need to acquire, hold, or dispose of real property to accomplish the purposes of this Agreement. The Agencies' respective governing boards shall determine the manner of acquiring, holding, or disposing of real property in the event that such a need arises. In no event shall the Administrator have the authority to acquire real property on behalf of the Agencies.

**8. Financing and Budgeting.** Each party will finance its respective responsibilities under this agreement through its existing internal financing and budgeting processes. The parties shall provide a copy of their respective budgets to the Administrator upon request.

**9. Expenses.** Unless provided otherwise herein, all expenses of this Agreement shall be shared and paid equally by the Agencies.

**10. Taxes.** This Agreement does not grant the Agencies any authority to levy, collect, or account for any tax authorized under sections 13-318 through 13-326 or 13-2813 through 2816.

**11. Nondiscrimination.** The Agencies 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.

**12. Employment Eligibility Verification.** The Agencies 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 a party employs or contracts with any subcontractor in connection with this Agreement, the contracting party 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.

**13. Termination.** Either party may terminate this agreement by providing written notice to the other party not less than 60 days prior to termination. Any funds contributed to or for the benefit of this Agreement in possession of any of the Agencies upon termination of this Agreement shall be divided as nearly as practicable in proportion to the amounts contributed over the life of the Agreement. Any other personal property owned by any of the Agencies as a result of this Agreement shall be the property of the party that purchased it. In the event that the cost of the personal property was shared equally by the Agencies, the property shall be liquidated or distributed in kind upon the termination of this Agreement. If a dispute arises between the Agencies as to the value of such property or as to how it will be distributed, such property shall be sold by taking bids at public auction and selling said property to the highest bidder with the proceeds therefrom being divided equally by the Agencies. Termination shall not impair a party's obligation for its share of any outstanding indebtedness incurred under this Agreement.

**14. Withdrawal.** An Agency's governing board may withdraw from this Agreement by passing a resolution and submitting a copy of it to the other Agency at least 60 days in advance of the stated date of withdrawal. Withdrawal shall not impair an Agency's obligation for its share of any outstanding indebtedness.

**15. Insurance.** Each party shall obtain and pay for its own insurance coverage for their participation in this Agreement.

**16. Notice.** Each Agency 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 electronic mail (to the Agency's then executive officer or the governing board's president, with receipt confirmed). Notice shall be sent to the following addressees at the following addresses:

ESUCC: ESUCC  
Attn: Executive Director  
6949 South 110th Street  
LaVista, NE 68128

Orchard: Village of Orchard  
Attn: Village Clerk  
407 East 4th Street  
Orchard, NE 68764

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

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

**18. Severability.** If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement shall remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.

**19. Counterparts.** The Agencies 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 Agencies 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 Agencies to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each Agency to the other Agencies. In proving this Agreement, an Agency must produce or account only for the executed counterpart of the Agency to be charged.

**20. Assignment.** The Agencies shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person or entity without the previous written consent of each of the other Agencies.

**21. Entire Agreement.** The Agreement is the complete and exclusive expression of the Agencies' agreement on the matters contained in this Agreement. All prior and contemporaneous

negotiations and agreements between the Agencies on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

**EDUCATIONAL SERVICE UNIT  
COORDINATING COUNCIL**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Kraig Lofquist  
Executive Director

\_\_\_\_\_

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

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

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

**RESOLUTION**

WHEREAS, on May 7, 2024, at a duly convened and scheduled meeting of the Educational Service Unit Coordinating Council, also known as the ESUCC, it was recommended and deemed advisable that the Council enter into the Interlocal Agreement with The Village of Orchard to jointly bid and contract, for supplies, materials, equipment, and services through the ESUCC’s Cooperative Purchasing Program;

AND WHEREAS, consideration of the matter was a duly advertised agenda item for the said meeting of the ESUCC;

AND WHEREAS, an opportunity was afforded any interested party to comment on the matter; and the ESUCC being apprised of the various aspects of the issue;

AND WHEREAS, the Board has determined that entering into the Interlocal Agreement is in the best interests of the ESUCC and its members and is appropriate to provide for the efficient and effective operation of the ESUCC;

NOW BE IT THEREFORE RESOLVED that the ESUCC’s Executive Director be authorized on behalf of the ESUCC, pursuant to this Resolution, to affix his signature to the aforementioned Interlocal Agreement and to do all things necessary to comply with said Agreement.

It was so moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ this 7th day of May, 2024.

Roll call vote as follows:

	Name	<u>Yes</u>	<u>No</u>
ESU 1:	_____	___	___
ESU 2:	_____	___	___
ESU 3:	_____	___	___
ESU 4:	_____	___	___
ESU 5:	_____	___	___
ESU 6:	_____	___	___

ESU 7: \_\_\_\_\_

ESU 8: \_\_\_\_\_

ESU 9: \_\_\_\_\_

ESU 10: \_\_\_\_\_

ESU 11: \_\_\_\_\_

ESU 13: \_\_\_\_\_

ESU 15: \_\_\_\_\_

ESU 16: \_\_\_\_\_

ESU 17: \_\_\_\_\_

ESU 18: \_\_\_\_\_

ESU 19: \_\_\_\_\_

Coop Directors report to ESUCC Board  
submitted by: Craig Peterson  
May 7, 2024

**1. Consent Agenda Items for Coop**

**a. Approve Special Buy agreement with Insight Public Sector**

- i. Insight provides IT solutions of computer hardware, software and peripherals from leading manufacturers as well as complete range of technology management services. We have had a contract with Insight since August of 2015 and this would just be a refresh of our current contract this is set to expire on 08/31/2024.

**b. Approve AEPA 021.5, 2021.75 and 023.5 Extensions**

- i. 021.5B - ServiceMaster, Inc.
- ii. 021.5B - Signal Restoration Services
- iii. 021.5C - E-Rate Elite Services Inc.
- iv. 021.5C - Kellogg & Sovereign Consulting
- v. 021.5C -Tel/Logic Inc. dba E-Rate Central
- vi. 021.5D - Kajeet Inc.
- vii. 021.75 - Carrier Corp.
- viii. 022.5-B - Blick Art Materials
- ix. 022.5-B - Midwest Technology Products
- x. 022.5-B - Pitsco Education, LLC
- xi. 022.5-C - Hubert
- xii. 2023.5-B - RCP Shelters
- xiii. 2023.5 - Romtec, Inc.

**c. Approve Special Buy agreement with Securly**

- i. This agreement is a refresh and continuation of a current contract that is set to expire on 06/30/2024

**d. Approve Special Buy agreement with Infobase Learning**

- i. This agreement is a refresh and continuation of a current contract that is set to expire on 07/31/2024. Learn360 (video on demand) is included in the agreement, we may need to negotiate pricing for this so as not to impact Lincoln Public Schools district purchase of this product.

**2. Annual/Paper Buy**

- a. **Definition of the Annual Buy:** This is a line item bid where 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 to 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. 2024 ESUCC-Annual Buy**

- i. Annual Buy closed on April 5. Orders sent to vendors in the amount of \$2,041,955.67 This is down \$162,031.13 from 2023 totals
  - 2023 - \$2,203,986.80
  - 2022 - \$2,304,945.85
  - 2021 - \$2,146,253.88
  - 2020 - \$2,389,178.36
  - 2019 - \$2,280,138.82
  - 2018 - \$2,282,359.68
  - 2017 - \$2,407,565.41

- ii. **Year over Year Marketplace purchases to include both year-round, Paper, and Annual Buy's**

	January	February	March	April	YTD
2016	\$2,567.08	\$250,162.71	\$887,101.29	\$2,657,808.25	\$4,070,589.59
2017	\$7,445.64	\$232,445.70	\$812,113.22	\$2,450,067.97	\$3,863,795.56
2018	\$16,404.15	\$223,012.95	\$882,895.68	\$2,513,162.25	\$4,449,044.40
2019	\$19,241.18	\$373,428.57	\$858,433.70	\$2,439,624.59	\$4,470,323.01
2020	\$14,553.90	\$335,257.61	\$892,614.95	\$2,589,289.80	\$4,989,205.11
2021	\$20,623.11	\$290,377.74	\$843,338.67	\$2,352,787.50	\$3,507,127.02
2022	\$18,280.08	\$338,159.11	\$1,116,327.04	\$2,553,217.018	\$4,025,983.41
2023	\$24,033.3	\$317,186.19	\$1,114,342.91	\$2,374,226.43	\$3,829,788.88
2024	\$25,697.70	\$487,611.47	\$855,972.05	\$2,268,140.02	\$3,637,421.24

**c. Annual Renewals – currently collecting orders**

- i. **Deadline May 15**

- 1. Swank Motion Pictures – Movie Licensing
  - a. 158 orders \$138,498 in orders to date (May 2)
- 2. World Book – Updated Encyclopedia, Rule 10
  - a. 87 orders \$93,941.47 in orders to date (May 2)

- ii. **Deadline June 15**

- 1. Infobase
  - a. \$0.44 per student pricing tier (Lowest price has been locked in)
  - b. 6 orders \$29,643.54 in orders to date
    - i. ESU 18/LPS
    - ii. ESU 13
    - iii. Gretna Public Schools
    - iv. Archdiocese of Omaha Schools

- v. Burwell Public Schools
- vi. Marian High School
- vii. Ainsworth Community Schools

2. Securly

- a. Securly – Internet Filtering
  - i. 27 orders \$37,845.50 in orders to date

iii. **Deadline June 28**

- 1. JourneyEd - Abobe
  - a. 69 orders \$43,110 in orders to date

- d. **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. **Spring Meeting in Greenville South Carolina this year April 22-24**

1. Highlights of meeting

- a. Meeting was called to order at 1:00 PM Monday April 22, Roll call was conducted, Welcome and announcements provided by the AEPA Executive Director George Wilson, Agenda was approved as amended, Treasurer's report was given, Nominating Committee held election for Secretary, Anna Marie Hollander from Michigan was reelected, AESA John Bass provided an update, AEPA Executive Director provided information and updates, Recommendations for Extension were provided by Category and membership voted on recommendations, Committee Reports were given by Governing Documents Committee, Solicitation Committee, Marketing Committee, Reporting Committee, Website Committee, Online Solicitation, Engagement Committee, Meeting Planning Committee and Executive Committee. There was discussion about adding staff for AEPA and a motion was made to table the proposal until a committee could review and set parameters. AEPA's President Tina Smith from Kansas reviewed the Strategic Plan. North Carolina requested membership to AEPA under the Carolina Buy umbrella, their request was approved so AEPA now has 30 state members. The Business Meeting was adjourned at

4:00 pm on Monday and the remainder of the days were spent in vendor round table discussions where each state had 15 minutes with each vendor 49 in total attending.

ii. MVP Awards conducted on Monday evening

1. **Quality and Innovation Award**-This award recognizes outstanding projects, campaigns, and innovations in the fields of digital media and communications.
  - a. **Nomination submitted by:** Tina Smith Kansas
  - b. I am thrilled to submit a joint nomination for Craig Peterson of Nebraska and Jane Eastes of North Dakota for the AEPA MVP Award in recognition of their outstanding contributions to quality and innovation in the realm of digitizing solicitation workflows.

**Background:** Craig Peterson and Jane Eastes have been pivotal in spearheading the AEPA effort to transition the solicitation process to the Bonfire platform, showcasing exemplary dedication to enhancing the overall quality and innovation in our digital solicitation and communication strategies.

**Quality Enhancement:** Under the leadership of Craig and Jane, the solicitation process is undergoing a transformative shift towards greater efficiency and effectiveness. Their keen attention to detail and commitment to quality will result in more streamlined processes for individuals involved in the solicitation process. By leveraging Bonfire, they will implement measures to enhance the clarity, consistency, and transparency of our solicitations, thereby elevating the overall quality of AEPA communications.

**Innovation in Digital Strategies:** Craig Peterson and Jane Eastes have demonstrated remarkable innovation by embracing Bonfire as a cutting-edge solution for the solicitation process. This technological shift represents a significant leap forward, showcasing their forward-thinking approach. By adopting innovative platforms like Bonfire, they are not only modernizing our methods but will also set a benchmark for other AEPA initiatives to follow suit, fostering a culture of innovation within our organization.

**Outstanding Project Leadership:** From the initial planning stages to implementation, Craig and Jane have exhibited exceptional project management skills. Their ability to navigate challenges, foster collaboration, and drive the project to

completion within set timelines showcases their exemplary leadership in this effort.

**Conclusion:** In recognition of Craig Peterson and Jane Eastes' exceptional leadership, dedication to quality, and innovation, I believe they are highly deserving of the AEPA MVP award.

2. Other Awardees
  - a. Sales Performance (Massachusetts-Member, Busch Systems-Vendor)
  - b. Quality & Innovation (North Dakota, Nebraska – Members, School Health-Vendor)
  - c. Relationship Excellence (Connecticut-Member, WTI/Tremco-Vendor)
- iii. Summary of 2023 AEPA Sales Reports
  - a. AEPA Total Sales (All Vendors) \$1,021,243,846.60 up \$237,809,421.96 from last year
  - b. ESUCC has 66 signed contracts with AEPA vendors
  - c. ESUCC Total Sales (All Vendors January 1 – December 31, 2023) \$8,305,426.99 down \$2.46M from last year (\$158,996.73 in revenue, down \$46,901.04 from last year)
  - d. ESUCC AEPA Sales by year
    - i. 2023 - \$8,305,426.99
    - ii. 2022 - \$10,772,654.19
    - iii. 2021 - \$7,447,503.37
    - iv. 2020 - \$4,180,171.03
    - v. 2019 - \$4,403,767.45
    - vi. 2018 - \$2,871,349.94
    - vii. 2017 - \$2,788,912.01
    - viii. 2016 - \$4,475,183.62
    - ix. 2015 - \$5,251,199.72
  - e. AEPA all Vendor Sales by year
    - i. 2023 - \$1,021,243,846.60 (New Goal of \$1,050,000 by 2025)
    - ii. 2022 - \$783,434,424.64
    - iii. 2021 - \$712,076,400.71 (Goal of \$619 Million by 2023 met 2 years in advance)
    - iv. 2020 - \$606,964,156.43
    - v. 2019 - \$520,303,356
    - vi. 2018 - \$461,233,534
    - vii. 2017 - \$470,020,597
    - viii. 2016 - \$471,937,671
    - ix. 2015 - \$463,452,183

- f. Nebraska ranks 25th out of 29 states in Sales, down from 19th last year.
- g. CDW-G ranks 1st out of 65 vendors in Sales with \$359,797,390.27
- 2. Assessments to be paid to AEPA
  - a. \$5,406.90
  - b. Calculation (Yearly Sales \* .00035) + \$2,500 Fixed Assessment
- iv. **Future AEPA Meetings**
  - 1. Regular Meeting – December 2-4, 2024 – Orlando, FL
  - 2. Annual Meeting - April 7-9, 2025 – Chattanooga, TN

### 3. Marketing

- a. 25 Campaigns sent since last meeting –Please share the list with your Superintendents.
  - i. [2024 Annual Buy Deadline Approaching](#) - 46% open rate
  - ii. [Capstone - March 2024](#) - 47% open rate
  - iii. [SchoolsPLP - April Does your Credit Recovery Program engage your students?](#) - 42% open rate
  - iv. [2024 Annual Buy Deadline 3 Days](#) - 44% open rate
  - v. [Cloud9World - April Learn about Social Emotional Learning \(SEL\) with Cloud9World](#) 39% open rate
  - vi. [2024 Annual Buy Deadline – Extended](#) 44% open rate
  - vii. [Pitsco - Twin Science](#) 38% open rate
  - viii. [FSG Facility Solutions Group - April 2024 Special Pricing on LED Lighting Products](#) 48% open rate
  - ix. [2024 Annual Buy Deadline - Last Call](#) 54% open rate
  - x. [AEPA Vendor - The OrganWise Guys Webinars](#) 43% open rate
  - xi. [School Health - March Don't let your year-end budget go unspent!](#) 43% open rate
  - xii. [Best Plumbing - April 2024 New Items](#) 45% open rate
  - xiii. [Quill - Paper Pallet & Case Reduced Pricing – April](#) 51% open rate
  - xiv. [Mackin - April 2024 - Monthly Digital Digest](#) 37% open rate
  - xv. [Daktronics - 2024 Shot Clocks](#) 42% open rate
  - xvi. [Peoria Ford - April 2024 47%](#) 47% open rate
  - xvii. [Busch Systems - Benefits of Modular Stations](#) 44% open rate
  - xviii. [Sanzonate - 2024 Aqueous Ozone on Demand for Nebraska Schools](#) 22% open rate
  - xix. [Voss Lighting - April 2024 - Upgrade Your Facility to LED for as little as \\$20,000](#) 42% open rate
  - xx. [Sysco - 2024 Food Show - Save the Date](#) 42% open
  - xxi. [AEPA Hillyard- May Streamline Summer Renovations: A Comprehensive Resilient Flooring Guide](#) (Scheduled, no open rates at this time)
  - xxii. [Midwest Technology - May AUGMENTED REALITY W E L D I N G S Y S T E M](#)
  - xxiii. [Join us to learn about SchoolsPLP The Most Comprehensive On-Line Learning Program](#) (Scheduled, no open rates at this time)
  - xxiv. [Best Plumbing - May 2024 New Items](#) (Scheduled, no open rates at this time)

xxv. [Peoria Ford - May 2024](#) (Scheduled, no open rates at this time)

- b. If users have previously unsubscribed from receiving these emails then you can re-subscribe or have other staff subscribe by visiting the following link <http://eepurl.com/gTsUCv>, choose the District-Building Contacts to receive Cooperative Purchasing emails about order deadlines and vendor announcements. After submitting your subscription request, check your email, you may receive email from MailChimp requiring you to confirm this submission.

**4. Additional Information & Meetings**

- i. **Communications with the following vendors/organizations since last board meeting:** Insight, Staples, ESU 3 Warehouse staff, AEPA Solicitations Committee, AEPA 025: Cybersecurity & Training Committee, AEPA Website Committee, 49 AEPA vendors,
- ii. **Conferences/Webinars/Trainings:**
1. Bonfire – Weekly training for Sourcing Software
  2. EqualLevel, a new chapter with Euna Solutions

**May 2024**

## **YOY Program/ Contract Sales**

**2023-24 Sales:** \$19,344,227.89 (July 2023-March 2024 *not final*)

**2022-23 Sales:** \$22,580,611.77 (July 2022-March 2023)

**YOY Delta:** **-\$3,236,383.88**

- AEPA **-\$3,730M**
- Special Buys: **-\$588K**
- Prime Vendor Buys: **+\$1,012K**
- Annual/ Paper Buy: **+70K**

## **YTD Food Program Update**

- **2023-24 Program**
  - 133 participants up 7 schools from previous year
  - YTD spend: \$6,541M up \$846K
  
- **2024-25 Program**
  - 296 2024-25 Program Invites Sent April 2, 2024 (8 more sent this year over last)
  - 75 Responses to date
    - 61 Participating
    - 7 new schools (Brady, Chadron, Leyton, Medicine Valley, Sumner-Eddyville, Sutherland, Plainview, & Wilcox-Hildreth)
  - 13 Not Participating
    - Kearney Catholic currently participating this year but opting to not participate next year