

**PRODUCTS & SERVICES AGREEMENT****CUSTOMER INFORMATION**

<b>Customer Name</b>	<b>Nassau County Public Library</b>
<b>Primary Contact</b>	<b>Susan Stanley</b>
<b>Address</b>	<b>25 N. 4<sup>th</sup> Street Fernandina Beach, FL 32034-4123</b>
<b>Agreement Date</b>	<b>October 1, 2001</b>
<b>Initial Term of Agreement</b>	<b>One (1) year</b>

N2H2, Inc, a Washington corporation located at 900 Fourth Avenue, Suite 3600, Seattle, Washington, 98164 ("N2H2"), wishes to provide to Customer, and Customer wishes to subscribe to, N2H2's Internet content filtering service, solely in accordance with the terms and conditions set forth below.

**1. Definitions.** As used in this Agreement, the following terms shall have the following meanings:

"Agreement" shall mean the N2H2 Subscription Agreement with attached Schedule A (and Schedule B, if applicable).

"Affiliate" means any company, firm, joint venture, association or partnership in which Customer has an ownership interest of at least 50%.

"Confidential Information" means all proprietary information of N2H2 and information provided to N2H2 by third parties which N2H2 is obligated to keep confidential. Confidential Information includes but is not limited to Proprietary Content, source code, inventions, trade secrets, specifications, techniques, data, documentation, processes and other information relating to the Products and Services. Confidential Information does not include information that Customer proves by clear and convincing evidence: (i) is or becomes generally known to the public through no act or failure to act on Customer's part; (ii) has been independently developed by Customer, without violation of any rights which N2H2 may have in such information; (iii) is furnished or made known on a non-confidential basis to Customer by a third party who has a lawful right to disclose such information; or (iv) is required by law or court order to be disclosed, but only to the extent of such required disclosure and provided that N2H2 is first given notice of such required disclosure and an opportunity to prevent such disclosure.

"Customer" means the Party identified at the top of this Agreement.

"Equipment" means any equipment (hardware) to be delivered to Customer and used to receive the Services, as identified on Schedule A.

→) "Location" means the location(s) where the Equipment will be stored, if any, as identified on Schedule A.

"Parties" means N2H2 and Customer. "Party" means either of them.

"Products" means any Equipment or Software to be delivered or licensed to Customer under this Agreement, as identified on Schedule A.

"Proprietary Content" means the N2H2 proprietary database of categorized and URLs, as updated from time to time.

"Licensed Unit" means any computer with an IP address, the user of which is authorized by Customer to use the Products and Services. The number of authorized Licensed Units is set forth in Schedule A.

"Services" means access to and use of the Proprietary Content to receive Internet content filtering, and also includes related services provided by N2H2.

"Software" means N2H2's filtering software.

**APPROVED**DATE 11-26-01 *JLB*

2. **Use.** Subject to Customer's timely payment of all fees in accordance with Section 5 below, and Customer's compliance with the other terms and conditions of this Agreement, N2H2 grants Customer the limited, non-exclusive, non-transferable (except as otherwise provided in this Agreement), revocable right and license to use the Products and Services during the Term, by means of a unique password issued by N2H2.
3. **Restrictions on Use.** Customer shall be responsible for the proper use of the Products and Services by its employees, agents, invitees, licensees and users, in accordance with this Agreement. Use of the Products or Services by more than the number of Seats for which a subscription fee has been paid shall constitute a breach of this Agreement. Customer shall not copy, modify, adapt, decrypt, decompile, reverse engineer or disassemble the Products or the Proprietary Content. In addition, Customer shall not sell, loan, lease, sublease, sublicense, transfer, distribute or dispose of the Products, without the prior written consent of N2H2. Customer shall not disclose to any third party the results of any benchmark test of the Services or Software, without N2H2's prior written approval.
4. **Software Licensing.** If Schedule A indicates that this Agreement involves a license of Software, then subject to Customer's timely payment of all fees and Customer's compliance with the other terms and conditions of this Agreement, N2H2 grants to Customer a limited, non-exclusive, non-transferable, revocable right and license during the Term to use the Software, in machine-readable object code form only, in connection with the Services.
5. **Equipment.** If Schedule A indicates that Equipment will be delivered with this Agreement, additional terms governing Customer's use of the Equipment are set forth in the Equipment Usage Addendum attached hereto as Schedule B.
6. **Services**

Installation and Setup. N2H2 will assist Customer with the initial setup and configuration of the Products and Services by providing three (3) hours of remote technical support at no charge. Additional hours of Technical Support will be provided at a then current rate. N2H2 will ship the Products to the Location and use reasonable efforts to implement the Products and Services for Customer. The installation and initial setup is generally complete within three (3) weeks after ordering.

Post-Installation Technical Support. N2H2 will offer the technical support services outlined on the Schedule A.

Software Upgrades. If applicable, N2H2 will provide upgrades to the Software as it deems necessary, in its sole discretion. Customer shall promptly install any Software upgrades provided by N2H2.

Proprietary Content Updates. N2H2 will make available electronic updates of the Proprietary Content to Customer. Alternatively, updates may be provided as mutually agreed between the Parties.

On-Site Help Services. N2H2 will provide on-site help services on a pre-arranged contracted basis for an additional fee. Customer shall provide a representative who understands Customer's network and is technically capable of configuring routers and other equipment already in place on the network. Customer shall reimburse N2H2 for travel-related costs for on-site technical services at the then-current N2H2 rates for such services. The prices for on-site help services are subject to change without prior notice.
7. **Fees.** Customer shall pay for the Products and Services in accordance with the pricing schedule and payment terms set forth in Schedule A. Customer shall promptly notify N2H2 in writing each time additional Seats are connected to the network at the Location. The pricing and payment terms may be revised annually, before renewal of the Agreement, as provided in Section 8 below.
8. **Audit Rights.** N2H2, or a representative on their behalf, reserves the right to audit the actual number of Seats connected to the network at the Location, remotely or on-site during normal business hours. Customer will be invoiced and required to pay for any Seats not previously reported to N2H2.

9. **Term.** The initial term of this Agreement shall commence on the Agreement Date and continue for the period stated at the top of this Agreement (the "Initial Term").
10. **Termination.** In the event of a breach of this Agreement by Customer, N2H2 reserves the right immediately to terminate the Services and seek any other remedies available in law or in equity, including monetary damages, specific performance and/or injunctive relief.
11. **Ownership.** All trademarks, service marks, patents, copyrights, trade secrets and other proprietary rights in or related to the Products and Services are and will remain the exclusive property of N2H2 or its licensors, whether or not specifically recognized or perfected under applicable law. Customer will acquire no right in the Products or Services except the limited use rights specified in this Agreement.
12. **Confidentiality.** Customer shall not use or disclose Confidential Information except in connection with the performance of this Agreement or as otherwise provided under this Agreement. Customer shall not disclose Confidential Information except to employees, agents and contractors of Customer who have a need to know such Confidential Information for the performance of this Agreement and are obligated to use and disclose such Confidential Information only as permitted herein.

Benchmark Testing. Licensee may not disclose the results of any benchmark test of the hardware and/or software to any third party without the prior written approval of N2H2.


All Confidential Information shall remain the sole property of N2H2. Upon request, Customer shall promptly return to N2H2 all items, materials and copies of same in Customer's possession or control that contain any Confidential Information.

13. **WARRANTY.** N2H2 WARRANTS TO LICENSEE THAT DURING THE TERM OF THIS AGREEMENT, THE SOFTWARE WILL CONFORM TO ITS DOCUMENTATION AND SPECIFICATIONS WHEN USED IN COMPLIANCE WITH SUCH DOCUMENTATION, AND THE N2H2 FURNISHED HARDWARE WILL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP UNDER NORMAL USE. EXCEPT WHERE PROVIDED ABOVE, N2H2 PROVIDES THE PRODUCTS AND SERVICES "AS IS," WITH ALL FAULTS, AND DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE AND QUIET ENJOYMENT. THERE IS NO WARRANTY THAT THE PRODUCTS OR SERVICES WILL FULFILL CUSTOMER'S PARTICULAR NEEDS. CUSTOMER ASSUMES ALL RISK OF SATISFACTORY QUALITY, PERFORMANCE AND EFFORT.
14. **LIMITATION OF DAMAGES.** Under no circumstances will N2H2 or its officers, directors, employees, agents, licensors, representatives or resellers be liable for any consequential, indirect, special, punitive or incidental damages, whether foreseeable or unforeseeable, based on Customer's claims or those of any third party (including but not limited to claims for loss of data, goodwill, profits, use of money or use of the Products or Services, interruption in use or availability of data, stoppage of other work or impairment of other assets) arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, access to sites contained in the Proprietary Content that should have been blocked, the contents of any site in the Proprietary Content, negligence, strict liability in tort or otherwise, except only in the case of personal injury where and to the extent that applicable law requires such liability. In no event will the total liability of N2H2 hereunder exceed the fees actually paid by Customer to N2H2 under this Agreement.

WITHOUT LIMITING THE FOREGOING, THE PARTIES AGREE THAT IF ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.

- 15. **Notice.** All notices and other communications under or in connection with this Agreement shall be in writing and shall be deemed given: (a) if delivered personally (including by overnight express or messenger), upon delivery; (b) if delivered by registered or certified mail (return receipt requested), upon the earlier of actual delivery or three days after being mailed; or (c) if given by telecopy, upon confirmation of transmission by telecopy, in each case to the parties at the addresses first written above.
- 16. **Force Majeure.** Neither Party will be in default or liable for breach of this Agreement in the event that such Party is unable to perform its obligations under this Agreement due to strikes, labor disturbances, lockout, riot, fire, flood, outside electrical failure, outside telecommunications facilities failure, computer virus, act of God or the public enemy, or other cause that is similarly beyond their reasonable ability to control, except with regard to a failure or delay in the performance of payment obligations hereunder, which shall not be excused by this Section.
- 17. **Publicity.** N2H2 shall have the right to use Customer's name in press releases and customer lists for referral or promotional purposes. Customer may use N2H2's name in press releases announcing that Customer uses the Services, provided Customer gives N2H2 prior written notice.
- 18. **Assignment** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Customer may not assign its rights under this Agreement or attempt to do the same without the prior written consent of N2H2, except that Customer may assign this Agreement to an Affiliate with prior written notice to N2H2.
- 19. **Release and Waiver.** CUSTOMER HEREBY EXPRESSLY WAIVES AND RELEASES, AND COVENANTS NOT TO SUE N2H2 FOR, ANY RIGHT TO RECOVER LOSSES, DAMAGES, OBLIGATIONS, LIABILITIES OR EXPENSES ON ACCOUNT OF ANY PRIOR AGREEMENTS BETWEEN THE PARTIES.
- 20. **Miscellaneous.** If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement. This Agreement will be governed by the laws of the State of Washington. Any action arising out of or relating to this Agreement must be brought in the appropriate state or federal court sitting in King County, Washington, and the Parties submit to the jurisdiction of such courts. This Agreement (including the attached Schedules) constitutes the entire agreement between the Parties, and supersedes all prior and contemporaneous communications, understandings or agreements, whether oral or written, with respect to the subject matter hereof. Except as set forth in Sections 6 and 8 (regarding pricing changes), no waiver, amendment or modification or any provision of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver, amendment or modification is sought to be enforced. Section headings are used in this Agreement for convenience of reference only and shall not affect the meaning of any provision of this Agreement. Nothing in this Agreement shall be construed as creating a partnership, joint venture or agency relationship or granting a franchise.

N2H2, INC.  
 Signature: \_\_\_\_\_  
 Print name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

NASSAU COUNTY PUBLIC LIBRARY  
 Signature:   
 Print name: MARIANNE MARSHALL  
 Title: Chairman, Nassau County Board of County Commissioners  
 Date: November 26, 2001

**SCHEDULE A**  
**PRODUCTS AND PRICING FOR NASSAU COUNTY PUBLIC LIBRARY**

**I. PRODUCT DELIVERY METHOD**

Full Service (Schedule A)  
 EQUIPMENT LOCATION: 25 N. 4<sup>th</sup> Avenue, Fernandina Beach, FL 32034-4123  
 Software and/or Proprietary Content (Schedule A)

**II. SERVICES**

**Full Service:** Technical Support will be offered during regular business hours, defined as Monday through Friday, from 5:00 a.m. to 5:00 p.m. (PST). For critical issues affecting the Services, on-call technical support will be available 24 hours per day, 7 days per week.

**III. PRODUCTS, PRICING & TERMS**

Qty	Prod #	Description	Sales Type	Licensed Units	Payment Terms	Unit Price	Discount	Discount Price	Extended Price
1 year	1012	Standard Server Monthly Filtering Svc Subscription	Renewal	50	Annually Quarterly	\$1,320.00	\$0.00	\$0.00	\$1,320.00
1 year	1013	Standard Server Annual Maintenance	Renewal		Annually	\$1,200.00	\$0.00	\$0.00	\$1,200.00

Discount Total **\$0.00**

*All prices are in US Dollars (USD).*

**Agreement Total \$2,520.00**

All fees are due upon commencement of the Services, unless otherwise specified above. N2H2 will invoice Customer for all applicable fees, and Customer shall pay all invoices upon receipt (current terms are net 20). Any amounts more than 30 days past due shall accrue interest on a daily basis pro rata, at the rate of 1.5% per month.

**For N2H2 Internal Administrative Use Only:**

<b>Billing Contact:</b> Dawn Bostwick – Accounts Payable	<b>Date:</b> 10/1/01 – 9/30/02	<b>Online Date:</b> Renewal
<b>Billing Address:</b> 25 N. 4 <sup>th</sup> Street Fernandina Beach, FL 32034-4123	<b>Flexi ID #:</b> 02040-00000	<b>Sales Representative:</b> Brandon Swanson
<b>Email Address:</b> dawn@nassau.lib.fl.us	<b>Customer Type:</b> Library	<b>Dept#:</b> 30
<b>Phone:</b> (904) 277-7367 <b>Fax:</b> (904) 277-7366	<b>Channel:</b> Direct	<b>PO#/Amount:</b>

**RECURRING INVOICE INFORMATION**

<i>Recurring Skeleton</i>	
<i>Skeleton Start Date</i>	
<i>Skeleton End Date</i>	
<i># of Skeletons</i>	
<i>Recurring Amt</i>	
<i>Def Rev Acct</i>	
<i>Rev Acct</i>	

**INITIAL INVOICE INFORMATION**

<i>Invoice #</i>	
<i>Invoice Date</i>	
<i>Invoice Amt</i>	
<i>Def Rev Skeleton Name</i>	
<i>Def Rev Skeleton Start</i>	
<i>Def Rev Skeleton End</i>	
<i># of Skeletons</i>	
<i>Def Rev Acct</i>	
<i>Revenue Acct</i>	
<i>Posting Date</i>	

Agenda Request For: November 26, 2001  
 Department: Library  
 Fund: General Fund

Action requested and recommendation:  
 Review and sign Products & Service Agreement for N2H2. N2H2 is the company that operates BESS software. The software is our Internet filtering system. Filtering required for CIPA and E-Rate Grant funds.

Funding Source: General Fund

Financial/Economic Impact to Future Years Budgeting Process or Effect on Citizens:  
 E-Rate grant funds significantly reduce cost of Library Internet access to residents.

Is this action consistent with the Nassau County Comprehensive Land Use Plan?  
 NA

Reviewed by:

Legal

Finance

Coordinator

OCT 19 2001 11:11  
 OCT 19 2001 11:13



**NASSAU COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**  
 P.O. Box 1010  
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**VIA FACSIMILE 491-3618**

**MEMORANDUM**

JOSEPH M. "Chip" OXLEY, JR.  
 Ex-Officio Clerk

MICHAEL S. MULLIN  
 County Attorney

WALTER D. GOSSETT  
 County Coordinator

**TO:** Mike Mullin, County Attorney  
**FROM:** Walt Gossett, County Coordinator  
**SUBJECT:** Library Agenda Item  
**DATE:** November 19, 2001

Dictated but not proof read by  
 Walt Gossett - Mailed in his  
 absence to avoid delay. *Wm*

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I am in receipt of the attached agenda item for November 26th. Please review it for the legal requirements, make comments (if necessary), initial and return to my office. Thank you.

(904) 225-2610 Board Room; 321-5782, (800) 789-6673

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