

ITEMS FOR DISCUSSION AND ACTION\ACADEMIC AND PERSONNEL

November 14, 2019

ACTION: **Approve Memorandum of Understanding with Virtual Education Software Inc for Chadron State College**

The Memorandum of Understanding between Virtual Education Software, Inc. (VESI) and Chadron State College supports collaboration opportunities for CSC to provide undergraduate and graduate level continuing education/professional development course credit with VESI. Chadron State respectfully requests approval of this Memorandum of Understanding.

Board Policy 7015 requires Board action for approval of all academic agreements.

The System Office and Chadron State College recommend approval of the Memorandum of Understanding with Virtual Education Software Inc for Chadron State College.

ATTACHMENTS:

- CSC VESI MOU (PDF)

**MEMORANDUM OF UNDERSTANDING
BETWEEN
VIRTUAL EDUCATION SOFTWARE, INC.
AND
THE BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES D.B.A. CHADRON STATE COLLEGE**

This MOU is made by and between the Board of Trustees of the Nebraska State Colleges doing business as Chadron State College ("CSC"), and Virtual Education Software, Inc. ("VESI") of Spokane, WA.

INTENT OF MOU: It is the intent of CSC and VESI to collaborate to provide CSC undergraduate and graduate-level continuing education/professional development credit for courses offered by VESI.

EFFECTIVE DATE: This MOU shall be in effect from November 31, 2019 to November 30, 2020.

COURSES: All courses will be developed and taught by VESI, and remain the sole property of VESI. Within any applicable governmental or accreditation approvals or regulations, CSC will offer undergraduate and graduate-level continuing education/professional development credit for all CSC-approved VESI courses. CSC makes no claim that VESI courses can be applied to any degree program.

COURSE APPROVAL: After reviewing course syllabi provided by VESI, and providing the courses meet established CSC standards, CSC will approve courses for appropriate undergraduate and/or graduate-level continuing education semester credit.

INSTRUCTORS & EVALUATORS: All instructors/evaluators will be hired by and be the responsibility of VESI. All instructors/evaluators teaching undergraduate courses will hold a minimum of a master's degree with at least eighteen (18) graduate credit hours in the content area of instruction. All instructors/evaluators teaching graduate courses must hold a terminal degree.

REGISTRATION: Students will register for VESI courses directly with CSC and CSC will collect all course fees. CSC will send VESI an electronic request via email with the appropriate student information required for registration. CSC will be responsible for managing student inquiries regarding registration, tuition payment, refunds, transcripts, and course-switching or course-extension requests.

COURSE DELIVERY: Upon receipt of the student registration, VESI will process the order within 1-2 business days and will fulfill all orders by providing the student with all necessary course materials. Course materials that cannot be delivered electronically will be sent out via priority mail.

CUSTOMER SERVICE: Upon receipt of the course order from CSC, VESI will provide all customer services related to order fulfillment, instruction and evaluation. CSC will notify VESI of students switching courses or requesting additional time to complete a course.

COURSE CANCELLATIONS: All course registration cancellations will be handled by CSC and communicated to VESI. All refunds will be the responsibility of CSC and will follow established CSC refund policies. Retrieval of any course materials is the responsibility of VESI.

GRADES & TRANSCRIPTS: Following established CSC guidelines, final course grades will be transcribed by CSC with appropriate semester credit using CSC's undergraduate or graduate-level continuing education course designation. Upon request, CSC will send transcripts to the student.

GRADE REPORTING: Once a course has been completed and evaluated, VESI will report the grade to CSC.

MARKETING: VESI will have permission to use the name “Chadron State College”, the trademark “CSC”, or the CSC logo in the list of partner universities on the VESI website for the duration of the MOU. CSC is solely responsible for marketing approved VESI courses and for determining the marketing resources it will use. When appropriate, CSC will include the VESI logo and course descriptions in print materials and CSC website locations. VESI acknowledges that, except for the permission granted herein, it has no right or interest in any of CSC’s trademarks or copyrights and will not represent that it has such rights. Upon termination of this MOU, regardless of the reasons, the permission granted herein will automatically terminate and VESI will no longer be authorized to use the CSC name or logo. CSC recognizes the same policy applies to VESI trademarks and copyrights.

CONSIDERATION: Within twenty-one (21) days after registration has been closed for the term, VESI will invoice CSC in the amount of \$140 per credit hour, per registrant. Upon receipt of invoice from VESI, CSC will initiate payment.

PROMPT PAYMENT ACT: In the event any amount due under this MOU remains unpaid for forty-five (45) days after the due date, the unpaid amount shall bear interest from the 31st day after the due date at the rate specified in the Prompt Payment Act, Neb. Rev. Stat. §§81-2401 to 81-2408.

INDEPENDENT CONTRACTOR: VESI shall be an independent contractor and not a College employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime payments, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any Nebraska revenue and taxation law, Nebraska workers’ compensation law and Nebraska unemployment insurance law.

VESI agrees that it is a separate and independent enterprise from CSC, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it shall utilize a high level of skill necessary to perform the work. This MOU shall not be construed as creating any partnership, joint venture, or joint employment relationship between VESI and CSC, and CSC shall not be liable for any obligation incurred by the VESI, including but not limited to unpaid minimum wages or overtime premiums. If VESI has employees or subcontractors, VESI further agrees to maintain at least the prescribed minimum workers’ compensation insurance coverage for all of the VESI’s employees for the duration of this MOU. VESI agrees to furnish CSC proof of workers’ compensation insurance coverage upon request.

LIABILITY INSURANCE REQUIREMENTS: *One box below must be selected and marked.*

- ☐ VESI is required to carry liability insurance in the amount of one million dollars (\$1,000,000) per occurrence with a five million dollar (\$5,000,000) umbrella. VESI’s insurance policy shall be primary and non-contributory. CSC shall be named as an additional insured party on the policy and the certificate of insurance shall reflect that the policy waives its right of subrogation against CSC. A copy of the certificate shall be provided to CSC.
- ☐ VESI is required to carry liability insurance in the amount of one million dollars (\$1,000,000) per occurrence with a three million dollar (\$3,000,000) umbrella. VESI’s insurance policy shall be primary and non-contributory. CSC shall be named as an additional insured party on the policy and the certificate of insurance shall reflect that the policy waives its right of subrogation against CSC. A copy of the certificate shall be provided to CSC.
- ☐ VESI is required to carry liability insurance in the amount of one million dollars (\$1,000,000) per occurrence. VESI’s insurance policy shall be primary and non-contributory. CSC shall be named as an additional insured party on the policy and the certificate of insurance shall reflect that the policy waives its right of subrogation against CSC. A copy of the certificate shall be provided to CSC.

- ☐ VESI is not required to carry liability insurance as a condition of this MOU.

NEW EMPLOYEE WORK ELIGIBILITY STATUS: - One box below must be selected and marked.

- ☒ Employee Work Eligibility Status. VESI is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
- ☐ VESI is an individual or sole proprietorship. VESI must complete the "United States Citizenship Attestation Form," available on the Department of Administrative Services website at http://das.nebraska.gov/lb403/attestation_form.pdf. If VESI indicates on such attestation form that he or she is a qualified alien, VESI agrees to provide US Citizenship and Immigration Services (USCIS) documentation required to verify VESI's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. *The attestation form and USCIS documents (if applicable) must be attached to the MOU.*

VESI understands and agrees that lawful presence in the United States is required and VESI may be disqualified or the MOU terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

NON-DISCRIMINATION: VESI agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended, the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, as amended, and Board Policy 5000 in that there shall be no discrimination against any employee who is employed in the performance of this MOU, or against any applicant for such employment, because of age, color, national origin, race, religion, disability, sex, sexual orientation, or gender identity. This provision shall include, but not be limited to employment, promotion, demotion, transfer, recruitment, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. VESI further agrees to insert a similar provision in all subcontracts for services allowed under this MOU.

ADA & DRUG-FREE WORKPLACE REQUIREMENTS: All provisions of this MOU are subject to the Americans with Disabilities Act (ADA). Further, VESI certifies that it operates a drug-free workplace and, during the term of this MOU, will be in compliance with the provisions of the Drug-Free Workplace Act of 1988.

PARTIES; SUBCONTRACTORS; ASSIGNMENT: References to VESI and the CSC include the parties' officers, employees, agents, and independent contractors and subcontractors. VESI agrees that no subcontractors shall be utilized in the performance of this MOU without the prior written authorization of CSC. VESI agrees not to assign or transfer any interest, rights, or duties in this MOU to any person, firm, or corporation without prior written consent of CSC.

RELATIONSHIP OF PARTIES: No agent, employee, representative, or subcontractor of either party shall be deemed to be an agent, employee, representative, or subcontractor for the other party. Each party will be solely responsible at all times for its acts and the acts of its agents, employees, representative, or subcontractor.

TERMINATION OF MOU: So that VESI can maintain the integrity and consistency of their programs, CSC will give VESI a six month advanced notice in writing if CSC should decide to terminate this MOU, and will allow current

registrants for CSC credit to finish their course(s) within normal CSC timelines. Should VESI decide to terminate this MOU, it will afford CSC the same six months advanced written notice.

UNAVAILABILITY OF FUNDING: Due to possible future reductions in state and/or federal appropriations, CSC cannot guarantee the continued availability of funding for this MOU beyond the current fiscal year. In the event funds to finance this MOU become unavailable either in full or in part due to reductions in appropriations for a future fiscal year, CSC may terminate the MOU or reduce the consideration by notice in writing to VESI. The notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. CSC shall be the final authority as to the availability of funds. The effective date of MOU termination or reduction in consideration shall be the actual effective date of the elimination or reduction of appropriations. In the event of a reduction in consideration, VESI may cancel this MOU as of the effective date of the proposed reduction by written notice to CSC.

COMPELTE AGREEMENT; GOVERNING LAW; AMENDMENT: This MOU sets forth the entire agreement of the parties and supersedes all prior negotiations, discussions, and proposals. There are no promises, understandings, or agreements of any kind pertaining to this MOU other than those stated herein. This MOU will be construed, interpreted, governed and enforced under the laws of the State of Nebraska. This MOU may be amended at any time in writing upon the agreement and signature of both parties.

CONFIDENTIALITY: VESI acknowledges that performance under the terms of this MOU may involve receipt of user data from CSC. VESI will utilize user data from CSC only in the furtherance of this MOU. VESI will notify CSC within twenty-four (24) hours of becoming aware of any data breach of its systems which expose confidential CSC user data. VESI will reimburse CSC for any and all expenses incurred by CSC as a result of a data breach of VESI's systems.

If the user data consists of confidential student information protected by The Family Educational Rights and Privacy Act (FERPA) VESI agrees and acknowledges that VESI is acting as an officer of CSC for the purposes of this MOU as defined by Nebraska State College Board Policy 3650 (at the time of this writing available at: https://www.nscs.edu/directory_record/45/3650_student_records) and will take necessary steps to safeguard the confidential student information.

VESI further acknowledges the obligation and agrees to comply with the General Data Protection Regulation (GDPR) privacy laws in regard to the collection, processing, storage, security, management, transfer and erasure of user data.

AUTHORIZATION & REPORTING: It is the sole responsibility of CSC to obtain and maintain any and all approvals needed to offer VESI courses for undergraduate and graduate credit. CSC is responsible for any applicable IRS Form 1098-T reporting required by law as it relates to MOU. CSC assumes full responsibility for operating in accordance with existing state and federal laws governing student registrations for credit and reporting.

NOTICES: All notices, demands, requests, or other communications required to be given or sent by either party will be in writing and will be mailed by first-class mail or transmitted by facsimile or e-mail addressed as follows:

Virtual Education Software, Inc.
Attention: Jeanette Nash
16201 East Indiana Avenue Suite 1450
Spokane, WA 99216
Fax: 509-926-7768
E-mail: jeanette_nash@virtualeduc.com

Chadron State College
Attention: Tamara Toomey
1000 Main St., Crites Hall Rm 225
Chadron, NE 69337
Fax: 308-432-6424
Phone: 1-308-432-6210
ttoomey@csc.edu

Each party may designate a change of address by notice in writing. All notices, demands, requests, or communications that are not hand-delivered will be deemed received three days after deposit in the U.S. Mail, postage prepaid; or upon confirmation of successful facsimile transmission.

NON-EXCLUSIVITY: This MOU does not imply exclusivity on the part of either party, meaning that VESI may maintain similar working partnerships with other universities and colleges and CSC may maintain working relationships with other providers of continuing education courses/programs. Signatures, where indicated, shall constitute an agreement to terms and conditions between the parties.

FORCE MAJEURE: Neither party to this MOU will be liable to the other party for delays in performing the responsibilities, or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of government authorities, extraordinary weather conditions or other natural catastrophes, or any other causes beyond the reasonable control of either party.

SEVERABILITY AND SURVIVAL: If any one or more of the provisions of this MOU are found to be invalid, illegal, or unenforceable in any way, the validity, legality, and enforceability of the remaining provisions will not be affected.

GOVERNING LAW: This MOU shall be governed in all respects, by the laws of the State of Nebraska.

DESIGNATED CSC REPRESENTATIVE: The designated CSC representative for purposes of monitoring and oversight of this MOU is: Tamara Toomey, ttoomey@csc.edu, 308-432-6210.

PARTY SIGNATURES:

Virtual Education Software, Inc.

Signature

Date

Title

Printed Name

Chadron State College

Signature

Date

Title

Printed Name

The Board of Trustees of the Nebraska State Colleges

Signature

Date

Title

Printed Name

United States Citizenship Attestation Form

For the purpose of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

I am a citizen of the United States.

— OR —

I am a qualified alien under the federal Immigration and Nationality Act, my immigration status and alien number are as follows: _____, and I agree to provide a copy of my USCIS documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete, and accurate and I understand that this information may be used to verify my lawful presence in the United States.

6