

ITEMS FOR CONSENT AGENDA

April 23, 2020

ACTION: **Approve Memoranda of Understanding with Virtual Education Software and Learners Edge for Wayne State College (AP)**

Wayne State requests permission to renew its partnerships with Virtual Education Software, Inc. and Learners Edge to offer graduate education courses through Wayne State College. WSC has worked with both companies for a number of years in offering continuing education courses for teachers.

The System Office and Wayne State College recommend approval of the Memoranda of Understanding with Virtual Education Software and Learners Edge for Wayne State (AP).

ATTACHMENTS:

- WSC Memorandum of Understanding - Virtual Education Software Inc (PDF)
- WSC Memorandum of Understanding - Learners Edge (PDF)

MEMORANDUM OF UNDERSTANDING

Between

The Board of Trustees of the Nebraska State Colleges doing business as Wayne State College & Virtual Education Software Inc.

It is the intent of the Board of Trustees of the Nebraska State Colleges doing business as Wayne State College (WSC) and Virtual Education Software Inc. (VESi), a Nevada Corporation, to partner in a collaborative partnership to offer graduate continuing education courses through WSC. The items contained in this Memorandum of Understanding (MOU) establish the roles and expectations for this partnership.

EFFECTIVE DATE: This MOU shall be in effect from August 1, 2020 to July 31, 2023.

COURSES: All courses will remain the sole property of VESi. Within applicable governmental or accreditation approvals or regulations, WSC will offer graduate-level continuing education credit for all WSC-approved VESi courses. WSC makes no claim that VESi courses can be applied to any degree program.

COURSE APPROVAL: VESi will submit syllabi to WSC for review. Provided the courses meet established WSC standards, approval for graduate continuing education semester credit will be given.

INSTRUCTORS & EVALUATORS: All instructors/evaluators will be hired by and be the responsibility of VESi. All instructors/evaluators will hold the minimum of a Master's Degree.

INDEPENDENT CONTRACTOR: VESi shall be an independent contractor and not a WSC 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 worker's compensation law and Nebraska unemployment insurance law. VESi agrees to maintain at least the prescribed minimum worker's compensation insurance coverage for all employees for the duration of this MOU. Legal determination of employee status versus independent contractor status is at the discretion of VESi and solely their responsibility.

NEW EMPLOYEE WORK ELIGIBILITY STATUS:

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

REGISTRATION: Students will register for VESi courses directly with WSC and WSC will collect all course fees. WSC will send VESi an electronic spreadsheet of the required student registration information each Friday during the registration period. Registrants have fourteen (14) days to drop class or choose a different course. WSC will be responsible for handling student inquiries regarding registration, tuition payment, refunds, transcripts, etc.

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.

CUSTOMER SERVICE: Upon receipt of the course order from WSC, VESi will provide all customer service related to order fulfillment, instruction and evaluation and extensions and requests for course switching. VESi will notify WSC of students switching courses or requesting additional time to complete a course.

COURSE CANCELLATIONS: All course cancellations will be handled by WSC and communicated to VESi. WSC will be responsible for issuing all refunds to students.

GRADES & TRANSCRIPTS: Following the established guidelines of WSC, grades for the courses will be transcribed in semester credit at the graduate continuing education level. Upon request, WSC will send transcripts to the student.

GRADE REPORTING: Upon receipt of completed course work, VESi will grade the work within a reasonable amount of time (generally one to two weeks) following WSC grading system. VESi will submit a completed grade report to WSC Office of Distance & Continuing Education weekly as needed.

MARKETING: VESi will have permission to use the name “Wayne State College”, or the trademark “WSC” and logo which will be included with other “private” academic partners on the VESi website. VESi will make a good-faith attempt to avoid advertising the availability of courses through institutions other than WSC in the WSC service area – namely northeast Nebraska. WSC recognizes that they are solely responsible for marketing these courses, and will include the VESi logo, when appropriate, in course listings/descriptions in appropriate print materials including course catalogs etc. and will also place the same in appropriate places on the WSC website. At their discretion, WSC will also communicate offerings to their customer base via print or electronic communication. VESi acknowledges that, except for the license granted herein, it has no right or interest in any of WSC’s trademarks or copyrights and will not represent that it has such rights. Upon termination of this MOU, regardless of the reasons, the license granted herein will automatically terminate and VESi will no longer be authorized to use the WSC name or logo and WSC recognizes the same applies to VESi trademarks and copyrights.

PRICING: WSC will price VESi courses to students at the rates established annually by the Board of Trustees of the Nebraska State Colleges.

INVOICING AND PAYMENT: Three weeks (21 days) after registration has been closed for the term, VESi will invoice WSC in the amount of \$145 per registrant per course. 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.

FERPA: Both parties affirm that they will comply with the Family Educational Rights and Privacy Act for sharing student information.

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

TERMINATION OF MOU: Should either party decide to end the partnership, it will afford the other party a six month advance notice in writing. If this MOU is terminated, current registrants will be allowed to finish their course(s) within normal timelines for WSC credit.

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:

To Virtual Education Software Inc.:
Virtual Education Software Inc.
Attention: Mick Jackson
16201 E. Indiana Ave, Suite 1450
Spokane, WA 99216
Fax: (509) 926-7768, Phone: 509-891-7219
E-mail: mick@virtualeduc.com

To WSC:
Wayne State College – Distance & Continuing Education
Attention: Becky Keen
1001 College Way, PO Box 989
South Sioux City, NE 68776
Fax: 402-241-6440, Phone: 402-241-6546
E-mail: bekeen1@wsc.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 WSC 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.

LIABILITY INSURANCE REQUIREMENTS: VESi shall maintain liability insurance from a reputable insurance company acceptable to WSC as follows: VESi is required to carry liability insurance in the amount of one (1) million dollars per occurrence. VESi's insurance policy shall be primary and non-contributory. WSC 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 WSC. A copy of the certificate shall be provided to WSC.

ADA & DRUG-FREE WORKPLACE REQUIREMENTS: All provisions of this MOU are subject to the Americans with Disabilities Act (ADA). Further, VESi certifies that VESi 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.

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 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.

DESIGNATED WSC REPRESENTATIVE: The designated WSC representative for purposes of monitoring and oversight of this MOU is:

<u>Becky Keen</u>	<u>(402) 241-6546</u>	<u>bekeen1@wsc.edu</u>
Name	Telephone	Email Address

IN WITNESS WHEREOF, the parties have executed, or caused to be executed this MOU as of the date of the last signature below.

For: Virtual Education Software, Inc.

For: Board of Trustees of the Nebraska State Colleges
doing business as Wayne State College

Mick Jackson, President & Dean of Faculty (Date)
Virtual Education Software, Inc.

Angela Fredrickson, Vice President for (Date)
Administration & Finance, Wayne State College

Paul Turman, Chancellor

(Date)

MEMORANDUM OF UNDERSTANDING

Between

The Board of Trustees of the Nebraska State Colleges doing business as Wayne State College & Learners Edge

It is the intent of the Board of Trustees of the Nebraska State Colleges doing business as Wayne State College (WSC) and Learners Edge (LE), a Limited Liability Company, to partner in a collaborative partnership to offer graduate continuing education courses through WSC. The items contained in this Memorandum of Understanding (MOU) establish the roles and expectations for this partnership.

EFFECTIVE DATE: This MOU shall be in effect from August 1, 2020 to July 31, 2023.

COURSES: All courses will remain the sole property of LE. Within applicable governmental or accreditation approvals or regulations, WSC will offer graduate-level continuing education credit for all WSC-approved LE courses. WSC makes no claim that LE courses can be applied to any degree program.

COURSE APPROVAL: LE will submit syllabi to WSC for review. Provided the courses meet established WSC standards, approval for graduate continuing education semester credit will be given.

INSTRUCTORS & EVALUATORS: All instructors/evaluators will be hired by and be the responsibility of LE. All instructors/evaluators will hold the minimum of a Master's Degree.

INDEPENDENT CONTRACTOR: LE shall be an independent contractor and not a WSC 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 worker's compensation law and Nebraska unemployment insurance law.

NEW EMPLOYEE WORK ELIGIBILITY STATUS:

Employee Work Eligibility Status. LE 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.

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

REGISTRATION: Students will register for LE courses directly with WSC and WSC will collect all course fees. WSC will send LE an electronic spreadsheet of the required student registration information. WSC will be responsible for handling student inquiries regarding registration, tuition payment, refunds, transcripts, etc.

COURSE DELIVERY: Upon receipt of student registration, LE 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 WSC, LE will provide all customer service related to order fulfillment, instruction and evaluation and extensions and requests for course switching. LE will notify WSC of students switching courses or requesting additional time to complete a course.

COURSE CANCELLATIONS: All course cancellations will be handled by WSC and communicated to LE. LE will be paid a \$40 cancellation fee. WSC will be responsible for issuing all refunds to students.

GRADES & TRANSCRIPTS: Following the established guidelines of WSC, grades for the courses will be transcribed in semester credit at the graduate continuing education level. Upon request, WSC will send transcripts to the student.

GRADE REPORTING: Upon receipt of completed course work, LE will grade the work within a reasonable amount of time (generally one to two weeks) following WSC grading system. LE will submit a completed grade report to WSC Office of Distance & Continuing Education weekly as needed.

MARKETING: LE will have permission to use the name “Wayne State College”, or the trademark “WSC” and logo which will be included with other “private” academic partners on the LE website. WSC recognizes that they are solely responsible for marketing these courses and will include the LE logo, when appropriate, in course listings/descriptions in appropriate print materials including course catalogs etc. and will also place the same in appropriate places on the WSC website. At their discretion, WSC will also communicate offerings to their customer base via print or electronic communication. LE acknowledges that, except for the license granted herein, it has no right or interest in any of WSC’s trademarks or copyrights and will not represent that it has such rights. Upon termination of this MOU, regardless of the reasons, the license granted herein will automatically terminate and LE will no longer be authorized to use the WSC name or logo and WSC recognizes the same applies to LE trademarks and copyrights.

PRICING: WSC will price LE courses to students at the rates established annually by the Board of Trustees of the Nebraska State Colleges. WSC understands that should the LE advertised regular price exceed the WSC rate charged to students that LE may execute the Termination of MOU section of this MOU.

INVOICING AND PAYMENT: Three weeks (21 days) after registration has been closed for the term, LE will invoice WSC in the amount of \$100 per credit hour, per registrant. Invoices for \$40 per course for any course cancellations would also occur at this time. 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.

FERPA: Both parties affirm that they will comply with the Family Educational Rights and Privacy Act for sharing student information.

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

TERMINATION OF MOU: Should either party decide to end the partnership, it will afford the other party a six month advance notice in writing. If this MOU is terminated, current registrants will be allowed to finish their course(s) within normal timelines for WSC credit.

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:

To Learners Edge:
Learners Edge
Attention: Julie Yaeger
Grand Oak Business Park
2805 Dodd Road, Suite 200
Eagan, MN 55121
Fax: 952-469-2790, Phone 877-394-4930
E-mail: Julie.Yaeger@learnersedge.com

To WSC:
Wayne State College – Distance & Continuing Education
Attention: Becky Keen
College Center
1001 College Way, PO Box 989
South Sioux City, NE 68776
Fax: 402-241-6440, Phone: 402-241-6546
E-mail: bekeen1@wsc.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 LE may maintain similar working partnerships with other universities and colleges and WSC 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.

LIABILITY INSURANCE REQUIREMENTS: LE shall maintain liability insurance from a reputable insurance company acceptable to WSC as follows:

- a. LE agrees to maintain at least the prescribed minimum worker's compensation insurance coverage for all employees for the duration of this MOU. Legal determination of employee status versus independent contractor status is at the discretion of LE and solely their responsibility.
- b. LE is required to carry liability insurance in the amount of one (1) million dollars per occurrence. LE's insurance policy shall be primary and non-contributory. WSC 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 WSC. A copy of the certificate shall be provided to WSC.

ADA & DRUG-FREE WORKPLACE REQUIREMENTS: All provisions of the MOU are subject to the Americans with Disabilities Act (ADA). Further, LE certifies that LE 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.

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 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.

DESIGNATED WSC REPRESENTATIVE: The designated WSC representative for purposes of monitoring and oversight of this MOU is:

<u>Becky Keen</u>	<u>(402) 241-6546</u>	<u>bekeen1@wsc.edu</u>
Name	Telephone	Email Address

IN WITNESS WHEREOF, the parties have executed, or caused to be executed this MOU as of the date of the last signature below.

For: Learners Edge

For: Board of Trustees of the Nebraska State Colleges
doing business as Wayne State College

Julie Yaeger, Executive Vice President
Learners Edge LLC.

(Date)

Angela Fredrickson, Vice President for
Administration & Finance, Wayne State College

(Date)

Paul Turman, Chancellor

(Date)