

# ITEMS FOR DISCUSSION AND ACTION STUDENT AFFAIRS, MARKETING, AND ENROLLMENT

June 17, 2021

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**ACTION:** **Approve Contract with Skyfactor for Student Affairs Assessment for the Nebraska State Colleges**

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Board Policy 7015 requires that contracts for information technology products and services in excess of fifty thousand dollars (\$50,000) be approved by the Board. The Colleges request approval to enter into a contract with Skyfactor for a license to use its student affairs assessment suite.

A formal bid or Request for Proposal (RFP) process is not required for such contracts consistent with Board Policy 7010 which establishes approved exceptions to the bidding process including software licensing renewal. The contract will run from July 1, 2021 through June 31, 2024 at a cost of \$7,470 per each of the 3 colleges annually for a total of \$67,230.

The System Office recommends approval of the Contract for Student Affairs Assessment with Skyfactor for Nebraska State Colleges.

**ATTACHMENTS:**

- 2021-2024 Skyfactor Contract (PDF)

**Note: Contracts for Services are public records which are generally subject to statutory public disclosure and public website posting requirements.**

## CONTRACT FOR SERVICES

(Long Form)

Board of Trustees of the Nebraska State Colleges  
Chadron State, Peru State, and Wayne State Colleges

This Contract is made by and between the Board of Trustees of the Nebraska State Colleges (the "Board"), and Skyfactor (the "Contractor"). The Contractor and the Board agree as follows:

- Effective Date.** This Contract shall be in effect from July 1, 2021 to June 30, 2024.
- Services.** The Contractor agrees to provide Chadron State College, Peru State College and Wayne State College license to utilize the Benchworks Student Affairs Assessment Suite. The Benchworks Student Affairs Assessment Suite will include the option to utilize the following assessments:
  - Housing:**
    - ACUHO-I/Benchworks Resident Assessment ACUHO-I/Benchworks Student Staff Assessment ACUHO-I/Benchworks Apartment Assessment
    - ACUHO-I/Benchworks Canadian Resident Assessment ACUHO-I/Benchworks United Kingdom Resident Assessment AACUHO-I/Benchworks Australian Resident Assessment
  - Campus Climate:**
    - Benchworks Student Campus Climate, Safety & Sexual Assault Benchworks Faculty/Staff Campus Climate, Safety & Sexual Assault
  - First Year Initiative:**
    - Benchworks First-Year Seminar Assessment Benchworks Academic Advising Assessment Student Activities:
      - AFA/Benchworks Fraternity/Sorority Assessment ACUI/Benchworks College Union/Student Center Assessment ACUI/Benchworks Student Organization Leadership Assessment ACUI/Benchworks Student Activities Assessment ACUI/Benchworks Event Services Assessment
      - Benchworks Student Affairs Student Employee Assessment Benchworks Recreation Services Assessment
      - Benchworks Career Services Assessment Benchworks Counseling Services Assessment Benchworks Veterans Services Assessment Benchworks Disability Services Assessment

\*this list is subject to change
- Consideration.** For the services described above, the Board agrees to pay the Contractor \$7,470 per each of the three (3) colleges annually for a period of three (3) years for a total of \$67,230.
- Prompt Payment Act.** In the event any amount due under this Contract 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.** The Contractor shall be an independent contractor and not a Board 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.

The Contractor agrees that it is a separate and independent enterprise from the Board, 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 Contract shall not be construed as creating any

partnership, joint venture, or joint employment relationship between the Contractor and the Board, and the Board shall not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages or overtime premiums. If the Contractor has employees or subcontractors, the Contractor further agrees to maintain at least the prescribed minimum workers' compensation insurance coverage for all of the Contractor's employees for the duration of this Contract. The Contractor agrees to furnish the Board proof of workers' compensation insurance coverage upon request.

**Liability Insurance Requirements -**

The Contractor is not required to carry liability insurance as a condition of this Contract.

6. **Access to Records.** The Contractor agrees to maintain complete records regarding the expenditures of funds provided by the Board under this Contract. The Contractor agrees to allow authorized representatives of the Board, the Board, the funding Federal Agency, if any, and the United States Comptroller General, if appropriate, free access at reasonable times to all records generated or maintained as a result of this Contract for a period of three (3) years after the termination of this Contract.
7. **Non-Discrimination.** The Contractor 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 Contract, 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. The Contractor further agrees to insert a similar provision in all subcontracts for services allowed under this Contract.
8. **ADA & Drug-Free Workplace Requirements.** All provisions of this Contract are subject to the Americans with Disabilities Act (ADA). Further, the Contractor certifies that the Contractor operates a drug-free workplace and, during the term of this Contract, will be in compliance with the provisions of the Drug-Free Workplace Act of 1988.
9. **Debarment/Suspension Certification.** If this Contract involves the expenditure of federal funds in the amount of twenty-five thousand dollars (\$25,000) or more, the Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
10. **Use of Information; Property Ownership.** The Contractor agrees that any and all information gathered in the performance of this Contract, either independently or through the Board or the State College System, shall be held in the strictest confidence and shall be released to no one other than to the Board, without prior written authorization of the Board. The Contractor agrees that no authority or information gained through the existence of this Contract will be used to obtain financial gain for the Contractor, for any member of the Contractor's immediate family, or for any business with which the Contractor is associated except to the extent provided by this Contract.  
  
The Contractor further agrees that any tangible or intangible property, including patents, trademarks and other intellectual property, produced, developed, prepared, or created under the terms of this Contract shall be the property of the Board. The Contractor hereby assigns and transfers to the Board all right, title and interest in and to any copyright in any copyrightable materials produced under this Contract.
11. **Parties; Subcontractors; Assignment.** References to the Contractor and the Board include the parties' officers, employees, agents, and independent contractors and subcontractors. The Contractor agrees that no subcontractors shall be utilized in the performance of this Contract without the prior written authorization of the Board. The Contractor agrees not to assign or transfer any interest, rights, or duties in this Contract to any person, firm, or corporation without prior written consent of the Board.
12. **Cancellation.** This Contract may be canceled by either party upon thirty (30) days' written notice. Settlement of the amount due to the Contractor upon cancellation shall be negotiated between the parties based upon (a) specified deliverables completed by the Contractor and accepted and usable by the Board as of the date of termination when the Contractor initiates termination, or (b) the percentage of services performed by the Contractor as of the date of termination when the Board initiates termination.

13. **Default; Remedies.** Because the Board has purchased multiple years of services from Contractor in a single order, either the Board or Contractor may terminate the remaining term of services by providing written notice to the other party no later than June 30th, and such termination shall be effective at the end of the current academic year. Such early termination will result in a termination fee equal to twenty percent (20%) of the amount then outstanding on the Board's order for services and such termination fee shall be paid to Contractor by August 31st.
14. **Unavailability of Funding.** Due to possible future reductions in state and/or federal appropriations, the Board cannot guarantee the continued availability of funding for this Contract beyond the current fiscal year. In the event funds to finance this Contract become unavailable either in full or in part due to reductions in appropriations for a future fiscal year, the Board may terminate the Contract or reduce the consideration by notice in writing to the Contractor. The notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The Board shall be the final authority as to the availability of funds. The effective date of Contract 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, the Contractor may cancel this Contract as of the effective date of the proposed reduction by written notice to the Board.
15. **Complete Agreement; Governing Law; Amendment.** This Contract 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 Contract other than those stated herein. This Contract will be construed, interpreted, governed and enforced under the laws of the State of Nebraska. This Contract may be amended at any time in writing upon the agreement and signature of both parties.
16. **Technology Access.** All contracts, that include provisions of technology products, systems, and services, including data, voice, and video technologies, as well as information dissemination methods, shall comply with the Nebraska Technology Access Standards adopted pursuant to Neb. Rev. Stat. §73-205. These Standards are available for viewing on the Web at <https://nitc.nebraska.gov/standards/index.html>, and are incorporated into this Contract as if fully set forth herein.
17. **Confidentiality.** Contractor acknowledges that performance under the terms of this Contract may involve receipt of user data from the Board. Contractor will utilize user data from the Board only in the furtherance of this Contract. Contractor will notify Board within twenty-four (24) hours of becoming aware of any data breach of its systems which expose confidential Board user data. Contractor will reimburse the Board for any and all expenses incurred by the Board as a result of a data breach of Contractor's systems.

If the user data consists of confidential student information protected by The Family Educational Rights and Privacy Act (FERPA) the Contractor agrees and acknowledges that Contractor is acting as an officer of the Board for the purposes of this Contract as defined by Nebraska State Board Board Policy 3650 (at the time of this writing available at: <https://www.nscs.edu/policy-manual/detail/39-3650-student%20records>) and will take necessary steps to safeguard the confidential student information.

The Contractor 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.

18. **Designated Representative.** The designated Board representative for purposes of monitoring and oversight of this Contract is:

Angela Melton	402-471-2505	amelton@nscs.edu
Typed or Printed Name	Telephone	Email Address

19. Signatures.

**SKYFACTOR**

**BOARD OF TRUSTEES FOR  
NEBRASKA STATE  
COLLEGES**

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Signature

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Signature

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Printed Name

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Printed Name

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Title

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Title

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Date

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Date