

## ITEMS FOR DISCUSSION AND ACTION/FISCAL, FACILITIES AND AUDIT

June 17, 2021

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**ACTION:** **Bookstore Contract for Chadron State College - Revised**

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CSC has had an on-line bookstore contract with MBS Direct Corporation since July of 2016. That contract is up on June 30, 2021. For 2020-21, the College received a commission of 10% on sales of print course materials, 2% on digital course materials, and 20-25% commission on books purchased at wholesale during book buyback; plus \$2,500 in textbook scholarships. CSC has gone out to bid for an on-line bookstore provider. The Campus Bookstore Review Committee received proposals from Akademos, MBS Direct Services/Barnes and Noble College (MBS), eCampus, Ambassador Education Solutions, and Follett.

The five (5) bookstore proposals were all reviewed and scored based on their overall qualifications, textbook costs for students, customer service structure, textbook services, implementation plan, refund policies, buyback policies, commission proposal and conformance to the request for proposal specifications. MBS received the best score out of the five (5).

The terms of the contract include:

- Three (3) year initial term, with two (2) one (1) year renewals
- MBS will pay the school commissions of:
  - Eleven percent (11%) on print
  - Four percent (4%) on rental
  - Three percent (3%) on digital
  - Twenty percent (20%) on buyback wholesale titles
- MBS will provide two thousand five hundred dollars (\$2,500) for an annual academic materials scholarship fund

Upon approval the contract with MBS will be effective July 1, 2021 through June 30, 2024 with two (2) additional one (1) year renewals.

The System Office and Chadron State College recommend approval of the Bookstore Contract for Chadron State College.

**ATTACHMENTS:**

- Chadron State College Bookstore Contract (PDF)

### MBS Direct Services Agreement

<b>CUSTOMER INFORMATION</b>		
Customer Name: Board of Trustees of the Nebraska State Colleges dba Chadron State College	Program Served: <b>ALL</b>	
Contact Person: Kari Gaswick	Phone: <b>(308) 432-6202</b>	
Email: kgaswick@csc.edu		
Street Address: <b>1000 Main Street</b>		
City: Chadron	State: NE	ZIP: 69337
<b>BILLING INFORMATION</b>		
Contact Person: Tracy Sommerville	Phone: <b>(800) 242-6241</b>	
Email: tsommerville@csc.edu		
Street Address: <b>**SAME AS ABOVE**</b>		
<b>SERVICES TO BE PROVIDED</b>		
MBS Direct Online Bookstore service, as further described on <b>Exhibit A and Exhibit B</b> to this Agreement.		
Effective Date: <b>July 1, 2021</b>		
Term of Agreement: <b>3 Years with up to two (2) additional one (1) year terms for a maximum of five (5) years ending June 30, 2026</b>		
Fees/Commission: <b>Print Commission: 11%</b> <b>Rental Commission: 4%</b> <b>Digital Commission: 3%</b> <b>Buyback Commission: 20% on wholesale titles</b> <b>Scholarships: \$2,500</b> <b>Shipping Promotion: Free standard shipping on orders over \$59</b>		

*Internal Use Only:*

Account Number: 37878	Date:
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### MBS Direct Services Agreement

By signing below, this MBS Direct Services Agreement (“Agreement”) is hereby entered into as of the July 1, 2021 by and between MBS Direct, LLC (“MBS Direct”) and the Board of Trustees of the Nebraska State Colleges d.b.a. Chadron State College (“Customer”). The Agreement includes the above Customer Information Sheet, the attached MBS Direct Terms and Conditions, and all Order Form(s) and Exhibits A and B attached hereto, all of which are hereby incorporated by this reference.

*For MBS Direct, LLC*

*For the Board of Trustees of the Nebraska State  
Colleges d.b.a. Chadron State College*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
William J. Dampier  
Printed Name

\_\_\_\_\_  
Kari Gaswick  
Printed Name

\_\_\_\_\_  
EVP and General Manager  
Title

\_\_\_\_\_  
Vice President for Administration & Finance  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Dr. Paul Turman  
Printed Name

\_\_\_\_\_  
Chancellor  
Title

\_\_\_\_\_  
Date

## MBS Direct Terms and Conditions

- 1. MBS Direct Responsibilities.** Subject to Customer’s compliance with the provisions of this Agreement, MBS Direct will provide Customer with the services specified in the Order Form and further described in Exhibits A and B (collectively, the “Services”) during the Term (as defined below).
- 2. Customer Responsibilities.** Customer shall perform those obligations set forth in the Agreement that are specified as being Customer’s responsibility and otherwise cooperate with MBS Direct as requested to enable the provision of the Services. In addition to any obligations set forth in the Exhibits, Customer is also responsible for validating a student’s right for a voucher sale and the establishment of a student credit limit for that voucher sale (Customer assumes all responsibility for any fraudulent use of vouchers by students).
- 3. Fees; Payment.** Customer must pay all invoices issued under this Agreement in U.S. dollars and no more than thirty (30) days from the invoice date. In the event any amount due under this Agreement 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. If invoices remain unpaid after sixty days, MBS Direct may suspend Services and/or withhold commissions as provided in the Exhibits until past due amounts are paid. After invoices are paid, MBS Direct will release held commissions within 30 days. Customer shall pay when due, or shall reimburse MBS Direct for its payment of, all taxes, fees or assessments of whatever kind or nature now or hereafter imposed by any governmental authority upon any Services (excluding taxes based upon MBS Direct’s income), and any taxes paid by MBS Direct to, or on behalf of, any of its service providers. Timely payment of amounts owed MBS Direct is a condition precedent to all of MBS Direct’s obligations under this Agreement.
- 4. Customer Data.** MBS Direct shall maintain commercially reasonable physical and logical security measures to maintain the security of the Services and any Customer data, including physical access controls, intrusion detection, off-site backup, and the use of firewalls and virus detection software designed to prevent unauthorized access to the Services and such data.

To the extent MBS Direct receives education records from Customer under this Agreement, MBS Direct shall comply with applicable state and federal laws and regulations, including the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”). For the avoidance of doubt, Customer is solely responsible for complying with FERPA’s requirements with respect to annual notification of rights to its students.

**5. Term; Termination.**

**a. Term.** The term of this Agreement will commence on the July 1, 2021 and continue until June 30, 2024, unless earlier terminated by either party as permitted in this Agreement (the “Initial Term”). This Agreement will automatically renew upon the end of the Initial Term for up to two (2) additional one (1) year terms (each a “Renewal Term” and together with the Initial Term, the “Term”) unless either party provides the other party written notice of its intent not to renew at least one hundred twenty (120) days prior to the end of the Initial Term or the then-current Renewal Term for a maximum of five (5) years ending June 30, 2026.

**b. Termination.**

(i) **Termination for Material Breach.** Either party may terminate the Agreement if the other party fails to cure a material breach of the Agreement within thirty (30) days of written notice from the non-breaching party describing the breach.

(ii) **Termination For Convenience.** During any Renewal Term, MBS Direct or Customer may terminate for any reason or no reason upon one hundred twenty (120) days written notice to Customer.

**c. Effect of Termination; Survival.** Upon the expiration or termination of this Agreement for any reason, all rights and obligations of the parties hereunder will terminate except (i) outstanding payment obligations, which will immediately become due and (ii) the rights and obligations under Sections 3, 4, 5.c, 6, 7, 8, 11, 12 and 13 will survive.

**6. Indemnification.**

**a. By Customer.** Customer, to the extent permitted by applicable law, will indemnify, defend, and hold harmless MBS Direct and its affiliates, and each of their directors, officers, members, employees, agents, and contractors (collectively, "MBS Direct Indemnified Parties"), from and against all claims, demands, suits, settlements, damages, losses, costs (including reasonable attorney's fees), expenses and proceedings (collectively, "Claims") made or brought against an MBS Direct Indemnified Party by a third party alleging (i) that any Customer-provided materials, or the MBS Direct Indemnified Party's use thereof, violates, infringes or misappropriates such third party's intellectual property (including moral), contractual, privacy, publicity, personality or other rights or violates applicable law; (ii) a material breach of this Agreement by Customer; (iii) Customer's gross negligence or willful misconduct; or (iv) violation of the law by Customer, except to the extent such Claim is caused by MBS Direct.

**b. By MBS Direct.** MBS Direct will indemnify, defend, and hold harmless Customer against all Claims made or brought against Customer by a third party alleging (i) the Service violates, infringes or misappropriates such third party's intellectual property rights; (ii) a material breach of this Agreement by MBS Direct; (iii) MBS Direct's gross negligence or willful misconduct; or (iv) violation of the law by MBS Direct (each of (i)-(iv), a "Claim Against Customer"). If MBS Direct receives information about an infringement or misappropriation claim related to the Service, MBS Direct may in its sole and absolute discretion and at no cost to Customer (w) modify the Service so that it no longer infringes or misappropriates, (x) obtain a license to continue use of the Service, (y) use a different Service with materially similar functionality, or (z) terminate this Agreement in accordance with the terms hereof. Notwithstanding the foregoing, MBS Direct will have no obligations under this Section 6 or any liability to the extent the Claim Against Customer arises from (1) content, software or materials provided by Customer or a third party selected by Customer, (2) the combination of such Customer content, software, or materials with the Service, (3) misuse, abuse or modification of Service by Customer or other use by Customer of the Service not permitted by this Agreement, (4) customization of the Service at Customer's instruction, or (5) Customer's breach of this Agreement. MBS Direct's obligations in this paragraph are its sole obligations, and Customer's sole remedy, for any third-party claim against Customer related to the Service.

**c. Procedure.** The party entitled to indemnification (the "Indemnified Party") shall promptly notify the party obligated to provide such indemnification (the "Indemnifying Party") of any Claim for which the Indemnified Party seeks indemnification. The Indemnifying Party shall promptly and diligently conduct the defense or settlement of any such Claim at the Indemnifying Party's sole expense, and the Indemnified Party shall cooperate with the Indemnifying Party at the Indemnifying Party's sole expense. The Indemnified Party shall have the right to participate in such defense at its own expense. The Indemnifying Party shall keep the Indemnified Party fully advised with respect to the Claim. The Indemnifying Party shall not settle, compromise, or otherwise enter into any agreement regarding the disposition of any Claim against the Indemnified Party without the prior written consent of the Indemnified Party unless such settlement, compromise or disposition (i) provides for a complete and unconditional release of the Indemnified Party with respect to the Claim, (ii) does not include a statement as to, or an admission of, fault, culpability or failure to act by or on behalf of the Indemnified Party, and (iii) does not impose any ongoing payment obligation on the Indemnified Party. The indemnification obligations in this Section 6 shall not be limited by any limitation on the amount or type of damages available or awarded to the Indemnified Party, or by any coverage provided by any insurance policy of the Indemnifying Party and regardless of whether such policy is required by this Agreement.

**7. Disclaimer.** MBS DIRECT DOES NOT MAKE ANY REPRESENTATION, WARRANTY OR GUARANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND MBS DIRECT, ON BEHALF OF ITSELF AND ITS AFFILIATES, THIRD-PARTY PROVIDERS AND LICENSORS, PROVIDES THE SERVICES "AS-IS" AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR

PURPOSE, SECURITY, QUALITY, TITLE, AND NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NO WARRANTY WILL ARISE FROM A COURSE OF DEALING OR TRADE CUSTOM. MBS DIRECT DOES NOT REPRESENT OR WARRANT THAT (A) THE SERVICES WILL BE CONTINUOUSLY AVAILABLE, ERROR-FREE, VIRUS-FREE, ACCURATE, COMPLETE, OR COMPLETELY SECURE. MBS DIRECT WILL NOT BE LIABLE IN ANY WAY RELATED TO ANY THIRD-PARTY WEBSITES OR THIRD-PARTY CONTENT, DATA, APPLICATIONS OR SYSTEMS.

**8. Limitation of Liability.** NEITHER MBS DIRECT NOR ITS AFFILIATES, THIRD-PARTY PROVIDERS OR LICENSORS WILL BE LIABLE UNDER THIS AGREEMENT FOR ANY LOST INCOME, LOST PROFITS, LOST DATA OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, HOWEVER ARISING, REGARDLESS OF WHETHER THE CLAIM IS BASED ON TORT (INCLUDING NEGLIGENCE), CONTRACT, BREACH OF WARRANTY OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER THE LOSS OR DAMAGES WERE FORESEEABLE, AND EVEN IF MBS DIRECT OR ITS AFFILIATE, THIRD-PARTY PROVIDER OR LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. MBS DIRECT'S AND ITS AFFILIATES', THIRD-PARTY PROVIDERS' AND LICENSORS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT CUSTOMER PAID TO MBS DIRECT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM (OR FIRST CLAIM IN A SERIES OF RELATED CLAIMS). THE LIMITATIONS IN THIS SECTION 8 WILL APPLY EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**9. Exclusive Affiliation.** The Parties intend that MBS Direct be the exclusive "official" provider of online bookstores and other services similar to the Services to Customer and its faculty and students. Without limitation, Customer agrees that during the Term: (a) Customer will not endorse or designate another provider as an "official", "authorized" or like provider of such services or itself offer such services; (b) Customer will ensure that MBS Direct is the exclusive retailer for adopted course materials submitted to MBS Direct under this Agreement; and (c) Customer shall submit adoption lists for the courses covered under this Agreement exclusively to MBS Direct.

MBS Direct shall be Customer's exclusive retail buyer and seller of all required, recommended or suggested course materials and supplies, including books delivered in all formats (digital, rental, new, or used), course packs, interactive or other courseware, computer software containing learning content, textbook rentals, and materials published or distributed electronically, through the Customer's learning management system ("LMS") sold over the Internet, or through hosted e-commerce links with the exception of free open educational resources or resources that MBS Direct is unable to source. MBS Direct will provide exclusive on-line services through the Bookstore website including fulfillment of any distance learning material needs during the term of this Agreement. Without limitation, Customer agrees that during the term of this Agreement: (x) Customer will not endorse or designate another provider as an "official", "authorized" or like provider of such services or itself offer such services; (y) Customer will ensure that MBS Direct is the exclusive retailer for adopted course materials submitted to MBS Direct under this Agreement, and (z) Customer shall submit adoption lists for the courses covered under this Agreement exclusively to MBS Direct.

The parties acknowledge and agree (i) MBS Direct shall be the exclusive retail (e-commerce) entity permitted to either place a link on the LMS or accept sales directly from Customer's students and/or as part of a course charge through the LMS and (ii) Customer shall prohibit all third parties, including but not limited to publishers and sellers of textbooks and course materials, from placing direct links within the LMS or soliciting sales directly from Customer students and faculty through the LMS. In the event any such third parties place a link on the LMS permitting direct sales of textbooks or course materials to Customer students, Customer shall remove and disable such links and retail functionality.

**10. Publicity.** Customer agrees that MBS Direct may publicize the relationship between the parties and use Customer's name in promotional and marketing materials and as may be required in any of MBS Direct's public filings.

**11. Ownership; Restrictions; Feedback.** Customer acknowledges and agrees that the Services, the technology used to provide the Services, MBS Direct's trademarks, and all MBS Direct websites and mobile applications, metadata and data collected in the course of providing the Services, including all patents, copyrights, trademarks,

trade secrets, moral rights and other intellectual property rights therein and thereto (collectively, "MBS IP"), are and will remain owned exclusively by MBS Direct and, as applicable, MBS Direct's licensors. Customer does not and will not claim any ownership or other proprietary rights in or to any MBS IP and will not hold itself out as having any rights therein. All rights (if any) not expressly granted herein are reserved by MBS Direct, and no rights will be granted by implication, estoppel, or otherwise. For clarity, MBS Direct is not obligated to provide or give Customer access to any MBS IP except as required for MBS Direct or Customer to perform their respective obligations hereunder. Customer will not attempt to decompile, reverse engineer or otherwise attempt to obtain source code in any MBS IP, nor will Customer attempt to circumvent, disable or defeat any security feature in any MBS IP. To the extent Customer has feedback on the Services ("Feedback"), Customer agrees to grant to MBS Direct (and hereby does grant) an exclusive, perpetual, irrevocable, royalty free, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform and otherwise exploit such Feedback without restriction or prior approval or compensation of any kind.

**12. Confidentiality.** During the term of this Agreement, each party may be provided information that relates to the other party's financial, marketing, or customer information, research, development, business activities, products, services, technical knowledge, and personally identifiable student and employee information. To the extent permitted by law, including any public record disclosure law that may be applicable, all such information (including the Agreement itself) shall be deemed "Confidential Information". Each party may use the Confidential Information of the other party only in connection with the specific duties authorized by this Agreement and shall not, directly or indirectly, use, copy, disclose, or disseminate to any other person or entity any Confidential Information except as required by law. Each party agrees to protect the confidentiality of the Confidential Information in the same manner that it protects its own confidential information but with no less than a reasonable standard of care. The obligations set forth herein shall not apply to any Confidential Information that becomes known to the public through lawful means and without violation of any law or agreement not to disclose such Confidential Information.

Each party further agrees it shall cause its personnel and representatives to agree to be bound by the terms of this Agreement and be responsible for any of their breach thereof. To the extent legally permissible, each party agrees to notify the other party of any unauthorized use or disclosure of Confidential Information and to take all actions reasonably necessary to prevent further unauthorized use or disclosure. If a party is required by an interrogatory, subpoena, civil investigative demand, or similar process to disclose any Confidential Information, to the extent legally permissible, such party shall promptly provide written notice to the other party so the other party may seek to avoid or minimize the required disclosure or, in the discretion of the disclosing party, waive compliance with the provisions of this Agreement. The terms of this Section 12 shall survive the expiration or termination of this Agreement.

**13. General Terms.**

**a. Entire Agreement.** This Agreement, including all attachments hereto, which are hereby incorporated into this Agreement by this reference, contains the entire agreement of the parties regarding the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between the parties regarding such subject matter. In the event of any conflict or inconsistency between the Exhibits or Order Forms and these Terms and Conditions, these Terms and Conditions will prevail. This Agreement shall be binding upon and shall inure to the benefit of Customer and MBS Direct and their successors and permitted assigns. This Agreement is enforceable only by Customer and MBS Direct, and there are no third-party beneficiaries under or pursuant to the terms of this Agreement.

**b. Amendments; Waivers; Further Assurances.** This Agreement may only be modified in a writing signed by both parties. No failure or delay by a party in exercising any right or remedy under this Agreement will operate as a waiver thereof, and any waiver will only be enforceable if made in a signed writing by the party waiving the right or remedy. No express waiver will affect any provision other than that to which the waiver is applicable and only for that occurrence. The parties agree they will, as needed from time to time, execute, acknowledge and deliver,

or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

**c. Notices.** All legal notices, authorizations, requests and other communications made in connection with this Agreement will be in writing and will be deemed given and received: (a) on the date of service if served personally on the party to which notice is to be given; (b) three (3) business days after the date of mailing if mailed to the party to which notice is to be given, at its address set forth on the first page hereof, by first-class mail, registered or certified, return-receipt requested; or (c) on the date delivered if sent by overnight courier to the party to which notice is to be given, at its address set forth on the first page hereof. A courtesy copy of all notices to MBS Direct shall also be sent to Barnes & Noble Education, 120 Mountainview Blvd., Basking Ridge, NJ 07920, Attn: Legal Department. The foregoing are the only permitted methods for giving legal notices. Communications regarding operational matters may be made by email.

**d. Assignment.** Neither party may assign this Agreement or assign any rights or delegate any obligations in this Agreement, including by operation of law or otherwise, without the prior written consent of the other party, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, MBS Direct may assign this Agreement without Customer's consent to one of its affiliates or in connection with a merger, acquisition, consolidation, stock or asset sale, or the like. Except with respect to VitalSource, which Customer hereby approves as a subcontractor to MBS Direct under this Agreement, MBS Direct may not otherwise subcontract its obligations without written notice to and approval by Customer, which will not be reasonably withheld, conditioned, or delayed. Any attempt to assign this Agreement other than in accordance with this subsection shall be null and void.

**e. Force Majeure.** If the performance of this Agreement or any obligation hereunder is prevented, restricted or interfered with by reason of any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected will take all reasonable steps to avoid or remove such cause of nonperformance and will resume performance hereunder promptly whenever such causes disappear.

**f. Compliance with Laws.** Customer and MBS Direct each shall comply with all laws, ordinances, rules, orders, and regulations of federal, state and municipal governments, and of any and all of their departments, divisions, bureaus, and subdivisions, applicable to their respective performance under this Agreement.

**g. Further Assurances.** Each party shall provide such further documents or instruments required by the other party as may be reasonably necessary or desirable to give effect to this Agreement and carry out its provisions. Whenever this Agreement requires or contemplates any action, consent, or approval, such party shall act reasonably and in good faith and (unless the Agreement expressly allows exercise of a party's sole discretion) shall not unreasonably withhold or delay such action, consent, or approval.

**h. Severability.** If any term of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the term will be modified to be enforceable to the maximum extent permitted by law (or severed if that is impermissible), and the remainder of this Agreement will remain valid and enforceable.

**i. Headings and Interpretation.** Both parties have received independent legal advice with respect to, and neither has relied upon the other party in, entering into this Agreement. For all purposes, this Agreement will be deemed to have been drafted jointly by the parties with no presumption in favor of one party over another. The headings used in this Agreement are for convenience only and do not constitute substantive matter to be considered in construing its terms. The use in this Agreement of the terms (a) "include", "includes", "including", and "such as" shall be deemed in all cases to be followed by the words "without limitation" and (b) "shall", "must", and "will" are equivalent and indicate mandatory and definitive requirements in all cases. When used in this Agreement, "Customer" includes all segments of the institution, including all academic departments.



**j. Authority.** Each party represents and warrants (a) it has all right, power, and authority to enter into this Agreement and to fully perform its obligations hereunder and (b) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action.

**k. Counterparts and Signatures.** This Agreement may be executed in counterparts, both of which taken together will constitute one and the same document. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement for all purposes.

#### **14. Customer Standard Terms.**

**a.** MBS Direct agrees the Services shall not be performed on time that is paid for by any public funds other than those provided by the Customer under this Agreement. Where provision is made for travel expenses, the expenses shall not exceed those allowed employees of the Nebraska State College System unless otherwise specifically provided herein.

**b. Independent Contractor.** MBS Direct shall be an independent contractor and not a Customer 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.

MBS Direct agrees that it is a separate and independent enterprise from the Customer, 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 Agreement shall not be construed as creating any partnership, joint venture, or joint employment relationship between MBS Direct and the Customer, and the Customer shall not be liable for any obligation incurred by MBS Direct, including but not limited to unpaid minimum wages or overtime premiums. If MBS Direct has employees or subcontractors, MBS Direct further agrees to maintain at least the prescribed minimum workers' compensation insurance coverage for all of MBS Direct's employees for the duration of this Agreement. MBS Direct agrees to furnish the Customer proof of workers' compensation insurance coverage upon request.

Liability Insurance Requirements - MBS Direct 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. MBS Direct's insurance policy shall be primary and non-contributory. The Customer 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 the Customer. A copy of the certificate shall be provided to the Customer.

**c. Access to Records.** MBS Direct agrees to allow authorized representatives of the Customer, 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 Agreement for a period of three (3) years after the termination of this Agreement.

**d. New Employee Work Eligibility Status.** MBS Direct 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.

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

**e. Non-Discrimination.** MBS Direct agrees to comply fully with the applicable provisions of 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 Agreement, 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. MBS Direct further agrees to insert a similar provision in all subcontracts for services allowed under this Agreement.

**f. ADA & Drug-Free Workplace Requirements.** All provisions of this Agreement are subject to the applicable provisions of the Americans with Disabilities Act (ADA). Further, MBS Direct certifies that MBS Direct operates a drug-free workplace and, during the term of this Agreement, will be in compliance with the provisions of the Drug-Free Workplace Act of 1988.

**g. Governing Law.** This Agreement will be construed, interpreted, governed and enforced under the laws of the State of Nebraska.

**h. Technology Access.** All agreements 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 applicable provisions of 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 Agreement as if fully set forth herein.

**Exhibit A**  
**MBS Direct Services Overview**

- **Adoptions**

- MBS Direct will:
  - Assign an Account Manager to Customer with responsibilities of managing the textbook adoption list, maintaining inventory to meet demand, and ensuring adequate promotion of MBS Direct services to Customer and its students.
  - Provide Customer with access to Course Director, a web-based application for the submission of textbook adoptions.
  - Will work toward the implementation of the Adoptions and Insights Portal, which includes SSO integration for simplified faculty and staff access.
- Customer will:
  - Designate a contact person for the purpose of communicating any factors or issues that may prevent the correct book, in the correct quantity, from being available for student purchase.
  - Submit textbook adoptions via Course Director or other mutually acceptable format no later than eight (8) weeks in advance of each term start date.

- **Inventory Procurement**

- MBS Direct will:
  - Reserve existing inventory and procure the remaining inventory and materials necessary to support the institution's adoption requests.
  - Provide a listing of Customized Inventory and Limited Return Inventory at the beginning of each course term.
  - Use commercially responsible means to manage and/or dispose of remaining inventory at the conclusion of usage by the Customer, which includes return to the vendor when available.
- Customer will:
  - Review the listing of all Customized Inventory and Limited Return Inventory and agree to provide a commitment of continued usage for one additional course term beyond the current course term, or a commitment to change the item for the next term's courses. Participate in the disposal of Customized Inventory and Limited Return Inventory as per the Customized Inventory and Limited Return Inventory section below.

- **Customer and Student Vouchers**

- MBS Direct will:
  - Allow for student customers to use approved school vouchers for payment of course materials.
  - Update student voucher data on a timely basis during the business day upon receipt of data from Customer.
  - Notify students via email that their voucher is available and can be used to purchase course materials at MBS Direct.
  - Provide Customer with an online voucher system, allowing Customer to add/modify/delete voucher data, as well as directly placing orders that will be billed to the institution.
  - Invoice Customer for all voucher sales, broken out by students, on a weekly basis.
- Customer will:
  - Submit student voucher data via a secure method of transmission.
  - Provide a student identification number (known to the student) and a voucher allocation code that will be transmitted separately to the student to access the voucher system.

- **Instructor’s Desk Copies**
  - MBS Direct will:
    - Assist Customer with obtaining instructor’s desk copies.
  - Customer will:
    - Order desk copies directly from publisher.
  
- **Returns**
  - MBS Direct will:
    - Offer a full refund for customers returning materials within fourteen (14) days after the class start date or within twenty-one (21) days of the date materials are shipped, whichever is later.
      - Shipping costs are not refundable, unless through error of MBS Direct
      - Any original shrink-wrap or bundling must not be opened or removed in order to receive a full refund.
  
- **Reselling Textbooks**
  - MBS Service Company will:
    - Provide a buyback value on eligible titles.
    - Send emails to customers typically one week prior to the end of their course prompting access to an online buyback quote.
    - Provide shipping instructions and a complimentary shipping label to ship books back at no cost to the student customer.
    - Upon receipt and verification of books sent back, send a check to the customer, or their PayPal account credited.
    - Offer “Guaranteed Buyback” on a limited quantity of selected titles for which the book will continue to be used by the Customer, provided they are not one of the following criteria:
      - new-only titles or adoptions,
      - non-textbook items,
      - consumable titles, including study guides, working papers, and workbooks,
      - old editions or out-of-print titles, titles with new editions pending, or
      - low-priced mass market titles.
    - Reserve the right to cancel any and all outstanding Guaranteed Buyback offers should the institution choose to cancel this Agreement.
  - Customer will:
    - Advise which Guaranteed Buyback titles will not be used in subsequent terms, so that they may be excluded from a quote.
  
- **Non-Textbook Course Materials**
  - MBS Direct will:
    - Acquire non-textbook course materials from established vendors/publishers as needed.
    - Provide publication services for customer-produced related course materials that have no copyrighted materials.
    - Publish a fee schedule by January 1 of each year detailing the cost of services in publishing and providing non-copyright related course materials.
    - Employ the services of a third-party publishing service to obtain permissions prior to producing the materials in the necessary quantities. MBS Direct will indemnify and hold Customer harmless for any liabilities for which the service provider has cleared permissions.
  - Customer will:
    - Provide an original, electronic or camera-ready, copy of non-copyrighted course materials for MBS Direct to reproduce.

- Indemnify and hold MBS Direct harmless from any liability resulting from the failure of Customer to obtain any necessary copyright clearances, in accordance with the terms set forth in Section 6.
- **Customized Inventory and Limited Return Inventory.**
  - Submitted adoptions may include both inventories customized for use at the institution (including packages, bundles or customized textbooks) (“Customized Inventory”) as well as items carrying limited returnability to the publisher (“Limited Return Inventory”). Because Customized Inventory and Limited Return Inventory typically cannot be used with other MBS Direct client institutions, MBS Direct will provide to the institution, at the beginning of each course term, a listing of all Customized Inventory and Limited Return Inventory. Upon receipt of such list, Customer agrees to provide commitment of continued usage for one additional course term beyond the current course term, or a commitment to change the item for the next term’s courses.
  - Should MBS Direct continue to hold on hand quantities of any Customized Inventory or Limited Return Inventory after the expiration of the adoption period for such items, MBS Direct will use commercially responsible means to dispose of such remaining inventory, including returning to the vendor when available. In the event that the institution has not provided the commitment of usage and in situations where the inventory cannot be returned, MBS Direct may at MBS Direct’s reasonable discretion, require the institution to participate in the disposal of such inventory, which may include the following in this order:
    - Continued usage for an additional term;
    - Cooperation of the vendor to allow for a return; or
    - After all other means have been exhausted, purchase by the institution, at MBS Direct’s cost, of any remaining inventory. Inventory purchases will be discussed and planned prior to the creation of an invoice.
  - Finally, should an adopted course material which constitutes Limited Return Inventory be changed or dropped after procurement by MBS Direct and not allowed to be sold for the adopted course in the quantities provided by the Institution, Customer agrees to purchase any remaining inventory that cannot be returned to the vendor for full credit from MBS Direct at MBS Direct’s cost or to reimburse MBS Direct for any restocking fees the vendor imposes for a return.
- **Partnership Review**
  - MBS Direct will:
    - Provide a comprehensive packet of performance levels once annually based on student involvement and services provided to Customer.
    - Designate Account Manager and Client Service Manager to present Partnership Review meeting either in person or by phone.
  - Customer will:
    - Designate person(s) to attend Partnership Review meeting either in person or by phone.
- **Institution Incentive**
  - MBS Direct will provide additional incentives of the following.
    - Annual book scholarships in the amount of twenty-five hundred dollars, (\$2,500.00)
      - Scholarships may be awarded to students of Customer’s choice in minimum increments of \$100.
      - Scholarships not used in a given year do not carry over the next school year. A school year is defined as August 1 – July 31 for this Agreement.
      - Scholarships are provided as a gift from MBS Direct for students and cannot be used as a credit on any outstanding balance or requested as cash by the Customer.

- Customer may choose between the following options eight (8) weeks prior to the class end date of each term. Only one option can be chosen at a time with the exception of the Online-Only buyback that can run in concurrently to:
  - Buyback commission in the amount twenty-five percent (25%) paid by MBS Service Company, Inc., on the value of wholesale books purchased at the Customer Onsite Buyback. To qualify for the commission, Customer must utilize and manage the on-site Buyback.
  - Buyback commission in the amount of twenty percent (20%) paid by MBS Service Company, Inc., on the value of wholesale books purchased at the Customer Onsite Buyback ran by MBS Service Company.
    - MBS Service Company reserves the right to cancel on-site buyback ran by MBS Service Company based on participation levels at any time. In the event of cancellation, an online buyback option will be available.
  - Buyback commission in the amount of five percent (5%) paid by MBS Service Company, Inc., on the value of books purchased at the Customer EZ-Drop Buyback. To qualify for the commission, Customer must utilize and manage the on-site EZ-Drop Buyback.
  - Online-Only buyback serviced by MBS Service Company directly to students via the Online Bookstore. This option does not include a commission to the Customer but does offer students a pre-paid shipping label to send books back with.

**Exhibit B**  
**MBS Direct Online Bookstore**

**Description of Services**

**Online Bookstore:** MBS Direct will develop an Internet ordering application for students of Customer that will be known as the “MBS Direct Online Bookstore”.

**MBS Direct Obligations**

- MBS Direct will:
  - Accept orders from students via the Online Bookstore, as well as via toll-free telephone, facsimile or mail.
  - Provide Customer with print and/or electronic materials at no cost to the institution for distribution to registered students that outline procedures for ordering, hours of operation, procedures to follow for returns and refunds, how a book may be sold back when the course is complete, and procedures to follow in the event any problems are encountered with an order.
  - Maintain at all times the data security of its customers in the performance of MBS Direct’s obligations under this Agreement, and in accordance with the published privacy policies of MBS Direct.

**Customer Obligations**

- Customer will:
  - Provide MBS Direct with the necessary artwork, such as institution logo, and/or the licenses and other approvals to use such artwork, for use within the Online Bookstore.
  - Insert banners on prominent and appropriate pages within the Customer institutional website so students will be able to conveniently link to the MBS Direct ordering website.
  - Allow for the Integration of MBS CourseLinks into institution student registration applications and web pages as appropriate.
  - Deliver of MBS Direct supplied promotional emails by Customer or MBS Direct to registered students upon the opening of the Online Bookstore.
  - Provide MBS Direct, on a term by term basis, student email addresses, including new incoming students and other new transfer students, for informational and promotional emails, which advise them of the MBS Direct Online Bookstore offerings.
  - Incorporate into any new student orientation program information regarding the Online Bookstore, including the addition of materials for on-campus orientation programs and orientation mailings to student and parents at home addresses.
  - Notify faculty of the Online Bookstore as the endorsed course material bookstore of Customer along with information on MBS Direct services and tools delivered by way of institution supplied email addresses.

**Institution Incentive**

- MBS Direct will provide the following incentives:
  - A commission allowance of eleven percent (11%) on Net Sales of all adopted print course materials (new and used).
    - “Net Sales” is defined as all collected online/website sales at the Bookstore, including the amounts earned from Barnes & Noble Education marketing programs and relationships with its brand partners, less voids, refunds, sales tax, shipping proceeds, and sales of any materials where MBS Direct realizes no markup.

- A commission of four percent (4%) on Net Rentals of adopted print course materials.
  - Net Rental of adopted course materials is defined as all collected online/website rentals of MBS Direct-owned textbooks, including the amounts earned from processing transactions for publishers related to the consignment of their rental property less voids, refunds, sales, use or others taxes, shipping proceeds, and sales of any materials where MBS Direct realizes no markup.
- A commission allowance of three percent (3%) on Net Sales of digital course materials.
  - “Net Sales” are defined as gross sales minus returns from customers and further reduced by (i) shipping proceeds, (ii) sales, use or other taxes, and (iii) sales of any materials on which MBS Direct realizes no markup. “Net Rentals” are defined as gross rental proceeds minus returns from customers and further reduced by (i) shipping proceeds, (ii) sales, use or other taxes, and (ii) sales of any materials on which MBS Direct realizes no markup. Net Sales/Rentals on digital course materials exclude titles that are sold under a Customer Agency program. Agency program titles are not eligible for discounting under any type of commission forfeiture.
- Commissions due will be paid quarterly on the 15th day of the month following the end of each calendar year quarter. MBS Direct shall have the right to withhold commissions due if any outstanding balance is more than sixty (60) days delinquent. Upon receiving payment for outstanding balances, MBS Direct will release held commissions within thirty (30) days.
- Customer may elect to utilize all or part of the above commission allowances as a discount on course materials to help lower course material costs for students. As an example, Customer may elect to have students receive a five percent (5%) discount on course materials and take the balance of six percent (6%) commission on net print sales. MBS Direct will promote the sales discounting you may offer students within the Online Bookstore.
- Customer will have the ability to change the discounting based on commission reduction prior to the opening of the Online Bookstore for each term. Any change will require an addendum to this Agreement.

### **Shipping**

- MBS Direct will provide the following shipping programs:
  - A variety of shipping service levels, including Ground, Second Day, Next Day and International through our shipping carriers, including UPS and USPS.
  - Shipping rates are determined from the current published rate chart of the carrier and are added to each customer order.
  - MBS Direct will offer year-round free standard shipping on orders over fifty-nine dollars (\$59).
  - Shipping promotions can only be applied to domestic U.S., non-PO/APO addresses.
  - Shipping promotions are reviewed on an annual basis and are subject to change.