

NEBRASKA P-20W

NSWERS FIRST AMENDED AND RESTATED AGREEMENT ESTABLISHING THE NEBRASKA STATEWIDE WORKFORCE & EDUCATIONAL REPORTING SYSTEM (NSWERS)

~~The parties to this Agreement are~~This First Amended and Restated Agreement (this “Agreement”) is entered into by and among the Nebraska State Board of Education (Board of Education), the Board of Regents of the University of Nebraska (University), the Board of Trustees of the Nebraska State Colleges (State Colleges), and each of the six Nebraska Community Colleges (Central, Mid Plains, Metropolitan, Northeast, Southeast, and Western) (Community Colleges) (collectively, the “Parties”). The Parties are all public agencies within the meaning of Nebraska Revised Statutes §13-803. Upon execution, this Agreement amends and restates the original interlocal agreement establishing the Nebraska Statewide Workforce & Educational Reporting System (NSWERS), entered into among the Parties on or about October 8, 2019.

I. PURPOSE

LB 1071 (2010) required the Nebraska State Board of Education, Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the board of governors of each community college area to enter into a Memorandum of Understanding to adopt a policy to share student data. LB 1071 is codified in the Nebraska Revised Statutes (§85-110 (University of Nebraska); §85-309 (Nebraska State College System); §79-776 (Nebraska Department of Education); §85-1511 (Nebraska Community Colleges)). The resulting Memorandum of Understanding for Sharing of Student Data between the Nebraska Department of Education, the University of Nebraska, the Nebraska State Colleges, and the Nebraska Community Colleges (herein the “MOU”) established an agreement “to share student data for the purposes of evaluation of and research related to public prekindergarten, elementary, secondary, and postsecondary education to improve education in Nebraska” and is incorporated herein by reference and attached hereto as Exhibit “A”. ~~Nebraska Revised Statutes §48-611 and §48-612 require the Commissioner of Labor to take all appropriate steps to facilitate employment of individuals in Nebraska, assist in the vocational training of students, ensure accurate data concerning employment is maintained and to research and report on same.~~ The joint entity created herein shall operate under the name of the Nebraska Statewide Workforce & Educational Reporting System (NSWERS) and shall supercede the MOU once executed by all parties to the agreement identified in Article III herein.

The purpose of this Agreement is to provide for a phased (preparation and implementation phase) undertaking to create a joint entity known as NSWERS.

NSWERS will exist to provide optimized and secured access to accurate and reliable longitudinal student information to analysts and researchers to discover those

policies, processes, and practices across students' academic involvement and transition into the workforce that best improve student outcomes.

NSWERS shall engage in activities including, but not limited to, overseeing and directing the operations, maintenance, and reporting of student data from the prekindergarten through postsecondary and workforce data warehouses. NSWERS shall further define, and may expand upon, the data to be shared and establish appropriate guidance as well.

II. DEFINITION OF TERMS

The following terms shall have the following meanings unless the context or use indicates or requires another or different meaning or intent.

“NSWERS” shall mean the joint entity organized and operated pursuant to this Agreement, the full name of which is: Nebraska Statewide Workforce & Educational Reporting System.

“Executive Council” shall mean the Executive Council of NSWERS appointed as provided in Section IV hereof.

“Party” shall mean the Board of Education, University, State Colleges and Community Colleges.

“Executive Council Member” shall mean a member of the Executive Council of the NSWERS.

“System” shall mean the rules, procedures, protocols, networks, software, hardware, principles, goals, guidance, and other instrumentalities used by NSWERS to fulfill the Purpose in Article I.

III. PARTIES TO THIS AGREEMENT

The only Parties to this Agreement shall be the Board of Education, University, State Colleges, and each of the six Community Colleges.

IV. ~~PHASED~~ ESTABLISHMENT OF NSWERS

~~A. Phases. The Parties Agree that the initial execution of this Agreement initiates only the Preparation Phase portions of this Agreement and that the execution of the supplement to this Agreement in the form as attached in Exhibit B~~

~~executed by all of the Parties is required to initiate the Implementation Phase of this Agreement.~~

~~B.A.~~ Joint Entity. This agreement creates a joint administrative entity consistent with the provisions of Nebraska Revised Statute § 13-804(6) to be known as NSWERS. NSWERS shall be subject to the control of the Parties within the meaning of §13-804(6). NSWERS shall constitute a separate administrative entity, exercising the public powers granted by this Agreement and acting on behalf of the Parties. Each Party agrees to participate and engage in the phased activities of NSWERS as provided in this Agreement.

~~C.B. Preparation Phase begins with~~ the execution of this Agreement by each Party ~~and facilitates~~ ~~includes~~ (i) the creation of NSWERS as an independent administrative government entity under the Nebraska Interlocal Cooperation Act to continue and complete the planning, design and approval of the System used for the purposes provided in Article I; (ii) ~~proposal and~~ approval of the ~~initial~~ annual budget for NSWERS; (iii) reviewing and updating the initial annual budget with the State of Nebraska and other funding sources for the Implementation of NSWERS; and (iv) risk management including appropriate insurance, indemnification and other provisions to assure that each Party is responsible for their own conduct without creating unnecessary joint and several exposures.

~~D.C. Implementation Phase shall include the e~~Execution of Exhibit B to this Agreement by each Party authorizing NSWERS to begin operation as a joint entity to provide optimized and secured access to accurate and reliable longitudinal student information for the purposes provided in Article I.

~~E.D.~~ The Executive Council shall consist of ~~five-four~~ (45) members comprised of the following:

Commissioner of Education
President of the University of Nebraska
Chancellor of the Nebraska State College System
A President of one of the Nebraska Community Colleges

~~F.~~ Executive Council Members other than the Nebraska Community College representative shall be appointed for such terms as shall be specified in the appointment and until their successors are appointed. The intent of the Parties is for Executive Council Members to serve for so long as they remain in their official capacity as stated in IV(~~AB~~). The Nebraska Community College representative shall be elected by majority vote of the Presidents of participating Nebraska Community Colleges signatory to this document. ~~Initial e~~Election of the representative for the Nebraska Community Colleges shall take place ~~as soon as practicable after~~

~~execution of this Agreement and~~ no later than January 15th of each calendar year thereafter.

G.E. Executive Council Members shall serve without compensation from NSWERS.

H.F. A vacancy on the Executive Council shall be filled by the Party whose position on the Executive Council is vacant.

I.G. No Executive Council Member shall be eligible to vote during any period of time that the Party such Executive Council Member represents is in default on any amount owed to the NSWERS. During the existence of such default, the vote or votes of the Executive Council Members representing such Party shall not be counted as eligible votes for any purpose of this Agreement, or for the determination of a quorum to transact business.

V. POWERS AND DUTIES OF NSWERS

The powers and duties of the NSWERS shall include all powers which the Interlocal Cooperation Act confers upon the NSWERS to the extent that such powers are consistent with the purposes specified in Article I hereof and the Bylaws of NSWERS.

VI. FINANCIAL MATTERS

A. NSWERS shall not be operated for profit, but shall be operated in such manner as shall enhance the missions and welfare of the Parties. NSWERS shall operate on a fiscal year from July 1 to June 30 and shall establish an operating budget which shall include all revenue of every type and description and expenses of every type and description. Each Party shall pay for contracted services and shall make payments therefore as provided in such contract.

B. The Executive Council shall prepare and distribute to each Party on April 1 of each year a written estimate of the revenues and expenditures proposed for the subsequent fiscal year. Included within the written estimate of revenues and expenditures shall be a recommended funding amount needed and the proposed source for the same. The proposed budget must be unanimously approved by the voting members of the Executive Council. ~~In the event all members do not unanimously approve the proposed budget on or before June 1 of each year, the Parties agree that the approved budget for the then current fiscal year will be the budget for the subsequent fiscal year.~~ In the event that unexpected conditions arise which cause any material increase to the overall budget, the Executive Council shall inform each Party in a timely manner. In the event that the Executive

Council deems it necessary to seek additional funds, assets, or administrative services from the Parties, such request will be submitted in writing and reviewed within the budgeting framework and time constraints of each Party. Each Party reserves its authorization, appropriation, and other powers to approve any requested additional funds, assets, or administrative services.

~~(1) The Executive Council University of Nebraska hereby commits to serving as the ~~administrative~~-lead in pursuing external sources funding for the costs associated with the NSWERS system ~~in the first three fiscal years immediately following the execution of this Agreement~~ (beginning July 1, 2022~~19~~). In the event that the recommended amount of funding is not secured, ~~the University of Nebraska shall hereby commit to provide funding in an amount not to exceed Two Million Dollars (\$2,000,000) in fiscal year one and funding in an amount not to exceed One Million Three Hundred Thousand Dollars (\$1,300,000) in fiscal year two and three, all said amounts to be subject to reduction by the amount of any funding provided by interlocal parties or any external funding received in each fiscal year.~~ the Executive Council shall inform the Parties as soon as possible.~~

~~(2) The University of Nebraska shall hereby commit to provide funding in an amount not to exceed One Million Three Hundred Thousand Dollars (\$1,300,000) per year for the purpose of continued funding and maintenance of the staffing and operating expenses associated with the operation of NSWERS beginning in the fourth fiscal year following execution of this Agreement. Said commitment shall be subject to reduction by the amount of any external funding received in any fiscal year and shall terminate in the event the recommended amount of funding to provide for the operation of NSWERS is secured from interlocal parties or external sources.~~

~~(3)~~(2) Subsequent determinations regarding dedication of any funds or resources by any party will be based upon future grants, appropriations or other funding sources.

C. NSWERS shall keep or shall cause to be kept appropriate books and records with respect to all financial activities of the NSWERS. Such books and records will be available for inspection by any Party.

VII. DURATION

This Agreement shall become effective upon execution by the Parties hereto and shall continue in effect indefinitely until it is terminated as herein provided.

VIII. TERMINATION AND DISPOSITION OF PROPERTY

At any time during which the NSWERS shall not have outstanding any bonds, notes or other evidences of indebtedness, this Agreement may be terminated by the unanimous action of the Parties and the NSWERS may be dissolved or liquidated.

Upon dissolution or liquidation, general assets of the NSWERS shall be sold and the proceeds thereof distributed to the Parties as determined by the Executive Council. Institutional or agency data submitted to NSWERS shall remain the property of the submitting institution or agency and is not a general asset of the entity. Institutional or agency data submitted to NSWERS shall be returned to the submitting institution or agency upon dissolution or liquidation of the entity; however, in the event return of submitted data is not feasible, said data shall be destroyed in a manner compliant with prevailing industry standard techniques. Data products derived from submitted data and reliant on personally identifiable information shall likewise be returned to the submitting institution or agency or shall be destroyed.

IX. MISCELLANEOUS

A. Entire Agreement; Amendment. This Agreement, the Articles of NSWERS and the Bylaws contain the entire agreement of the Parties and shall be binding upon the successors and assigns of the respective Parties. All prior agreements and understandings between the Parties are hereby superseded. No amendment, deletion or addition shall be made to this Agreement except as agreed upon by all Parties in writing.

B. Governing Law. This Agreement shall be governed by the laws of the State of Nebraska.

C. Conflict of Interest. No officer, employee, or agent of any of the Parties shall have any personal pecuniary interest, direct or indirect, arising out of or related to this Agreement.

D. Severability. The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

E. Nondiscrimination. No Party will discriminate against any employee, or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privilege of employment because

of the race, color, national origin, sex, sexual orientation, gender identity, marital status, disability, religion or age of the employee or applicant.

F. Hold Harmless. To the extent allowed by law, each Party (the “Indemnifying Party”) shall assume all risk of loss and hold the other Parties, their employees, agents, assignees, and legal representatives harmless from all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments and all expenses incident thereto, for injuries to persons, for civil rights liability, and for loss of, damage to, or destruction of property arising out of or in connection with this Agreement and proximately caused by the negligent or intentional acts or omissions of the Indemnifying Party, its employees, agents, assignees or legal representatives.

G. Insurance. The Parties agree to separately maintain self-insurance coverage or a policy of general liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

H. Headings. The captions or headings in this Agreement are for reference only and do not define, describe, extend, or limit the scope or intent of the Agreement.

I. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and which together shall constitute a single document.

J. Notice. All notices, consents, approvals, demands, requests or other communications required or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent to the person(s) and address(es) set forth below via certified mail, hand delivery, overnight courier, or facsimile transmission (to the extent a facsimile number is set forth below). All such notices shall be effective when received.

If to Board of Education: Nebraska Department of Education
c/o Commissioner of Education
~~301 Centennial Mall South, 6th Floor~~ 500 S. 84th Street, 2nd
Floor
~~P.O. Box 94987~~
Lincoln, NE ~~68509-4987~~ 68510-2611

with a copy to: Nebraska Department of Education
c/o Office of Legal Services
~~301 Centennial Mall South, 6th Floor~~ 500 S. 84th Street, 2nd
Floor
~~P.O. Box 94987~~
Lincoln, NE ~~68510-2611~~ 509-4987

If to the University: University of Nebraska
c/o President
3835 Holdrege Street
P.O. Box 830743
Lincoln, NE 68583

with a copy to: University of Nebraska
c/o Office of General Counsel
3835 Holdrege Street
P.O. Box 830743
Lincoln, NE 68583

If to State Colleges: Nebraska State College System
c/o Chancellor
1327 H Street, Suite 200
Lincoln, NE 68508

with a copy to: Nebraska State College System
c/o Office of General Counsel
1327 H Street, Suite 200
Lincoln, NE 68508

If to Central CC: Central Community College
c/o College President
3134 W. Highway 34
P.O. Box 4903
Grand Island, NE 68802-4903

with a copy to: Central Community College
c/o Vice President for Administrative Services
3134 W. Highway 34
P.O. Box 4903
Grand Island, NE 68802-4903

If to Metropolitan CC: Metropolitan Community College

~~Dr. Randy Schmailzl~~
College President
~~Metropolitan Community College~~
P.O. Box 3777
Omaha, NE 68164

with a copy to: ~~James R. Thibodeau~~Metropolitan Community College
Associate Vice Chancellor for Compliance
and General Counsel
Metropolitan Community College
P.O. Box 3777
Omaha, NE 68164

If to Mid-Plains CC: ~~Dr. Ryan Purdy~~Mid-Plains Community College
President
~~Mid Plains Community College~~
601 W. State Farm Road
North Platte, NE 69101

with a copy to: ~~Michael Steele~~Mid-Plains Community College
Vice President of Administrative Services
~~Mid Plains Community College~~
1101 Halligan Drive
North Platte, NE 69101

If to Northeast CC: Northeast Community College
c/o Office of the President
801 East Benjamin Avenue
Norfolk, NE 68701

with a copy to: Northeast Community College
c/o Office of the Vice President of
Administrative Services & General
Counsel~~Executive Vice President~~801

East Benjamin Avenue
Norfolk, NE 68701

If to Southeast CC: Southeast Community College
c/o Office of the President
301 South 68th Street Place
Lincoln, NE 68510

with a copy to: Perry Law Firm
c/o Rex R. Shultze
233 South 13th Street, Suite 1400
Lincoln, NE 68508

If to Western NE CC: Western Nebraska Community College
c/o Office of the President
1601 East 27th Street
Scottsbluff, NE 69361

with a copy to: Dr. Nino Kalatozi
Western Nebraska Community College
1601 East 27th Street
Scottsbluff, NE 69361

IN WITNESS WHEREOF, the parties hereto have executed this Agreement
by their respective duly authorized officers this ____ day of _____,
20~~22~~19.

ATTEST: **THE NEBRASKA STATE BOARD OF EDUCATION:**

By: _____ By: _____

Commissioner

ATTEST: **THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**

By: _____ By: _____
President

~~ATTEST: THE NEBRASKA DEPARTMENT OF LABOR:~~

By: _____

By: _____
Commissioner

ATTEST: THE BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES

By: _____

By: _____
Chancellor

ATTEST: THE BOARD OF GOVERNORS OF CENTRAL COMMUNITY COLLEGE

By: _____

By: _____
President

ATTEST: THE BOARD OF GOVERNORS OF METROPOLITAN COMMUNITY COLLEGE

By: _____

By: _____
President

ATTEST: THE BOARD OF GOVERNORS OF MID-PLAINS COMMUNITY COLLEGE

By: _____

By: _____
President

ATTEST:

**THE BOARD OF GOVERNORS OF
NORTHEAST COMMUNITY COLLEGE**

By: _____

By: _____
President

ATTEST:

**THE BOARD OF GOVERNORS OF
SOUTHEAST COMMUNITY COLLEGE**

By: _____

By: _____
President

ATTEST:

**THE BOARD OF GOVERNORS OF
WESTERN NEBRASKA COMMUNITY
COLLEGE**

By: _____

By: _____
President

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