

**NEBRASKA WHOLE CHILD PROJECT  
CONSORTIUM MEMBERSHIP AGREEMENT**

This Membership Agreement (the "Agreement"), is made and entered into pursuant to the Nebraska Interlocal Cooperation Act, §§ NEB. REV. STAT. 13-801 – 13-827 (Reissue 2007) effective as of the \_\_\_\_\_ day of \_\_\_\_\_ (the "Effective Date"), 20\_\_\_\_ by and between the undersigned Nebraska school district, educational service unit ("ESU"), university, or state college (the "Member"), a local intergovernmental entity known as the Nebraska Whole Child Project ("NWCP"), which is composed exclusively of member school districts, ESUs, universities, and state colleges and constitutes a separate public body corporate and politic of the State of Nebraska, and each other school district, ESU, university, or state college which is now or may in the future become a member of the NWCP.

WHEREAS, the Member of the NWCP recognizes the increasing trend of obesity and lack of physical activity of students;

WHEREAS, if the Member is a school districts or ESUs, the Member is a member with the Nebraska Association of School Boards ("NASB") (a private non-profit corporation);

WHEREAS, the Member desires to become a member of the NWCP to work together with the NASB to address student fitness and health issues of Nebraska children;

WHEREAS, the Member desires to become a member of the NWCP in order to permit the NWCP, acting on the Member's behalf to bring Nebraska school districts, ESUs, universities, and state colleges together to share best practices for improving student fitness and health;

WHEREAS, the Member has received a copy of the Articles of Incorporation and Bylaws of the NWCP, is familiar with the terms thereof, and desires to become a member of the NWCP under the provisions set forth in said Articles of Incorporation, Bylaws, and this Membership Agreement;

NOW THEREFORE, the undersigned parties agree as follows:

Section 1. Membership. The undersigned Member hereby agrees to become and remain a member of the NWCP upon and subject to the terms and conditions of the Articles of Incorporation and Bylaws of the NWCP and this Agreement for and during the term of this Agreement.

Section 2. Agreement with Respect to Formation and Existence of the NWCP. The Member acknowledges and agrees the NWCP is a joint entity that has been formed by its constituent members under the

Nebraska Interlocal Cooperation Act, and as such, is and shall for all purposes be and remain a separate body corporate and politic of the State of Nebraska with such powers as are set forth in its Articles of Incorporation and Bylaws.

Section 3. Services Provided by the NWCP. For and during the Term of this Agreement, the NWCP, acting as the agent for and on behalf of its Members, hereby agrees as follows:

- (i) To encourage all interested Nebraska school districts, ESUs, universities, and state colleges together to join this interlocal agreement;
- (ii) To maintain Bylaws for the organization;
- (iii) To promote and actively engage sharing of “best practices” for optimal student fitness, health, and wellness; and
- (iv) To abide by all relevant state and federal laws governing interlocal agreements.

Section 4. Member Obligations. For and during the Term of this Agreement, the Member agrees as follows:

- (i) To maintain its status as a duly organized and validly existing school district, ESU, university, or state college pursuant to the laws of the State of Nebraska;
- (ii) For member school districts and ESUs to maintain its status as a Member in good standing of the Nebraska Association of School Boards;
- (iii) To comply with the provisions of the Articles of Incorporation and Bylaws of the NWCP as the same now exists or may from time to time hereinafter be amended; and,
- (iv) To share best practices with fellow members.

Section 5. Term and Termination.

5.1 Term. Subject to any Renewal Term(s) and unless sooner terminated as provided below, this Agreement shall be for a term of two (2) years, commencing on the Effective Date as stated above (the “Initial Term”). This Agreement shall renew automatically for subsequent three (3) year terms (the “Renewal Term(s)”) unless and until terminated as provided herein, or notice of non-renewal is provided in accordance with Section 5.2 of this Agreement. The Initial Term and any Renewal Term(s) shall be referred to collectively herein as the “Term” or the “Terms.”

5.2 Notice of Non-Renewal. Notwithstanding anything herein to the contrary, the Member may preclude the automatic

renewal described in Section 5.1 of this Agreement by providing written notice to the NWCP at least thirty (30) days prior to the commencement of the Renewal Term.

5.3 Termination. This Agreement may be terminated during its Term as follows:

A. Termination by Mutual Consent. At any time by mutual written consent of each of the parties.

B. Immediate Termination in Certain Events. At any time upon the affirmative vote of at least 51% of the members of the NWCP's Board of Directors in the event the Member: (i) ceases to be a duly organized and validly existing school district, ESU, university, or state college under the laws of the State of Nebraska; or, (ii) for member school districts and ESUs ceases to be a member in good standing of the Nebraska Association of School Boards.

C. Termination by Member. At any time, the member school district, ESU, university, or state college may submit its intentions to terminate its membership in the consortium in writing to the NWCP. Such termination will be effective upon NWCP receiving a written intention to terminate.

D. Termination of the NWCP Consortium. The NWCP Consortium may be terminated by: (i) the individual termination of all its Members, or (ii) by any mechanism created in the NWCP Bylaws. In the event of the termination of the consortium any assets possessed by the consortium shall be retained by the last remaining members in a manner created by its Bylaws.

Section 6. Indemnification. The Member hereby agrees to indemnify and hold the NWCP and its officers, Directors, employees, agents and representatives harmless from any and all liabilities, losses, damages, penalties, fines, costs or expenses (including without limitation court costs and reasonable attorneys fees) to the extent the same are incurred in connection with any demand, suit, audit, investigation or other proceeding and arise out of or relate in whole or in part to: (i) any act or omission of the Member or any of its board members, officers, employees, agents or representatives which occurs in the course of the Member's performance of this Agreement; or (ii) failure by the Member to observe or perform any obligation, undertaking or agreement required to be observed or performed by the Member pursuant hereto.

Section 7. Budgeting and Finance. The NWCP shall be financed by soliciting donations from participating foundations, non-profits, or other entities interested in the fitness, health, and wellness of Nebraska students. The Board of Directors of the NWCP will establish a budget covering the operations of the NWCP each year, on an annual basis.

Section 8. Levying, Collecting and Accounting of Tax. The NWCP will not levy or collect any taxes authorized under Nebraska law.

Section 9. Amendment. This Agreement may be modified only by a written amendment duly executed by both the Members and the NWCP. No alteration or variation of the terms and conditions of the Agreement shall be valid or binding unless made in writing and signed by both the Members and the NWCP. Every amendment shall specify the date on which its provisions shall be effective.

Section 10. Assignment. Neither the Member nor the NWCP may assign or transfer any of its or their interest, rights, or duties under this Agreement to any person, firm or entity without prior written consent of the other party to this Agreement, which consent may be granted or withheld by the other party in its sole discretion. In the absence of such written consent, any such assignment or attempted assignment shall be invalid and shall constitute a breach of this Agreement.

Section 11. Governing Law. This Agreement shall be subject to, governed by, and construed according to the laws of the State of Nebraska, without regard to principles of conflicts of laws.

Section 12. Entire Agreement. This written Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and any prior or contemporaneous representations, promises, or statements by the parties that are not expressly incorporated herein or therein shall not serve to vary, contradict, augment, modify or supplement the terms set forth in this Agreement.

Section 13. Survival. All rights, remedies, obligations, and all covenants and agreements set forth in this Agreement which by their terms require or contemplate performance which is to extend or occur after the expiration or termination of the Agreement shall survive the termination or expiration of the Agreement and shall remain in effect and be enforceable as between the parties hereto in accordance with the terms.

Section 14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, and all shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have signed this Agreement fully intending the same to be binding upon themselves and their respective trustees, receivers, successors and permitted assigns as of the Effective Date below written.

\_\_\_\_\_  
(Name of School District / Educational Service Unit)      (Date)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

For the NEBRASKA WHOLE CHILD PROJECT

By: \_\_\_\_\_  
(Signature)      (Date)

\_\_\_\_\_  
(Print Name and Title)