

## **BYLAWS OF NEBRASKA WHOLE CHILD PROJECT**

Pursuant to the Nebraska Interlocal Cooperation Act (the “Act”), the Nebraska Whole Child Project Consortium Membership Agreement, and the Articles of Incorporation, the undersigned Directors hereby adopt the Bylaws of Nebraska Whole Child Project (the “Corporation”) to provide as follows:

### Article I. Purpose

Section 1. Purpose. The Corporation is organized as a consortium pursuant to the Nebraska Interlocal Corporation Act to permit its member school districts, educational service units (ESUs), public universities, and state colleges, all of which shall be school districts, ESUs, universities, or state colleges that are duly organized and validly existing under the laws of the State of Nebraska, acting jointly: (i) to recognize the alarming trend of increasing student obesity and lack of student physical activity; (ii) to recognize the alarming trend of increasing student mental health issues; (iii) to share best practices in student fitness, health, wellness and mental health; (iv) to research, collect, report, and share data regarding student fitness, health, wellness and mental health from the consortium; and (v) to effectuate a change in the culture at school districts, ESUs, and colleges across Nebraska to improve student fitness, health, wellness and mental health.

### Article II. Offices

The principal office of the Corporation in the State of Nebraska will be located in Lincoln, Nebraska. The Corporation may have such other offices, in the State of Nebraska, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

### Article III. Members

Section 1. Membership. The members of the Corporation shall be the School Districts, Education Service Units, universities, and state colleges that are identified in Exhibit “A,” attached hereto as the same now exist or may be amended, from time to time in the future. There shall be only one class of membership in the Corporation. Additional members may be admitted from time to time upon approval by the Board of Directors of the Corporation.

Section 2. Qualifications and Obligations of Members. Membership is open to any school district, education service unit, university, or state college that: (i) is duly organized and validly existing under the laws of the State of Nebraska; and (ii) for school districts and ESUs, for school year commencing on or after September 1, 2013 is a member in good standing of the Nebraska Association of School Boards (NASB). All new members are official members of the Corporation upon approval by its governing board but must be approved by the Board of Directors of the Corporation at a

later date, and shall be admitted as a member upon satisfaction of conditions set forth by the Corporation's Board of Directors. Each member must agree to be bound by the Articles of Incorporation and these Bylaws, including any amendment thereto, and such rules and regulations as may be adopted from time to time by the Board of Directors. As a condition of membership, members must also enter into a Nebraska Whole Child Project Membership Agreement pursuant to which they agree to be bound by the terms of, and fulfill their obligations under, any agreements the Corporation may enter into with other entities or organizations.

Section 3. Annual Meetings. The first annual meeting of the members of the Corporation shall be held within one year from the date of the incorporation of the Corporation, and each subsequent regular annual meeting of the members shall be held annually thereafter, at such time and place as shall be stated in the notice of the meeting.

Section 4. Special Meetings. Special meetings of the members of the Corporation may be called at any time by the President, the Chief Executive Officer or by a majority of the Board of Directors, or upon written request of the members representing at least twenty percent (20%) of the voting power of the Corporation. Special meetings shall be held at such place and on such date and time as shall be stated in the notice of meeting required with respect thereto.

Section 5. Notice of Meetings. Notice of the annual and any special meetings of the members of the Corporation will be provided in accordance with the Open Meetings Act of the State of Nebraska. A member's attendance at a meeting of the members of the Corporation waives objection to a lack of notice or defective notice of such meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting the meeting, and waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Section 6. Quorum. The presence of members entitled to cast a majority of the votes that may be cast for election of the Board of Directors shall constitute a quorum at any regular or special meeting of the members of the Corporation, except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. All action by the members of the Corporation shall be taken by affirmative vote of a majority of the members present and voting at a duly called meeting at which a quorum is

present, except as otherwise provided in the Articles, the Declaration or these Bylaws. As used herein and in the Articles, the requirement for the approval or presence of a “majority” of the members shall mean the approval or presence of no less than fifty-one percent (51%) of the members.

Section 7. Removal of a Member. A member of the Corporation may be removed in accordance with the Nebraska Whole Child Project Membership Agreement.

#### Article IV. Board of Directors

Section 1. Eligibility and Authority. All corporate powers shall be exercised by or under the authority of, and the affairs of the Corporation shall be managed under the direction of, its Board of Directors.

Section 2. Number and Qualification. The business and affairs of the Corporation shall be managed by a Board of Directors consisting of seven (7) Directors. Although the number and qualifications of the Directors may be changed from time to time by amendment to these Bylaws, no change shall affect the incumbent Directors during the terms for which they were elected. The number of Directors and the duration of their terms may be changed by the vote of a majority of the Directors in office.

Section 3. Qualifications. All members of the Board of Directors must be duly elected or appointed and currently serving as a member of the Board of Education of a member school district, ESU, university, or state college; or an individual who is employed with a member school district, ESU, university, or state college.

Section 4. Election and Term of Office. The Incorporators shall appoint the initial Board of Directors of four (4) who shall hold office for one (1) year until their successors have been elected and qualified, unless their service is earlier terminated because of death, resignation, removal, or due to amendment to these Bylaws. The successor Board of Directors to the initial Board will be made up of the four (4) initial Directors, to serve an additional one year term from January 1, 2015 to December 31, 2015 and three (3) additional board members who shall be nominated by the Nebraska Association of School Boards (NASB) Board of Directors and approved by a majority vote of the initial Directors, to serve a two year term from January 1, 2015 to December 31, 2016. Every two years thereafter, Directors shall be nominated by the Whole Child Board of Directors and approved and approved by a majority vote of the Nebraska Association of School Boards (NASB) Board of Directors. The Directors shall serve for a term of two (2) years and until their successors are elected and qualified, unless their service is earlier terminated

because of death, resignation, removal, or due to amendment to these Bylaws.

Section 5. Resignation of Directors. Any Director may resign at any time by giving written notice of such resignation to the Board of Directors, the presiding officer of the Board of Directors, or to the President or Secretary of the Corporation. Resignation shall be effective when the notice is effective, unless the notice specifies a later effective date. If a resignation is made effective at a later date, the NASB Board of Directors may nominate and the Corporation Board of Directors may vote to fill the pending vacancy before the effective date. Any successor Director so appointed shall hold office for the balance of the term of the Director he or she replaced.

Section 6. Annual Meeting. The Board of Directors shall hold an annual meeting at such times and places as determined by the Board of Directors for the transaction of such business as may come before the meeting, without further notice to the Directors.

Section 7. Regular and Special Meetings of the Board. Regular meetings of the Board of Directors shall be held at such times and places as determined by the Board of Directors for the transaction of such business as may come before the meeting, without further notice to the Directors. Special meetings of the Board of Directors may be called by the presiding officer of the Board, the President, or 20% of the Directors then in office.

Section 8. Notice of Special Meetings. Notice of all special meetings of the Board of Directors shall be provided in accordance with the Open Meetings Act of the State of Nebraska.

Section 9. Chair. At all meetings of the Board of Directors, the President, or in his or her absence or inability, the Vice President, or, in both their absence or inability, a Chair chosen by those Directors present shall preside.

Section 10. Quorum. At all meetings of the Board of Directors, a majority of the Directors in office immediately before the meeting commences shall be necessary and sufficient to constitute a quorum for the transaction of business. If a quorum is present when a vote is taken, the affirmative vote of a majority of Directors present is the act of the Board of Directors.

Section 11. Compensation. Directors shall not receive any stated salary for their services as Directors, but, by resolution of the Board, a reasonable sum for expenses of attendance, if any, may be allowed for attendance at each annual, regular or special meeting of the Board.

Section 12. Loans to Officers and Directors. The Corporation shall not lend money to nor guarantee the obligation of any Director or officer of the Corporation.

#### Article V. Board Committees

Section 1. Committees. Committees which may exercise the authority of the Board of Directors in the management of the Corporation may be appointed in such manner as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present.

Section 2. Rules. Each committee may adopt rules for its own government not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

#### Article VI. Officers

Section 1. Number and Qualification. The officers of the Corporation shall be a President, one or more Vice Presidents (the number to be determined by the Board of Directors), and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors may elect or appoint such other officers, as it deems desirable, such officers to have the authority to perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person. The President and Vice President shall also serve on the Board of Directors. In the event there is more than one individual serving under the title of Vice President, the Board of Directors shall identify which Vice President shall serve on the Board of Directors at the time of his or her election or appointment.

Section 2. Appointment, Election and Term of Office. Except as otherwise provided herein, the officers of the Corporation shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors. If the election of officers is not held at such meeting, such election will be held as soon thereafter as is convenient. New offices may be created and filled at any meeting of the Board of Directors. Each officer will hold office until his or her successor is qualified and has been duly elected.

Section 3. Resignation of Officers. An officer may resign at any time by delivering notice to the Corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the Corporation accepts the future effective date, the Board of Directors may fill the pending vacancy before the effective date if the Board provides that the successor does not take office until the effective date.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the principal executive officer of the Corporation and will in general supervise and control all of the business and affairs of the Corporation. He or she will preside at all meetings of the Board of Directors. He or she may sign, with the Secretary or any other proper officer of the Corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof is expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the Corporation; and in general he or she will perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Vice President. In the absence of the President or in the event of his or her death, inability or refusal to act, the Vice President (or in the event there shall be more than one Vice President, the Vice Presidents in the order of their election) will perform the duties of the President, and when so acting, will have all the powers of and be subject to all the restrictions upon the President. Any Vice President will perform such other duties as from time to time may be assigned by the President or by the Board of Directors.

Section 7. Removal of Officers. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors of the Corporation whenever in its judgment the best interests of the Corporation would be served thereby. A simple majority vote of a quorum will be necessary for the removal of an officer.

#### Article VII. Investments

The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors, without being restricted to the class of investments which a Director is or may hereafter be permitted by law to make, or any similar restriction.

## Article VIII. Indemnification

Any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the Corporation, by reason of the fact that he or she is or was a Director, officer, employee, or agent of the Corporation, or is or was serving at the Corporation's request as Director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, shall be and hereby is indemnified, without need of affirmative act on his or her part or on the part of the Corporation's Directors, against all expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if:

- (1) He or she acted in good faith.
- (2) He or she reasonably believed: (a) in the case of conduct in his or her official capacity with the Corporation, that his or her conduct was in the Corporation's best interests; and (b) in all other cases, that his or her conduct was at least not opposed to the Corporation's best interests.
- (3) In the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful.

The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not meet the standard of conduct described in this Article. However, no indemnification shall be made in respect to any claim, issue, or matter by or in the right of the Corporation in which such person is adjudged liable to the Corporation or in connection with any other proceeding charging improper personal benefit to such person, whether or not involving action in his or her official capacity, in which such person is adjudged liable on the basis that personal benefit was improperly received by such person.

To the extent that a Director, officer, employee or agent of the Corporation has been successful on the merits, or otherwise, in defense of any action, suit, or proceeding referred to in this Article, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against all expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection therewith.

The indemnifications provided in these Bylaws for Directors, officers, employees, and agents are directly created and accorded without the need of any

affirmative act on the part of the Directors, officers, employees, or agents, and, subject to the conditions and limitations of this Article, such indemnification rights may be asserted and proceeded upon by any Director, officer, employee, or agent whenever the need arises.

The Corporation may pay expenses incurred in defending a civil or criminal action, suit, or proceeding in advance of the final disposition of such action, suit, or proceeding upon (1) receipt of a written affirmation of the Director, officer, employee, or agent of his or her good faith belief that he or she has met the standard of conduct described in this Article; (2) a written undertaking by such person to repay such amount; and (3) a determination that the facts then known to those making the determination would not preclude indemnification under applicable law.

To the extent permitted by law, the Corporation may have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation against any liability asserted against him or her and incurred in such a capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability.

The indemnification of officers, employees, and agents will occur without further action of the Board. Indemnification of a Director will occur according to the procedures described in NEB. REV. STAT. § 21-19,101 and any successor thereto.

Indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of disinterested Directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent, and shall inure to the benefit of the heirs, executors, and administrators of such person.

#### Article IX. Contracts, Checks, Deposits and Funds

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, and Orders for the Payment of Money. All checks, drafts, or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Chief Executive Officer.

Section 3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

Section 4. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purpose or for any special purpose of the Corporation.

#### Article X. Prohibition Against Sharing in Corporate Earnings

No member, Director, officer, or employee of, or member of a committee of, or person connected with the Corporation, or any other private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation; provided, that this shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes as shall be fixed by the Board of Directors; and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation. All members of the Corporation shall be deemed expressly to have consented and agreed that upon such dissolution or winding up of the affairs of the Corporation, after all debts have been satisfied, any assets then remaining in the hands of the Board of Directors shall be distributed according to the terms of the Articles of Incorporation and these Bylaws.

#### Article XI. Books and Records

The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors. All books and records of the Corporation may be inspected by any Director, or his/her agent or attorney, for any proper purpose at any reasonable time.

## Article XII. Fiscal Year

The fiscal year of the Corporation shall be January 1 to December 31.

## Article XIII. Seal

The Board of Directors may, but need not, provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words "Corporate Seal."

## Article XIV. Amendments to Bylaws

These Bylaws may be amended at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for that purpose, by a vote of Directors representing a majority of a quorum of the voting percentage in the Corporation.

## XV Board Policies

The Nebraska Whole Child Project Board may, from time to time, adopt and amend policies that provide guidance on day-to-day business activities of the Nebraska Whole Child Project. Such policies may be adopted and amended by support of a majority of a quorum of the Nebraska Whole Child Project Board during a properly advertised regular, special, or emergency meeting.

## Article XVI. Additional Executive Officers

The NASB Executive Director shall serve as the Chief Executive Officer ("CEO") of the Corporation. The CEO shall report to, be supervised by, and serve at the pleasure of the Board of Directors, which shall determine the terms and conditions of his/her respective employment with the Corporation. The CEO shall serve as ex-officio members of the Board of Directors without voting rights. The CEO shall have the authority on behalf of the Board to sign checks, to enter into any contract, or execute and deliver any instrument in the name of and on behalf of the Corporation.

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