

## EDUCATIONAL SERVICE UNIT NO. 16

### Telecommunications/Distance Education Contract

#### ESU 16- (Southwest Nebraska Distance Education Network)

THIS AGREEMENT is entered into by and between Educational Service Unit No. 16 ("ESU 16"), and Arapahoe Public Schools ("District").

In consideration of the mutual covenants, the parties agree as follows:

**1. Scope of the Contract.** ESU 16 shall provide to the District "Distance Educational Services" which may include, but are not limited to, the following:

- *Maintaining and supporting the transport of audio and video on the IP network.*
- *Maintaining and supporting IP codec.*
- *Maintaining and supporting distance education classroom equipment including all other related hardware.*
- *Maintaining and supporting the scheduling and clearinghouse software in the distance learning classroom.*
- *Providing network and program coordination.*
- *Providing network scheduling of classes and events.*
- *Providing instructor training for teachers, administrators, other staff, and community members using the distance learning classroom.*
- *Providing troubleshooting expertise on IP video network.*

**2. Payment Terms/Payment Schedule.** The District shall pay ESU 16 for the 2023-24 school year TWENTY-THREE THOUSAND DOLLARS (\$23,000.00) per distance learning site used by the District no later than September 15, 2023. The District has one distance learning site(s), and thus, the District shall pay ESU 16 a total of \$23,000.00 for the 2023-24 school year ("Yearly Payment"). Upon mutual written agreement, the parties may adjust the Yearly Payment before such payment is due to reflect the prospective costs ESU 16 may incur in providing Distance Learning Services to the District during the next coming year. **[Note: The Yearly Payments are**

in consideration for only the Distance Educational Services provided by ESU 16 as set forth in section 1 of this Agreement. ESU 16 may, to the extent allowed by law, pass through to the District the non-discount charges billed to ESU 16 by other service providers for telecommunications and Internet access services rendered to the District pursuant to the District's participation in the ESU 16 Distance Learning E-rate Agreement, as authorized by the District in a Letter of Agency.]

**3. Reconciliation.** If, at the end of the term, the total amount paid by the District pursuant to this Agreement exceeds the costs incurred by ESU 16 in providing Distance Learning Services to the District during the entire term, then ESU 16 shall transfer said funds into the depreciation account for the amount in which the District's payments exceed ESU 16's costs. If, at the end of the term, the costs incurred by ESU 16 in providing Distance Learning Services to the District during the entire term exceed the amount paid by the District pursuant to this Agreement, then upon request by ESU 16, the District shall pay ESU 16 the amount in which such costs exceed the District's payments.

**4. Term.** This Agreement is effective beginning

July 1, 2023, and shall continue until 12:00 midnight (CST) on June 30, 2024, unless terminated earlier as provided by this Agreement or by law.

**5. Termination.**

A. Each party may terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within 30 days after receipt of written notice of such default or such additional cure period as the non-defaulting party may authorize in writing. Upon the termination of this Agreement, each party shall promptly return to the other party all papers, materials and other property of the other

party then in its possession, including but not limited to all work in progress as is appropriate in its then existing form to the other party.

B. ESU 16 may terminate this Agreement without cause and cease offering Distance Learning Services at any time by providing thirty (30) days written notice to the District. Upon termination under this subparagraph, ESU 16 shall reimburse the District in an amount equal to the difference between (1) the total amount the District has paid to ESU 16 pursuant to the Agreement, minus (2) the total costs incurred by ESU 16 for the Distance Learning Services provided to the District. ESU 16 shall not otherwise be liable to the District.

C. The District may terminate this Agreement without cause at any time by providing thirty (30) days written notice to ESU 16. In the event the District terminates this Agreement under this paragraph 8, the District shall immediately pay ESU 16 an amount equal to the difference between (1) the sum of (a) all Yearly Payments that have become due, plus (b) all Yearly Payments that would become due if this Agreement had not been terminated hereunder, minus (2) the total amount the District has paid to ESU 16 pursuant to the Agreement.

**6. Indemnification.** The parties agree to indemnify, defend, and hold each other harmless from any and all costs and liabilities arising from a breach or noncompliance of their obligations under this Agreement. The foregoing indemnification obligation shall continue notwithstanding the expiration or termination of this Agreement.

**7. Public Records.** The parties acknowledge that both parties must comply with Neb. Rev. Stat. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

**8. Nondiscrimination.** The parties and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms,

conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

**9. Employment Eligibility Verification.** The parties shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the parties employ or contract with any subcontractor in connection with this Agreement, the contracting party shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

**10. Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

ESU:           ESU No. 16  
  
                  Attn: Administrator  
  
                  314 W. First Street  
  
                  Ogallala, NE 69153

District:       Arapahoe Public Schools  
  
                  Attn: Superintendent  
  
                  P.O. Box 360  
  
                  Arapahoe, NE 68922

Notice is effective only if the party giving the Notice has complied with this section.

**11. Governing Law.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska.

**12. Entire Agreement.** The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

**13. Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.


**14. Third Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the signatories.

**15. Authority to Execute Agreement.** The individuals signing below represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of their respective entity and that this Agreement is binding upon their entity in accordance with its terms.

IN WITNESS WHEREOF the parties have executed this Agreement on the last date written below.

**[FOLLOWING PAGE IS SIGNATURE PAGE]**

**ESU**


Signature: 

Name: Debra Paulman

Title: Administrator

Date: 1/30/23

**DISTRICT**

Signature: 

Name: Robert Drews

Title: Superintendent

Date: 1/17/23

ESU 16-(Southwest Nebraska Distance Education Network)