

## ITEMS FOR DISCUSSION AND ACTION\ACADEMIC AND PERSONNEL

September 12, 2019

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***ACTION:***                                      **Approve Online Program Management Contract for Peru State College**

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Peru State College seeks authority to sign a contract with Archer Education to provide Online Program Management (OPM) services for expanding online enrollments in targeted degree programs. Several external vendors were evaluated to determine viable models for improving performance in this area, with an OPM company surfacing as one of the most viable options for producing the desired enrollment growth. Following a final RFP process, Peru State received proposals from four (4) companies, and following vendor presentations Archer Education has been selected.

The System Office and Peru State College recommend approval of the Online Program Management Contract for Peru State College.

## MASTER SERVICES AGREEMENT

This **AGREEMENT** is dated and effective this \_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date") by and between Archer Education, Inc. with an address at 12555 W. Jefferson Blvd., Suite 202, Los Angeles, CA 90066 (referred to herein as "Archer"), and Board of Trustees of the Nebraska State College System dba Peru State College, with an address at 600 Hoyt St., Peru, NE 68421 (referred to herein as "Client").

### PRELIMINARY STATEMENT

Archer provides higher education-bundled services which it markets and makes available through, in part, marketing, admissions support, and retention programs. Client is an institution of higher education seeking assistance with its online student recruitment and related consulting services for its existing online programs with the goal of increasing recruitment, enrollment, and student persistence for its fully online degree programs. Client desires to engage Archer to perform activities for certain of its End-Clients (as defined below) and to perform other agreed upon services on behalf of Client (collectively, "Services") according to the terms set forth herein.

**NOW THEREFORE**, in exchange for mutual promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Archer and Client hereby agree to the following:

#### 1. DEFINITIONS.

- 1.1. "Agreement" means this Master Services Agreement dated as of the Effective Date, as may be amended from time to time in accordance with the terms herein or the addendums attached hereto.
- 1.2. "Applicable Law" means all federal, state, and local laws, ordinances, regulations, and codes which are applicable to the performance of the parties' obligations under this Agreement and each Insertion Order.
- 1.3. "Archer" has the meaning set forth in the Introduction to this Agreement.
- 1.4. "Archer Data" means data regarding Archer, its employees, suppliers and customers provided to Client hereunder, or to which Client has access in connection with this Agreement.
- 1.5. "Client" has the meaning set forth in the Introduction to this Agreement.
- 1.6. "Client Materials" means any and all materials that are owned or licensed by Client and/or that are provided by Client to Archer in connection with Archer providing the Services, including any content or materials (e.g. URLs and content) of any End-Client.
- 1.7. "Confidential Information" has the meaning set forth in Section 4.
- 1.8. "Effective Date" has the meaning set forth in the introduction to this Agreement.
- 1.9. "End-Client" means those clients of Client for which Archer will manage paid search and display marketing activities. Client shall indicate each such End-Client in the Insertion Orders.
- 1.10. "Revenue" means the online rate collected from students directly attributable to the online programs specified in Addendum B and as otherwise defined herein.
- 1.11. "Services" has the meaning set forth in the Preliminary Statement above.

## 2. COLLECTION, SUBMISSION, VALIDATION AND PAYMENT.

During the Term (defined herein) of this Agreement, Archer shall have the obligations identified herein. To help facilitate effective and prompt communication with Client, Archer will utilize a team-based approach to service Client's account to help avoid delays related to Archer employee unavailability or separation. Archer will provide all Services pursuant to industry standards. Upon request from Client, Archer will meet with Client to discuss Archer's efforts to satisfy its obligations hereunder, including making available for inspection at Archer's primary place of business documentation supporting Archer's efforts to satisfy its marketing, recruitment and application, and student services/retention obligations.

### 2.1. Marketing. Archer will:

- a. Assess all of Peru State College's ("Institution") existing and potential online programs to determine viability for growth and marketing opportunity including brand reach and evaluation; employment trends related to program offerings; and competitive landscape.
- b. Deliver a marketing plan to the Institution with outlined objectives, target markets, campaign resources, timelines, appropriate marketing platforms and the data necessary to identify potential students for all contracted programs through a multi-channel digital marketing strategy using Archer's precision audience targeting approach.
- c. Test ad copy and other creatives across channels to improve conversion rates.
- d. Utilize advanced targeting and Archer's proprietary lead-generation technology to manage media placement, campaign pacing, and quality optimization.
- e. Reengage nonconverted prospective students that have inquired via technology enabled outreach including strategic e-mails and SMS messages.
- f. Build a marketing plan and place ads for all of the online programs listed in Addendum B.
- g. Provide weekly reports to the Institution of all marketing and engagement efforts.
- h. Work with the Institution to comply with all regulatory compliance guidelines for creative and marketing materials and practices.

Client will have final approval of creative content used in marketing materials. Client will respond to Archer's request to approve marketing materials within seventy two (72) hours of receiving a marketing approval request.

Client will create a subdomain within the Peru State College domain to help facilitate Archer's marketing obligations. Archer's access to the subdomain will terminate immediately upon termination or expiration of this Agreement.

### 2.2. Recruitment and Application Support. Archer will:

- a. Provide Educational Service Representatives (ESRs) who will serve as the primary point of contact for all prospective students for identified degree programs until final disposition of enrolled or "no longer interested" within acceptable contact and engagement. The ESRs will help educate students about the Institution's programs via telephone, SMS text, web chat, emails or other methods of communication as agreed by Archer and the Client.
- b. Provide weekly reports to the Institution related to recruitment and application support efforts.
- c. Inform potential students of the program characteristics, walk them through the application process, and refer potential student to the Institution regarding financial aid or academic questions.
- d. Recruit in compliance with the academic standards of the Institution, Higher Learning Commission ("HLC") requirements, and all federal and state laws.

### 2.3. Student Services/Retention: Archer will:

- a. Follow up with the students at key action and decision points to promote persistence to graduation.
- b. Refer students to the Institution resources if academic questions persist.

- c. Remind students of upcoming start dates and deadlines.
- d. Provide a customer relationship manager (Archer CRM) to integrate with the College customer relationship manager (College CRM), Student Information System (SIS) and Learning Management System (LMS) for tracking of student progress through the enrollment and graduation cycle.
- e. Ensure that prospective student information is integrated and flows cleanly into the College CRM.

2.4. Academic Decisions. All student admission decisions, student performance expectations, academic advising, and academic program decisions and modifications are made by and at the sole discretion of the Client and not by Archer or its employees.

2.5. Invoices and Payment. In exchange for providing the Services as described herein, Archer will receive 35% of the Revenue generated by the online programs identified in Addendum B, in accordance with the terms of this Agreement, starting with the Spring 2020 semester until terminated as specified herein. To determine the 35% Revenue share, Client shall provide to Archer on or before the 30th day after the commencement of each course start for only the courses applicable to the online programs identified in Addendum B starting with the Spring 2020 semester a listing for such course start of: (i) the students offered admission by Client to the online programs identified in Addendum B, (ii) the students who enrolled in or dropped from each course in the online programs identified in Addendum B, including a course listing for the then enrolled students, (iii) the total number of credits started by each student in any of the online programs identified in Addendum B, (iv) a calculation of the payments due to Archer pursuant to the 35% Revenue sharing of the online programs identified in Addendum B, and (v) a list of students who are enrolled in the online programs identified in Addendum B but who are not included in the 35% Revenue sharing. Students not included in the 35% Revenue sharing are:

- a. High School students: Any high school student taking online classes at Peru State College.
- b. International Students: Students from a foreign country enrolled in classes at Peru State College.
- c. Joint Enrollment: Students attending Wayne State College or Chadron State College who through the Joint Enrollment process, are completing a limited number of courses at Peru State College to complete their degree.
- d. Existing students at the College: Any students who were enrolled for Spring, Summer or Fall 2019 will not fall within the 35% revenue split unless they lapse in enrollment for long enough to require application for readmission to an online program identified in Addendum B.
- e. Campus based students: Full and part time campus based students who augment a program of study with an online course or courses.
- f. Employees: Any Peru State College employee taking an on-line course(s).

Client shall pay or adjust, as applicable, the payment due to Archer for the subject course start by electronic transfer of funds to such bank account as Archer may direct by notice to Client no later than 45 days from receipt of invoice.

2.6. Non-Compete. Archer agrees not to provide similar services to (i) any other institution that is located in the State of Nebraska or (ii) serve another similar institution within 150-mile radius of Peru, NE. This non-compete provision does not apply to the greater Kansas City metropolitan area. Moreover, Archer may continue to provide marketing only services to Ottawa University, University of Saint Mary, Bryan University, Bellevue University, Graceland University, and Northwest Missouri State University. This Agreement applies exclusively to Peru State College and excludes programs offered at the other Colleges in the Nebraska State College System.

- 2.7. Termination of Revenue Share. Payment to Archer for any of the 35% Revenue share contemplated in this Agreement will end one (1) year from the termination of this Agreement regardless of whether a student enrolled in the online program identified in Addendum B has completed the applicable program or is still taking courses within the program.
- 2.8. Additional Programs. The Parties contemplate that the Client may offer additional online-programs in the future, in its sole discretion. The Parties agree that Archer will have a right of first refusal to offer any new online-programs offered by Client pursuant to the terms of this Agreement. Archer will inform Client whether it intends to include any additional on-line programs pursuant to this Agreement within thirty (30) days of such a request. If Archer elects not to include any on-line program in this Agreement, nothing in this Agreement will preclude Client from offering any new online program on its own or through a third-party. The parties will work collaboratively and by mutual agreement on the implementation of any new online programs.

### 3. INTELLECTUAL PROPERTY RIGHTS/ OWNERSHIP OF ACTIONS.

- 3.1. License. Subject to the terms and conditions of this Agreement and relevant Insertion Orders, during the term of this Agreement, Client grants to Archer a revocable, non-exclusive, non-transferable (except as provided herein), worldwide, royalty-free license to reproduce, display, and use the Client Materials solely in connection with Archer's performance of its obligations under this Agreement. Archer shall not use the Client materials for any other purpose without prior written consent from Client. The right and license for Archer in the Client Materials shall terminate immediately upon termination or expiration of this Agreement.
- 3.2. Advertising. Archer may upon Client's prior written approval, create advertising materials promoting Client-Partners consistent with the terms of this Agreement. Client will respond to Archer's request to approve marketing materials within seventy two (72) hours of receiving a marketing approval request. Client will own all advertising materials created under this subsection, and Archer hereby assigns and further agrees to assign the rights and ownership of any such works. Client grants to Archer a revocable, non-exclusive, non-transferable (except as provided herein), worldwide, royalty-free license to reproduce, display, and use the marketing materials in connection with Archer's performance of its obligations under this Agreement. Archer shall not use the marketing materials for any other purpose without prior written consent from Client. The right and license for Archer in the marketing materials shall terminate immediately upon termination or expiration of this Agreement.
- 3.3. Non-Infringement. Archer represents and warrants that the Services performed by Archer will not infringe or constitute a misappropriation of any right of any third party, including any copyrights, patent rights, trademark rights, trade secret rights or confidentiality rights. Archer will defend, protect, and hold harmless Client, its board, officers, agents, and employees from and against any liabilities, claims, causes of action, suits, losses, damages, fines, judgments, settlement, and expenses (including reasonable attorney fees) which may be suffered, made, or incurred by Client arising out of or in any way relating to patent or copyright infringement or any other misappropriation concerning the Services contemplated in this Agreement.

### 4. CONFIDENTIALITY.

- 4.1. Confidential Information. Except as otherwise provided in this Agreement, the parties agree that the terms of this Agreement and all information, data, materials or technology communicated by one party to the other party that is marked as "Confidential" or

“Proprietary,” or that, under the circumstances taken as a whole, would be reasonably deemed to be confidential (“Confidential Information”) will (a) be received in strict confidence; (b) be used only for purposes of this Agreement; and (c) not be disclosed by the receiving party or its agents to any third party without the prior written consent of the disclosing party. Each party agrees to use the same means to protect the disclosing party’s Confidential Information that it uses to protect its own Confidential Information, but in any event not less than commercially reasonable means, to prevent disclosure to third parties. Notwithstanding anything to the contrary herein, Client shall only disclose Archer Confidential Information, including any Archer Data, to Client employees and contractors who need to know such Archer Confidential Information in connection with this Agreement. Client will advise such employees and contractors to whom disclosure of Archer Confidential Information is made of the obligations hereunder to protect Archer Confidential Information and such employees and contractors shall have agreed to obligations of confidentiality substantially similar to those herein. Confidential Information will not include information that is (i) already known by the receiving party without an obligation of confidentiality other than pursuant to this Agreement; (ii) publicly known or becomes publicly known through no unauthorized act of the receiving party; (iii) rightfully received from a third party without an obligation of confidentiality; (iv) independently developed without use of the other party’s Confidential Information, and (v) required to be released pursuant to state or federal law or judicial order. Archer understands and agrees that this Agreement for services is a public record which is subject to statutory public disclosure and public website posting requirements.

FERPA: In the course of providing Services during this Agreement, Archer may have access to Client student education records that are subject to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, et seq. and the regulations promulgated thereunder. Such information is considered confidential and is therefore protected. To the extent that Archer has access to “education records” under this Agreement and to the extent FERPA is applicable to Archer, it is deemed a “school official,” as each of these terms are defined under FERPA. Client is not expected to provide Archer with any information regarding its students other than directory information (within the meaning of FERPA) and such other information as may be necessary to perform the Services. If and only to the extent that it receives education records subject to FERPA, Archer agrees that it shall not use education records for any purpose other than in the performance of this Agreement. Except as required by law, Archer shall not disclose or share education records with any third party unless permitted by the terms of the Agreement or to subcontractors who have agreed in writing to maintain the confidentiality of the education records to the same extent required of Archer under this Agreement.

Data Privacy. Archer shall use commercially reasonable efforts to ensure that any electronic information provided to Archer by Client is not re-disclosed except as expressly authorized by this Agreement or otherwise breached. Archer shall notify Client in writing immediately and without unreasonable delay, after Archer has either actual or constructive knowledge of a suspected breach which affects any data provided to Archer by Client (an “Incident”). Notification may be delayed as required by law enforcement to prevent any impediment(s) to its investigation of the Incident. Archer shall have actual or constructive knowledge of an Incident if Archer actually knows there has been an Incident or if Archer has reasonable basis in facts or circumstances, whether acts or omissions, for its belief that an Incident has occurred. Archer shall cooperate with law enforcement in accordance with applicable law provided however, that such cooperation shall not result in or cause an undue delay to remediation of the Incident. Archer shall promptly take appropriate action to mitigate such risk or potential problem at Archer’s sole expense. In the event of an Incident, Archer shall, (a) at its sole cost and expense, fully restore the data and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable; and (b) reimburse Client for the reasonable cost of notifying affected individuals whose information was disclosed as a result of the Incident and provide a

minimum of one (1) year of credit monitoring for such individuals if misuse of the information compromised could reasonably be expected to be detected by such monitoring or if monitoring is otherwise required under the laws of such an individual's state of residence. Archer agrees to indemnify, defend, and hold harmless Client and its affiliates and its and their officers, directors, employees, contractors, representative and agents from and against any and all claims, actions, damages, liabilities, costs and expenses, including reasonable and documented attorneys' fees and expenses, arising out of any third party claim for an Incident.

- 4.2. Destruction of Confidential Information. Upon the termination or expiration of this Agreement, the receiving party shall cease all use of the disclosing party's Confidential Information and shall return to the disclosing party, or, at the disclosing party's option, destroy all of the disclosing party's Confidential Information in its possession, and shall provide to the disclosing party a certification executed by an officer of the receiving party that it has complied with this obligation.

#### 5. USE OF SUBCONTRACTORS/ALTERNATE CLIENTS.

Archer may use subcontractors to perform its obligations hereunder; provided, however, that as between Archer and Client, Archer shall be fully responsible for such subcontractors' performance hereunder. Client must pre-approve the use of any subcontractor in writing but such approval will not be unreasonably withheld. Archer does not need to seek Client's approval for software and/or other products that its purchases to perform Archer's obligations hereunder.

#### 6. WARRANTIES AND DISCLAIMERS.

- 6.1. Mutual Warranties. Each party represents and warrants to the other that: (a) it has the authority to enter into and perform the duties and obligations described in this Agreement; (b) the performance of its obligations and duties described in this Agreement does not conflict with any other agreement to which it is a party; and (c) it shall comply with all applicable laws and regulations in connection with its performance hereunder. In addition, Archer represents and warrants that it will perform all Services in professional manner, consistent with industry standards.
- 6.2. Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE PARTIES DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED. THE PARTIES EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. ARCHER DOES NOT GUARANTEE THAT THE SERVICES WILL YIELD ANY SPECIFIC RESULTS FOR CLIENT OR END-CLIENTS.

#### 7. PAYMENT DISPUTES.

In the event of a dispute over a payment, payment due, or any part thereof, each party shall submit to the other a written notice detailing the amount disputed and the basis for the dispute. Upon receipt of such notice, both parties shall make reasonable, good faith efforts to resolve the dispute within thirty (30) days following the date of such notice. All disputes that are not able to be resolved between the parties are handled via litigation in the State of Nebraska.

#### 8. INDEMNIFICATION.

Except for where expressly stated under this Agreement, each party is responsible for its performance. If there is litigation, the court will determine who is liable.

9. NO INDIRECT DAMAGES.

Except as provided in Sections 3.3, 4.1, and 11.711.7 , NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING, NEGLIGENCE), OR OTHERWISE WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.”

10. TERM/TERMINATION.

- 10.1. Term. The term of this Agreement will commence on the Effective Date and shall continue in effect for three (3) years with up to two (2) renewable one-year Agreements for a maximum of five (5) years ending in 2024.
- 10.2. College’s Right to Terminate. After an initial period of 4 semesters (Spring 2020, Summer 2020, Fall 2020, and Spring 2021): If the student credit hour production generated over the course of the Agreement does not match or exceed an increase of 35% in credit hours over the baseline (2,262 undergraduate credit hours, 1,070 graduate credit hours, for a total of 3,332 credit hours), Archer will provide a new or enhanced marketing strategy to Client. If the performance and marketing strategy does not result in credit hour production that exceeds 35% over baseline credit hours for the subsequent semester (subsequent semester baseline is 643 undergraduate credit hours, 292 graduate credit hours for a total of 935 credit hours), the College can elect to terminate the contract, effective immediately, subject to Section 2.7.
- 10.3. Early Termination. In addition, either party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within ninety (90) days following written notice thereof from the non-breaching party, subject to Section 2.7. The following Sections will expressly survive termination or expiration of this Agreement: 2.7, 3.3, 4.1, 4.2, 7, 9, 11.7.

11. MISCELLANEOUS.

- 11.1. Notices. Whenever any notice to a party is required hereunder, such notice shall be in writing, either: (i) addressed to the party’s address set forth below, and shall be delivered personally, by commercial courier service or by facsimile transmission; or (ii) via email to the party’s email address as set forth below with email confirmation from said party to the sender that it received such email. Such notice shall be deemed given and received when actually delivered or transmitted by facsimile and electronically confirmed by the sender’s facsimile system in the case of (i) above or upon recipient’s confirmation in the case of (ii) above.

If to Archer:

**Brian Hartnack**  
**CEO**  
**Archer Education**  
**12555 W. Jefferson Blvd, Suite 200**  
**Los Angeles, CA 90066**  
**Email: brian@archeredu.com**

**With copy to:**

**Brad Gibbs**  
**Email: bgibbs@archeredu.com**

If to Client:

Debbie A. White  
VPAF



600 Hoyt St.  
Peru, NE 68421  
Email: [dwhite@peru.edu](mailto:dwhite@peru.edu)

With copy to:

Jesse Dorman, VPMSA  
Email: [jdorman@peru.edu](mailto:jdorman@peru.edu)

- 11.2. Independent Contractor. The parties hereto are independent contractors and neither party is an employee, agent, partner or joint venturer of the other party. Archer is a separate and unaffiliated entity from Client and End Clients, with no decision-making authority on behalf of Client.
- 11.3. Modification. This Agreement may not be modified or altered in any respect except by a writing executed by both parties hereto.
- 11.4. Assignability. This Agreement is not assignable by either party without the prior written consent of the other party. Notwithstanding the immediately preceding sentence, Archer may assign this Agreement in all or in part, in connection with any merger, consolidation, any sale of all or substantially all of its assets or any other transaction in which more than fifty percent (50%) of its voting securities are transferred, subject to all of the terms of this Agreement.
- 11.5. Severability. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect. In the event of conflict between the terms of any Insertion Order and this Agreement, the terms of this Agreement shall control unless the Insertion Order specifically identifies the provision in the Agreement and the parties express their intent to supersede it.
- 11.6. Governing Law. This Agreement shall be interpreted in accordance with and governed by the law of the State of Nebraska, without regard to conflict of laws principles. Any legal action or proceeding arising under or relating to this Agreement will be brought exclusively in the federal or state courts located in Nemaha County, Nebraska.
- 11.7. DOE. Both parties understand and intend for this Agreement to comply with the United States Department of Education's ("DOE") regulations regarding incentive compensation and the related "bundled services" provision set forth in applicable DOE guidance. Archer warrants that its internal practices do not violate the DOE's regulations on incentive based compensation, or any other applicable law or regulation. Without limiting the foregoing, Archer agrees that in the course of recruitment of students for enrollment in one or more online courses it will not provide any commission, bonus, or other incentive payments based directly or indirectly upon success in securing enrollment or financial aid to any person or entity engaged in any student recruiting or admission activities, or any person directly supervising such person, except in accordance with the provisions of 34 C.F.R. 668.14(b)(22) and any subsequent DOE guidance or amendment thereto, and/or any other applicable DOE requirement. Archer agrees to indemnify, defend, and hold harmless Client and its affiliates and its and their officers, directors, employees, contractors, representative and agents from and against any and all claims, actions, damages, liabilities, costs and expenses, including reasonable and documented attorneys' fees and expenses, arising out of any third party claim, investigation, lawsuit, or any other legal proceeding related to Archer's failure to comply with applicable laws. Should 34 C.F.R. 668.14(b)(22) change during the term of this Agreement, or DOE revise or issue official guidance concerning the regulations such that, in either case, the calculation and payment of fees is no longer

viable, the parties will promptly negotiate an amendment to the Agreement to comply with the change and to preserve, as close as possible, the payment provisions and other terms of the Agreement. If an amendment is not viable or materially alters the payment structure of this Agreement, either party may terminate the Agreement, effective immediately.

- 11.8. Force Majeure. Neither party shall be deemed to be in breach of this Agreement for any failure or delay in performance (other than payment of Fees due hereunder) caused by reasons beyond its reasonable control, including, but not limited to, acts of God, war, terrorism, strikes, failure of suppliers, fires, floods or earthquakes.
- 11.9. Waiver. Notwithstanding any other provision in this Agreement to the contrary, no full or partial failure to exercise and no delay in exercising, on the part of a party, any right, remedy, power or privilege permitted hereunder shall operate in any way as a waiver thereof by such party, regardless of the frequency of such failure or delay.
- 11.10. Reliance. Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of any other party but nothing in the foregoing shall limit or exclude any liability for fraud.
- 11.11. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 11.12. Non-solicitation. During the term of this Agreement and for twelve (12) months thereafter, neither party will hire any employee or independent contractor of the other or directly or indirectly solicit, induce, or attempt to induce any such employee or independent contractor to terminate or breach any employment or engagement with the other party.
- 11.13. No Third Party Beneficiaries. Nothing herein is intended or shall be construed to confer upon any person or entity other than the parties and their successors or assigns, any rights or remedies under or due to this Agreement.
- 11.14. Entire Agreement. This Agreement and attached addendums constitute the entire agreement and understanding of the parties with respect to its subject matter and supersedes and extinguishes all prior communication, drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto. In the event that the terms of the Agreement and addendums conflict, the terms of the addendums will control.
- 11.15. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the Effective Date.

**Archer Education, Inc.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**Board of Trustees of the Nebraska State College System dba Peru State College \_\_\_\_\_**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: VPAF \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

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

**Addendum A  
PERU STATE COLLEGE ADDENDUM**

The parties agree that Archer will perform the Services with the Board of Trustees of the Nebraska State Colleges, doing business as Peru State College (the "Client") as described in the base Contract pursuant to the following.

**New Employee Work Eligibility Status. One box below must be selected and marked.**

- Employee Work Eligibility Status.** Archer 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.
- Archer is an individual or sole proprietorship. Archer must complete the "United States Citizenship Attestation Form," available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us). If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide US Citizenship and Immigration Services (USCIS) documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. *The attestation form and USCIS documents (if applicable) must be attached to the contract.*

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

**Non-Discrimination.** Archer agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended, and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, as amended, in that there shall be no discrimination against any employee who is employed in the performance of this contract, or against any applicant for such employment, because of age, color, national origin, race, religion, disability, gender identity, sexual orientation or sex. 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. Archer further agrees to insert a similar provision in all subcontracts for services allowed under this contract.

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

**Complete Agreement; Governing Law; Amendment.** This Agreement and Addendums sets forth the entire agreement of the parties and supersedes all prior negotiations, discussions, and proposals. There are no promises, understandings, or agreements of any kind pertaining to this Agreement other than those stated herein and in the Addendums. Agreement and Addendums will be construed, interpreted, governed and enforced under the laws of the State of Nebraska. This contract may be amended at any time in writing upon the agreement and signature of both parties.

**Prompt Payment Act.** In the event any amount due under this contract 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.

**Designated College Representative.** The designated College representative for purposes of monitoring and oversight of this contract is:

Dr. Jesse Dorman  
Typed or Printed Name  
G/L: 526995  
Cost Objective:

(402) 872-2224  
Telephone

jdorman@peru.edu  
Email

\_\_\_\_\_  
PSC Signature  
Debbie A. White  
VP, Administration & Finance

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

**Addendum B: Online Programs Subject to the 35% Revenue sharing**

**Bachelor of Arts and Bachelor of Science**

Business Administration

Criminal Justice

Psychology

**Bachelor of Applied Science**

Management

**Masters of Science in Education**

Curriculum and Instruction

**Masters of Organizational Management**

Entrepreneurial and Economic Development