

**AMENDED AND RESTATED
INTERLOCAL COOPERATION AGREEMENT FOR THE FORMATION AND
OPERATION OF WESTERN KANSAS COMMUNITY COLLEGE
VIRTUAL EDUCATION CONSORTIUM**

THIS AMENDED AND RESTATED AGREEMENT, dated October 1, 2010, is entered into by and among the Founding Members as set forth herein (hereinafter collectively referred to as the “Founding Members” and individually as “Founding Member”).

WITNESSETH:

WHEREAS, the Founding Members, as set forth on Exhibit “A,” entered into an Interlocal Cooperation Agreement for the Formation and Operation of Western Kansas Community College Virtual Education Consortium on July 1, 2002, pursuant to K.S.A. 12-2901, *et seq*; and,

WHEREAS, the Founding Members now wish to amend and restate the Interlocal Cooperation Agreement for the Formation and Operation of Western Kansas Community College Virtual Education Consortium (referred to hereafter as “Interlocal Cooperation Agreement”) that formed a separate legal entity known as Western Kansas Community College Virtual Education Consortium (hereinafter referred to as WKCCVEC); and,

WHEREAS, the purpose of WKCCVEC is to serve as an instrument of cooperation among the Founding Members and Associate Members, if any, on the design and delivery of distance education courses, programs and degrees through the respective Founding Members and Associate Members, if applicable; and,

WHEREAS, the Founding Members have combined and shared their financial, physical and intellectual resources and expenditures of the individual Founding Members to realize a broader base of support and cooperation through the affiliation of the Founding Members; and,

WHEREAS, the Founding Members wish to amend and restate the Interlocal Cooperation Agreement and substitute this amended and restated agreement in its entirety for the current Interlocal Cooperation Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual conveyance herein contained, and all other valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE I
Organizational Matters

I. **Agreement.** The Founding Members hereto hereby agree to amend and restate the Interlocal Cooperation Agreement, all upon the terms and conditions herein contained.

SECTION 1.01. **Organization, Composition and Nature of Legal Entity.** The Founding Members hereby formed, by Interlocal Cooperation Agreement, a separate legal entity to be known as Western Kansas Community College Virtual Education Consortium. The separate legal entity shall constitute a body corporate and politic, and shall have, in addition to other powers reasonably necessary to the exercise of its function under this Agreement, all powers as set forth in K.S.A. 12-2904a. The rights and obligation of the Founding Members and Associate Members, and the affairs of WKCCVEC, shall be governed by the mandatory provisions of the Interlocal Cooperation Act (referred to as “Act”) and by this Interlocal Cooperation Agreement. In the event there is a conflict between Interlocal Agreement and the Act, the provision of the Act shall take precedent over the terms of this Agreement.

SECTION 1.02. **Name.** The name of the legal entity shall be Western Kansas Community College Virtual Education Consortium. The entity may operate under that name or any variation thereof, including WKCCVEC or EduKan, or any of the name or names deemed advisable by the Founding Members.

SECTION 1.03. **Duration.** WKCCVEC became effective upon inception and shall continue until otherwise dissolved in accordance with the provisions set forth herein.

ARTICLE II

Purpose

SECTION 2.01. **Purpose of the Consortium.** The purpose of WKCCVEC shall be to serve as an instrument of cooperation among the Founding Members on the design and delivery of distant educational courses, programs, and degrees by and through the Internet. Through this Agreement, the Founding Members shall expand distant educational programs and increase the effectiveness of the individual Founding Members by combining, coordinating and eliminating duplication of efforts among the Founding Members and the providing of such distant educational courses, programs and degrees and other services as needed. Distant education programs shall provide a broader base and greater convenience in education of the Founding Members’ students, either traditional or nontraditional, and provide greater public access to the educational institution.

ARTICLE III

Founding Membership

SECTION 3.01. **Membership.** Any community colleges or other educational institutions located within the United States which are in good standing and fully accredited, may subscribe to membership in WKCCVEC. There shall be two classes of membership: Founding Members and Associate Members (collectively referred to herein as Members or individually as Member). Founding Members shall consist of those community colleges that originally formed the consortium as listed on Exhibit A attached hereto and incorporated herein by reference. Associate Members

shall include all persons, firms, associations, companies, or bodies politic or subdivisions that seek the services of the consortium in providing distant educational courses, programs and degrees by and through the internet as the Board of Directors may determine from time to time. All Founding Members shall be voting members. Associate Members shall not have the right to vote.

SECTION 3.02. **Membership Approval.** Eligible applicants for Associate Membership shall be approved by the Board of Directors and shall pay a membership fee at such rate, or rates, as may be determined by the Board of Directors from time to time. Applications for Associate Membership shall be made in writing to the Board of Directors and the application shall be regarded as a guarantee on the part of the applicant of its concurrence with the purposes of WKCCVEC and of its adherence, if approved, to this Agreement and the rules, policies and regulations set by the Board of Directors for Associate Members. Approval of Associate Membership shall require a majority vote of the Board of Directors.

SECTION 3.03. **Expulsion.** Members of any class may be expelled by the Board of Directors for cause. A two-thirds vote of the Board of Directors shall be necessary to expel a Member for cause, other than for failure to maintain eligibility for membership or for nonpayment of financial obligations which shall require mandatory expulsion. Expulsion for cause shall terminate the Member's membership and shall work as a complete and full forfeiture of any interest the expelled Member may have in and to WKCCVEC and the property or rights thereof, and the Member thereafter shall have no further interest or rights herein. Any Associate Member shall be a member for no longer than one year unless the term of membership is extended by the Board of Directors for no more than one year at a time. The Board of Directors can extend the Associate Member's membership for an unlimited number of one year extensions.

ARTICLE IV **Board of Directors**

SECTION 4.01. **General Powers.** The business and affairs of the WKCCVEC shall be managed and controlled by the Board of Directors. Each Founding Member institution shall be entitled to and shall designate a representative to serve as director on the Board of Directors. The Founding Member may remove and replace its Director from time to time, and may name an alternate to appear on its behalf in the absence of its named representative.

SECTION 4.02. **Regular Meetings.** A regular meeting shall be held by the Board of Directors from time to time, but no less often than once each quarter of the calendar year. The time and place of the regular meeting shall be as provided by resolution by the Board of Directors, and in the absence of such designation, as determined by the Chairman.

SECTION 4.03. **Special Meetings.** Special meetings of the Board of Directors may be called at the request of the Chairman or any two (2) Member Directors. The person or persons authorized to call a special meeting of the Board of Directors may fix any place within the State of

Kansas as the place for holding a special meeting of the Board of Directors called by them, and if no place is fixed, then the place of meeting shall be at the place normally designated by the Board of Directors for purposes of holding regular meetings.

SECTION 4.04. **Notice; Waiver.** Notice of any special meeting shall be given at least three (3) days prior thereto by written notice delivered personally to each director at his or her business address by personal delivery, mail or by any means of electronic transmission. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting that is not lawfully called or conveyed. Whenever any notice is required, a waiver in writing, signed at any time, whether before or after the meeting, by the Director shall be deemed equivalent to its giving of such notice. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the Board of Directors need be specified with a notice or waiver of such meeting.

SECTION 4.05. **Quorum.** A two thirds (2/3) majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but a majority of the directors present (though less than such quorum) may adjourn the meeting from time to time without further notice.

SECTION 4.06. **Manner of Acting.** The act of the majority of the directors present at a meeting at which a quorum is present shall constitute the act of the Board of Directors, unless the act of a greater number is required herein.

SECTION 4.07. **Conduct of Meeting.** The Chairman, and in his absence, the Vice Chairman or any director chosen by the Board of Directors present, shall call the meetings of the Board of Directors to order and shall act as chairperson of the meeting. The secretary of WKCCVEC shall act as secretary of all meetings of the Board of Directors, but in the absence of the secretary, the presiding officer may appoint any assistant secretary or any director or any other person present to act as secretary at the meeting.

SECTION 4.08. **Vacancy.** Any vacancy occurring in the Board of Directors shall be filled by the Founding Member from whom the vacancy occurred.

SECTION 4.09. **Committees.** The Board of Directors by resolution adopted by affirmative vote of a majority the directors may designate one or more committees. The Board of Directors may create an executive committee which shall have and may exercise, when the Board of Directors is not in session, the powers of the Board of Directors in the management of the business and affairs of the WKCCVEC. The Board of Directors may elect one or more of its members as alternate members of any committee who may take the place of any absent member at any meeting of such committee, upon the request by the Chairman or upon the request by the chairman of such committee.

SECTION 4.10. *Consent without meeting.* Any action required or permitted herein may be taken by the Board of Directors at a meeting or by resolution without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors then in office.

SECTION 4.11. *Indemnity of Directors.* WKCCVEC shall provide indemnity to the officers and directors as follows:

(A) WKCCVEC shall indemnify each person (and the heirs and legal representatives of such person) who is or was a director or officer of the WKCCVEC against any and all liability and expense actually and reasonably incurred by him in connection with or resulting from any claim, action, suit or proceeding (whether brought by or in right of WKCCVEC), civil, criminal, administrative or investigative, or threat thereof, or in connection with an appeal relating thereto, in which he may be involved, as a party or otherwise, by reason of his being or having been a director, officer or authorized representative, or by reason of any past or future action or omission (including those antedating the adoption of this Agreement) by him in such capacity, whether or not he continues to be such at the time such liability or expense is incurred; provided such person has not been shown to have failed to exercise good faith in what he reasonably believed to be the best interest of WKCCVEC, and in addition, with respect to any criminal action or proceeding, in which he had reasonable cause to believe that his conduct was not unlawful.

(B) To the extent such a director or authorized representative has been successful on the merits or otherwise with respect to any claim, action, suit or proceeding, he shall be indemnified against any and all liability and expense actually and reasonably incurred by him in connection therewith.

(C) As used in this section, the terms “liability” and “expense” shall include, but not be limited to, counsel fee and disbursements and amounts of judgments, fines or penalties against, and any amounts paid in settlement by or on behalf of any director, officer or authorized representative.

(D) The termination of any claim, action, suit or proceeding, or threat thereof, by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of guilty or no low contender, or its equivalent, shall not of itself create a presumption that a director, officer or authorized representative did not meet the standards of conduct set forth above.

(E) WKCCVEC may advance expenses to, or where appropriate may itself at its expense undertake the defense of, every such person prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amount unless it shall ultimately be determined that he is entitled to indemnification under this section.

(F) Any indemnification hereunder (unless ordered by a court) shall be made at the direction of WKCCVEC, but only as authorized in a specific case upon a determination that indemnification of such person is proper in circumstances because it has not been shown such person

failed to meet the applicable standards of context set forth above. Such determination shall be made, first, by the Board of Directors by a majority vote of a quorum consisting of directors who are not parties to such claim, action, suit or proceeding, or second, if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel (in a written opinion) selected by the directors.

(G) The rights of indemnification provided in this section shall be an addition to any rights to which such person concerned may otherwise be entitled by contract or under any agreement, as a matter of law, vote of members or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office; and, irrespective of the provisions of this section, the Board of Directors may, at any time and from time to time, approve indemnification of directors, officers or authorized representatives to the full extent permitted by the provisions or the statutes of the State of Kansas at that time in effect, whether on account of past or future transactions.

(H) WKCCVEC may similarly indemnify particular agents or employees (and the heirs and legal representatives of such persons) of WKCCVEC, but such indemnification shall rest solely in the discretion of the Board of Directors.

ARTICLE V ***Officers***

SECTION 5.01. ***Board Officers.*** The principal officers of WCKKVEC shall be Chairman of the Board, Vice Chairman of the Board, Secretary and Treasurer, each of whom shall be elected by the Board of Directors. Such other officers, including an executive director, and an assistant officer as may be deemed necessary, may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person except the offices of Chairman of the Board and Vice Chairman of the Board.

SECTION 5.02. ***Election and Term of Office.*** The officers of WKCCVEC to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first regular meeting of the Board of Directors after the beginning of each fiscal year. A fiscal year shall be deemed to be from July 1 to June 30 of each year. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as it conveniently may be held. Each officer shall hold office until his successor shall have been elected, or until his death or resignation, or until he shall have been removed in the manner hereinafter provided.

SECTION 5.03. ***Removal.*** Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interest of WKCCVEC will be served thereby, and such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment shall not of itself create a contract right.

SECTION 5.04. ***Vacancy.*** A vacancy in any principal office because of death, resignation, removal, disqualification or otherwise, shall be filled by the Board of Directors for the unexpired portion of the official term.

SECTION 5.05. ***Chairman of the Board.*** The Chairman, unless otherwise determined by the Board of Directors, shall be the principal executive officer of WKCCVEC and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of WKCCVEC. He shall have the authority, subject to such rules as may be prescribed by the Board of Directors, to appoint such agents and employees of WKCCVEC as he shall deem necessary, to prescribe their powers, duties and compensation and to delegate authority to them, including Chief Executive Officer. Such agents and employees shall hold office at the discretion of the Chairman. He shall have authority to sign, execute and acknowledge, on behalf of WKCCVEC, all deeds, mortgages, bonds, stock certificates, proxies, contracts, leases, reports and all other documents or instruments necessary or proper to be executed in the course of regular business, or which shall be authorized by resolution of the Board of Directors; and, except as otherwise provided by law or the Board of Directors, he may authorize any Vice Chairman or other officer or agent of WKCCVEC to sign, execute and acknowledge such documents or instruments in his place and stead. In general, he shall perform all duties incident to the office of Chairman and such other duties as may be prescribed by the Board of Directors from time to time.

SECTION 5.06. ***Vice Chairman of the Board.*** In the absence of the Chairman, or in the event of his death, inability or refusal to act, the Vice Chairman (or in the event there be more than one Vice Chairman, the Vice Chairman in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman.

SECTION 5.07. ***Secretary.*** The Secretary shall: (a) keep the minutes of the Board of Directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of this Agreement or as required by law; (c) keep a register of the post office address of each member; and (d) in general, perform all duties and exercise such authority as from time to time may be delegated or assigned to him by the Chairman or by the Board of Directors.

SECTION 5.08. ***Treasurer.*** If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine. He shall: (a) have charge and custody of and be responsible for all funds and securities of WKCCVEC; receive and give receipts for monies due and payable to WKCCVEC from any source whatsoever, and deposit all such monies in the name of WKCCVEC in such banks, trust companies or other depositories as shall be selected by the Board of Directors; and (b) in general, perform all of the duties incident to the office of Treasurer and have such other duties and exercise such other authority as from time to time may be delegated or assigned to him by the Chairman or by the Board of Directors.

SECTION 5.09. **Chief Executive Officer and Other Assistants.** The Board of Directors shall have the power to create and appoint any person to the position of Chief Executive Officer or assistant to any officer, and to determine the duties of office. Such Chief Executive Officer, assistant or acting officer so appointed by the Board of Directors shall have the power to perform all the duties as determined by the Board of Directors to which he is so appointed, except as such power may be otherwise defined or restricted by the Board of Directors.

ARTICLE VI
Contracts, Loans, Checks and Deposits;
Special Consortium Acts

SECTION 6.01. **Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of WKCCVEC, and such authorization may be general or confined to specific instances. In the absence of other designation, all deeds, mortgages and instruments or assignments or pledges made by WKCCVEC shall be executed in the name of WKCCVEC by the Chairman or the Vice Chairman and by the Secretary and Treasurer, when necessary or required, and when so executed no other party to such instrument or any third party shall be required to make any inquiry into the authority of the signing officer or officers.

SECTION 6.02. **Loans.** No indebtedness for borrowed money shall be contracted on behalf of WKCCVEC and no evidence of such indebtedness shall be issued in its name unless authorized by or under the authority of a resolution of the Board of Directors. Such authorization may be general or confined to specific instances.

SECTION 6.03. **Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of WKCCVEC, shall be signed by such officer or officers, fiscal agent or agents of WKCCVEC and in such manner as shall from time to time be determined by or under the authority of a resolution of the Board of Directors.

SECTION 6.04. **Deposits.** All funds of WKCCVEC not otherwise employed shall be deposited from time to time to the credit of WKCCVEC in such banks, trust companies or other depositories as may be selected by or under the authority of a resolution of the Board of Directors.

SECTION 6.05. **Contracts with Affiliates.** WKCCVEC may enter into contracts with affiliates only if approved by majority vote of the Board of Directors. Affiliate refers to any Member hereof and any employee or agent of such Member, including faculty of the Member, unless otherwise precluded from doing so by agreement between the faculty member and the Member.

SECTION 6.06. **Insurance.** WKCCVEC shall obtain and maintain such insurance and sureties as the Board of Directors shall deem reasonable and prudent, including workers

compensation, liability, directors and officers errors and omission and such other related insurance coverage.

ARTICLE VII
Fiscal Year

The fiscal year of WKCCVEC shall begin on July 1 and end on the following June 30.

ARTICLE VIII
Amendments

SECTION 8.01. ***Procedure.*** This Agreement may be altered, amended or appealed by the mutual agreement of all Founding Members.

ARTICLE IX
Financing of Cooperative Undertaking and Maintaining Budget

SECTION 9.01. ***Financial Commitment.*** Each Founding Member by execution of this Agreement agrees to pay his aliquot share of the cost of operating WKCCVEC as determined by the fiscal budget submitted to the Founding Members prior to the beginning of each fiscal year. WKCCVEC shall submit its anticipated financial needs for the ensuing fiscal year to each Founding Member at least (60) sixty days prior to the beginning of each fiscal year. The Founding Member shall then have until the beginning of the fiscal year to accept or reject its commitment and agreement to pay its aliquot share of the budgeted amount. Should the Founding Member fail to take any such action, then the Founding Member shall be deemed to have accepted the budget request and agreed to pay its aliquot share of the budget amount within thirty (30) days of the beginning of the fiscal year. Any Founding Member's acceptance of the budgeted amount shall limit the Founding Member to an amount no more than its aliquot share of the budgeted amount.

SECTION 9.02. ***Fiscal Agent.*** The Board of Directors shall a person or entity, which may include a Founding Member, as the fiscal agent for WKCCVEC who shall serve as fiscal agent until otherwise removed by the Board of Directors. The fiscal agent shall receive and collect all funds otherwise due WKCCVEC and, subject to the oversight of the Treasurer, shall be responsible for the use of all funds which shall be used for legitimate purposes of WKCCVEC in accordance with the budgetary requirements as set forth in the fiscal budget. The fiscal agent shall be subject to an independent audit conducted annually at the request of the Board of Directors.

SECTION 9.03. ***Enrollment Fees.*** As contemplated by this Agreement, the students of the individual Founding Members and Associate Member, if applicable, shall enroll with the individual Member for purposes of taking those courses offered by the Member through the on-line services

provided by WKCCVEC. All student fees, and state aid, or the equivalent thereof, derived by the enrollment of the student in the on-line course shall be collected by the Member, if applicable, and submitted to the fiscal agent to be used for the administration and operation of WKCCVEC.

SECTION 9.04. ***Limitation and Liability.*** Notwithstanding anything to the contrary herein, a Founding Member or Associate Member shall not be personally liable for any debts, liabilities, or obligations of WKCCVEC, to any of the other Members, or to creditors of WKCCVEC, and shall not be obligated to restore deficits arising out of the operation. A Founding Member's liability for obligations of WKCCVEC is limited to payment of its aliquot share of the annual budget.

SECTION 9.05. ***Records and Accounting.*** WKCCVEC shall keep or cause to be kept appropriate books and records with respect to the WKCCVEC's business including, without limitation, all books and records necessary to provide the Founding Members any reasonable information to fully inform the Founding Members on the operation and expenditures of WKCCVEC. The books shall be kept at the principle offices of the fiscal agent or at such other places as the Board of Directors deem reasonable and appropriate to carry out the business of WKCCVEC. Any records maintained by the fiscal agent or WKCCVEC in the regular course of its business may be kept on, or be in the form of, magnetic tape, photograph, micrographics and any other informational storage device, provided that the records are so kept are convertible into clearly legible written form within a reasonable time. The books of WKCCVEC shall be maintained, for regulatory and financial reporting purposes, on such basis and accounting as may be determined by the Board of Directors.

ARTICLE X

Admission of Additional Founding Members

SECTION 10.01. ***Admission of New Members.*** Upon a majority vote of the Board of Directors, additional Founding Members or Associate Members may be admitted to WKCCVEC subject to the conditions of and in the manner permitted under this Agreement.

SECTION 10.02. ***Eligibility Requirements of Membership.*** No person may be admitted as a Member unless such person is a "public agency" or "private agency" as defined by K.S.A. 12-2903. Nor shall a person be admitted as a Member if such admission would materially, adversely affect the viability of the legal entity created herein or its capability to conduct the joint and cooperative undertaking as contemplated by the parties and as authorized by the Act. Nor shall a Member which is an educational institution be admitted to WKCCVEC if the institution is not fully accredited or its admission would materially, adversely affect the accreditation of the existing Members.

SECTION 10.03. ***Restriction on Transfer.*** No Member may transfer, assign or otherwise convey its Membership interest or rights herein.

SECTION 10.04. **Effective Date.** The admission of a new Founding Member or Associate Member shall become effective on the first day of the ensuing fiscal year after approval unless otherwise authorized by the Board of Directors. Any new Associate Member admitted shall agree to be committed to WKCCVEC and shall remain an Associate Member for a minimum of one full fiscal year. Any Founding Member may withdraw from WKCCVEC by providing at least ninety (90) days written notice prior to the end of the fiscal year. Otherwise, the Founding Member shall be deemed to have agreed to remain a Founding Member for the next succeeding fiscal year. Any Founding Member which elects to withdraw from WKCCVEC shall not be entitled to receive a distribution of excess cash or any allocation of revenue generated during the proceeding years of operation. The withdrawing Founding Member shall upon termination of membership be totally divested of any interests or rights in WKCCVEC.

ARTICLE XI

Dissolution and Liquidation

SECTION 11.01. **Dissolution.** WKCCVEC shall terminate and dissolve upon a two-thirds majority vote of the Founding Members.

SECTION 11.02. **Liquidation.** Upon termination of WKCCVEC, a liquidator or liquidating committee approved by the Board of Directors shall be responsible for liquidation. The liquidator shall be entitled to receive such compensation for its services as may be approved by the Board of Directors. Except as otherwise restricted by the Board of Directors, the liquidator appointed shall have and may exercise without further authorization or consent of any of the Founding Members hereto, all of the power to the extent necessary, in the good faith judgment of the liquidator, to carry out any of the duties and functions of the liquidation hereunder for and during such periods at the time as shall be reasonably required in good faith judgment of the liquidator to complete the winding up and liquidation of WKCCVEC. The liquidator shall, subject to all limitations placed on the powers and rights of the Founding Members acting herein, liquidate the assets of WKCCVEC, and apply and distribute the proceeds of such liquidation, together the remaining funds for distribution, in the following order of priority, unless otherwise required by mandatory provisions of the Act:

(A) To those liabilities of creditors, in the order of priority provided by law, including those liabilities to Members which may be otherwise due.

(B) The balance of the property to the public agencies that are parties to this Agreement, if and when at any time no bond, note or other indebtedness of WKCCVEC is not currently outstanding and unpaid. The liquidator shall not distribute any property for the benefit of any private individual, corporation or association other than for fair value received.

Unless the Founding Members shall unanimously otherwise determine, all of the distribution shall be made in cash, except for courses developed for on-line instruction. As for courses

developed by a Founding Member, the course shall be transferred to the Founding Member that developed the course.

ARTICLE XII ***Curriculum***

SECTION 12.01. ***Course Development.*** WKCCVEC and the individual Member educational institutions shall cooperate in the joint development of educational courses to be offered on-line through the respective Founding Member's educational institutions and Associate Member educational institutions as determined by the Board of Directors. No course shall be offered which is not accredited nor meets the minimum educational standards for the State of Kansas and such other rules and regulations as may be promulgated by the Board of Regents or State Board of Education, where applicable.

SECTION 12.02. ***Course Offerings.*** All on-line courses shall be offered to students through the Founding Member's educational institution and Associate Members, if applicable. No courses will be offered directly by WKCCVEC to a student, nor is a Member required to offer a course which may be offered through WKCCVEC. The determination of what courses will be offered through the Founding Member shall be made by the Founding Member in its sole discretion and determination. Nor shall WKCCVEC offer courses or be operated in a manner which may jeopardize state funding or accreditation of the Founding Member or would be inconsistent with the purpose and mission of public education within the State of Kansas.

SECTION 12.03. ***Confidentiality.*** Members recognize that each shall come into possession of information and know how that comprises valuable trade secrets and other confidential information ("Confidential Information") which is exclusively owned by WKCCVEC. Members expressly acknowledge that Confidential Information is being and will be disclosed to them under conditions of confidentiality, and agree they shall not disclose Confidential Information to any third party during the term of this agreement, and for a period of five (5) years following the termination of the Member's membership. Members may disclose Confidential Information only to their staff and employees who need to know the Confidential Information in order to serve the purposes for which this Agreement is intended; provided however, Members shall require their staff and employees to keep the information confidential to the same extent required of the Members. Furthermore, the Members acknowledge WKCCVEC has developed and will be developing course content and materials, including graphical and pictorial material, text based lectures and weekly lecture notes, supplemental readings and other materials as required by the nature of the course, and bi-products generated through the interaction between students and between students and faculty. Members recognize and agree such course content and materials are owned by WKCCVEC and it shall retain its ownership rights therein, including any patent rights, copyrights, trade secrets, trademarks, service marks, related goodwill, intellectual property, source codes, programming codes, software licenses, and joint software development agreements, corporate identifying graphics, and marketing strategies. The Members agree all such items are the exclusive and proprietary property

of WKCCVEC and under no circumstances shall a Member sell, lease, sign, sublease or otherwise transfer or use such course content, material and proprietary rights, even after termination of Membership herein.

ARTICLE XIII ***General Provisions***

SECTION 13.01. ***Addresses and Notices.*** Any notice, demand, request or report required or permitted to be given or made to a Member under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class mail or other means or written communication to the Member at the address set forth beside the Member's name on the attachment hereto, or at such other address previously forwarded for such purposes to WKCCVEC. Any notice or report to be given or sent to a Member hereunder shall be deemed conclusively to have been given or sent, upon mailing of such notice, or report to the address shown on the records of WKCCVEC.

SECTION 13.02. ***Captions.*** All articles and section titles or captions in this Agreement are for convenience only. They should not be deemed to be part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

SECTION 13.03. ***Pronouns and Plurals.*** Whenever this Agreement may require, any pronoun used in this agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

SECTION 13.04. ***Further Action.*** The parties of this Agreement shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purpose of this Agreement.

SECTION 13.05. ***Waiver.*** No failure by any Member to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of such breach or any other covenant, duty, agreement or condition.

SECTION 13.06. ***Applicable Law.*** This Agreement shall be construed in accordance with and governed by the laws of the State of Kansas, without regard to the principles of conflicts of law.

SECTION 13.07. ***Invalidity of Provisions.*** If any provision of this Agreement is or becomes invalid, illegal, or unenforceful in any respect, and if the rights and obligations of the parties to this Agreement will not be materially, adversely effected thereby,

- (A) Such provision will be fully severable;

(B) This Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof;

(C) The remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid, or unenforceable provision or by its severance here from; and,

(D) In lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and unenforceful provision as similar in terms to such illegal, invalid, or unenforceful provision as is possible.

SECTION 13.08. **Prior Agreement.** This Agreement shall replace and be a substitution for any prior agreements, constitution or bylaws entered into by and among the Members hereto for similar purposes.

SECTION 13.09. **Effective Date.** The amendments to the Interlocal Cooperation Agreement will become effective upon the approval of the Office of the Attorney General, the Kansas Board of Regents and upon filing the same with the Barton County Register of Deeds and the Kansas Secretary of State.

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Agreement effective October 1, 2010.

Dodge City Community College

Barton County Community College

Pratt County Community College

Garden City Community College

Colby Community College

Seward County Community College

EXHIBIT "A"

FOUNDING MEMBERS

Dodge City Community College
2501 N. 14th Ave.
Dodge City, Kansas 67801

Barton County Community College
245 N.E. 30th Rd.
Great Bend, Kansas 67530

Pratt County Community College
348 N.E. State Rd. 61
Pratt, Kansas 67124

Garden City Community College
801 Campus Drive
Garden City, Kansas 67846

Colby Community College
1255 S. Range
Colby, Kansas 67701

Seward County Community College
1801 N. Kansas Ave.
Liberal, Kansas 67901

ASSOCIATE MEMBERS

By acceptance of Associate Membership in WKCCVEC and execution of this Agreement, the undersigned hereby agrees to be bound by the terms and conditions set forth in the Amended and Restated Interlocal Cooperation Agreement for the Formation and Operation of Western Kansas Community College Virtual Education Consortium and all policies and terms of membership as may be determined by WKCCVEC for membership in WKCCVEC effective on the first day of the ensuing fiscal year after approval. The undersigned as a new Associate Member agrees to be an Associate Member and bound by this Agreement for a minimum of one fiscal year.

Dated: _____

Dated: _____