# BOARD OF REGENTS for KENTUCKY STATE UNIVERSITY



## Special Called Meeting of the Board of Regents

Tuesday, January 24, 2023 11:30 a.m. EST

Julian M. Carroll Academic Services Building, 2nd Floor 400 East Main Street Frankfort, Kentucky 40601

### KENTUCKY STATE UNIVERSITY BOARD OF REGENTS SPECIAL CALLED MEETING

\*\*\* Meeting Will be Conducted in Person and by Teleconference \*\*\*

Tuesday, January 24, 2023 11:30 a.m. EST

Board of Regents Room
Julian M. Carroll Academic Services Building, 2nd Floor
400 East Main Street
Frankfort, Kentucky 40601
(Primary Physical Location)

**Zoom Link:** https://kysu.zoom.us/j/94423683097

Webinar ID: 944 2368 3097

One Tap Mobile: US: +16469313860,,94423683097# or +13017158592,,94423683097#

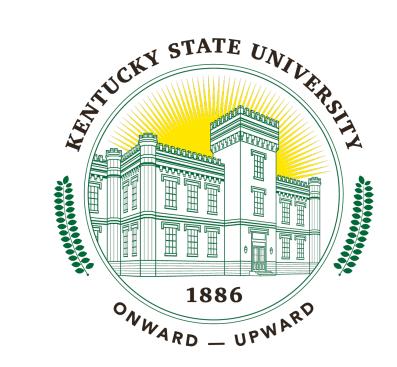
### **AGENDA**

1. Call to Order Dr. Gerald W. Patton Board Chair 2. Roll Call Mr. Zachary Atwell Board Secretary 3. Approval of Agenda Chair Patton 4. Information Item A. HB 250 Update Dr. Ronald A. Johnson Interim President 5. Action Items Dr. Michael D. Dailey A. Approval of Revised Faculty Evaluation Process Interim Provost & VP for Academic Affairs B. Approval of NCAA Title IX and President Johnson Serious Misconduct Policy Ms. Shuo Han Interim General Counsel C. Approval of Separation and Retreat Policy President Johnson for Senior Academic Administrators

Attorney Han

D. Approval of Blackboard Contract **Provost Dailey** Dr. Wendy D. Dixie Chief Information Officer E. Approval of Amended Hotel Contract Dr. Bridgett Golman Interim VP for Student Engagement & Campus Life F. Approval to Enter Into Agreement With EAB VP Golman for Enrollment Consulting Services G. Approval to Purchase Agilent 5200 Dr. Kirk Pomper Fragment Analyzer Director of Land Grant Program H. Approval of Pending Personnel Actions Ms. Candace Raglin Director of Human Resources I. Approval of Action to Make Regent Attendance at President Johnson the Annual CPE Trusteeship Conference Mandatory 6. Closing Remarks Chair Patton **Chair Patton** 7. Adjournment





# **HB 250 Update**

Ronald A. Johnson, PhD Interim President January 24, 2023

## KSU's 3-Phase Plan

Phase 1 Goal: Stabilization



Phase 2 Goal Performance

Sustainabili

## Implement HB 250: Section 1 to:

- Improve credibility
- Increase stakeholder confidence

### **Major Initiatives:**

- De-risking
- Cost saving
- Redeployment of resources and budgetary reallocation

**Internal Focus** 

## Implement HB 250: Section 2 to:

 Improve the alignment of the work that faculty, staff, and students do to enhance KSU's impact and financial viability

### **Major Initiatives:**

- Measurement and reporting standards
- Interoperability, policies, procedures and practices
- Culture of accountability

**Internal Focus** 

### Achieve HB 250: Sections 3, 5, and 7 requirements

- Improve the ability to attract resources, enhance existing programs, and support innovation
- Strengthen competitive positioning

### **Major Initiatives:**

- Greater stakeholder impact
- Enrollment growth

**External** Focus



# HB 250 Progress Report: H1 2022-2023

	HB 250 Progress Report: First Half 2022-23 Fiscal Year						
•	Developed Faculty Evaluation Performance Plan	•	HB 250 Section 1				
•	Developed Staff Evaluation Performance Plan	•	HB 250 Section 1				
•	Streamlined spending on academic course offerings and associated Adjuncts/Faculty Overload hours	•	HB 250 Section 1				
•	Outsourced the Management of KSU Facilities	•	HB 250 Section 2: Management Improvement Plan				
•	Recruited and hired Interim Vice President for Student Engagement	•	HB 250 Section 2: Management Improvement Plan				
•	Restructured of Student Engagement Leadership Team (Student Centric)	•	HB 250 Section 2: Management Improvement Plan				
•	Elevated Business Office Executive Leadership and Daily Business Practices	•	HB 250 Section 2: Management Improvement Plan				
•	Obtained a Declaration of Emergency for Facilities Management Services	•	HB 250 Section 2: Management Improvement Plan				
•	Activated an Executive Cabinet and Leadership Team	•	HB 250 Section 2: Management Improvement Plan				
•	Prepared for and Testified at several Joint meetings of the Budget Review Subcommittee on Education	•	HB 250 Section 2: Management Improvement Plan				
•	Facilitated the Association of Governing Boards of Universities and Colleges (AGB) Training of KSU's Board Members	•	HB 250 Section 2: Management Improvement Plan				
•	Collaborated with CPE to develop HB 250 management improvement plan	•	HB 250 Section 2: Management Improvement Plan				
•	Engaged an Internal Audit Firm to mitigate internal control risks	•	HB 250 Section 2: Management Improvement Plan				
•	Engaged an External Auditor to complete FY 2021 & FY 2022 annual audits	•	HB 250 Section 2: Management Improvement Plan				
•	Engaged Your-Part Time Controller to modernize accounting and budget departments' daily business practices	•	HB 250 Section 2: Management Improvement Plan				
•	Restructured and appointed new executive leadership for Academic Affairs	•	HB 250 Section 2: Management Improvement Plan				



## KSU's MIP: Conceptual Framework

Element 1: Policies & **Procedures** Element 2: Element 8: **Development of** Salary Ranges & Online Curricula Benefits **KSU Management** Element 7: Element 3: Student Academic **Board Training & Improvement Progress & Results** Development Plan Element 6: Element 4: Student Success & Academic **Enrollment Programs & Faculty** Strategy Productivity Element 5: Accounting,

> **Budgets & Internal** Controls

## KSU's Phase 2 Goal: **Performance**

- Create the context for faculty, staff, and students to do their best work.
- **Enhance KSU's Impact.**
- Strengthen KSU's financial viability.
- **Ensure that everyone has** the big picture.



## MIP Element 1: FY 2023 Deliverables

Plan Element		Start Date		Project Duration	
Element 1: Review and Catalogue KSU Policies and Procedures for Efficiency and Compliance with State and Federal Law		1-Jul		261	
	Activity Owner	End Date			_
Organization: Office of the General Counsel	Name: Zack Atwell assited by Outside Counsel	30-Jun			
	Title: Interim Associate General Counsel				_
Activity	Objectives	Status	Assigned to	Comments	Completion Date
Review all Kentucky State University policies and procedures for compliance with the Policy on Policies	Summative Report	In Progress	Office of the General Council and Outside Council		May-23
Review and revise The Gold Book, Bylaws of Kentucky State University	Revised Policy	Delayed	Board of Regents assisted by the Board Secretary		Jun-23
Review and Revise the K-Book, The Kentucky State University Student Handbook	Revised Policy	Delayed	Division of Student Affairs		Jun-23



# MIP Element 2: FY 2023 Deliverables

Plan Element		Start Date		Project Duration	
Element 2: Guidelines for Salary Ranges and Benefits for all Faculty, Staff, and Administrators		1-Ju	ıl	239	
Organization: Finance and Administration	Activity Owner Dr. Daarel Burnette Title: Interim Executive VP President and Chief of Staff	End Date 31-Ma	у		
Activity	Objectives	Status	Assigned to	Comments	Completion Date
Establish a master position list and develop protocols for adding and subtracting positions to and from the list	Master Position List and Modification Policy	In Progress	President and Leadership Cabinet		Jan-23
Review all currently offered benefits, vaction, sick leave, and holiday poicies at other Kentucky Institutions and ensure competitiveness and consistency	Summative Report	In Progress	Department of Human Resources		Feb-23
Review all positions in the institution, including those filled and unfilled, to determine need	Summative Report	In Progress	Department of Human Resources and the Budget Manager		Feb-23
Identify positions that should be eliminated or reconstituted to meet needs of the institution	Summative Report	Delayed	President and Leadership Cabinet		Feb-23
Establish descriptions for all positions including any qualifications requirements and an outline of their duties and responsibilities	Summative Report	Delayed	Department of Human Resources		May-23



## MIP Element 3: FY 2023 Deliverables

	1-Jul	261
Activity Owner	End Date	

Name: Board Chair working with the Interim President

### **Board Chair and President**

Objectives	Status	Assigned to	Comments	Completion Date
Participation Confirmed	In Progress	Board Chair working with the Interim President		Ongoing
Summative Report	Completed	_	Completed 10-12-2022	Nov-22
Board Action	In Progress	Board Chair working with the Board Secretary		Jan-23



Plan Element		Start Date	P	roject Duratio	on
Element 3: Mandatory board member training and development, including but not limited to financial oversight and effective committee structure		1-Jul		261	
	Activity Owner	End Date			
Organization: Board of Regents of Kentucky State University (BOR)	Name: Board Chair working with the Interim President	30-Jun			
	Board Chair and President				
Activity	Objectives	Status	Assigned to	Comments	Completion Date
Conduct review of current board committee structure as compared to those at peer institutions and best practices for structure and charge of effective university board committee	Summative Report	In Progress	Board of Regents assisted by the Board Secretary		Feb-23
Complete CPE-facilitated training on history of the institution as a state entity and its recent financial crisis	Training Completed	In Progress	Board Chair working with the Board Secretary		Feb-23
Determine board committee structure and composition and outline and the charge of each committee	Revised Committee Structure	Completed	Board Chair working with the Board of Regents	Completed 9-1-2022	Apr-23
CPE Review and approve KSU new board member orientation programs per KRS 164.020(25)©	Orientation Program Curriculum	In Progress	Board Chair working with the Interim President		May-23
Develop with CPE financial oversight training modules for Regents	Training Modules	In Progress	Board Chair working with the Chair of the Finance and Administration Committee, the Interim President, and the Interim Executive VP		Jun-23
			Î		



## MIP Element 4: FY 2023 Deliverables

Plan Element		Start Date		<b>Project Duration</b>	
Element 4: Academic program offerings and faculty productivity		1-Jul		261	
	Activity Owner	End Date			
Organization: Division of Academic Affairs	Name: Dr. Michael Dailey	30-Jun			
	Title: Interim Provost and VP of Academic Affairs				
Activity	Objective	Status	Assigned to	Comments	Completion Date
Evaluate the viability of all current academic programs	Summative Report	Delayed			Feb-23
Close low performing programs	Suspend programs with plan to close in CPE program inventory	<b>In Progress</b>			Apr-23
Determine appropriate class sizes, approval process and pay structure for	Summative report and updated HR policy	<b>In Progress</b>			May-23
Ensure alignment of course program plans with CPE's Academic Program Inventory and degree plan site.	Summative report and inventory/site updates	In Progress			May-23
Evaluate cost/benefit of the dual credit program	Summative report and performance improvement plan	<b>In Progress</b>			May-23
Evaluate curriculum for all non-educator preparation programs	Posted RFP and contract awarded	In Progress		(FY 2023 MIP Funding \$100k)	May-23
Review educator preparation programs and redesign to provide culturally					
responsive teaching, improve K12 pipeline, meet market demands, and	Posted RFP and contract awarded	Delayed			May-23
address shortage of teachers of color.					
Determine number of faculty needed for each program	Summative report	Delayed			Jun-23
Evaluate potential new program offerings	Summative Report and proposal development plan	<b>In Progress</b>			Jun-23



# MIP Element 5: FY 2023 Deliverables

Activity	Objective	Status	Assigned to	Comments	Completion Date
	Issue RFP and award a contract for			<b>Executed Contract (FY</b>	
	accounting services to assist in the	Completed		23 MIP Funding	Dec-22
	addressing ongoing accounting issues			\$500k)	
	Clearing accounts reconciled within 7 days of end of each month	In Progress		Completed on time	Jun-23
		in Flogress		each month	Juli-23
	Bank accounts reconciled within 7 days of	In Progress		Completed on time	Jun-23
	end of each month	III FTOgress		each month	Juli-23
	Monthly closing entries posted within 7	In Progress		Completed on time	Jun-23
	days of end of each month	g. coo		each month	
	Month closed by the 10th day of each	In Progress		Completed on time	Jun-23
	month			each month	
	Credit card account reconciliations	In Progress		Completed on time	Jun-23
				each month	
	Revise and update Business Procedures	In Progress		Completed on time	Jun-23
	Manual			each month	
	Statement of Revenues, Expenses and			Completed on time	
	Changes in Net Position by 10th of each	In Progress		each month	Jun-2
	month				
	Statement of Net Position by 10th of each	In Progress		Completed on time	Jun-23
Improve the accounting and reporting	month	In Progress		each month *1. Current Ratio	
system, as well as internal controls over	er	In Progress		*2. Composite	
financial reporting, and provide				Financial Index	
quarterly GAAP statements and other				Scores exceeding	
financial information to the Board of				industry standard	
Regents.		In Progress		*3. Improving Score	
				on College Market	
				Stress Test	
				*4. Improving	Jul-2
		In Progress		Accounts Payable	
				<b>Turnover Ratio</b>	
				*5. Increase in	
	Annual Financial Statement Analysis			Unrestricted Net	
		In Progress		Assets less Capital	
				Assets and Pension	
				Impact	
		In Progress		Completed on time	Jun-2
		miliogress		each month	
		In Progress		Completed on time	Jun-23
				each month	3411-2.
		In Progress		Completed on time	Jun-23
				each month	Juli-2.
		In Progress		Completed on time	Jun-23
				each month	3611 23



Activity	Objective	Status	Assigned to	Comments	Completion Date
	Adopt audit plan for internal audit	In Progress			Dec-22
Outsource or co-source the internal audit function and reinstate the	Award contract for internal auditing services	Completed		Completed 11-10- 2022	Nov-22
externally managed tip line.	Reinstitute external tip line	Completed		Completed 11-10- 2022	Nov-22
	Review endowment agreements and execute new agreements where needed	In Progress			Jun-23
	Correct accounting for prior withdrawals in 2019 and 2020	In Progress			Jun-23
	Correct accounting structure in Banner for endowment accounts	In Progress			Jun-23
Implement a formal endowment	Correct endowment reporting on FY 2021 and FY 2022 financial statements	In Progress			Jun-23
management framework	Review and update endowment investment policy	In Progress			Jun-23
	Conduct a review of endowment manager performance	In Progress			Jun-23
	Report on Fundraising Efficiency	In Progress		Fundraising Efficiency Ratio Improving	Jun-23



Activity	Objective	Status	Assigned to	Comments	Completion Date
	Monthly report of outstanding student balances	In Progress		1. Trend of reduced student balances at census date	
Improve the collection of student accounts receivable, including implementation of a comprehensive Student Financial Responsibility Agreement and utilization of external collection agencies, including Kentucky's		In Progress		2. Improving Accounts Receivable Turnover Ratio	February and September
		In Progress		3. Decrease over time in Bad Debt Expense	
Department of Revenue.	Monthly report of collection activity	In Progress		Completed on time each month	Jun-23
	Executed student financial responsibility agreement	In Progress			Jun-23
	Revised collection policy	In Progress			Jun-23
Complete a comprehensive review of	Revised chart of accounts	In Progress			Jun-23
expenses to ensure they are charged to	Summative report on account revisions	In Progress			Jun-23
	Completed optimizations by module	In Progress			Sep-23
Complete Banner optimization project and ADP to Banner Transition.	Summative report on necessary optimizations	In Progress			Nov-23
	Completed transition from ADP to Banner payroll module	In Progress			Jun-23



Activity	Objective	Status	Assigned to	Comments	Completion Date
Implement a long-range planning process to support the strategic and capital investment decision-making	Contract for custodial, grounds, and facilities management	Completed		Board approval 12-28- 2022 and awaiting CPE Board approval 1- 2023 (FY 23 MIP Funding \$1.2m)	Nov-22
process.	Deferred Maintenance Schedule	In Progress			Jun-23
	Asset Preservation Funding Allocation Program	In Progress			Jun-23
Implement an enterprise risk management process to identify, evaluate, and mitigate key risks facing	Create BOR committee for enterprise risk management or assign to existing committee				Jan-24
the institution and higher education	Summative report				Mar-24
Develop appropriate policies and	Annual cash flow projection	In Progress			Jun-23
procedures governing the key functions of treasury management including cash	Cash and Treasury management procedures manual	In Progress			Jun-23
Implement quarterly reporting to the Board of Regents on the President's travel, entertainment, and discretionary expenses.	Quarterly report	In Progress			Jan-23



Activity	Objective	Status	Assigned to	Comments	Completion Date
Complete software audit to identify if all purchased and licensed software is necessary and being used effectively.	Summative Report	In Progress			Jun-23
Incorporate NACUBO FARM as a guiding document for all business procedures.	Revised business procedures document	In Progress			Jun-23
Review endowment performance and develop related management metrics.	Summative report	In Progress			Jun-23



# MIP Element 6: FY 2023 Deliverables

	Start Date	Project Duration		
	1-Jul		261	
Activity Owner	End Date			
Name: Dr. Bridget Golman				
Objective	Status	Assigned to	Comments	Completion Date
Summative report and updated organizational chart	Completed	Dr. Golman	Completed 10-12-2022	Dec-22
Issuance of RFP and award of contract	In Progress			May-23
Summative report and Implementation and Training Plan	In Progress			May-23
Summative report and Implementation Plan	In Progress			May-23
Summative report	Delayed			Jun-23
	Objective  Summative report and updated organizational chart  Issuance of RFP and award of contract  Summative report and Implementation and Training Plan  Summative report and Implementation Plan	Activity Owner End Date Name: Dr. Bridget Golman 30-Jun Title: Interim VP Student Engeagement  Objective Status  Summative report and updated organizational chart  Issuance of RFP and award of contract  Summative report and In Progress  Summative report and Implementation and Training Plan  Summative report and Implementation Plan  In Progress	Activity Owner End Date Name: Dr. Bridget Golman 30-Jun Title: Interim VP Student Engeagement  Objective Status Assigned to  Summative report and updated organizational chart Dr. Golman  Issuance of RFP and award of contract In Progress  Summative report and Implementation and Training Plan  Summative report and Improgress  In Progress  In Progress	Activity Owner End Date Name: Dr. Bridget Golman 30-Jun Title: Interim VP Student Engeagement  Objective Status Assigned to Comments  Summative report and updated organizational chart In Progress  Issuance of RFP and award of contract In Progress  Summative report and Implementation and Training Plan  Summative report and Implementation Plan  In Progress



## MIP Element 7: FY 2023 Deliverables

Plan Element		Start Date	Project Duration		on
Element 7: Student acacademic progress and results		1-Jul		239	
Oussuisstians Division of Student	Activity Owner	End Date			
Organization: Division of Student	Name: Dr. Bridget Golma	31-May			
Engagement	Title: Interim VP Student	Engeageme	nt		
Activity	Objective	Status	Assigned to	Comments	Completion
7.00.0127					Date
Develop a system to manage institution-wide and program/departmental student cohorts	Summative report and Implementation Plan	Delayed			May-23



## MIP Element 8: FY 2023 Deliverables

Plan Element		Start Date		<b>Project Duration</b>	
Element 8: Develoment of online offerings		1-Jul		740	
			1		
	Activity Owner	End Date			
Organization: Division of Academic Affairs	Name: Dr. Michael Dailey	1-May			
	Title: Interim Provost and VP of Academic Affairs				
Activity	Objective	Status	Assigned to	Comments	Completion Date
Identify a partner to provide online programs	Issue RFP and contract award	Delayed		FY 2023 MIP Financing \$2.5m	May-23
Utilize Gray Associates PES+ Market system to identify high demand	Summative report and proposal development plan	In Progress			May-23



- KSU's Mission
- A History of Service
- KSU Empowering Success
- The KSU Promise





## KSU's Mission Statement

KSU – Public, comprehensive, historically black land-grant university Committed to –
advancing the
Commonwealth
of Kentucky,
enhancing society
and impacting
individuals

A History of Service to the Commonwealth...

By providing – quality teaching with a foundation in liberal studies, scholarly research, and public service

To enable – productive lives within the diverse global economy

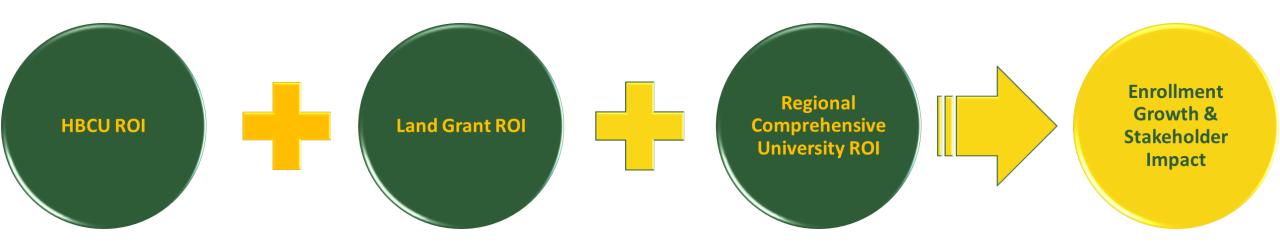
Dedicated to Improving Lives through Empowerment...

# A History of Service

- Kentucky State University (KSU) began as an idea on October 15, 1885. The Commonwealth needed more normal schools to train African American teachers for employment in its Black elementary schools. On May 18, 1886, legislators authorized the school's creation, and the University was chartered as the State Normal School for Colored Persons, the second state-supported institution of higher learning in Kentucky.
- KSU became a land-grant college in 1890, and the school produced its first graduating class of five students in the spring of that year.
- Today, KSU is a public institution with an enrollment of approximately 2,100 students and 160 full-time faculty members. The University's diverse mix of faculty, staff, and students has made Kentucky State the most diverse public institution in the Commonwealth, and among the most diverse nationwide.



## KSU Empowering the Success



HB 250: Section 7 – Whereas the financial health and success of Kentucky State University, a comprehensive, historically Black land-grant university, is vital to the well-being of Kentucky's postsecondary education system and the students it serves, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.



- KSU's Promise is to be unwavering in its commitment to leveraging the success of its stakeholders. To fulfill KSU's Promise we must focus on improving the alignment of the work that faculty, staff, and students do with helping our stakeholders thrive. Acting together, we can do this!
- Goal achievement begins with the recognition that all stakeholders matter and that reaching the goal calls for a tailored set of solutions based on a deep understanding of what matters most to stakeholders. This is the cornerstone of the strategies required to achieve success in meeting stakeholder expectations and ensuring financial viability.
- In addition to driving outcomes that yield improved performance, the pursuit of these
  goals can help unlock emergent patterns of stakeholder need and problems and offer
  opportunities for KSU to supply solutions that create new sources of revenue and
  economic and social impact and help strengthen the long-term health and
  sustainability of the university, the region, the Commonwealth of Kentucky, and
  beyond.

# Questions





### KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

**ACTION ITEM 5A** 

### **ACTION ITEM**

Approval of revisions to the faculty evaluation process.

### **FACTS**

House Bill 250 (HB 250), an act relating to Kentucky State University, was signed into law on April 8, 2022.

On July 15, 2022, the KSU Board of Regents approved an action to allow HB 250-mandated policies and procedures for employee evaluations to include post-tenure reviews. However, with additional administrative and faculty input, revisions to the process are recommended to refine the faculty evaluation rubric and process.

The revised faculty evaluation process will be the basis for subsequent annual revisions, third-year review, and post-tenure review. The performance evaluation will support decision-making relative to continuous improvement.

Future performance evaluations will require faculty to provide planned performance criteria for the academic year. Once the criteria are approved based on University and discipline-level requirements, they will serve as the basis for faculty performance evaluation.

The revised evaluation process accesses the performance of tenured, tenure-track, and term faculty. The revised evaluation process requires documented evidence for evaluating faculty in three areas: teaching effectiveness, high-impact practices in scholarship, and University and community service.

### **BUDGETARY IMPLICATION**

There are no budgetary implications.

### **RECOMMENDATION**

Interim President Ronald A. Johnson recommends that the Board of Regents approve the revised faculty evaluation process.

### **MOTION**

Approve the revised faculty evaluation process.

# **Faculty Evaluation Process** 2022-2023





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# KENTUCKY STATE UNIVERSITY POLICIES AND PROCEDURES

**POLICY TITLE: Revised Faculty Evaluation Process** 

**SECTION/NUMBER: TBD** 

**APPROVED BY: Interim President Ronald A. Johnson** 

**EFFECTIVE DATE: January 24, 2023** 

**REVISED FROM: July 15, 2022** 

**PURPOSE:** According to *House Bill 250, Section 1(g),* effective April 8, 2022, the following process regarding a faculty performance review during the 2022 calendar year of term, tenured, and tenure-track faculty at Kentucky State University is adopted, effective January 26, 2023. Kentucky State University asserts the performance evaluation system is designed to share with faculty a clear understanding of their performance within the three evaluation cycles for term, tenured, and tenure-track faulty.

All faculty types participate in the annual review process unless a faculty member is undergoing Third Year Review for Pre-Tenure faculty, Tenure and Promotion Review, or Post-Tenure Review evaluation processes.

### **POLICY STATEMENT:**

As stated in *House Bill 250, subparagraph 2 of Section 1(g),* "The process shall ensure a consistently high level of employee performance and shall include, but not be limited to, assessments by peers, students, and administrators. In addition to evaluating an employee's effectiveness, growth, accomplishments, and skills, the process shall be used to identify deficiencies and ineffectiveness and redirect employee efforts to improve or increase productivity. The process shall be used as a basis for decisions on continued employment, promotion, salary increases, tenure, and maintenance of tenure; . . . the review process for tenured faculty shall include an evaluation of teaching effectiveness, research body of work, overall commitment to the mission of the university, and other criteria determined by the board and the council."

Determining a faculty member in "good standing" is based on documented and verifiable evidence as outlined in the faculty member's executed contract and the minimum university set performance standards in the areas of teaching, scholarship, as well as university and community service.

Based on the *HB 250* mandate, Kentucky State University's new process addressing the 2022 calendar year performance evaluation of faculty ensures that processes are clearly articulated and published and are available to all persons in the university community. The process reflects Kentucky State University's set performance standards, as well as respecting the uniqueness of disciplines within the university, and provides appropriate, professional, and flexibility at college and school levels to establish expectations beyond the university performance standards.

### **RELATED PROCEDURES:**

Faculty at Kentucky State University are evaluated annually on the performance standards in three areas: teaching effectiveness and high impact practices in scholarship, and university and community service. Furthermore, faculty are contractually bound to meet the service expectations listed on their faculty contract addendum. The type of performance evaluation conducted (annual, third year, tenure and promotion, or post-tenure review) depends on the nature of the faculty member's contract, rank, and tenure status. The annual, third year, tenure and promotion, or post tenure review include four rating categories, as identified below:

- Exceeds Expectations has a numeric value equal to three (3) points a faculty member can earn;
- Meets Expectations has a numeric value equal to two (2) points a faculty member can earn;
- Needs Improvement has a numeric value equal to one (1) point a faculty member can earn; and,
- Unsatisfactory has a numeric value equal to zero (0). A faculty member will not earn any points towards their performance in this area.

The categories represent the point per indicator within the category faculty member can earn. The overall average for each category on the rubric found in Appendix D will adhere to the following bands:

3.00 - 2.50 Exceeds Expectations

2.49 to 2.0 Meets Expectations

1.99 to 1.0 Needs Improvement

.99 - 0 Unsatisfactory

University performance standards for faculty evaluations include the following (additional standards can be set by the college, unit, or school within the discipline):

**Teaching effectiveness:** Faculty members are evaluated on their ability to effectively deliver course content and engage students in authentic and active learning. This includes the use of appropriate teaching methods, the ability to create and use effective assessments, and the ability to provide meaningful feedback to students.

**Scholarship and research:** Faculty members are evaluated on their ability to conduct and publish scholarly research and contribute to their field of expertise. This includes the quality and quantity of publications, presentations, and other scholarly creative activities as outlined in the rubrics in Appendix D by rank and discipline

**Professional development:** Faculty members are evaluated on their ability to stay current in their field and engage in professional development activities. This includes attending and presenting at conferences, participating in workshops, and taking courses to maintain and improve their skills and knowledge.

**University and community service:** Faculty members are evaluated on their ability to contribute to the school or unit, college, and university community. This includes service on committees, participation in school or unit and college-wide activities, and engagement with the community.

**Goals and objectives:** Faculty members are evaluated on their ability to meet the goals and objectives set for them in their job description and by their employer. This includes specific targets and goals related to teaching, research, university and community service, and professional development.

**Compliance:** Faculty members are evaluated on their compliance with institutional, college, and school or unit policies and procedures.

Student, Peer and Supervisor evaluations: Faculty members are evaluated on their performance through student evaluations, peer evaluations, and supervisor evaluations.

These standards can vary depending on the college, school or unit, and discipline, but generally should be aligned with the goals of the institution.

Kentucky State University performance standards are designed to support the mission, vision, and values of this institution as well as promoting continuous growth and improvement of faculty members. Each rank and tenure status potentially earned by faculty members has performance standards commensurate with the rank or tenure status desired.

#### **DEFINITIONS:**

**Kentucky State University Performance Evaluation Standards** are designed to ensure continuous growth and improvement among all faculty at the university. The university evaluation performance standards are set as baseline expectations for demonstrated teaching effectiveness, high impact practices in scholarship, as well as institutional service and professional development for term, tenured, and tenure-track faculty.

- Exceeds Expectations the faculty member has demonstrated accomplishments and achievements reflecting a significant level beyond what is expected by the university, college, or school including faculty rank and contractual obligations within the unit discipline.
- Meets Expectations the faculty member has demonstrated accomplishments and achievements reflecting and commensurate with the university, college, or school including faculty rank and contractual obligations within the unit discipline.
- **Needs Improvement** the faculty member has not completely demonstrated or met the expectations defined by the university, college, or school including faculty rank and contractional obligations within the unit discipline.
- **Unsatisfactory** the faculty member failed to meet expectations defined by the university, college, or school including faculty rank and contractional obligations within the unit discipline.

- Accomplishments refer to specific, measurable actions or tasks that a faculty member has
  completed during the evaluation period. These may include things like publishing research
  papers in discipline accepted venues, developing new curriculum, or receiving grant funding.
  Accomplishments are often tangible and can be easily quantified. Additional determinations of
  quality may be applicable at the college and unit levels.
- Achievements refer to the overall impact or results that a faculty member has had in their role. These may include things like improving programs and student learning outcomes, increasing student engagement, or fostering a positive departmental culture. Achievements are more qualitative in nature and may be harder to quantify.

Kentucky State University Evaluation Performance Standards define the minimum criteria for meeting expectations within the evaluation system for term, tenured, and tenure-track faculty. The standards reflect the progression associated with the rank or tenure status desired. The following information outlines the performance standards across the areas of teaching effectiveness, high impact practices in scholarship, university and community service, as well as contractual obligations.

- Annual Evaluation
- Tenure Track 3<sup>rd</sup> Year Review
- Post-Tenure Review

Faculty members who are designated as "Needs Improvement" in any or all categories must complete an improvement plan. Any faculty receiving an unsatisfactory in any or all categories shall be subject to university sanctions including but not limited to dismissal.

**Term faculty** describes credentialed faculty who are hired as limited term, non-tenure track (short term/semester/year) contract, including part-time adjunct, lecturer, instructor, and visiting professor. Term faculty do not hold rank or tenure. Term faculty participate in annual performance review according to their executed contract.

**Full-time tenure track faculty** describes a credentialed faculty member employed full-time who is tenured, eligible for tenure, or in a pre-tenure probationary period. Full-time tenure track faculty participate in the annual performance review unless undergoing either 1) third-year review or 2) tenure and promotion review.

**Pre-tenure probationary faculty** describes a credentialed faculty member employed full-time who has been employed in a tenure track position from 1-6 years. Pre-tenure probationary faculty under annual review every year except during the third-year review and tenure and promotion reviews.

- Pre-tenured faculty members with three years of service participate in the third-year tenure review process.
- Pre-tenured faculty members with less than three years of service participate in the annual faculty review process.

**Tenured faculty** describes a credentialed faculty member who was awarded tenure previously at Kentucky State University. Tenured faculty undergo post-tenure performance review every four years. Tenured faculty members under post-tenure review evaluation do not participate in the annual performance review process.

**Calendar Day** will be defined as a date no later than the specified number of calendar days following the day of notification. If the final calendar day occurs on a weekend or holiday, the due date will be on the first day university administrative offices are open. The time for response may be extended upon agreement by both parties.

**Collegiality** is the ability of an individual to interact with colleagues with civility and professional respect; to engage in shared academic and administrative tasks productively with faculty, students, and staff. Collegiality should not be confused with sociability or likability but rather is the professional criterion relating to teaching, scholarly/creative activities, and service.

**Confidentiality** is the principle of limiting access to information or documents only to those persons authorized to have such access. Documents and communications in the evaluation, tenure, and promotion processes will be confidential to the extent permitted by law.

**Provost** refers to the chief academic officer or his/her designee.

**Dean** refers to an administrative faculty member who oversees a college where schools are housed and who reports to the provost.

**Chair** refers to an administrative faculty member overseeing a school where majors and programs are housed and reports to the dean of the college.

**Unit/School** refers to the academic programs that reside under one chair within a college.

### **ENTITIES AFFECTED:**

All faculty, school and unit administrators, deans, vice president of academic affairs/provost, president, and peer review committees as specified.

### POLICY OWNER/INTERPRETING AUTHORITY:

Policy Owner: Office of Academic Affairs

Interpreting Authority: Office of the President, Faculty Senate, and Office of the General Counsel

### **RELATED POLICIES/DOCUMENTS:**

Please see Appendices

- Appendix A: HB 250 Performance Review Process of All Faculty 2022-23;
- Appendix B: 2.6 Tenure, Promotion, and Reappointment Procedures;
- Appendix C: Post-Tenure Review
- Appendix D Evaluation Rubrics.

### **STATUTORY OR REGULATORY REFERENCES:**

### **Appendix A**

### **Academic Regulation:**

### HB 250 Performance Review Process of All Faculty 2022-23

### Statement

According to *House Bill 250, Section 1(g)*, effective April 8, 2022, the following process regarding a faculty performance review during the 2022 calendar year of term, tenured and tenure-track faculty at Kentucky State University is adopted, effective January 26, 2023.

As stated in *HB 250, subparagraph 2 of Section 1(g),* "The process shall ensure a consistently high level of employee performance and shall include, but not be limited to, assessments by peers, students, and administrators. In addition to evaluating an employee's growth, accomplishments, and skills, the process shall be used to identify deficiencies and ineffectiveness and redirect employee efforts to improve or increase productivity. The process shall be used as a basis for decisions on continued employment, promotion, salary increases, tenure, and maintenance of tenure; . . . the review process for tenured faculty shall include an evaluation of teaching effectiveness, research body of work, overall commitment to the mission of the university, and other criteria determined by the board and the council."

Determining a faculty member in "good standing" is based on documented and verifiable evidence using university performance standards.

Based on the *HB 250* mandate, Kentucky State University's new process addressing the 2022 calendar year performance evaluation of faculty ensures that processes are clearly articulated and published and are available to all persons in the university community. The process respects the uniqueness of disciplines within the university and provides appropriate, professional, and flexibility at college and school levels.

#### **Entities Affected**

- College and University-level Administrators
- Schools
- Tenured Faculty
- Tenure-Track Faculty
- Term Faculty
- Provost

### **Principles**

The revised performance review process at each administrative level shall include appropriate evaluations of performance in teaching, scholarship, and service. The evaluation shall be a part of the individual's evaluation file housed in the Office of Academic Affairs and Human Resources, with a copy to the faculty member, school chair, and dean.

The review process at each level shall be limited to professionally relevant considerations and shall include documented evidence of performance from the faculty member, students, other faculty, and

college- and university-level administrators. The documented evidence shall be a part of the individual's evaluation dossier.

#### Criteria

Faculty shall be evaluated on their teaching, research, and service performance for the 2022 calendar year using established discipline guidelines. This *HB 250* mandate stipulates a performance review process that will include all tenured, tenure-track, and term faculty. For faculty members who do not submit a performance review, do not develop and obtain an approved performance improvement plan according to the obtained performance rating described below, or fails to implement a performance plan, the provost could recommend sanctions up to dismissal for the faculty member.

In reviewing all three areas of faculty performance (quality of teaching effectiveness, quality of professional development and scholarly achievement, and quality of service and community contribution), faculty appointments that are reassigned to the administration, library, research or extension will be evaluated according to their annual contracts and distribution of effort agreements. Faculty may include scholarly achievements from Fall 2020 to Fall 2022 in the professional growth and scholarly achievement category only.

Academic discipline areas may articulate expectations beyond the minimum to meet professional accrediting and/or certification criteria.

#### **Procedures**

#### **Conducting Evaluations for Faculty**

General Guidelines for Evaluations:

- a. All evaluations are conducted ethically, with recommendations and justifications based on relevant documented and verifiable information.
- b. Administrative reviewers (school chair, college dean, and provost) will ensure the performance standard evaluation recommendations are consistent with the goals and needs of the university, as well as the areas within their scope of responsibility.
- c. The faculty member will have a dossier consultation with their chair prior to February 1, 2023.
- d. Faculty must submit evidence of their teaching, research, and service performance in dossiers to their school chair by **February 1, 2023**. The performance areas will contain three categories: (1) Evidence of Quality Teaching Effectiveness, (2) Evidence of Quality Professional Growth and Scholarly Achievement, and (3) Evidence of Quality Service and Community Contribution.
- e. The performance evaluation item ratings are scored as follows:
- Exceeds Expectations (3)
- Meets Expectations (2)
- Needs Improvement (1)
- Unsatisfactory (0)

The categories represent the point per indicator within the category faculty member can earn. The overall average for each category on the rubric found in Appendix D will adhere to the following bands:

3.00 - 2.50 Exceeds Expectations 2.49 to 2.0 Meets Expectations 1.99 to 1.0 Needs Improvement .99 - 0 Unsatisfactory

Additionally, the school chair will collect information on the compliance of the faculty with the annual executed contract and include this information in the performance evaluation. Compliance infractions will require a faculty performance improvement plan and each category of noncompliance will result in a three-point reduction (-3) from the faculty member's performance assessment.

Faculty with predominantly administrative, research, extension, or library appointments will be weighted according to the faculty member's contract.

- a. Full-time term faculty (temporary, non-tenure track, instructor, lecturer, or visiting professor)
   will be evaluated according to their contract for the teaching, scholarly work, and service requirements.
- b. The dossier will be submitted via Interfolio to the faculty member's school chair by February 1, 2023. The school chair evaluates faculty performance objectives by following the university's standards for teaching and learning, research and creative artifacts, service, and compliance standards. After receipt of the materials, the school chair shall state in writing their overall recommendation for either "exceeds expectations," "meets expectations," "needs improvement," or "unsatisfactory."

#### **Performance Exceeds Expectations or Meets Expectations**

- a. The school chair sends the performance review to the college dean for review and recommendation and to the faculty for their records by March 1. The faculty member may respond to the recommendation with comments within 5 days. The dean shall review the dossier and the recommendation and faculty comments. The college dean sends the performance review to the provost for approval by April 4, and the approved review is sent to the faculty member, dean, and school chair for their records.
- b. If any category under the performance review "needs improvement" or "unsatisfactory" or if there are compliance infractions, see the relevant performance section below.

#### **Performance Needs Improvement**

- a. If any category under the performance review has a performance "needs improvement," then a faculty performance improvement plan would be required.
- b. The school chair sends the performance review to the faculty member and college dean by March 1. The faculty must develop and submit a one-year faculty performance improvement plan, working with the school chair, to be submitted to the school chair for an approval recommendation by March 29. The school chair sends their approved recommendation, the performance improvement plan, and the other performance review documents, by April 4, to the college dean for review and recommendation. The college dean sends their recommendation by April 14, along with all the other performance review documents to the provost for approval and the approved plan and review are sent to the faculty member, college dean, and school chair for their records.
- c. For faculty members who do not submit a performance review, do not develop and obtain an approved performance improvement plan, or fail to implement a performance plan, the provost could recommend sanctions up to dismissal for the faculty member.

If there are compliance infractions, the faculty member must sign a Compliance Statement in accordance with their annual executed contract. If the faculty member does not sign the infraction agreement, the provost could recommend sanctions up to dismissal for the faculty member.

#### **Performance Is Unsatisfactory**

- a. For faculty members who do not submit a performance review, do not develop and obtain an approved performance improvement plan, or fail to implement a performance plan, the provost could recommend sanctions up to dismissal for the faculty member.
- b. For tenured and tenure-track faculty where there is an unsatisfactory performance in any category under review, the school chair will send the performance review document and their recommendation to the faculty for their comments by **March 1**. Faculty members may respond to the recommendation within 5 days.
- c. The school chair will forward the performance review document, along with their recommendation and the faculty's response to the college dean and the faculty member by March 7. The college dean will review the materials and send his/her recommendation to the provost for review and decision by March 22.
- d. If the provost finds that a faculty performance improvement plan is warranted, then the provost sends the decision to the school chair and the faculty member by April 5, notifying them that the faculty member must develop and submit a one-year faculty performance improvement plan to the school chair by April 25. The school chair sends their approved recommendation, the faculty performance improvement plan, and the other performance review documents, by May 1, to the dean for review. The dean will send all documents and their recommendation by May 8 to the provost for review and approval by the provost. The provost sends their decision by May 18, along with all the other performance review documents to the faculty member, college dean, and school chair for their records.
- e. If there are compliance infractions, the faculty member must sign a Compliance Statement in accordance with their annual executed contract. If the faculty member does not sign the infraction agreement, the provost could recommend sanctions up to dismissal for the faculty member.
- f. If the provost finds that the faculty performance warrants sanctions and the faculty member is tenure-track, the provost will send all the faculty performance evaluation documents and the provost's review/recommendation for sanctions, up to dismissal, to the president and to the faculty member by May 1. If the sanction recommendation is for dismissal, the president reviews the recommendation, and sends his/her final determination decision to the and the provost by May 18.
- g. If the provost finds that the faculty performance warrants sanctions, and the faculty member is **tenured**, the provost will send all the faculty performance evaluation documents and the provost's review/recommendation for sanctions including, up to dismissal, to the faculty member by **April 17**. The faculty member may appeal to the recommendation by **April 24** to the provost. The provost will send the recommendation for sanctions and the faculty appeal to the president and to the faculty member by **May 1**. The president reviews the recommendation and makes a determination. For sanctions other than dismissal, the president's determination is final and is sent to the provost, faculty member, college dean, and school chair.

h. In the event of a recommendation for dismissal, the president by **May 18** sends his/her recommendation along with the faculty's written appeal to the Board of Regents (BOR) for final determination. The BOR will send the final decision on dismissal to the president, who will then send a letter to the faculty member, with copies to the college dean and chair notifying them of the BOR decision.

#### **SANCTIONS**

Sanctions may include reassignment of duties, a salary reduction, a reduction in rank, a leave of absence, or other appropriate measures, including dismissal as provided in Policy 2.8.5 Termination. Sanctions could include dismissal with a 30-day notice per HB 250 section 1b.

#### The Faculty Performance Improvement Plan

Faculty performance improvement plans shall be for a maximum of one year. Additional time may be considered by the provost.

The development plan shall

- 1. Identify specific concerns to be addressed;
- 2. Define specific objectives to remedy the concerns that are reasonable and measurable;
- 3. Outline the activities required to achieve the objectives;
- 4. Set timelines, with specific milestones throughout the plan, for achieving the objectives;
- 5. State the criteria for progress reviews and for completion of the plan; and
- 6. Identify sources of funding required to implement the plan, if necessary.

#### Assessment of the Faculty Performance Improvement Plan

- 1. At each milestone in the faculty performance improvement plan, the school chair shall assess the achievement of the stated objectives. If a milestone objective has not been satisfactorily met, the chair shall notify the faculty member in writing. The chair may recommend the faculty member continue with the development plan or may recommend a sanction. If a sanction is recommended, the chair shall forward the recommendation and the report to the dean. The recommendation of sanction shall then follow steps 5-8 below.
- 2. Within 30 calendar days of the conclusion of the faculty performance improvement plan, the chair shall assess the achievement of the stated objectives and shall write a report indicating how each objective was achieved or not achieved. The chair can make one of two findings:

- a. the faculty member has fulfilled the development plan objectives and the review period has been completed with an overall satisfactory rating, or
- b. the faculty member has continued performance deficiencies.
- 3. The chair shall submit the report to the dean.
- 4. If the dean concurs with a finding that the development plan has been fulfilled, the faculty member will resume the normal annual review cycle. If the chair does not concur with a finding that the development plan has been fulfilled or concurs with a finding that the faculty member has continued performance deficiencies, within 10 calendar days, the chair will indicate in writing with a justification and a recommendation of a sanction. The chair will forward his/her recommendation, the chair's report, and all supporting materials to the dean.
- 5. Within 10 calendar days, the chair shall state in writing whether they concur with the recommendation for sanction, If the chair does not concur with the recommendation for sanction, the chair shall state in writing the reasons for the differing recommendation. The chair shall forward all recommendations and all supporting materials to the dean of the faculty member's college.
- 6. Within 10 calendar days, the dean shall state in writing whether he/she concurs with the recommendation for sanction, If the dean does not concur with the recommendation for sanction, the dean shall state in writing the reasons for the differing recommendation. The dean shall forward the chair's report, all recommendations, and all supporting materials to the provost.
- 7. Within 10 calendar days, the provost shall notify the faculty member in writing, with a copy to the dean, and the chair, whether he/she concurs with the recommendation for sanction. If the provost does not concur with the recommendation for sanction, the provost shall state in writing the reasons for the differing decision.
- 8. The faculty member may appeal the provost's decision to the Faculty Evaluation Appeals Committee within 10 calendar days of notification of the provost's decision.

#### **Definitions**

**Calendar Day** will be defined as a date no later than the specified number of calendar days following the day of notification. If the final calendar day occurs on a weekend or holiday, the due date will be on the first day university administrative offices are open. The time for response may be extended upon agreement by both parties.

**Collegiality** is the ability of an individual to interact with colleagues with civility and professional respect; to engage in shared academic and administrative tasks productively with faculty, students,

and staff. Collegiality should not be confused with sociability or likability but rather is the professional criterion relating to teaching, scholarly/creative activities, and service.

**Confidentiality** is the principle of limiting access to information or documents only to those persons authorized to have such access. Documents and communications in the evaluation, tenure, and promotion processes will be confidential to the extent permitted by law.

**Term Faculty** refers to an instructor, a replacement for a regular faculty member, a person on short-term assignment, adjunct, lecturer, instructor and visiting faculty member.

**Full-time tenure track Faculty** describes a faculty member employed full-time who is tenured, eligible for tenure, or in a pre-tenure probationary period.

**Provost** refers to the chief academic officer or his/her designee.

**Dean** refers to an administrative faculty member who oversees a college where schools are housed and who reports to the provost.

**Chair** refers to an administrative faculty member overseeing a school where majors and programs are housed and reports to the dean of the college.

Unit/School refers to the academic programs that reside under one chair within a college.

## Responsibilities

#### School Chair/Unit Administrator

At a minimum, the chair/unit administrator is responsible for the following:

- informing the faculty of policies, procedures, and criteria for the faculty performance evaluation
- conducting the school/unit level review and evaluation as outlined in this policy specific to the timeframe directed herein regarding HB 250
- making recommendations to the dean regarding faculty performance or sanctions

#### **College Dean**

At a minimum, the college dean is responsible for the following:

- notifying the faculty in writing of such decisions
- ensuring all evaluation materials are submitted to the provost on time

#### **Faculty Member**

At a minimum, the faculty member being evaluated is responsible for the following:

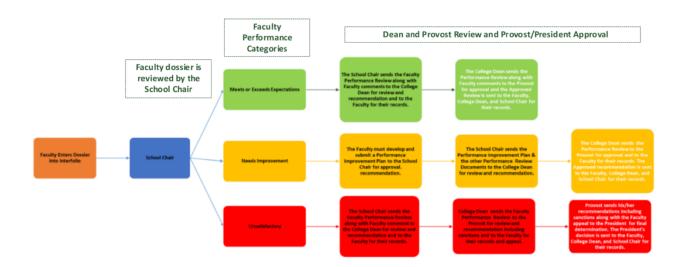
- knowing and adhering to the principles and criteria outlined in this policy and the executed annual faculty contract
- submitting a dossier and other applicable materials by the established University deadline

#### **Provost**

At a minimum, the provost is responsible for the following:

 ensuring the criteria applied in the evaluation is consistent with the terms of agreement established in writing at the faculty member's initial appointment in a tenure-track position

## KSU Annual Faculty Performance Review Process



#### Appendix B:

# Academic Regulation: 2.6 Tenure, Promotion, and Reappointment Procedures

#### Statement

Pursuant to the declaration of Financial Exigency by the Kentucky Legislature and outlined in *House Bill 250* on April 8, 2022, the following policy replaces the current *Faculty Handbook (2019) Section 2.6 regarding the Promotion and Tenure: Policies and Standards* of tenured and tenure track faculty at Kentucky State University is hereby adopted.

#### **Entities Affected**

- College and University-level Administrators
- Schools and Units
- Tenured Faculty
- Tenure-Track Faculty
- Provost

## **Principles**

#### **Third-Year Summative Review**

For probationary faculty (tenure track), a comprehensive, **summative third-year review** will be conducted to assist the faculty member with specific feedback on their progress towards meeting school/unit expectations in their pursuit of earning tenure and promotion.

#### **Procedure**

a. For probationary faculty (tenure track) who have been employed for a minimum of three years at Kentucky State University as a tenure track faculty member, a comprehensive, summative third year review will be conducted according to university standards in reference to the evaluation of (1) Quality Teaching Effectiveness (2) Quality of Professional Development and Scholarship and (3) Quality University Service and Community Contribution. Faculty with predominantly administrative, research, extension, or library appointments will be weighted according to the faculty member's executed contract.

- b. The categories represent the point per indicator within the category faculty member can earn. The overall average for each category on the rubric found in Appendix D will adhere to the following bands:
- c. 3.00 2.50 Exceeds Expectations
- d. 2.49 to 2.0 Meets Expectations
- e. 1.99 to 1.0 Needs Improvement
- f. .99 0 Unsatisfactory
- b. The dossier will be submitted via Interfolio to the faculty member's school chair by February 1, 2023. The school chair evaluates faculty performance following the university's standards for teaching and learning, research and creative artifacts, and service. After receipt of the materials, the chair shall state in writing their recommendation for either "exceeds expectations," "meets expectations," "needs improvement," or "unsatisfactory" and whether a performance improvement plan or any sanctions are recommended and the level of any the sanctions as follows:

## **Performance Exceeds Expectations or Meets Expectations**

- a. The school chair sends the performance review to the college dean for review and recommendation and to the faculty for their records by **March 1**. The faculty member may respond to the recommendation with comments within 5 days. The dean shall review the dossier and the recommendation and faculty comments. The college dean sends the performance review to the provost for approval by **April 4**, and the approved review is sent to the faculty member, college dean, and school chair for their records.
- b. If any category under the performance review "needs improvement" or "unsatisfactory" or if there are compliance infractions, see the relevant performance section below.

## **Performance Needs Improvement**

- a. If any category under the performance review has a performance "needs improvement," then a Faculty Third-Year Review Performance Improvement Plan would be required.
- b. The school chair sends the performance review to the faculty member and college dean by March 1. The faculty must develop and submit a one-year Faculty Third Year Review Performance Improvement Plan, working with the school chair, to be submitted to the school chair for an approval recommendation by March 29. The school chair sends his/her/their approved recommendation, the Faculty Third-Year Review Performance Improvement, and other performance review documents, by April 4, to the college dean for review and recommendation. The college dean sends his/her recommendation by April 14, along with all the other performance review documents to the provost for approval and the approved plan and review are sent to the faculty member, college dean, and school chair for their records.
- c. For faculty members who do not submit a Faculty Third Year Review Performance Improvement Plan, do not develop, and obtain an approved Faculty Third Year Review Performance

- Improvement Plan or fail to implement a Third -Year Review Performance Improvement Plan, the provost could recommend sanctions up to dismissal for the faculty member.
- d. If there are compliance infractions, the faculty member must sign a Compliance Statement in accordance with their annual executed contract. If the faculty member does not sign the infraction agreement, the provost could recommend sanctions up to dismissal for the faculty member.

## **Performance Is Unsatisfactory**

- a. For tenured and tenure-track faculty where there is an unsatisfactory performance in any category under review, the school chair will send the performance review document and their recommendation to the faculty for their comments by **March 1**. Faculty members may respond to the recommendation within 5 days.
- b. The school chair will forward the performance review document, along with their recommendation and the faculty's response to the college dean and the faculty member by **March 7**. The college dean will review the materials and send his/her recommendation to the provost for review and decision by **March 22**.
- c. If the provost finds that a Faculty Third-Year Review Performance Plan is warranted, then the provost sends the decision to the school chair and the faculty member by April 5, notifying them that the faculty member must develop and submit a one-year Faculty Third-Year Review Performance Improvement Plan to the school chair by April 25. The school chair sends his/her/their approved recommendation, the Faculty Third-Year Review Performance Improvement Plan, and the other performance review documents, by May 1, to the dean for review. The dean will send all documents and his/her/their recommendation by May 8 to the provost for review and approval by the provost. The provost sends his/her/their decision by May 18, along with all the other performance review documents to the faculty member, college dean, and school chair for their records.
- d. If there are compliance infractions, the faculty member must sign a Compliance Statement in accordance with their annual executed contract. If the faculty member does not sign the infraction agreement, the provost could recommend sanctions up to for the faculty member.
- e. If the provost finds that the faculty performance warrants sanctions, the provost will send all the faculty performance evaluation documents and the provost's review/recommendation for sanctions, up to dismissal, to the president and to the faculty member by **May 1**. If the sanction recommendation is for dismissal, the president reviews the recommendation and sends his/her/their final determination decision to the faculty and the provost by **May 18**.

#### **SANCTIONS**

Sanctions may include reassignment of duties, a salary reduction, a reduction in rank, a leave of absence, or other appropriate measures, including dismissal as provided in Policy 2.8.5 Termination. Sanctions could include dismissal with a 30-day notice per HB 250 section 1b.

## The Faculty Third-Year Review Performance Improvement Plan

Faculty Third-Year Review Performance Improvement Plan shall be for a maximum of one year. Additional time may be considered by the provost.

The Faculty Third-Year Review Performance Improvement Plan shall:

- 1. Identify specific concerns to be addressed.
- 2. Define specific outcome objectives to remedy the concerns that are reasonable and measurable.
- 3. Outline the activities required to achieve the objectives.
- 4. Set timelines, with specific milestones throughout the plan, for achieving the objectives.
- 5. State the criteria for progress reviews and for completion of the plan; and
- 6. Identify sources of funding required to implement the plan, if necessary.

## Assessment of the Faculty Third-Year Review Performance Improvement Plan

- 1. At each milestone in the Faculty Third Year Review Performance Improvement Plan, the school chair shall assess the achievement of the stated objectives. If a milestone objective has not been satisfactorily met, the chair shall notify the chair in writing. The chair may recommend the faculty member continue with the development plan or may recommend a sanction. If a sanction is recommended, the chair shall forward the recommendation and the report to the dean. The recommendation of sanction shall then follow steps 5-8 below.
- 2. Within 30 calendar days of the conclusion of the Faculty Third-Year Review Performance Improvement Plan, the chair shall assess the achievement of the stated objectives and shall write a report indicating how each objective was achieved or not achieved. The chair can make one of two findings:
  - a. the faculty member has fulfilled the development plan objectives and the review period has been completed with an overall satisfactory rating, or
  - b. the faculty member has continued performance deficiencies.
- 3. The chair shall submit the report to the dean.
- 4. If the dean concurs with a finding that the development plan has been fulfilled, the faculty member will resume the normal annual review cycle. If the chair does not concur with a finding

that the development plan has been fulfilled or concurs with a finding that the faculty member has continued performance deficiencies, within 10 calendar days, the chair will indicate in writing with a justification and a recommendation of a sanction. The chair will forward his/her recommendation, the chair's report, and all supporting materials to the dean.

- 5. Within 10 calendar days, the chair shall state in writing whether they concur with the recommendation for sanction, If the chair does not concur with the recommendation for sanction, the chair shall state in writing the reasons for the differing recommendation. The chair shall forward all recommendations and all supporting materials to the dean of the faculty member's college.
- 6. Within 10 calendar days, the dean shall state in writing whether he/she concurs with the recommendation for sanction, If the dean does not concur with the recommendation for sanction, the dean shall state in writing the reasons for the differing recommendation. The dean shall forward the chair's report, all recommendations, and all supporting materials to the provost.
- 7. Within 10 calendar days, the provost shall notify the faculty member in writing, with a copy to the dean, the chair, whether he/she concurs with the recommendation for sanction. If the provost does not concur with the recommendation for sanction, the provost shall state in writing the reasons for the differing decision.
- 8. The faculty member may appeal the provost's decision to the Faculty Evaluation Appeals Committee within 10 calendar days of notification of the provost's decision.

#### **Definitions**

**Tenure-Track Faculty:** This term describes faculty employed full-time who are tenured, eligible for tenure, or in a pre-tenure probationary period.

**Provost:** This term refers to the provost or his/her designee.

**Dean:** This term refers to an administrative faculty member who oversees a college where schools are housed, and who reports to the provost.

**Chair:** This term refers to an administrative faculty member who oversees a school where majors and programs are housed, and who reports to the respective college dean.

**Unit/School:** This term refers to the programs/majors that reside under one chairperson within one college

#### Responsibilities

Chair/ School Head

At a minimum, the chair is responsible for

• informing the faculty of policies, procedures, and criteria for tenure, promotion, and reappointment.

## College Dean

At a minimum, the college dean is responsible for

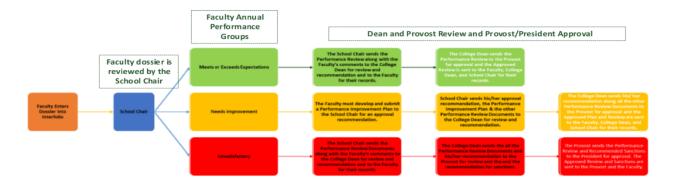
 making recommendations on the reappointment of term, tenure-track, and tenured faculty

#### **Provost**

At a minimum, the provost is responsible for

making decisions on the reappointment of term, tenure-track, and tenured faculty

## KSU Tenure-Track Faculty ThirYdear Review Process



## **Appendix C:**

**Academic Regulation: Post-Tenure Review** 

#### **Statement**

Pursuant to the declaration of Financial Exigency by the Kentucky Legislature and outlined in *House Bill 250* on April 8, 2022, the following policy amends the replacement of the current *Faculty Handbook (2019) Appendix H: Post-Tenure Review Policy and Procedures* of tenured faculty at Kentucky State University passed by the Board of Regents on July 15, 2022. All tenured faculty will undergo Post-Tenure Review by April 2023, with a second review by April 2027, and every four years thereafter on a rotational basis from the date of tenure award. The annual review will not be conducted in the years when a post-tenure review occurs.

In accordance to Section 1 (h) (2) of HB 250, "If there is not a sufficient body of evidence for a tenured faculty member to undergo the review required under subparagraph 1. of this paragraph, as determined by criteria established by the board in consultation with the council, the review shall be delayed, and the faculty member shall be advised of the deficiencies in the body of evidence causing the delay. The review shall take place by April 1, 2024; and (i) All tenured faculty shall undergo an additional post-tenure review as described in paragraph (g) of this section by June 30, 2027."

The Post-Tenure Review process below will be followed where tenured faculty are reviewed once every four years following the receipt of tenure. Tenured faculty members share the responsibility to maintain a high level of teaching, scholarly/creative activities and professional development, and university and community service. All schools will review, update, and establish performance standards and procedures for the review of tenured faculty. The Post-Tenure Review policy is intended to be an opportunity to improve deficient performance. The university may choose to use the post-tenure process in lieu of immediate dismissal for cause.

#### **Entities Affected**

Colleges, Schools, Faculty, Provost Office

#### **Procedures**

## **Establishing the Post-Tenure Review Committee**

The university will establish a Post-Tenure Review (PTR) Committee by carrying out the following procedure:

- 1. The provost will select two members from each college to serve on the committee by January 3, 2023.
- 2. The provost will select a fifth member for the PTR Committee who will serve as the chair of the committee also by January 3, 2023.

#### **Post-Tenure Review Procedures**

- The dossier will be submitted via Interfolio to the PTR Committee by February 1, 2023. The
  provost will provide an orientation to the committee regarding the process and use of discipline
  specific approved benchmarks.
- 2. After receipt of the materials, the PTR Committee shall state in writing their recommendation for either "exceeds expectations," "meets expectations," "needs improvement," or "unsatisfactory."

The categories represent the point per indicator within the category faculty member can earn. The overall average for each category on the rubric found in Appendix D will adhere to the following bands:

3.00 - 2.50 Exceeds Expectations

2.49 to 2.0 Meets Expectations

1.99 to 1.0 Needs Improvement

.99 - 0 Unsatisfactory

## Performance Exceeds Expectations or Meets Expectations

- a. The PTR Committee Chair sends the Post-Tenure Review recommendation to the school chair and to the faculty by March 1. The faculty member may respond to the recommendation within 5 days. The school chair sends the Review along with faculty comments to the college dean by March 7 for review and recommendation. The college dean will send all documents and his/her/their recommendation to the provost by April 4 for approval and the approved review is sent to the faculty member, college dean, and school chair for their records by May 1.
- b. If any area under Post-Tenure Review recommendation is "needs improvement" or "unsatisfactory" or if there are compliance infractions, see the relevant performance section below.

## **Performance Needs Improvement**

- a. The PTR Committee Chair sends the Post-Tenure Review recommendation to the school chair and to the faculty member by **March 1**. The faculty must develop and submit a one-year Faculty Post-tenure Performance Improvement Plan, working with the school chair, to be submitted to the school chair for approval of the recommendation by **March 29**. The school chair sends the Faculty Post-tenure Performance Improvement Plan and the other post-tenure review documents to the college dean for review and approval of the recommendation by **April 4**. The college dean sends the faculty post-tenure review and Faculty Post-tenure Performance Improvement Plan to the provost by **April 14** for approval and the approved plan and review are sent to the faculty member, college dean, and school chair for their records.
- b. For faculty members who do not submit a Faculty Post-tenure Performance Improvement Plan for review, do not develop and obtain an approved faculty performance improvement plan, or fail to implement a performance plan, the provost could recommend sanctions up to dismissal for the faculty member.

c. If there are compliance infractions, the faculty member must sign a Compliance Statement in accordance with their annual executed contract. If the faculty member does not sign the infraction agreement, the provost could recommend sanctions up to dismissal for the faculty member.

## **Performance Is Unsatisfactory**

- a. The PTR Committee Chair sends the Faculty Post-tenure Review to the school chair and to the faculty member by March 1. Faculty members may respond to the recommendation within 5 days.
- b. The school chair will forward the PTR Committee recommendations, the faculty's response to the college dean and the faculty member by **March 7**. The college dean will review the materials and send his/her/their recommendation to the provost for review and decision by **March 22**.
- c. If the provost finds that a Faculty Post-tenure Performance Improvement Plan is warranted, then the provost sends the decision to the school chair and the faculty member by April 5, notifying them that the faculty member must develop and submit a one-year Faculty Post-tenure Performance Improvement Plan to the school chair by April 25. The school chair sends his/her/their approval recommendation, the Faculty Post-tenure Performance Improvement Plan and the other performance review documents, by May 1, to the dean for review. The dean will send all documents and his/her/their recommendation by May 8 to the provost for review and approval. The provost sends his/her/their decision by May 18, along with all the other performance review documents to the faculty member, college dean, and school chair for their records.
- d. If there are compliance infractions, the faculty member must sign a Compliance Statement in accordance with the annual executed contract. If the faculty member does not sign the infraction agreement, the provost could recommend sanctions up to dismissal for the faculty member.
- e. If the provost finds that the faculty performance warrants sanctions, the provost will send all the Faculty Post-tenure Review documents and the provost's review/recommendation for sanctions including, up to dismissal, to the faculty member by **April 17**. The faculty member may appeal to the recommendation by **April 24** to the provost. The provost will send the recommendation for sanctions and the faculty appeal to the president and to the faculty member by **May 1**. The president reviews the recommendation and makes a determination. For sanctions other than dismissal, the president's determination is final and is sent to the provost, faculty member, college dean, and school chair.
- f. In the event of a recommendation for dismissal, the president by **May 18** sends his/her/their recommendation along with the faculty's written appeal to the Board of Regents (BOR) for final determination. The BOR will send the final decision on dismissal to the president, who will then send a letter to the faculty member, with copies to the college dean and chair notifying them of the BOR decision.

## The Faculty Post-Tenure Performance Improvement Plan

The Faculty Post-Tenure Performance Improvement Plan shall be for a maximum of one year. Additional time may be considered by the provost.

The development plan shall:

- 1. Identify specific concerns to be addressed;
- 2. Define specific outcome objectives to remedy the concerns that are reasonable and measurable;
- 3. Outline the activities required to achieve the objectives;
- 4. Set timelines, with specific milestones throughout the plan, for achieving the objectives;
- 5. State the criteria for progress reviews and for completion of the plan; and
- 6. Identify sources of funding required to implement the plan, if necessary.

### Assessment of the Faculty Post-tenure Performance Improvement Plan

- 1. At each milestone in the Faculty Post-tenure Performance Improvement Plan, the school chair shall assess the achievement of the stated objectives. If a milestone objective has not been satisfactorily met, the chair shall notify the faculty member in writing. The chair may recommend the faculty member continue with the development plan or may recommend a sanction. If a sanction is recommended, the chair shall forward the recommendation and the report to the dean. The recommendation of sanction shall then follow steps 5 & 6 below.
- 2. Within 30 calendar days of the conclusion of the Faculty Post-tenure Performance Improvement Plan, the chair shall assess the achievement of the stated objectives and shall write a report indicating how each objective was achieved or not achieved. The chair can make one of two findings:
  - a. the faculty member has fulfilled the development plan objectives and the review period has been completed with an overall satisfactory rating, or
  - b. the faculty member has continued performance deficiencies.
- 3. The chair shall submit the report to the dean.
- 4. If the dean concurs with a finding that the Faculty Post-tenure Performance Improvement Plan has been fulfilled, the faculty member will resume the normal annual review cycle. If the chair does not concur with a finding that the Faculty Post-tenure Performance Improvement Plan has been fulfilled or concurs with a finding that the faculty member has continued performance deficiencies, within 10 calendar days, the dean will indicate in writing with a

justification and a recommendation of a sanction. The dean will forward his/her/their recommendation, the chair's report, and all supporting materials to the provost.

- 5. Within 10 calendar days, the provost shall notify the faculty member in writing, with a copy to the dean, and the chair, whether he/she concurs with the recommendation for sanction. If the provost does not concur with the recommendation for sanction, the provost shall state in writing the reasons for the differing decision.
- 6. The faculty member may appeal the provost's decision to the Faculty Evaluation Appeals Committee within 10 calendar days of notification of the provost's decision.

#### **SANCTIONS**

Sanctions may include reassignment of duties, a salary freeze, a reduction in rank, a leave of absence, or other appropriate measures, including dismissal as provided in Policy 2.8.5 Termination. Sanctions could include dismissal with a 30-day notice per *HB 250 section 1b*.

### Responsibilities

**Tenured Faculty Member** 

o The tenured faculty member is responsible for knowing and complying with this policy.

Post-Tenure Review Committee

At a minimum, the PTR Committee is responsible for

o making recommendations resulting from post-tenure review

Chair

At a minimum, the chair is responsible for

- o approving a Faculty Post-tenure Performance Improvement Plan
- making recommendations regarding sanctions resulting from the post-tenure review

#### College Dean

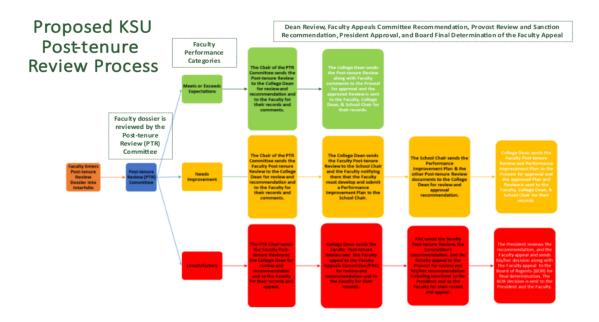
At a minimum, the dean is responsible for o approving a Faculty Post-tenure Performance Improvement Plan o making recommendations regarding sanctions resulting from post-tenure review

**Faculty Appeal Committee** 

The Faculty Appeals Committee is responsible for o ensuring appeals are reviewed only on the grounds stated in this policy o reviewing the appeal and the evidence submitted by the faculty member o submitting findings and recommendations to the president

#### Provost

At a minimum, the provost is responsible for o approving a Faculty Post-tenure Performance Improvement Plan o making recommendations regarding sanctions resulting from post-tenure review



## Appendix D: Evaluation Rubrics

## **2023 Faculty Performance Evaluation Rubric**

Instructions: Chairpersons are to use the university minimum measurements defined in the faculty evaluation point system for ratings Ratings of "Needs Improvement" and "Unsatisfactory" requires a plan for improvement, a follow up review, and/or possible sanctions. All areas of evaluation should reflect the faculty member's performance expected at their academic rank. All faculty types participate in the annual review process unless, a faculty member is undergoing Third Year Review for Pre-Tenure faculty, Tenure and Promotion Review, or Post-Tenure Review evaluation processes.

#### **Evidence of Quality and Effectiveness in Teaching**

Scoring Instructions: Minimum university expectation for Effectiveness in Teaching is Meets Expectations (2) in at least eight of the areas listed below each year with verifiable artifacts. Special Note: Evaluations by students/administrators/peers are required for all faculty members. Category will be mean (average) scored across all items present in the dossier. Category scores less than "2" will require a Performance Improvement Plan and subject to sanctions.

Evaluations from students
Evaluation by school/unit administrator

Direct observation of faculty by peers and/or school/unit administrator

Use of teaching portfolios as developed by schools/units

Accessibility to, and rapport with students

Innovative teaching methodology and the use of research in instruction

Evidence of contributions to student career development

Quality and standards as developed through consultation with colleagues to meet the objectives set forth in the course syllabus

Initiative in developing or experimenting with media and materials Additional evidence of effective teaching

#### **Evidence of Quality in Scholarly Activity**

Scoring Instructions: Minimum university expectation for Scholarly Activity is Meets Expectations (2) in at least five of the areas listed below each year with verifiable artifacts. Category will be mean (average) scored across all items present in the dossier. Category scores less than "2" will require a Performance Improvement Plan and subject to sanctions.

#### **Research and Publications**

Publications in refereed journals
Publications in non-refereed journals
Publication of a book or monograph
Competitive research grant awards
Publication of a chapter in a book
Book or Journal Editor
Published book reviews

Publication of workbooks used in conjunction with instruction

Publication of refereed proceedings

**Publication of cases** 

Software developed for use in instruction (validated by external reviewers)

#### Creative Works and Projects

Published journal abstracts

See discipline specific benchmarks published in the Faculty Handbook (2019) Appendices where appropriate

Exceeds Expectations (3)	Meets Expectations (2)	Needs Improvement (1)	Unsatisfactory (0)

Exceeds Expectations (3)	Meets Expectations (2)	Needs Improvement (1)	Unsatisfactory (0)

#### **Professional Activities**

Professional program presentations

Honors received from professional groups (if related to scholarly activities that have been validated by external reviewers)

Participation in professional organizations

Consulting activites (depends on validation of external reviewers)

Reviewer, discussant, moderator, or track chair at professional meetings

Program development in recruiting students

Competitive research grant applications

Editing of professional publications

Educational curriculum development for stakeholders

#### Other Evidence of Professional Growth and Leadership

Roundtable or panel participation Professional certifications Professional internships Advanced or post-graduate study Other activities and experiences

#### **Evidence of Quality in University and Community Service Contributions**

Scoring Instructions: Minimum university expectation for University and Community Service Activity is Meets Expectations (2) in at least two of the areas listed below each year with verifiable artifacts. Category will be mean (average) scored across all items present in the dossier. Category scores less than "2" will require a Performance Improvement Plan and subject to sanctions.

Off-campus instruction and regional service International instruction and workshops

Non-credit instruction and workshops

Advising and other activities with students (Career and Counseling Center, undeclared majors, declared majors, career selection and placement assistance, student organizations, recruitment organizations, orientation programs, retention activities, study skills assistance and referral, assisting students in the participation, submission, and presentation of scholarly works).

Activities at school/unit, college, and university levels (school committee appointments, college committee appointments, university committee appointments, chair positions on committees, elected positions (senate), course validation activities, credit by examination activities, others)

Exceeds Expectations (3)	Meets Expectations (2)	Needs Improvement (1)	Unsatisfactory (0)

## **Post-Tenure Performance Evaluation Rubric**

Instructions: The university minimum benchmarks must be met in evaluating the performance of the faculty member over the last four years. Ratings of "Needs Improvement" and "Unsatisfactory" requires a plan for improvement, a follow up review, and/or possible sanctions. All areas of evaluation should reflect the faculty member's performance expected at their academic rank.	Exceeds	Meets Expectations (2)	Needs Improvement (1)	Unsatisfactory (0)
Evidence of Quality and Effectiveness in Teaching				
Evaluations from students				
Evaluation by school/unit administrator				
Direct observation of faculty by peers and/or school/unit administrator				
Use of teaching portfolios as developed by schools/units				
Accessibility to, and rapport with students				
Innovative teaching methodology and the use of research in instruction				
Evidence of contributions to student career development				
Quality and standards as developed through consultation with colleagues to meet the objectives set				
forth in the course syllabus				
Initiative in developing or experimenting with media and materials				
Additional evidence of effective teaching				
Performance of students on course outcomes with rubric provided				
Documented faculty member attendance and subsequently developed and implemented new				
approaches in pedagogy				
Is faculty member engaged in the scholarship of teaching and learning				
Innovative teaching methodology and the use of research in instruction				
Curriculum is aligned with Industry Practices and Requirements				
Faculty advising and mentoring student in career pursuits				
Evidence of contributions to student career development				
Sub-totals Sub-totals				

**Total Quality and Effectiveness in Teaching Score** 

Preformance Teaching Quality and Effectiveness Standard (Total points 34)

Preformance Criteria (Unsatisfactory <70%, Needs Improvement 70-75%, Meets Expectations 76-85%, Exceeds Expectiations >85%)

# Evidence of Quality Professional Growth and Scholarly Achievement Based on Specific Discipline Criteria as Approved by the Provost

Research and Publications	Expectations		Improvement	Unsatisfactory (0)
Current Citation indices (i.e. Google Scholar)	(3)	(2)	(1)	
Publications in refereed journals (including journal quality rating,i.e., High Index/i10 Index)				
Publications in non-refereed journals				
Publication of a book or monograph				
Competitive research grant awards				
Publication of a chapter in a book				
Book or Journal Editor				
Published book reviews				
Published journal abstracts				
Publication of workbooks used in conjunction with instruction				
Publication of refereed proceedings				
Publication of cases				
Software developed for use in instruction (validated by external reviewers)				
Creative Works and Projects	<b>-</b>	T	T	
See discipline specific benchmarks published in the Faculty Handbook (2019) Appendices where				
appropriate				
Professional Activities				
Professional program presentations				
Honors received from professional groups (if related to scholarly activities that have been validated				
by external reviewers)				
Participation in professional organizations				
Consulting activities (depends on validation of external reviewers)				
Reviewer, discussant, moderator, or track chair at professional meetings				
Program development in recruiting students				
Competitive research grant applications				
Editing of professional publications				
Educational curriculum development for stakeholders				
Other Evidence of Professional Growth and Leadership				
Roundtable or panel participation				
Professional certifications				
Professional internships				
Advanced or post-graduate study				
Other activities and experiences				
Series destricted and experiences		l	1	

Exceeds

Meets

Needs

## **Evidence of Quality Service and Community Contribution**

Instructions: Rate the level that the tenured faculty member is known outside of the university using the indicators below.	Exceeds Expectations (3)	Meets Expectations (2)	Needs Improvement (1)	Unsatisfactory (0)
Number of service activities at the international, national, regional, state, and local levels.  Off-campus instruction and regional service International instruction and workshops Non-credit instruction and workshops Advising and other activities with students (Career and Counseling Center, undeclared majors, declared majors, career selection and placement assistance, student organizations, recruitment organizations, orientation programs, retention activities, study skills assistance and referral, assisting students in the participation, submission, and presentation of scholarly works).				
Activities at school/unit, college, and university levels (school committee appointments, college committee appointments, university committee appointments, chair positions on committees, elected positions (senate), course validation activities, credit by examination activities, others) Quality and standards as developed through consultation with colleagues to meet the objectives set forth in the course syllabus				

# **Contract Compliance Infraction Rubric**

Instructions: Evaluator(s) (unit chair or post-tenure review committee) will use the faculty compliance requirements in the executed current year Faculty Contract Addendum to evaluate the performance of the faculty member.	•	(Minus ints per ction)
Contract Addemdum Compliance Infractions		
Instructor did not post midterm grades in WIRED/Banner by the date specified in the university's academic calendar		
Instructor did not post final grades in WIRED/Banner by the date specified in the university's academic calendar		
Instructor did not submit textbook Information for every class taught each semester by deadlines		
Instructor altered the modality without consulting the chair and approval from the dean		
Instructor changed rooms, days, or time from the printed schedule for a course without consulting the chair and approval of the dean		
Instructor did not hold classes as scheduled without the approval of the chair		
Instructor did not hold the required office hours for courses without the approval of the chair		
Instructor did not attend faculty meetings without the approval of the chair		
Instructor did not attend committee meetings without the approval of the chair		
Instructor did not attend the Encampment at the beginning of the fall and spring terms with out approval of the chair		
Instructor did not attend convocations, including graduation and assemblies, as scheduled without the approval of the chair		
Instructor did not post class attendance in Blackboard each week without the approval of the chair		
Instructor did not submit midterm and final grades before the scheduled deadline without the approval of the chair		
Instructor did not participate in university activities such as new student orientation and program assessment without the approval of the chair		
Instructor did not complete all required on-campus and online training sessions by		
published deadline as required by Human Resources or the Office of the Provost		
Instructor did not update all faculty information as required in Interfolio Faculty 180 by		
the dates without the approval of the dean		
Instructor did not prepare and submit material for Faculty Evaluation (Annual Review,		



## KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

**ACTION ITEM 5B** 

#### **ACTION ITEM**

Approval of NCAA Title IX and Serious Misconduct Policy.

#### **FACTS**

Pursuant to the April 27, 2021, revision to the NCAA Board of Governors' Policy on Campus Sexual Violence, the University is required to exercise due diligence in gathering pertinent information concerning the prior conduct of any current or prospective student athlete.

To comply with the NCAA policy, the University has devised a Title IX and Serious Misconduct Disclosure Policy. Per this policy, KSU shall require all current, prospective, and transfer student-athletes to complete a Title IX and Serious Misconduct Student-Athlete Disclosure Form and thereby disclose if they have been involved in any serious misconduct. Moreover, pursuant to the policy, if a student-athlete attempts to enroll in a new college or university, KSU must share all relevant discipline information and incomplete Title IX proceedings resulting from that student-athlete's transfer.

Under the policy, "serious misconduct" is defined as any act of rape, sexual assault, sexual violence, domestic violence, dating violence, stalking, or sexual exploitation—or any equivalent violation as defined in the University's Policy and Procedures on Sexual Harassment, or any other felony or misdemeanor considered equivalent to the above-listed in the jurisdiction in which a student-athlete was convicted or pleaded guilty or no contest.

#### **BUDGETARY IMPLICATION**

There are no budgetary implications.

#### **RECOMMENDATION**

Interim President Ronald A. Johnson recommends that the Board of Regents approve the NCAA Title IX and Serious Misconduct Policy.

#### **MOTION**

Approve the NCAA Title IX and Serious Misconduct Policy.



# KENTUCKY STATE UNIVERSITY POLICIES AND PROCEDURES

**POLICY TITLE: Interim Title IX and Serious Misconduct Disclosure Policy** 

**SECTION/NUMBER: TBD** 

**APPROVED BY: Interim President Ronald A. Johnson** 

**EFFECTIVE DATE: September 2, 2022** 

**REVISED FROM: N/A** 

**PURPOSE:** Pursuant to the National Collegiate Athletic Association (NCAA) Board of Governors' Policy on Campus Sexual Violence, as revised on or about April 27, 2021, Kentucky State University ("KSU") is required to use due diligence in gathering pertinent information regarding the prior conduct of any current or prospective student athlete, including a graduate or transfer student who seeks to enroll and participate in intercollegiate athletics at KSU.

**POLICY STATEMENT:** Kentucky State University is committed to fostering and creating a safe and productive campus community. In consistency with this commitment and to ensure compliance with the NCAA Campus Sexual Violence Policy, KSU shall require all current, prospective, and transfer student athletes to complete a Title IX and Serious Misconduct Student Athlete Disclosure Form and to disclose if s/he has been involved in serious misconduct. Furthermore, in a manner consistent with federal and state law, as an NCAA member, KSU shall share relevant discipline information and incomplete Title IX proceedings as a result of transfer with other member institutions when a student athlete attempts to enroll in a new college or university.

RELATED PROCEDURES: All student athletes, including those who are prospective and/or transfers shall complete the Title IX and Serious Misconduct Student Athlete Disclosure Form ("Disclosure Form") before an official position on an athletics team or a financial aid agreement is offered. Current student athletes must complete the Disclosure form annually. Student athletes shall answer the Disclosure Form truthfully, accurately, and completely. If a student athlete is determined to have been untruthful or to have inaccurately completed the Disclosure Form, s/he shall be reviewed under the process detailed, "Procedures for Affirmative Response," and may be subject to discipline up to a finding of ineligibility to participate in University athletics.

## **Mandatory Student-Athlete Disclosure**

- On an annual basis, all current student athletes will complete the Disclosure Form. Student athletes must complete the form truthfully, accurately, and completely, to the best of his or her knowledge.
- All prospective student athletes will receive the Disclosure Form from the Athletics/Admissions Office, or the coaching staff that is recruiting the prospect during the recruiting period. The Disclosure Form will have to be completed and turned into the Athletic Office for review before an official position on an athletics team or a financial aid agreement is offered.
- Prospective and/or transfer student athletes will have to complete the Disclosure Form prior to an offer of a grant-in-aid or offer of a walk-on position on a team, whichever comes first. Prospective and/or transfer student athletes must also fill out a Title IX & Serious Misconduct Consent Form which give written permission for KSU to contact his/her former institution to complete an inquiry related to whether if s/he has been a respondent in a case through the Title IX Office and whether s/he was found to be responsible. If the prospective and/or transfer student athlete attended more than one prior institution, then s/he will have to give written permission for all prior institutions.

### *Specifically, student athletes must disclose the following:*

- Whether they have ever been disciplined (including, but not limited to, any sanctions, suspensions, expulsions, and remedies as a result of informal resolutions) through a Title IX or similar campus proceeding for sexual, interpersonal, or other acts of violence;
- Whether they have been convicted of, pleaded guilty, or pleaded no contest to any crime of sexual, interpersonal, or other acts of violence; and
- Whether, if a transfer, a Title IX proceeding was incomplete or pending at the time of transfer.

#### Students athletes need not disclose:

- That they are currently under investigation in a Title IX proceeding for sexual, interpersonal, or other acts of violence unless it was pending or incomplete at the time they transferred.
- That they have been found "not responsible" or "not in violation" through a Title IX proceeding for sexual, interpersonal, or other acts of violence.
- That they have been found "not guilty" or otherwise had charges dismissed without a conviction in a criminal investigation of sexual, interpersonal, or other acts of violence.

## **Responsive Action**

Failure to comply with this Policy may jeopardize a student athlete's eligibility to participate in intercollegiate athletics at the University and/or elsewhere, and may result in responsive or disciplinary action by the NCAA and/or the University including, but not limited to revocation of eligibility for athletic scholarship and removal from the team.

#### **Document Retention**

KSU's Athletic Director or his/her designee shall be the local custodian of disclosure records. The University shall maintain the disclosure records for each student athlete until such time the student athlete is no longer a student with the University.

#### **DEFINITION:**

**Serious Misconduct:** any act of rape, sexual assault, sexual violence, domestic violence, dating violence, stalking, or sexual exploitation.

Serious Misconduct includes any equivalent violation as defined in the Kentucky State University's Interim Policy and Procedures on Sexual Harassment as Defined Under Title IX and Other Sexual Misconduct.

Serious Misconduct also include any other felony or misdemeanor considered equivalent to those listed above in any jurisdiction where current or prospective student-athlete was convicted, or pleaded guilty or no-contest.

#### **ENTITIES AFFECTED:**

All Kentucky State University student athletes to include but not limited to those who are prospective, current, and transfers.

## **POLICY OWNER/INTERPRETING AUTHORITY:**

**Kentucky State University Athletics** 

## **RELATED POLICIES/DOCUMENTS:**

Title IX and Serious Misconduct Student-Athlete Disclosure Form [INSERT HYPERLINK]

Title IX & Serious Misconduct Student Athlete Consent Form [INSERT HYPERLINK]

Kentucky State University's Interim Policy and Procedures on Sexual Harassment as Defined Under Title IX and Other Sexual Misconduct [INSERT HYPERLINK]

## **STATUTORY OR REGULATORY REFERENCES:**

NCAA Board of Governors' Policy on Campus Sexual Violence [INSERT HYPERLINK]



## KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

**ACTION ITEM 5C** 

#### **ACTION ITEM**

Approval of Separation and Retreat Policy for Senior Academic Administrators.

#### **FACTS**

Faculty members who primarily perform work related to the management of the educational and operational activities of the University are categorized as senior academic administrators. As with all senior-level administrative appointments, senior academic administrative appointments are made at the discretion of the appropriate appointing authority. Therefore, a senior-level administrative appointment may be terminated by the proper appointing authority at any time, with or without cause. However, termination of a faculty member's administrative appointment does not terminate the underlying faculty appointment.

The Separation and Retreat Policy for Senior Academic Administrators controls the process by which a senior academic administrator returns to his or her tenured faculty appointment or voluntarily separates from the University. Moreover, it establishes how salaries are to be adjusted and how discretionary sabbatical leave is to be granted.

#### **BUDGETARY IMPLICATION**

There are no budgetary implications.

#### **RECOMMENDATION**

Interim President Ronald A. Johnson recommends that the Board of Regents approve the Separation and Retreat Policy for Senior Academic Administrators.

#### **MOTION**

Approve the Separation and Retreat Policy for Senior Academic Administrators.



# KENTUCKY STATE UNIVERSITY POLICIES AND PROCEDURES

# POLICY TITLE: INTERIM SEPARATION AND RETREAT POLICY (SENIOR ACADEMIC ADMINISTRATORS)

**NUMBER, VOLUME, & SECTION: [TBD]** 

APPROVED BY: INTERIM PRESIDENT RONALD A. JOHNSON

**EFFECTIVE DATE:** November 7, 2022

**REVISED FROM: N/A** 

#### **PURPOSE:**

At Kentucky State University, all voluntary and involuntary separation(s) from senior academic administrative position(s) are governed by the terms as defined by the Separation and Retreat Policy.

#### **POLICY STATEMENT:**

Administrative faculty members who primarily perform work related to the management of the educational and operational activities related to the University are categorized as senior academic administrators at Kentucky State University. All senior level administrative appointments are at the discretion of the appropriate appointing authority, and in the case of Provost/Vice-President of Academic Affairs, serves at the pleasure of the President of the University. As such, a senior level administrative appointment may be terminated at any time, with or without cause. Termination of the administrative appointment, however, does not terminate the underlying faculty appointment.

#### **RELATED PROCEDURES:**

The following conditions apply when senior academic administrators retreat to faculty status, either voluntarily or involuntarily:

Return to a Tenured Faculty Position.

A. An administrator who holds a concurrent tenured faculty appointment may return to that appointment with all the rights and responsibilities of faculty in the home department unless an institutional due process or termination proceeding is initiated to discharge or demote the employee from the tenured position pursuant to Kentucky State University's Faculty Handbook and/or any other relevant statutory provisions/policies. In addition, the employee's salary shall be adjusted from a twelve-month administrative salary to a nine-month or twelve-month faculty salary.

- a. *Initial appointments* a tenured faculty member who was initially hired to serve solely in a senior academic administrative role may return to designated faculty status.
  - In the absence of a concurrent faculty appointment contract, the employee's salary shall be based on the employee's academic and administrative experience, accomplishments, expertise, academic rank and standing in the discipline and the function the employee will be expected to perform upon retreating. In addition, the salary range will be within the salary range of other faculty of the same rank in the employee's designated department/school/college.
- b. *Traditional appointments* A senior academic administrator who holds a concurrent or has previously held a tenured faculty appointment may return to that appointment with all the rights, responsibilities, and compensation of a faculty member.
- c. If an administrative stipend was awarded during an appointment, the stipend will be removed upon the termination of the administrative duties.

## **Discretionary Sabbatical Leave:**

- A. At the sole discretion of the University President, a retreating Senior Academic Administrator may be granted a reasonable period of time and opportunity to prepare for teaching and research responsibilities. The reasonable period of time may be calculated in relation to the time spent in the administrative duties, but shall not be for longer than six (6) months without prior approval of the Board of Regents.
- B. Discretionary sabbatical leave shall be granted only if funds are available for specific purposes, when the employee's absence from the University will not hamper the work of his/her designated unit or the University, and when the leave will provide a demonstrated benefit to the University.
  - The University President may, at his or her discretion, approve full, partial, or reasonable monetary compensation, to be calculated at a continuing rate for the senior administrative role, during the time allowed for the employee to prepare for teaching and research responsibilities.
- C. Prior to the beginning of the research leave, the administrator shall submit a work plan for the discretionary sabbatical leave to include expected outcomes. The plan will be reviewed and approved by the

President. In the event that the employee does not satisfactorily complete the project at the conclusion of the leave period, Kentucky State University may require full repayment of compensation paid during the sabbatical leave.

Voluntary Separation From University:

In some cases, it may be in the best interests of the University to negotiate a severance agreement with an administrator. In certain circumstances, these employees are entitled to notice of the discontinuation of their employment, including his/her faculty appointment and regardless of tenure status, with full pay for up to 90 days or severance pay, depending on their length of service. The President may, at his or her discretion, determine that the circumstances justify continuing full pay for employees for up to 90 days, subject to potential Board Approval pursuant to Article II, Section 2(p) of the Gold Book: Bylaws of the Kentucky State University Board of Regents.

#### **Retirement:**

Nothing in this policy shall prevent a tenured faculty member from immediately participating in retirement, consistent with existing Kentucky State University policies.

#### **DEFINITION:**

**Senior Academic Administrator**: Faculty members with administrative appointments that typically serves in executive level leadership roles including, but not limited to: Provost/Vice President of Academic Affairs, Vice/Associate/Assistance Provost(s), and Dean(s).

#### **ENTITIES AFFECTED:**

Faculty members with senior academic administrative appointments. The policy does not apply to those with acting senior academic administrative appointments.

## POLICY OWNER/INTERPRETING AUTHORITY:

Office of President/Office of the General Counsel

## **RELATED POLICIES/DOCUMENTS:**

N/A

#### STATUTORY OR REGULATORY REFERENCES:

N/A



# KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

**ACTION ITEM 5D** 

# **ACTION ITEM**

Approval of annual software maintenance and support for KSU's Blackboard Learning Management System.

# **FACTS**

KSU has used Blackboard Learn as its online and distance education system for over fifteen (15) years. This annual agreement covers maintenance, support, and a 24-hour help desk for the system.

The support agreement also includes a non-production staging system to be used for changes, testing, and approval of software updates, as well as an additional 1 TB of storage space.

The University will renew its annual agreement with Anthology/Blackboard using the Blackboard Master Agreement.

# **BUDGETARY IMPLICATION**

The total cost of the two-year renewal is \$224,991 (year 1: \$109,752, year 2: \$115,239). The cost for Year 1 has been budgeted for in the FY23 E&G fund.

# **RECOMMENDATION**

Interim President Ronald A. Johnson recommends that the Board of Regents approve the annual software maintenance and support for KSU's Blackboard Learning Management System.

# **MOTION**

Approve the annual software maintenance and support for KSU's Blackboard Learning Management System.

VOID IF EXECUTED AFTER: 31-Jan-2023 CUSTOMER: Kentucky State University (100655)

# **Blackboard**

This Blackboard Order Form ('Order Form') by and between Blackboard Inc. ('Blackboard') and Kentucky State University ('Customer') details the terms of Customer's use of the products and services set forth below ('Product and Pricing Summary'). This Order Form shall become effective the Effective Date. This Order Form, together with the Blackboard Master Agreement located http://agreements.blackboard.com/bbinc/blackboard-new-master-agreement-all-products.aspx and incorporated by this reference, form the entire agreement between the parties in respect to the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by the Customer, any product or service provided by Blackboard to the Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable.

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

# A. Software & Services Product and Pricing Summary

Period Number	Total
Period 1	\$109,752.00
Period 2	\$115,239.00
Contract Total	\$224,991.00

	Period 1				
Qty	Product Code	Product Name	Dates	Net Total (USD)	
1	SS-SDO-HD-INC	HELPDESK SUPPORT	24-Nov-2022 to 23-Nov-2023	\$12,239.00	
1	SS-SDI-TECH-HDBD	TECHNOLOGY IT HELPDESK	24-Nov-2022 to 23-Nov-2023	\$4,510.00	
1	SAAS2-LC-HE-P	PKG- LRNG CORE SAAS PLUS Entitlements for Period 1 Band: 1 - 2,000 FTE Purchased Storage: 1024 GB	24-Nov-2022 to 23-Nov-2023	\$69,647.00	
1	AS-LRN-SAAS2	BLACKBOARD LEARN SAAS PLUS Entitlements for Period 1 Band: 1 - 2,000 FTE Purchased Storage: 1024 GB	24-Nov-2022 to 23-Nov-2023	Included - SAAS2-LC-HE-P	
1	AS-TPD-S	TRAINING PROGRAM DEVELOPMENT	24-Nov-2022 to 23-Nov-2023	\$1,678.00	
1	AS-TRN-OLN-S	ONLINE TRAINING SUBSCRIPTION	24-Nov-2022 to 23-Nov-2023	\$1,678.00	
1	AS-HST-STG-SAAS	SAAS STAGING ADD-ON Entitlements for Period 1 Purchased Storage: 102.4 GB	24-Nov-2022 to 23-Nov-2023	\$15,000.00	
1	AS-HST-STO1TB-SAAS	SAAS ADDITIONAL STORAGE 1TB Entitlements for Period 1 Purchased Storage: 1024 GB	24-Nov-2022 to 23-Nov-2023	\$5,000.00	

Period 1 Total \$109,752.00

	Period 2				
Qty	Product Code	Product Name	Dates	Net Total (USD)	
1	SS-SDO-HD-INC	HELPDESK SUPPORT	24-Nov-2023 to 23-Nov-2024	\$12,851.00	
1	SS-SDI-TECH-HDBD	TECHNOLOGY IT HELPDESK	24-Nov-2023 to 23-Nov-2024	\$4,735.00	
1	SAAS2-LC-HE-P	PKG- LRNG CORE SAAS PLUS Entitlements for Period 2 Band: 1 - 2,000 FTE Purchased Storage: 1024 GB	24-Nov-2023 to 23-Nov-2024	\$73,129.00	

1	AS-LRN-SAAS2	BLACKBOARD LEARN SAAS PLUS Entitlements for Period 2 Band: 1 - 2,000 FTE Purchased Storage: 1024 GB	24-Nov-2023 to 23-Nov-2024	Included - SAAS2-LC-HE-P
1	AS-TPD-S	TRAINING PROGRAM DEVELOPMENT	24-Nov-2023 to 23-Nov-2024	\$1,762.00
1	AS-TRN-OLN-S	ONLINE TRAINING SUBSCRIPTION	24-Nov-2023 to 23-Nov-2024	\$1,762.00
1	AS-HST-STG-SAAS	SAAS STAGING ADD-ON Entitlements for Period 2 Purchased Storage: 102.4 GB	24-Nov-2023 to 23-Nov-2024	\$15,750.00
1	AS-HST-STO1TB-SAAS	SAAS ADDITIONAL STORAGE 1TB Entitlements for Period 2 Purchased Storage: 1024 GB	24-Nov-2023 to 23-Nov-2024	\$5,250.00

Period 2 Total \$115,239.00

#### **B. Terms**

- 1. The Initial Term of this Order Form shall include all Periods included in the Software & Services Product and Pricing Summary above.
- 2. Upon conclusion of the Initial Term, this Order Form shall terminate.
- 3. Effective Date: November 24, 2022

## **C. Payment Terms**

- 1. All initial and subsequent payments shall be due NET60. Unless otherwise stated, all prices are in United States currency.
- 2. Sales Tax: If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.

# **D. Special Provisions**

- 1. Funding Out Provision: The Customer, an agency of the Commonwealth of Kentucky, may terminate this contract if funds are not appropriated to it or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. Except for the rights included in this provision and section 9.2 of the Master Agreement for All Products and Services, the parties have no other right of early termination.
- 2. The Statemen of Work attached hereto is incorporated by this reference.

Sales Approved: Kevin O'Keefe	Sales Approved:
Ds	
Initial: 40°	Initial:
Customer: KENTUCKY STATE UNIVERSITY	BLACKBOARD INC.
Signature:	Signature:
	111
	mzz
	1
Name:	Name: Michael Pohorylo
Title:	Title: Deputy General Counsel
Date:	Date: January 16, 2023
Blackboard does not require a PO for the purchase or payment of the	products on this Order Form. If your
organization requires a PO in addition to this signed contract, please p	
PO will be issued after signature, indicate 'Pending' in the PO Number	
PO Number:	PO Amount:
Attach PO or send PO to Operations@blackboard.com(Optional):	
Attach Tax Exemption (Optional):	
Invoicing	
Send Invoices via email to:	
1. Name:	Email:
2. Name:	Email:
3 Name:	Fmail:

# Blackboard

#### **EXHIBIT A**

#### STATEMENT OF WORK

This Statement of Work (SOW) is a preliminary expectation of both Blackboard and Kentucky State University ("Customer") of the services that may need to be performed. As such it may be modified by a writing approved by the designated representatives of each Blackboard and Customer. The work described below is intended to be performed on a fixed price basis.

This SOW is an exhibit to the Order Form between Blackboard and Customer which is hereby referenced and incorporated into this SOW and will legally control the delivery of services.

# **WORK SUMMARY**

The objective of this Statement of Work (SOW) is to ensure that the implementation of support services for CLIENT students, staff, and faculty exceeds the expectations of your organization. In addition to providing contact center support, Blackboard will become a strategic participant in developing or recommending improvements for efficiency, quality of service, and support experience.

# **PROJECT SCOPE**

## 1. SOLUTION TYPE (SELECT ONE)

☑ Standard LMS Support: Nights & Weekends or 24/7/365, blended agent support, and Tier 1 scope of support supporting the Learning Management System and 3<sup>rd</sup> Party Tools. Includes: dedicated phone number, multi-modal support with live chat, end-user knowledge base, self-service portal, access into ticket management system for reporting, data access, and call recordings.

☑ Standard IT Help Desk: Nights & Weekends or 24/7/365, blended agent support, and Tier 1 scope of support inclusive of a variety of support areas such as those listed in the Standard offering and Software, Hardware, Printing, SIS/ERP/SSB, Network (Wired, VPNs, Network Drives), Telecom, and Web Applications. Requires integration or generic accounts of technologies related to SIS, Active Directories, or ticketing systems.

#### 2. SUPPORT HOURS (SELECT ONE)

⊠ 24/7

# 3. LANGUAGE(S) SUPPORTED (CHECK ALL THAT APPLY)

□ English

# 4. <u>SELF-SERVICE CHANNELS (CHECK ALL THAT APPLY)</u>

Self-Heli	o Portal	IVR Password Reset	/ Self-Help	Portal Password	d Reset

## 5. TICKETING SYSTEM INTEGRATION (SELECT ONE)

☐ SmartView only: no tickets route to external system
SmartView Licenses:
$\square$ SmartView email to external system
$\square$ API Integration with SmartView:

## PROJECTED INCIDENT VOLUME, AVERAGE HANDLE TIME, AND PRICE PER INCIDENT

Blackboard will be staffed to serve up to the Projected Total Incident Volume with a 10 minute Average Handle for Live Incidents. Accurate projections are important. Blackboard does not provide a credit in the event that actual incident volume is lower than the projected incident volume.

# **Blackboard**

At the end of the initial 12 months of service, if Actual Incidents exceeds Projected Incidents CLIENT will be assessed an overage fee at price per live support + 10% premium for each Live Incident that is over the projection. If AHT trends above 10 minutes Blackboard will work collectively to reduce AHT and or update the agreement for increased AHT.

<u>Month</u>	Projected Monthly Live
	<u>Incidents</u>
January	139
<u>February</u>	<u>75</u>
<u>March</u>	<u>69</u>
<u>April</u>	<u>66</u>
<u>May</u>	<u>81</u>
<u>June</u>	<u>75</u>
July	<u>71</u>
<u>August</u>	141
<u>September</u>	104
<u>October</u>	<u>74</u>
<u>November</u>	<u>53</u>
<u>December</u>	<u>51</u>
<u>Total</u>	1000



# 6. SERVICE LEVEL AGREEMENTS

Metric	Definition	Measurement Method	Service Level	Credit
Live Phone Average Speed to Answer	Average Speed to Answer ("ASA") means the time required to answer a call from any Authorized End User, calculated as the time elapsed from when the Authorized End User selects an option from the telephone menu leading to a Blackboard advisor until	This Service Level shall be measured monthly as the ASA for all calls from Authorized End Users that are answered by Blackboard agents during the previous month.	<120 seconds	1.5%
	the point at which a			

# **Blackboard**

Blackboard agent answers		
the call.		

Any service credits will be applied to the first invoice for the next Renewal Term. CLIENT's sole remedy for Blackboard's failure to achieve the Service Levels for a Support Service as specified in this Order Form shall be the service credits described herein.

Notwithstanding anything to the contrary in the Agreement, the parties acknowledge and agree that Blackboard's obligation to meet the above Service Level Agreements is contingent upon several factors, and that the Service Level Agreements shall not apply for any period of time where the following criteria is met:

- 1. If the actual monthly Inbound Interactions exceeds Projected Monthly Incident Volume by more than 5%; or
- 2. To the extent caused by CLIENT-owned server/network slowdowns, outages, or similar technical issues within such period that are reasonably documented by Blackboard (other than a Service Outage); or
- 3. If the Knowledge Base has not been reviewed, and updated as necessary, within the past twelve (12) months.
- 4. In addition to the criteria listed above, the Service Level Agreement for Average Speed to Answer shall not apply for any period of time where the Average Handle Time for such period exceeds the estimated Average Handle Time set forth on this Order Form by more than 5%.

In Process



# KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

**ACTION ITEM 5E** 

# **ACTION ITEM**

Approval of amended Capital Plaza Hotel contract.

## **FACTS**

The University is partnering with a local vendor to provide supplemental student housing for spring 2023. The hotel is located within two miles of the University's main campus. The University will provide a shuttle service to and from the hotel and campus for students. The hotel will provide Wi-Fi to each room to support students' learning.

# **BUDGETARY IMPLICATIONS**

The total contract price will not exceed \$582,120. The estimated price of \$582,120 is based on 84 rooms at a rate of \$55 per room per night for 126 days (January 7, 2023–May 13, 2023). Capital Plaza Hotel has agreed to reduce the total price should the University need the rooms for fewer than 126 days.

# **RECOMMENDATION**

Interim President Ronald A. Johnson recommends that the Board of Regents approve the amended Capital Plaza Hotel contract.

# **MOTION**

Approve the amended Capital Plaza Hotel contract.



405 Wilkinson Blvd/Frankfort, KY 40601 502-227-5100

**Organization**: Kentucky State University

Contact: Bridgett Golman Address: 400 E. Main St

City: Frankfort

**Group Name**: KSU Housing

Contact Phone: (704) 299-9477 Email: <u>bridgett.golman@kysu.edu</u> State/Zip: Frankfort, KY 40601

Spring Semester Housing for Kentucky State University students
Arrival: January 7, 2023 Departure: May 13, 2023\*
\*departure date subject to change with a minimum 2 week advanced notice

Total Rooms = 84 rooms

Room Rate = \$55/night per room single or double occupancy Total contract amount: \$582,120 (based on 84 rooms for 126 days\*)

The parties agree that Capital Plaza Hotel will bill Kentucky State University on the 10th day of each month by submitting its invoice to <a href="mailto:accounts.payable@kysu.edu">accounts.payable@kysu.edu</a>. Kentucky State University will make payment upon receipt of an approved invoice. Payment terms are net thirty (30) days.

Kentucky State University agrees that it will house at least one Resident Hall Assistant (RA) to live on each floor housing KSU students. The KSU RA will be responsible for monitoring those KSU students.

All rooms provided will be non-smoking. All rooms provided will have Wi-Fi access. Kentucky State University will inspect each room prior to the student's arrival/departure. Any damages will be the financial responsibility of Kentucky State University.

Capital Plaza is operating as a hotel and students will be expected to refrain from activity that would negatively impact the hotel and/or KSU while on hotel premises. Parties and excessive noise will not be allowed. Kentucky State University Security will be utilized for any student issues.

If Kentucky State University must close due to the Covid-19 pandemic, the Capital Plaza Hotel will release Kentucky State University from any obligation to make additional payments under the terms of this contract as soon as the student has vacated the room including taking of all personal belongings.

Vacuum cleaners and cleaning products will be available at the front desk. Onsite maintenance is available until 11 pm and on call for any emergencies. Indoor pool, if open, is available to students residing at hotel from 7am-11pm and all pool rules will be followed, or privileges will be revoked. There will be no offset of room rental in the event of pool closure.

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

1 <sup>st</sup> Party – Kentucky State University	2 <sup>nd</sup> Party – Capital Plaza Hotel
	MA
Signature	Signature
	Marc Stone
Printed Name	Printed Name
	President
Title	Title .
	12/8/22
Date	Date
Approved as to form and legality	
Signature	
Printed Name	
General Counsel	
Kentucky State University	



# KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

**ACTION ITEM 5F** 

# **ACTION ITEM**

Approval to enter into an agreement with EAB for enrollment consulting services.

# **FACTS**

To continue its mission of "advancing the Commonwealth of Kentucky, enhancing society, and impacting individuals," Kentucky State University must ensure that it can attract more students. As outlined by the Council on Postsecondary Education, one of Kentucky's goals is for sixty percent (60%) of its population to have degrees or credentials by 2030. For the Commonwealth to achieve this, regional universities like KSU must increase their enrollments. Moreover, larger enrollments—and increased tuition revenue—are necessary for the financial well-being of the University.

The University aspires to increase freshmen enrollment by up to nine percent (9%) over the next few years, increase retention and graduation rates, and create more awareness of the value of a KSU degree. To ensure that it can achieve its goals, the University would like to employ the services of EAB, an education services firm with over forty (40) years of experience in generating leads and executing student campaigns. EAB's value is evidenced by the following:

- EAB partners see a 6% average increase in enrollments and 7:1 ROI in their first year of partnership
- Students recruited by EAB are three (3) times more likely to enroll than those engaged by other means.
- EAB-recruited students have first-year retention rates that are six (6) percentage-points higher than those of students not recruited by EAB and thirteen percent (13%) greater rates of post-graduation giving than students recruited by other means.

Therefore, the University seeks to retain EAB for its enrollment consulting services.

# **BUDGETARY IMPLICATIONS**

The total estimated cost for the engagement is \$1,294,631. Funding for the engagement will come from the following:

Title III funds: \$535,746.74 E&G funds: \$758,884.26

## **RECOMMENDATION**

Interim President Ronald A. Johnson recommends that the Board of Regents approve the agreement for enrollment consulting services.

#### **MOTION**

Approve the University's entry into an agreement with EAB for enrollment consulting services.

# AGREEMENT

THIS AGREEMENT is made by and between KENTUCKY STATE UNIVERSITY (400 East Main Street, Frankfort, Kentucky 40601), a public university operating under the laws of the Commonwealth of Kentucky, hereinafter referred to as "KSU," and EAB Global, Inc. (2445 M Street NW, Washington, DC 20037), hereinafter referred to as "CONTRACTOR," as follows:

- 1. KSU's Purchasing Policy allows for a "piggyback cooperative" on an existing competitively-bid government contract as long as the piggyback and original contract include the same scope and substantially the same terms and conditions. Although the terms and conditions must be substiantially the same, KSU may alter certain terms and conditions if they are to its benefit. The parties agree that the Contractor has entered into a contract with Morehead State University (150 University Boulevard, Morehead, Kentucky), with said contract being identified as RFP-09-20, "Price Contract for Enrollment Marketing & Fulfillment Program," effective July 1, 2020, through June 30, 2023, with an option to renew/extend for additional two years. The parties further agree that Morehead State University has already elected to renew and that the term for RFP-09-20 has been extended through June 30, 2025.
- 2. The original government contract (RFP-09-20) is incorporated herein by reference and is attached as "Exhibit A" to this contract. All of the terms and conditions set out in the original government contract (RFP-09-20) are fully binding on the parties, and said terms and conditions are incorporated herein.
- 3. Notwithstanding the requirement that the original government contract is fully binding on the parties, the parties have agreed to modify certain technical provisions of the original government contract as applied to this contract between the Contractor and KSU as follows:
  - A) The term of this Agreement shall begin on February 1, 2023, and continue through June 30, 2025.
  - B) Insurance Requirements:
    - a. The CONTRACTOR shall maintain the minimum types of insurance and limits as required in the original government contract and shall provide proof of same to KSU in the form of a Certificate of Insurance prior to the start of any work hereunder.
    - b. The CONTRACTOR shall name "Kentucky State University" as a certificate holder and/or as an additional insured on all required insurance policies for the services to be provided hereunder and provide KSU with proof of same.
    - c. The CONTRACTOR shall provide KSU's Purchasing Department with a Certificate of Insurance evidencing such coverage for the duration of this Agreement. Said Certificate of Insurance shall be dated and show:
      - 1. The name of the insured CONTRACTOR;
      - 2. The specified job by name and job number;
      - 3. The name of the insurer:

- 4. The number of the policy;
- 5. The effective date:
- 6. The termination date; and,
- 7. A statement that the insurer will mail notice to KSU at least thirty (30) days prior to any material changes in the provisions or cancellations of the policy.
- 8. The Certificate Holders Box must read as follows:

Kentucky State University c/o Purchasing Department 400 East Main Street Frankfort, Kentucky 40601

- d. Receipt of certificates, other documentation of insurance, policies, or copies of policies by KSU, or by its representatives, which indicate less coverage than is required does not constitute a waiver of the CONTRACTOR's obligation to fulfill the insurance requirements specified herein.
- e. The CONTRACTOR shall ensure that any sub-contractor(s) hired to perform any of the duties contained in the Scope of Services of this Agreement maintain the same insurance requirements set forth herein. In addition, the CONTRACTOR shall maintain proof of same on file and make readily available upon request.

# C) Compensation:

- a. The total compensation during the term of this Agreement shall not exceed ONE MILLION TWO HUNDRED NINTETY-FOUR THOUSAND SIX HUNDRED THIRTY-ONE DOLLARS (\$1,294,631), which is the amount to be paid based upon prices as set forth in the Order Form, "Exhibit B", which is attached hereto and made a binding part hereof.
- b. Compensation for services completed by the CONTRACTOR will be paid in accordance with Kentucky State University's Accounts Payable policy.
- c. Services to be performed in accordance with this Agreement are subject to the annual appropriation of funds by KSU, and therefore, in its sole discretion, KSU reserves the right to forego use of the CONTRACTOR for any project which may fall within the Scope of Services listed herein.
- d. In the event KSU is not satisfied with the services provided by the CONTRACTOR, KSU will hold any amounts due until such time as the CONTRACTOR has appropriately addressed the problem.
- e. In conjunction with the agreement, a purchase order will be established by KSU prior to the start of any project, service, or work by the CONTRACTOR. Work to be provided under the Agreement will be authorized through the issuance of a Notice to Proceed (NTO) or Task Authorization (TA).
- D) Address and Notice Change for KSU: Notwithstanding the address and contact information for the government entity as set forth in "Exhibit A," the Contractor agrees to conduct business with and to provide all notices to: Attention, KSU Vice President for Student Engagement & Campus Life, at 400 East Main Street, Frankfort, Kentucky 40601.

- E) Notwithstanding any provisions in "Exhibit A" to the contrary, the venue of any dispute will be in Franklin County, Kentucky. Litigation between the parties which may arise out of this contract must be in Franklin County, Kentucky, in the Court of appropriate jurisdiction. The law of the Commonwealth of Kentucky will control any dispute between the parties arising out of or related to this Piggyback Contract, the performance thereof, or any products or services delivered pursuant to such contract.
- F) Notwithstanding any other provision in "Exhibit A" to the contrary, there shall be no arbitration with respect to any dispute between the parties arising out of this contract. Dispute resolution shall be through voluntary and non-binding mediation, negotiation or litigation in the Court of appropriate jurisdiction in Franklin County, Kentucky, with the parties bearing the costs of their own legal fees with respect to any dispute resolution, including litigation.

All other provisions in the original government contract ("Exhibit A") are fully binding on the parties and will represent the agreement between KSU and the Contractor.

4. In accordance with the contract terms, KSU reserves the right to purchase the services that are the subject hereof from any alternative Contractor during the contract term in the event of default or termination of the agreement.

1 <sup>st</sup> Party – Kentucky State University	2 <sup>nd</sup> Party – EAB Global, Inc.
Signature	Signature
Printed Name	Printed Name
Title	Title
Date	Date
Approved as to form and legality	
Signature	
Printed Name General Counsel Kentucky State University	

# **EXHIBIT A**

# AWARD OF PRICE CONTRACT

EAB Global, Inc. 2445 M Street NW Washington, DC 20037

REPRESENTATIVE: Jonathan Weyl

PHONE: 804-402-9659 EMAIL: jweyl@eab.com

Price Contract No.: MSU-1139-0623 Date: April 20, 2020

Contract Term-From: July 1, 2020 RFP/Invitation No.: RFP-09-20

To: June 30, 2023

Renewal Option: One (1) two-year renewal option

Contractor is hereby awarded this contract written in accordance with the terms, conditions and specifications of the proposal submitted by the contractor in response to Morehead State University's Request for Proposal referenced above and the negotiations between the parties. This price contract and attachments constitutes the entire agreement between the parties and supersedes all other agreements written or oral.

#### DESCRIPTION

This Price contract is for an Enrollment Marketing and Fulfillment Program. The term of this price contract is July 1, 2020 through June 30, 2023 with one remaining two-year renewal option.

This price contract is based on the following documents:

- 1. Morehead State University's Request for Proposal Number RFP-09-20 (incorporated by reference)
- 2. EAB's response to RFP-09-20, not including Appendix C (incorporated by reference)
- 3. Service Agreement dated March 26, 2020 If any terms of the RFP-09-20, EAB's response to RFP-09-20, and the Service Agreement conflict, the terms of the Service Agreement shall be the controlling document.

# Please answer the following questions:

- 1. Are you an employee or Regent of MSU? Yes \_\_\_ or No <
- 2. Is this firm/company owned in any part by an employee or Regent of MSU? Yes \_\_ or No <
- 3. Do you permit the use of this contract by other Universities, state agencies, public and private institutions in the Commonwealth of Kentucky? Yes No \_\_\_

OFFICIAL APPROVAL
MOREHEAD STATE UNIVERSITY

Booksignature

Signature

Director of Procurement Ser. Da

Brian Bondurant

Type or Print Name

Corporate Controller

Title



# Service Agreement for Morehead State University Student Marketing Programs Fiscal Years 2021 through 2025

This Service Agreement dated May 1, 2020 ("Effective Date") by and between EAB Global, Inc. ("EAB") and Morehead State University ("Client" or "you") (each of EAB and Client, a "Party" and collectively, the "Parties") describes the services to be performed by EAB pursuant to this Service Agreement and the Terms & Conditions attached to this Service Agreement (collectively, the "Agreement") for the Fiscal Years 2021, 2022, 2023, 2024, and 2025. In the event of any conflict between a term or condition set forth in this Service Agreement and a term or condition set forth in the Terms & Conditions, the term or condition set forth in the Service Agreement will control. All capitalized terms used and not expressly defined in this Service Agreement will have the meanings given to them in the Terms & Conditions.

#### I. Services Descriptions

## A. Agreement Term

This Agreement will start on the Effective Date and end on June 30, 2023 (the "Term") unless extended as sot forth horoin.

Client may elect to extend the Term for an additional two years, with annual Program fees as set forth herein. To extend this Agreement for an additional two years, Client must provide written notice to EAB no later than sixty (60) days prior to last day of the Term. If Client does not provide such written notification, the Services will terminate on the end of the Term and Client will not owe the fees listed above for the period after the end of the Term.

#### B. Coordination of Services

Upon execution of this Program Order Form, EAB will assign a team led by key senior EAB staff member (Principal or Strategic Leader) who will serve as Client's primary point of contact and work collaboratively with Client leaders and staff to meet the program objectives outlined herein.

The EAB staff member is responsible for coordinating service delivery and program management across the Term, including program messaging, sequencing, and utilization of paper and electronic media.

EAB staff is available to travel to Client's campus an Annual Yield and Melt Strategy Summit, to the extent permissible by Client's policies and procedures, to discuss the services provided under the terms of this Agreement. All associated travel costs are assumed by EAB; the Client is not assessed any incremental fees for travel.

EAB staff will monitor and coordinate the following services along with the descriptions in Summary of Program Services for Client as applicable:

- Targeting recommendations for optimal results (including, as applicable, list recommendations and list order placement)
- Creative development: copy and design of all communication channels (print packages, emails, web pages, display ads, SMS text messages)
- Production of printed materials
- Development and hosting of program response sites
- Automated, regular exchange of Client data via secure FTP to EAB
- Return of required responder data to the Client's student information system ("SIS"), enterprise resource planning ("ERP") system or customer relationship management ("CRM") system
- · Mailing and mail tracking
- Email deployment and delivery tracking
- · Interim and final analyses
- Use of EAB's proprietary methods and systems

In addition, during the term of this Agreement, Client has access to the following:

- Enrollment IQ a comprehensive, full funnel performance monitoring dashboard that allows you to track enrollment metrics using your entering class data.
- Complimentary membership to the National Student Clearinghouse Student Tracker Premium service (valued at up to \$2,700 per year).
- My Royall™, EAB's Organization-only website, for real-time program reporting and analysis to applicable campaigns.
- Benchmarking reports in which EAB will compare enrollment metrics for Organization against a set of peer institutions.
- Research and educational support through EAB.com.
- An Awareness and Perception Study (valued at \$20,000) every 2-4 years, designed to measure prospective students' awareness and familiarity with your institution and a set of your institution peers.

#### **Data Automation Services**

EAB's Data Automation Services are a set of highly recommended delivery services provided at no additional cost to generate necessary Client data from Client's SIS, ERP or CRM to implement EAB Enrollment Services programs and provide corresponding reporting and analytics. This service is available for the following source systems: Ellucian Banner, Campus-Vue, Peoplesoft, PowerCampus, Slate, Target X (includes Jenzabar JRM), Jenzabar CX, Jenzabar EX, CAMS, Hobsons Connect, Ellucian Colleague on SQL Server (not Unidata), and Campus-hosted Ellucian Recruit/Recruiter. If you have a source system that is not in the foregoing sentence, EAB will conduct a feasibility assessment to determine if EAB can provide Data Automation Services for your source system.

#### Implementation Support

If applicable, in providing the Data Automation Services, EAB will, where possible:

- Outline source data fields required for implementation of EAB programs in consultation with EAB staff and Client subject matter experts;
- Create SQL queries to extract data or code in the Query Environment specified above to output data files for implementation of EAB programs;
- Develop query logic and/or code to generate regular updates of the output data files on a frequency needed by EAB programs; and
- . Work with Client's staff to integrate the Data Automation Services queries or code into the production environment.

#### **Client Data and Analytics**

EAB may aggregate or analyze student-level and institutional-level data across client cohorts to enhance the Services provided under this Agreement. EAB may provide these insights from such analysis to Client in various forms, for example, benchmarking Client's performance against a group of peer institutions, which may include data at the individual student level. EAB may also use such information to optimize and improve the efficacy of EAB's marketing programs in this Agreement relative to individual students, such as modifying communication strategies based on student-level or parent-level behavior across all of EAB's interactions with such individual.

#### C. Year-Round Search

- Year-Round Search will include the development, deployment, management and analysis of a comprehensive multichannel communications program that will contact students whose profiles and characteristics make them a strong potential match for Client.
- Year-Round Search includes production of offer(s) to be used in conjunction with the communications program.
- With the ultimate goal of initiating the most conversations with students whose achievements and interests mirror your
  enrollment goals and objectives, we will communicate with students when they first are available, launching the multichannel program up to four times.
- Year-Round Search may be initiated with Search Jumpstart, an email only communications program to students who did not respond to prior search initiatives.

- Year-Round Search may be initiated in spring beginning with Search Jumpstart, an email only communications program
  to students who did not respond to prior search initiatives.
- The deployment of Client's Year-Round Search will begin with the first launch following execution of this Agreement and continue through May 2021 unless extended in accordance with the terms herein.

# D. 30-Day Fulfillment Campaign

- 30-Day Fulfillment will include the development, deployment, management and analysis of a communications program
  for students who have expressed interest in hearing more from Client by responding to your Year-Round Search.
- With the ultimate goal of confirming and strengthening student interest in Client, we will rapidly respond to each student's
  response via email, as applicable. We will continue the communications program for thirty days following response via
  email with these student responders.
- Parents will also receive multiple communications during this thirty-day period in those instances where students have provided parent email addresses. These parent messages will invite them to participate in their student's conversations with Client.
- Client's 30-Day Fulfillment Campaign will deploy with Year-Round Search and will continue through June 2021 unless
  extended in accordance with the terms herein.

# E. Custom Application Marketing

- Custom Application Marketing will include the development, deployment, management and analysis of a comprehensive multi-channel communications program that will contact high school seniors whose achievements, characteristics and prior actions make them desirable candidates for admissions and enrollment as freshmen by Client.
- Custom Application Marketing will launch up to four times and will encourage students to submit an application for admission to Client, and includes the provision of an online admissions application, designed for ease of completion, personalized with each student's name and other pertinent information, and branded uniquely for Client.
- Custom Application Marketing features an application for smartphones and tablets, allowing students to browse and submit their application using a mobile method.
- Submitted applications data will be available to you on a daily basis for direct download in a pre-established and tested format.
- SENDedu will be available to each student's high school guidance counselor to enable electronic submission by the counselor of additional documents required for consideration for admissions, including a student's high school transcript.
- If fees are collected on your behalf, students will have the option of submitting payment via credit card through an online
  account established for this purpose. Payments collected will be remitted to you net of associated credit card processing
  fees. The amount of these fees varies based on the volume of transactions processed through this program.
- Custom Application Marketing also includes the following:
  - Early Application Marketing ("EAM"); a multi-channel campaign to students and parents in expressing your interest in the student and laying the foundation for your invitation to apply.
  - An Application Deadline Mailing ("ADM") timed to arrive just prior to your most significant application deadline with messaging to encourage completion and submission of the application. This mailing will be sent to applicable audiences in your campaign (Inquiry Pool students and purchased name responders) who have not yet submitted your admissions application.
- Client's Custom Application Marketing will deploy beginning with the first launch following execution of this Agreement
  and conclude in May 2021 unless extended in accordance with the terms herein.

#### F. Yield Optimization

Yield Optimization will include the development, deployment, management and analysis of a comprehensive communications campaign to admitted students and/or financial aid services.

Yield IQ

- EAB will aggregate 150+ demographic, financial aid, and EAB campaign data points to provide enhanced intelligence on Client's admitted student pool. Prescriptive analytics resulting from the model will be provided before and after admitted student survey deploys.
- Client's admitted student pool will be surveyed regarding their enrollment intentions and guided through the next step of the enrollment process. This multi-channel program will consist of email messages, display advertising, and SMS communications to students, as well as targeted parent messages. Responses from the admitted student survey will be included in the data model.
- Client will have access to a live counselor dashboard that provides enhanced student-level visibility, allowing counselors to triage follow-up communications with admitted students.
- At the conclusion of the campaign, EAB will provide a Benchmarked Year-End Survey of students who indicated that they did not plan to deposit at your institution. The report will provide comparisons of Client to other institutions participating in the Yield IQ Program.
- If Client desires, a "Quick Pay" payment site may be included in the program to encourage more deposits online with a
  direct link from Client's .edu website to make a deposit.
- o If fees are collected on your behalf, students will have the option of submitting payment via credit card through an online account established for this purpose. Payments collected will be remitted to you net of associated credit card processing fees. The amount of these fees varies based on the volume of transactions processed through this program.
- Client's Yield IQ will deploy by December 2020 and continue through June 2021 unless extended in accordance with the terms herein.

#### II. Summary of Costs

	FY 2021				
Programi	Quantity	Cost	Additional Program S/M	Additional Postage S/M	Additional Media S/M
INQUIRY GENERATION					
Year-Round Search	75,000				
List Source Names Contacted	75,000		\$1,549	\$191	\$112
Student Responders Fulfilled (30-Day Fulfillment)	8.000		\$7,945		
Total		\$200,220			
APPLICATION GENERATION					
EAB Custom Application Marketing	82,000				
Inquiry Pool	8,000		\$11,610	\$409	\$74
Senior Search New Names	50,000		\$2,624	\$191	\$74
Previously Purchased Names (e-only)	24,000		\$1,002		\$74
Total	i	\$294,030			
YIELD OPTIMIZATION					
Yield IQ	All Admits	<u>\$74,160</u>			\$0
Total		\$74,160			
Yield and Melt Strategy Summit		\$15,000			

Subtotal	\$583,410	
Multi-Year EAB Investment	-\$30,000	
EAB Investment in Application Marketing	-\$28,30 <del>0</del>	
EAB Investment in Year-Round Search	-\$32,660	
EAB Investment in Yield IQ	-\$30,810	
EAB Investment in Yield and Melt Strategy Summit	-\$15,000	

\$446,640
\$23,000
\$10,000
\$70,653

FY 2022							
Program	Quantity	Cust	Additional Program \$/M	Additional Postage S/M	Additional Media S/M		
INQUIRY GENERATION							
Year-Round Search	50,000						
List Source Names Contacted	50,000		\$1,855	\$195	\$115		
Student Responders Fulfilled (30)-Day Fulfillment)	6,000		\$8,463				
Total		\$172,610					
APPLICATION GENERATION							
EAB Custom Application Marketing	82,000						
Inquiry Pool	8,000		\$11,958	\$417	\$77		
Senior Search New Names	50,000		\$2,703	\$195	\$77		
Previously Purchased Names (e-only)	24,000		\$1,032		\$77		
Total		\$302,870					
YIELD OPTIMIZATION							
Yield IQ	All Admits	<u>\$76,390</u>			\$0		
Total		\$76,390					
Yield and Melt Strategy Summit		\$15,000					

Subtotal	\$566,870
Multi-Year EAB Investment	-\$25,750
EAB Investment in Application Marketing	-\$14.575
EAB Investment in Yield IQ	<b>-\$31,730</b>
EAB Investment in Yield and Melt Strategy Summit	- <b>\$</b> 15,000
Total Program Cost	\$479,815
Postage Estimate	\$23,000
Digital Media Estimate	\$10,000
List Estimate	\$58,987

	FY 202	3			
Program	Quantity	Cost	Additional Program S/M	Additional Postage S/M	Additional Media S/M
INQUIRY GENERATION					
Year-Round Search	50,000				
List Source Names Contacted	50,000		\$1,911	\$199	\$119
Student Responders Fulfilled (30-Day Fulfillment)	6,000		\$8,717	\$0	
Total		\$177,800			
APPLICATION GENERATION					
EAB Custom Application Marketing	83,000				
Inquiry Pool	8,000		\$12,317	\$426	\$79
Senior Search New Names	50,000		\$2,784	\$199	\$79
Previously Purchased Names (e-only)	25,000		\$1,060	\$0	\$79
Total		\$313,100			
YIELD OPTIMIZATION					
Yield IQ	All Admits	\$78.690			\$0
Total		\$78,690			
Yield and Melt Strategy Summit		\$15,000			

Subtotal	\$584,59	
Multi-Year EAB Investment	-\$23,000	
EAB Investment in Application Marketing	-\$18,676	
EAB Investment in Yield IQ	-\$32,696	
EAB Investment in Yield and Melt Strategy Summit	-\$15,00	
Total Program Cost	\$495,230	
Postage Estimate	\$23,000	
Digital Media Estimate	\$10,000	
List Estimate	\$60,750	

FY 2024 – Optional							
Program	Quantity	Cost	Additional Program 8/M	Additional Postage \$/M	Additional Media S/M		
INQUIRY GENERATION							
Year-Round Search	50,000						
List Source Numes Contacted	50,000		\$1,969	\$203	\$122		
Student Responders Fulfilled (30-Day Fulfillment)	6,000		\$8,980	\$0			
Total		\$183,150					
APPLICATION GENERATION							
EAB Custom Application Marketing	68,000						
Inquiry Pool	8,000		\$12,686	\$434	\$81		
Senior Search New Names	50,000		\$2,867	\$203	182		
Previously Purchased Numes (e-only)	10,000		\$1,221	\$0	\$81		
Total		\$304,740					
YIELD OPTIMIZATION							
Yield IQ	All Admits	\$81,060			\$0		
Total		\$81,060					
Yield and Melt Strategy Summit		\$15,000					

 Subtotal
 \$583,950

 Multi-Year EAB Investment
 -\$22,900

EAB Investment in Yield IQ	-\$33,680
EAB Investment in Yield and Melt Strategy Summit	-\$15,000
Total Program Cost	\$512,370
Postage Estimate	\$23,000
Digital Media Estimate	\$10,000
List Estimate	\$62,579

FY 2025 - Optional						
Prógram	Quantity	Cost	Additional Program S/M	Additional Postage S/M	Additional Media S/M	
INQUIRY GENERATION						
Year-Round Search	50,000					
List Source Names Contacted	50,000		\$2,028	\$209	\$12	
Student Responders Fulfilled (30-Day Fulfillment) Total	6,000	\$188,650	\$9,250			
APPLICATION GENERATION						
EAB Custom Application Marketing	68,000					
Inquiry Pool	8,000		\$13,067	\$447	\$8	
Senior Search New Names	50,000		\$2,953	\$209	\$8	
Previously Purchased Names (e-only)	10,000		\$1,258		\$8.	
Total		\$313,890				
YIELD OPTIMIZATION	İ					
Yield IQ	All Admits	\$83,500			\$	
Total		\$83,500				
Yield and Melt Strategy Summit		\$15,000				
Subtotal		\$601,040				
Multi-Year EAB Investment		-\$23,670				
EAB Investment in Yield IQ		-\$34,690				
EAB Investment in Yield and Melt Strategy Summit		<b>-\$</b> 15,000				
Total Program Cost		\$527,680	6			
Postage Estimate		\$23,000				
Digital Media Estimate		\$10,000				
List Estimate		\$64,456				

The costs in the above tables cover mailed launches for quantities over 1,000 or more for each launch. If Client mails an additional launch or launches for any campaign, there will be an additional \$5,000 fee per launch.

Additional Program Cost/M, Additional Postage Cost/M, and Additional Media Cost/M will be applied if the actual quantity volumes are higher than those included in the tables above.

The estimated postage and media costs are based on then-current available postage or media rates. In the event that actual postage and/or media costs are greater than the estimated postage and/or media costs, EAB will invoice Client for the difference. Estimated postage and/or media costs will be applied as credit to other services in the current or next fiscal year as agreed upon by EAB and Client, unless Client requests a refund of such excess postage and/or media costs.

Client will incur the estimated list costs in the above tables, which will be invoiced directly by, and should be paid directly to, the list providers.

#### III. **Payment Terms**

All invoices are payable within thirty days.

# FY 2021

Invoiced in July 2020	100% Program Costs	100% Postage	100% Media	Total Invoice
	\$446,640	\$23,000	\$10,000	\$479,640
FY 2022				
Invoiced in July 2021	100% Program Costs	100% Postage	100% Media	Total Invoice
	\$479,815	\$23,000	\$10,000	\$512,815
Invoiced in July 2022	100% Program Costs	100% Postage	100% Media	Total Invoice
	\$495,230	\$23,000	\$10,000	\$528,230
FY 2024 – Optional		-		
	100% Program	100%	4000/ 84-4:-	Total Invoice
Invoiced in July 2023	Costs	Postage	100% Media	TOTAL III VOICE

100% Program Costs

\$527,680

# **ACKNOWLEDGED AND AGREED**

Invoiced in July 2024

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# MOREHEAD STATE UNIVERSITY

100% Media

\$10,000

**Total Invoice** 

\$560,680

By: Brian Bondurant By: Name: Corporate Controller Title: Title: Date: 5/5/2020

Date:

100% Postage

\$23,000

Address for Notices:

EAB Global, Inc. Attn: General Counsel 2445 M Street NW Washington, DC 20037 Address for Notices:

Morehead State University 180 Martindale Drive Morehead, KY 40351

Procurement Services

#### **TERMS & CONDITIONS**

These Terms & Conditions, together with the Service Agreement to which these Terms & Conditions are attached (including any attachments or subsequent amendments thereto, the "Service Agreement"), constitute a binding agreement (the "Agreement") between the entity named in the Service Agreement (the "Client" or "you") and EAB Global, Inc. ("EAB" or "we"), effective as of the date set forth on the Service Agreement ("Effective Date") regarding the services set forth on such Service Agreement (the "Services"). In the event of a conflict between any term set forth in the Service Agreement and any term or condition set forth in these Terms & Conditions, the term set forth in the Service Agreement shall control.

#### 1. GENERAL TERMS AND CONDITIONS

- 1.1. Fees. Fees for Services ("Fees") are set forth in the Service Agreement. Client will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on EAB's income), and any related penalties and interest for the grant of the Services hereunder. If Client is tax exempt and provide EAB with a valid tax exempt certificate issued by the relevant taxing jurisdiction, EAB will not charge Client any taxes that Client is not obligated to pay. Client will make all required payments to EAB free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to EAB will be Client's sole responsibility, and Client will, upon EAB's request, provide FAB with official receipts issued by appropriate taxing authorities, or such other evidence as EAB may reasonably request, to establish that such taxes have been paid.
- 1.2. Payment. Fees are due in full within thirty (30) days of invoice date. EAB's obligation to furnish Services (or to continue to furnish Services) is conditioned on Client's timely payment of invoiced amounts. Any past due balanco will be subject to interest at the lower of the monthly rate of one percent (1%) per month or the highest rate permitted by law. Client will be responsible for all costs and expenses incurred by EAB in collecting any Fees or other sums owed by Client. In the event any invoice remains unpaid for thirty (30) days or more, EAB reserves the right to terminate this Agreement or suspend the provision of any Services until the account is brought current.

#### 2. RESPONSIBILITIES

- 2.1. <u>EAB Responsibilities</u>. EAB agrees to furnish the Services described in the Service Agreement. Any additional Services shall be set forth in additional Service Agreement(s) signed by both Partles.
- 2.2. <u>Client Responsibilities</u>. Client shall provide EAB with all information and data by the specified dates or milestones reasonably required by EAB to perform services and furnish Services to Client. Specifically, Client will be solely responsible for: (a) the accuracy and completeness of the Client Materials (as defined below); (b) the design of any marketing program created as part of the Services and its compliance with applicable laws, rules and regulations; and (c) the content of any mailings to a prospective student or his/her families for completeness, accuracy and compliance with applicable laws, rules and regulations.
- 2.3. Review of Marketing Materials. EAB shall send to Client for its approval a proof of the final communication template for each mailing (e.g., emails and/or direct mail). If Client discovers any problems after review, Client will immediately notify EAB. If there are any subsequent changes in the marketing communications or campaign details, Client will review again according to the above procedure. Client shall review all marketing materials created by EAB for Client to ensure that all such marketing materials are accurate, complete and in compliance with all applicable laws, rules and regulations, including, but not limited to, adherence with the U.S. Department of Education's misrepresentation regulations provided at 34 C.F.R. 668, Subpart F, any applicable FTC guidelines and other consumer marketing laws and regulations. Client acknowledges that delays in notification of approval in or changes to EAB may result in Service delays.
- 2.4. Financial Aid Processing. Client agrees to carry out, or cause to be carried out, the processing and awarding of all aspects of the financial aid process in compliance with federal regulations. Client will retain complete control of all aspects of awarding financial aid, including setting of budgets and disbursement schedules. It is understood and agreed that this Agreement does not render EAB as a "Third Party Servicer" as that term is defined at 34 C.F.R. § 668.2 and EAB is not subject to the requirements of 34 C.F.R. § 668.23 or 34. C.F.R. § 668.25. Client shall not report or characterize EAB to the U.S. Department of Education or any regulatory agency as such, and EAB shall not undertake any work pursuant to this Agreement inconsistent with this section.

#### 3. <u>TERM</u>

- 3.1. <u>Term</u>. This Agreement shall be in effect as of the Effective Date and, unless terminated as set forth herein, will continue until all Services have been furnished pursuant to the Service Agreement (the "Term").
- 3.2. <u>Termination for Breach</u>. Either Party may terminate this Agreement immediately upon written notice in the event that the other Party materially breaches the Agreement and thereafter has failed to cure such breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the terminating Party) within thirty (30) days after receiving written notice thereof
- 3.3. <u>Termination for Convenience</u>. Client may terminate this Agreement for any reason in its sole discretion upon 30 days written notice. The parties agree that if Client terminates this Agreement pursuant to this Section 3.3, no prepaid fees will be refunded.
- 3.4. Upon Termination. Upon expiration or termination of this Agreement, (a) Client will pay all outstanding invoices or amounts owing to EAB and (b) the following Sections will survive: 3.4, 4, 5, 6, 7 and 8.

#### 4. PROPRIETARY RIGHTS

- 4.1. Client Materials. As between the Parties, Client will own all data provided to EAB under a Service Agreement, including any admissions and financial aid data Client provides to EAB ("Client Data"). Client will also own all right, title and interest in and to all other content and materials, including any copyrights, trademarks, service marks, data, and other intellectual property Client may provide to EAB in order to allow EAB to provide the Services to Client under the terms of this Agreement and the applicable Service Agreement ("Client Materials"). Client grants to EAB a worldwide, non-exclusive, right and license to store, reproduce, modify, perform, display, distribute and utilize the Client Data and Client Materials: (a) to provide the Services; (b) for internal tracking, reliability testing and research purposes; and (c) in a manner that does not identify Client for any lawful purpose in EAB's discretion. The rights granted in the foregoing clauses (b) and (c) shall be perpetual and shall survive any termination or expiration of this Agreement. Notwithstanding the foregoing, upon written request following termination of the Agreement, EAB shall return or destroy all Client Data and Client Materials within thirty (30) days.
- Ownership of Services. As between the Parties, EAB owns all right, title and interest in and to all Services (excluding any Client Data and Client Materials therein), as well as all products and services, including all hardware, systems, software, artwork, copy, concepts, techniques, and other intellectual property EAB uses to provide services and furnish Services hereunder, and any derivatives thereto. Client is authorized to use the Services only to the extent expressly authorized in these Terms & Conditions during the Term of this Agreement. Upon termination of this Agreement, Client's rights to and its use of the applicable Services shall promptly cease. To the extent EAB provides you Deliverables (as defined in the Services Agreement) as part of its Financial Aid Optimization services pursuant to the Service Agreement, EAB hereby grants Client the right to store, reproduce, perform, display and utilize the Deliverables for Client's internal business purposes; however, you may not (a) provide the Deliverables to any third party, or (b) modify, after, reverse engineer, decompile, or disassemble the Deliverables to obtain or perceive any source code or algorithms.
- 4.3. <u>Additional Programs</u>. To the extent Client presently participates in more than one membership program or service offering or enrolls in or purchases additional membership programs or service offerings of EAB or its affiliates in the future ("Programs"), the data that Client provides to EAB in connection with a particular Program may be combined with data provided by Client in connection with other Programs or otherwise used by EAB and its affiliates in connection with other Programs to provide services to Client pursuant to the Agreement and other membership or services agreements between Client and EAB or its affiliates.
- 4.4. <u>No Other Licenses</u>. Except for the license and other rights granted to EAB under this Agreement, EAB claims no ownership or control over, and

shall have no liability with respect to, any Client Materials or Client Data.

#### 5. WARRANTIES AND DISCLAIMERS

- 5.1. <u>Limited Warranty.</u> EAB warrants that the services to be provided under this Agreement shall be performed in a professional manner conforming to generally accepted industry standards and practices.
- 5.2. <u>Client Data Warranty.</u> Client warrants that Client has or will have all necessary rights, and has obtained any necessary third party consents, authorizations or permissions required, to provide the Client Data to EAB for such Client Data to be used in the manner contemplated by this Agreement.
- Compliance with Laws. The Fees set forth in the Service Agreement 5.3. are not intended to be incentive compensation payments. However, EAB represents, warrants and covenants that the compensation of its employees, subcontractors or other persons who perform any student recruitment activities for Client (if any) under this Agreement is and will be in material compliance with Section 487(a)(20) of the HEA (20 U.S.C. § 1094(a)(20)), or any successor provision, and the regulations promulgated thereunder by the U.S. Department of Education (currently located at 34 C.F.R. § 668.14(b)(22)), (the "Incentive Compensation Rules"), to the extent applicable. It is the intention of the Parties that if there are any payments that would be deemed incentive compensation payments, then this performance of the Services would fall under Example 2-B, page 12 of the letter titled "Implementation of Program Integrity Regulations" from the U.S. Department of Education issued on March 17, 2011. In the event the Incentive Compensation Rules change during the Term of this Agreement or the Department of Education revises or issues official guidance concerning such regulations such that, in either case, the calculation and payment of Fees is no longer feasible, the Parties will promptly negotiate in good faith an amendment to this Agreement to comply with such change and to preserve, as nearly as practicable, the payment provisions and other economic benefits and terms of this Agreement
- 5.4. Client shall be responsible for obtaining and maintaining eligibility for student financial aid under Title IV of the HEA and the rules and regulations thereunder, for obtaining and maintaining all necessary state authorizations and approvals, and for maintaining its accreditation in full force and effect. Client shall promptly notify EAB in the event it is notified that any of the foregoing approvals and authorizations is, or is threatened to be, materially modified, suspended or terminated.
- 5.5. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY KENTUCKY LAW, THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS," AND EAB MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

#### 6. LIMITATION OF LIABILITY

TO THE EXTENT PERMITTED UNDER KENTUCKY LAW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, WHICH THE OTHER PARTY MAY INCUR, EXPERIENCE OR CLAIM (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF SERVICES, INTERRUPTION IN USE OR AVAILABILITY OF DATA, LOST BUSINESS, LOST OPPORTUNITY, WORK STOPPAGE OR OTHER IMPAIRMENT OF ASSETS) ARISING OUT OF ANY ALLEGED BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, ON ACCOUNT OF ENTERING INTO OR RELYING ON THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED UNDER KENTUCKY LAW, EAB'S TOTAL LIABILITY FOR ANY CLAIM UNDER THIS AGREEMENT FROM ANY AND ALL CAUSES SHALL BE LIMITED TO AND SHALL NOT EXCEED TWO TIMES THE AMOUNT OF FEES ACTUALLY PAID BY YOU TO EAB FOR THE DELIVERABLES AND/OR SERVICES RELATED TO SUCH CLAIM DURING THE ONE-YEAR PERIOD PRIOR TO THE CAUSE FOR SUCH CLAIM, REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTIONS MAY BE BROUGHT, AND ANY SUCH DAMAGES SHALL CONSTITUTE YOUR SOLE AND EXCLUSIVE

#### 7. CONFIDENTIALITY AND NONDISCLOSURE

- Confidentiality. Except as required by law or as reasonably 7.1 necessary in the performance of the Services or as otherwise agreed to by Client, EAB will keep confidential any and all Client Data and Client Materials. Notwithstanding the foregoing, Client agrees that EAB shall not be obligated to maintain the confidentiality of non-personally identifying Client Data or Client Materials that are known to EAB prior to receiving the Client Data or Client Materials from Client or that becomes known (independently of disclosure by Client) directly or indirectly from a source other than one having an obligation of confidentiality to Client. The Services are confidential to EAB and its suppliers, if any. Thus, subject to the Kentucky Open Records Act, Client shall not disseminate to, or permit the use of, and shall take reasonable precautions to prevent such dissemination or use of, Services by any of its ersonnel to any third party. In addition, except as required by law, Client shall not disclose the fees charged by EAB to Client to any third party, other than its personnel or professional services providers (e.g., accountants or legal counsel) who need to know such information in order to provide their respective professional services to Client and, in each case, are bound by confidentiality obligations to Client. Client shall not remove from the Services any confidential markings, copyright notices and other similar indicia therein.
- 7.2 <u>FERPA</u>. To the extent applicable, EAB agrees to abide by the applicable requirements of the Family Education Rights and Privacy Act ("FERPA") in using Client Data.

#### B. MISCELLANEOUS

- 8.1 <u>Governing Law and Venue</u>. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the Commonwealth of Kentucky, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Client hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for Franklin County, Kentucky. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 8.2 <u>Publicity</u>. EAB and its affiliates may publicly refer to Client, including on its or their website and in sales presentations, as an EAB client and may use Client's logo for such purposes with written permission by Client.
- 8.3 <u>Severability.</u> If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Client agrees that Section 6 will remain in effect notwithstanding the unenforceability of any provision in Section 5.5.
- 8.4 <u>Waiver</u>. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 8.5 <u>No Assignment.</u> This Agreement is not assignable by either Party without the other Party's prior written consent, which shall not be unreasonably withheld or delayed, except an assignment by operation of law shall not require the consent of the other Party. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.
- 8.6 <u>Force Majeure</u>. EAB shall not be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control. If any such an event of force majeure occurs, EAB shall provide Client with written notice.
- 8.7 <u>Independent Contractors</u>. EAB's relationship to Client is that of an independent contractor, and neither Party is an agent or partner of the other. Nothing herein shall be deemed to establish a partnership, joint venture or agency relationship between the Parties. EAB shall have the right to use third parties, including, without limitation, its affiliates, in performance of its obligations and in providing the Services under this Agreement.
- 8.8 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered by a commercially recognized national courier (such as Federal Express or UPS) to the addresses set forth on the Service Agreement. In the event that the last address Client have provided to EAB is not valid, or for any reason is not capable of delivering to Client any notices required by this Agreement, EAB's dispatch of such notice will nonetheless constitute effective notice of the changes described on the notice.

8.9 Entire Agreement. The parties agree that Client's RFP-09-20 and EAB's response thereto are incorporated herein by reference into this Agreement. In the event of any conflict, this Agreement shall control, This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the Parties with respect to such subject matter.



# EAB's Exceptions to RFP Terms and Conditions

Contains Trade Secret and Confidential Information

APPENDIX



February 17, 2020

Andrea Stone, Director, Procurement Services Morehead State University Office of Procurement Services 180 Martindale Drive Morehead, KY 40351

Dear Ms. Stone,

# Re: Requested Modifications to RFP Terms & Conditions

EAB Global, Inc. ("EAB" or the "Contractor") is pleased to respond to Morehead State University's ("MSU" or "University") Request for Proposal 09-20 (the "RFP") for an Enrollment Marketing and Fulfillment (the "Services") FAB and MSU are parties to that certain Service Agreement, dated December 16, 2016 pursuant to RFP-15-17 (the "Existing Agreement") relating to the provision of services that are equivalent to the Services requested in the RFP. The Existing Agreement was the result of negotiation between EAB and University. Accordingly, EAB proposes employing a contract in form and substance substantially similar to the Existing Agreement.

In the event this is not practicable, this letter contains EAB's proposed changes to the terms and conditions included in the RFP, and we agree to negotiate the terms of any agreement awarded under the RFP ("Agreement") in good faith.

- 1. EAB requests addition of the following terms, which are specific to the types of Services to be provided as requested in the RFP:
  - a. <u>University-Provided Data</u>. University acknowledges and agrees that Contractor exercises no control whatsoever over the content of such data or other content or information that University or an End User so supplies to be used in connection with the Services, as well as any copyrights, trademarks, service marks, data, and other intellectual property University may provide to Contractor in order to allow Contractor to provide the Services to University under the terms of this Agreement (such data or other information and intellectual property, collectively, "University-Provided Data" or "U-P Data"). Contractor makes no warranty, representation, endorsement, or guarantee regarding, and accepts no responsibility for, the quality, content, nature or reliability of such U-P Data or any products or services referenced thereby. Unless otherwise specifically set forth in the Agreement or required in order to provide the Services, University acknowledges and agrees that Contractor will have no obligation to archive or back up U-P Data, nor will Contractor have any liability for any loss or corruption of U-P Data, nor will Contractor have any obligation under the Agreement to retain any U-P Data, after the expiration or termination of the term of the Agreement.
  - b. <u>Financial Aid Processing</u>. University agrees to carry out, or cause to be carried out, the processing and awarding of all aspects of the financial aid process in compliance with federal regulations. University will retain complete control of all aspects of awarding financial aid, including setting of budgets and disbursement schedules. It is understood and agreed that this Agreement does not render Contractor as a "**Third Party Servicer**" as that term is defined at 34 C.F.R. § 668.2 and Contractor is not subject to the requirements of 34 C.F.R. § 668.25. University shall not report or characterize Contractor to the

- U.S. Department of Education or any regulatory agency as such, and Contractor shall not undertake any work pursuant to this Agreement inconsistent with this section.
- c. Compliance with Laws. Contractor represents, warrants and covenants that the compensation of its employees, subcontractors or other persons who perform any student recruitment activities for University (if any) under this Agreement is and will be in material compliance with Section 487(a)(20) of the HEA (20 U.S.C. § 1094(a)(20)), or any successor provision, and the regulations promulgated thereunder by the U.S. Department of Education (currently located at 34 C.F.R. § 668.14(b)(22)), (the "Incentive Compensation Rules"), to the extent applicable. In the event the Incentive Compensation Rules change during the term of this Agreement or the Department of Education revises or issues official guidance concerning such regulations such that, in either case, the calculation and payment of fees as structured under this Agreement is no longer feasible, the parties will promptly negotiate in good faith an amendment to this Agreement to comply with such change and to preserve, as nearly as practicable, the payment provisions and other economic benefits and terms of this Agreement. The University and Contractor agree that the University is solely responsible for making final decisions about enrollments and enrollment targets for all programs.

University shall be responsible for obtaining and maintaining eligibility for student financial aid under Title IV of the HEA and the rules and regulations thereunder, for obtaining and maintaining all necessary state authorizations and approvals, and for maintaining all institutional and programmatic accreditations necessary to offer its programs. University shall promptly notify Contractor in writing and provide Contractor with copies of key communications from any accreditor or regulatory body in the event it is notified that any of the University's approvals, accreditations, or authorizations is, or is threatened to be, materially modified, suspended or terminated.

To the extent the Services include marketing activities, Contractor shall send to University for its review and approval a proof of the final template for each communication (e.g., emails and/or direct mail) prior to distribution of such communication. If University discovers any problems after issuing its approval, University will immediately notify Contractor and instruct Contractor on all necessary corrections. If there are any subsequent changes in the marketing communications or campaign details, University will review again according to the above procedure. University shall review all marketing materials created by Contractor for University to ensure that all such marketing materials are accurate, complete and in compliance with all applicable laws, rules and regulations, including, but not limited to, adherence with the U.S. Department of Education's misrepresentation regulations provided at 34 C.F.R. 668, Subpart F, any applicable Federal Trade Commission laws, regulations, or guidelines and all other consumer marketing laws and regulations. University will be solely responsible for: (a) the design of any marketing program created as part of the Services and its compliance with applicable laws, rule and regulations; and (b) the content of any mailings to a prospective student or his/her families for completeness and accuracy.

d. <u>Limitations on Liability</u>. University agrees that neither Contractor nor its Personnel will be liable to University for any claims, liabilities, or expenses relating to the Services, the Materials or the Agreement for an aggregate amount in excess of the fees paid by University for each Program to Contractor pursuant to the Agreement during the 12 month period before the claim, liability or expense arose, except to the extent finally judicially determined to have resulted from Contractor's bad faith or intentional misconduct. In no event will a party or its Personnel be liable to the other party and/or its Personnel for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the Services, the Materials or the Agreement including, without limitation, lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation, or

liabilities to third parties arising from any source, even if a party has been advised of the possibility of such damages. In addition, Contractor will not be liable in respect of the following: (a) any decisions made by University as a result of the performance of the Services or as a result of any transactions made in reliance upon any of the Materials;(b) University's misuse of the Services, Materials or other data provided to University in connection with the Services; (c) any claims by any third party in connection with U-P Data or other information unlawfully disclosed to Contractor by the University.

- e. Warranties. Contractor represents and warrants that it will provide the Services in a professional and workmanlike manner. University represents and warrants that (a) its signatory is authorized to enter into this Agreement on behalf of University, (b) (i) its provision of U-P Data and (ii) receipt of and access to the Services by the University and its Personnel will not violate any of its obligations to third parties or violate any applicable laws and that University has obtained all necessary third party consents and authorizations to provide the U-P Data and for such U-P Data to be used in the manner contemplated by the Agreement, including consents or authorizations pursuant to FERPA. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND MATERIALS ARE PROVIDED "AS IS," AND CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES AND MATERIALS AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, AND NON-INFRINGEMENT. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES WILL MEET UNIVERSITY'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND CONTRACTOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
- f. FERPA. (a) Subject to subsection (b), and to the extent that Contractor receives from University or otherwise has access to, on behalf of University, personally identifiable information from a student education record (collectively, Student Records), Contractor agrees to maintain such Student Records in accordance with the requirements of the Family Educational Rights and Privacy Act, 20 USC § 1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (collectively FERPA). (b) University agrees (i) that Contractor is performing for the University an institutional service or function for which the University would otherwise use its employees, (ii) that the University will retain control over all education records provided to Contractor, and (iii) that the University is responsible for complying with FERPA, including with respect to the annual notification requirement (34 C.F.R. § 99.7) and with respect to providing Student Records to Contractor. University will indemnify, defend and hold harmless Contractor and its Personnel from any and all third-party claims, liabilities, and expenses arising from University's breach of its obligations under this Section.
- g. <u>Fees and Payment</u>. University will pay Contractor fees for the Services as set forth in the Agreement. Unless expressly stated otherwise in the Agreement, University shall pay Contractor within thirty (30) days of receipt of an invoice. Overdue payments are subject to a late payment charge, which is compounded monthly, calculated at the lesser of (x) a rate of 1% per month or (y) the maximum amount permitted by law. University will be responsible for all costs and expenses incurred by Contractor in collecting any fees or other sums owed

by University. If University fails to pay undisputed amounts in accordance with the Agreement, Contractor shall have the right, in addition to any of its other rights or remedies, to suspend the Services, without liability to University, until such amounts are paid in full.

- 2. EAB requests revision of the following terms of the RFP, as set forth below:
  - a. Section 3.7, Acceptance or Reject and Award of Proposal. Please strike the last sentence of this Section as not applicable. The parties will commit to the full scope of the Services set forth in the Agreement.
  - b. Section 3.10, Disclosure of Offeror's Response. Please add the following to the beginning of the second-to-last sentence, "Except as otherwise set forth in the Agreement,".
  - c. Section 6.1, Contract Term. Please strike the last sentence of this Section as EAB cannot condition renewal based on client satisfaction due to the Incentive Compensation Rules.
  - d. Section 6.6, Contractor Cooperation in Related Efforts. Please strike the second sentence in its entirety. EAB cannot agree to work with potential competitors without an opportunity to consider more fully. Please add "knowingly" before "commit or permit" in the third sentence. Lastly, please strike the fourth sentence as EAB does not typically hire subcontractors for individual clients.
  - e. Section 6.9. Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act. EAB cannot agree to unreviewed security policies. In the unlikely event of a breach, EAB would fully cooperate with University as to all investigation and response; however, notification would be more appropriately provided by University. Please revise as set forth below:

To the extent Company receives Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, 61.932 and 61.933 (the "Act"), Company shall secure and protect the Personal 17 Information by, without limitation: (i) complying with all requirements applicable to non-affiliated third parties set forth in the Act; (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed, at least as stringent as University's and reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction; (iii) notifying University of a security breach relating to Personal Information in the possession of Company or its agents or subcontractors within seventy-two (72) hours of discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Company abides by the requirements set forth in that exception; (iv) cooperating with University in complying with the response, mitigation, correction, investigation, and notification requirements of the Act, (v) paying all legally required costs of notification, investigation and mitigation in the event ofto the extent arising from a security breach of Personal Information suffered by Company; and (vi) at University's reasonable discretion and direction, handling all administrative functions associated with notification, investigation and mitigation.

- f. Section 6.10, Termination for Convenience. Please strike this Section in its entirety as accounting practices prohibit EAB's ability to recognize revenue from a contract containing a termination for convenience clause.
- g. Section 6.11, Termination for Non-Performance. Please replace this provision with the following termination provision, which is substantially similar to the termination provision in

the Existing Agreement, but additionally allows either party to terminate in the event of a bankruptcy of the other party:

Except as otherwise provided herein, the Agreement may only be terminated by a party upon written notice to the other party if such other party (a) fails to perform any material obligation required of it under the Agreement, and such failure is not cured within thirty (30) days of receipt of written notice thereof, or (b) files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, and such petition, action or filing is not dismissed within 60 days of such filing, or is adjudicated a bankrupt concern. Upon an undisputed termination pursuant to clause (a) of the preceding sentence by (i) Contractor, all fees due to Contractor under the Agreement shall promptly become due and payable and (ii) University, Contractor will waive (or refund, as applicable) a pro-rata portion of any prepaid fees for Services (i.e., fees due for Services to be performed after the termination date) and, in each case, Contractor will be released from any further obligation to provide the Services.

h. Section 6.12, Funding Out. EAB is willing to provide a "funding out" provision in the event the University does not receive sufficient appropriated funds subject to certain reasonable conditions. Please replace this Section with the following:

University represents and warrants that funds sufficient to meet all financial obligations hereunder for the first year of the contract term have been allocated and are available. Further, Contractor agrees and understands that from the first anniversary of the start date of the contract term, the financial obligations of University to continue hereunder are conditioned upon the appropriation of funds on a biennial basis, which is not controlled by the University. In the event that the entities controlling such funding fail to appropriate funds within five percent (5%) of the previous contract year's appropriation and University has determined, in University's sole discretion, that there are insufficient funds available to cover University's obligation for the upcoming year of the contract term under this Agreement, University shall have the right to terminate this Agreement for the upcoming year of the contract term without damage, penalty, cost, or further obligation, provided: (i) University has notified Contractor in writing of its intention to exercise such option at least ninety (90) days in advance of such anniversary of the start date of the contract term; and (ii) University has provided sufficient documentation of such decrease in appropriation of funds.

Section 6.14, Assignment and Subcontracting. Please replace this provision with the following assignment provision, which prohibits either party from assigning the Agreement without consent, except in the event of assignment by operation of law, and allows EAB the opportunity to work with third parties to provide the Services:

Neither party may assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, assignment by operation of law shall not require consent of the non-assigning party. This Agreement shall be binding upon the parties and their respective successors and permitted assigns. Contractor shall have the right to use third parties, including, without limitation, its affiliates, in the performance of its rights and obligations hereunder.

j. Section 6.16, Attorneys' Fees. Please update this Section to be reciprocal as follows:

In the event that either party deems it necessary to take legal action to enforce any

provision of the contract the non-prevailing party agrees to pay all expenses of such action including attorneys' fees and costs at all stages of litigation to the prevailing party.

- k. Section 6.17, Royalties, Patents, Copyrights and Trademarks. Please strike this Section in its entirety in favor of EAB's proposed modification of Section 6.18 (Indemnification), which sets forth indemnification obligations in the event of a third-party claim of IP infringement.
- I. Section 6.18, Indemnification. If EAB is to agree to an indemnity, it needs to be standard language tailored to the services and acceptable to our insurance company. Please replace in its entirety as follows:

Contractor will indemnify, defend and hold harmless University and its personnel from any and all third party claims, liabilities and expenses arising from any infringement, misappropriation, or other violation by the Services of any United States patent, copyright, trademark, service mark, or trade secret right of a third party; provided that University used the Services in accordance with the terms of the Agreement and consistent with the purpose for which they were provided to University. Contractor shall have no liability for any claim of infringement based on (a) Services which have been modified by University or any third party on University's behalf, (b) University's use of the Services in connection with data, including U-P Data, where use with such data gave rise to the infringement claim, or (c) University's use of the Services with third party software or hardware, where use with such other software or hardware gave rise to the infringement claim. Should the Services become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor may, at its option, (x) obtain the right for University to continue using the Services, (y) replace or modify the Services so they are no longer infringing, or (z) if neither of the foregoing options is commercially reasonable, terminate the right of University to use the affected Services. Upon such termination, Contractor will refund to University, as University's sole remedy for such termination, any fees paid for Services to be provided following the effective termination date. This Section states Contractor's entire liability with respect to any claim of infringement regarding the Services.

- m. Section 6.19, Insurance. Please strike "owned" from the "Auto Liability" portion of this Section, as EAB does not have owned automobiles and, as such, EAB's insurance coverage is limited to hired and non-owned vehicles.
- n. Section 6.22, Reports and Auditing. Please add the following reasonable audit conditions to the end of this Section:

Notwithstanding the foregoing, any audit or access shall be conducted: (a) with at least ten (10) days' advance notice; (b) at University's expense; (c) during Contractor's normal business hours; and (d) not more than one (1) time per year. Furthermore, Contractor shall have the right to exclude from such audit any of its confidential or proprietary information which was not otherwise provided to University as part of the Services, and the results of any audit shall be subject to the confidentiality provisions of the Agreement or a mutual non-disclosure agreement, if applicable.

o. Section 6.23, Confidentiality. Please add the following, with regard to materials shared under the Agreement:

Except as required by law or as reasonably necessary in the performance of the Services or as otherwise agreed to by University in this Agreement or in a separate writing, Contractor will keep confidential any and all U-P Data. Notwithstanding the foregoing, University agrees that Contractor shall not be obligated to maintain the confidentiality of U-P Data that is known to Contractor prior to receiving the U-P Data from University, that becomes known (independently of disclosure by University) directly or indirectly from a source other than one having an obligation of confidentiality to University or that is independently developed by Contractor. University agrees that Contractor may collect aggregated statistical data regarding University's use of the Service and provide such aggregated statistical data to third parties.

The Materials are confidential to Contractor and its suppliers, if any. Thus, University shall not disseminate to, or permit the use of, and shall take reasonable precautions to prevent such dissemination or use of, Materials by any of its Personnel to any third party. In addition, except as required by law, University shall not disclose the fees charged by Contractor to University to any third party, other than its Personnel or professional services providers (e.g., accountants or legal counsel) who need to know such information in order to provide their respective professional services to University and, in each case, are bound by confidentiality obligations to University. University shall not remove from the Materials any confidential markings, copyright notices and other similar indicia therein and shall not create any derivative works thereof. For purposes of this Agreement, "Personnel" means a party's officers, directors, trustees, employees and agents.

Notwithstanding the foregoing, a party may disclose U-P Data and the Materials to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (y) to establish a party's rights under the Agreement, including to make such court filings as it may be required to do.

Contractor may use University's name on a list of clients in Contractor's programs.

- p. Section 6.24, Conflict of Interest. EAB is willing to certify that to the best of its knowledge EAB does not have a conflict of interest with respect to the Services. Please add "to the best of its knowledge" in between "that" and "no actual" and strike "apparent or potential" from the first sentence of this Section.
- q. Section 6.26, Personal Service Contract Policies. Please strike as not applicable to the Services.
- r. Section 6.27, Copyright and Title to Designs and Copy. Please note that EAB does not provide ownership rights to the Services for any partner institutions. Please replace this Section with the following ownership provision, which sets forth ownership rights to the University's data and the Services:

Ownership. Contractor is authorized to use such U-P Data to the extent expressly authorized in this Agreement. As between the parties, University owns the U-P data. University acknowledges that Contractor may use the U-P Data, and the University

hereby grants Contractor a non-exclusive right and license to use, reproduce, host, reformat, and create derivative works from, publicly display and otherwise exploit all or portions of the U-P Data: (a) in connection with providing the Services; (b) for internal tracking, reliability testing and research purposes; and (c) in a manner that does not identify the University for any lawful purpose in Contractor's discretion. The rights granted in the foregoing clauses (b) and (c) shall be perpetual and shall survive the termination or expiration of this Agreement. As between the parties, Contractor owns all right, title and interest in and to the research, research results, tools, methods, analyses, reports, or other materials or information relating to the Services (including, without limitation, any such materials based on or incorporating U-P Data, except for the U-P Data therein) (collectively, "Materials"), the Services, the know-how, techniques or procedures used or acquired in creating the Materials or performing the Services, and any derivative works of any of the foregoing. Except as stated in this Agreement, no right, license, permission or interest of any kind in the Services or Materials is intended to be given, transferred to or acquired by University by the Agreement. University is authorized to use such items only to the extent expressly authorized in this Agreement. Upon termination or expiration of the Agreement, University's rights to and its use of the applicable Services and Materials shall promptly cease, except that University shall continue to be able to use any Materials provided to University prior to the expiration of the term of the Agreement to the extent the Materials include U-P Data solely for internal purposes. Upon request, University shall return any Materials if the continued use thereof would be prohibited under this Agreement.

To the extent University presently participates in more than one Contractor program or enrolls in or purchases additional Contractor programs in the future ("**Programs**"), the data that University provides to Contractor in connection with a particular Program may be combined with data provided by University in connection with other Programs or otherwise used by Contractor in connection with other Programs to provide services to University pursuant to the Agreement and other letters of agreement between University and Contractor.

s. Section 6.28, University Brand Standards. Please strike this Section in favor of EAB's approach to marketing activities as outlined in Subsection 1(c) (Compliance with Laws), which sets forth a process to require approval of each communication template by the University. Please replace the second paragraph of this Section with the following:

Accessibility for users with disabilities is a core and ongoing part of Contractor's development roadmap. We design and develop our technology with accessibility standards and best practices in mind, with a central goal to deliver accessible solutions that are WCAG 2.0 AA compliance.

t. Section 6.29, Printing Statutes. Please strike as this provision was not included in the Existing Agreement.

Please do not hesitate to contact us with any specific questions or concerns.

# 4.7: Financial Proposal

# The Financial Summary shall contain the complete financial offer made to the University.

EAB is pleased to offer the following pricing proposal prepared for MSU. To demonstrate our commitment to MSU's success and desire for a continued partnership, EAB is offering MSU a reduction in standard program costs—our EAB Investment—and providing several enhancements to support two key initiatives at no cost to MSU. In total, EAB is prepared to invest \$458,125 in our partnership across a five-year term.<sup>2</sup>

# Continue to Create and Cultivate Top-of-Funnel Demand

EAB will sponsor the program cost of increasing Student Search and Application Marketing campaign volumes as we seek to expand MSU's market footprint out of state and support recruitment for Entering Classes 2021–2023:

- Increased Student Search Volume (Year One): 25,000 additional student names to support recruitment in West Virginia, Virginia, Indiana, and Ohio for Entering Classes 2022 and 2023.
- Increased Application Marketing Volume (Years One—Three): 25,000 additional student names to ensure core market saturation in Kentucky and Tennessee and to support recruitment for Entering Class 2021-2023.

## Improve Throughput and Yield to Drive Enrollment Growth

EAB is prepared to offer the following to support strong yield results for MSU:

- Yield Scoring Analytics: EAB will enhance MSU's Decision IQ program by incorporating yield scoring analytics and new dashboard functionality that will significantly increase program utility and ROI. EAB will sponsor the cost of this Yield IQ program enhancement for the duration of the partnership.
- **Annual Yield and Melt Strategy Summit:** At no cost to MSU, EAB will travel to campus each year of the partnership to share best practice research and brainstorm with your team new strategies and tactics to improve yield and reduce melt.

EAB's services are delivered through an all-inclusive model. We are committed to this approach because it provides our partners with the highest level of service and greatest return on investment. All fees listed are annual and are fully inclusive of all aspects of service outlined in this proposal. In addition, please note:

- Access to National Student Clearinghouse's StudentTracker Premium service is included with your partnership.
- All fees associated with travel will be paid by EAB with no expense charged to MSU. Unlike other firms, there is no set number of trips either to MSU or to EAB.
- All List Costs will be invoiced by and paid directly to the List Provider (not EAB), which will require
  separate purchase orders. EAB will provide cost estimates upon request. Postage and digital media costs
  are pass-through charges paid by EAB on MSU's behalf.
- Campaign launch timing and volume as outlined are contingent upon timely contract signature and partnership start date.
- The pricing proposed is based on the following invoice schedule (all invoices are payable within 30 days):
  - o Year One: 75% of program cost and 100% of postage and digital media cost billed upfront.
  - Years Two—Five: 75% of program cost and 100% of postage and media costs billed in July, with remaining 25% of program cost billed in January.
- Proposed scope and fees are guaranteed for 90 days following the opening date for RFP response.

<sup>&</sup>lt;sup>2</sup>The EAB Investment outlined is contingent upon a minimum three-year fixed term of service. If MSU should "opt out" of the agreement for any reason prior to the end of the initial three-year term, MSU will repay the EAB Investment applied to the previous year of service.

	PROGRAM	YEAR 1 (FY 2021)	YEAR 2 (FY 2022)	YEAR 3 (FY 2023)	YEAR 4 (FY 2024)	YEAR 5 (FY 2025)
Strategy	Targeting Strategy and Campaign Support Services		Included	at No Additi	onal Cost	
Inquiry	Year-Round Search and Instantaneous Fulfillment  List Source Names Contacted: <sup>3</sup> Year 1: 75,000 Years 2-5: 50,000 Student Responders Fulfilled (Digital): 6,000-8,000	\$200,220	\$172,610	\$177,800	\$183,150	\$188,650
Visit	YouVisit Virtual Tour	Integ	grated into Ca	ampaigns at l	No Additional	Cost
Application	Application Marketing  • Application Type: Custom  • Inquiry Pool <sup>2</sup> : 8,000  • Senior Search New Names: <sup>2</sup> 50,000  • Previously Purchased Names: <sup>2</sup> • Years 1-3: 25,000  • Years 4-5: 6,500	\$294,030	\$302,870	\$313,100	\$304,740	\$313,890
	Yield IQ	\$74,160	\$76,390	\$78,690	\$81,060	\$83,500
Yield	Annual Yield and Melt Strategy Summit	\$15,000 ( <i>Gratis</i> )				
Analytics	Enrollment IQ Platform, Benchmarking, National Student Clearinghouse Partnership		Included	l at No Additi	onal Cost	78
	Total Value	\$583,410	\$566,870	\$584,590	\$583,950	\$601,040
	EAB Gratis Offering	(\$15,000)	(\$15,000)	(\$15,000)	(\$15,000)	(\$15,000)
	EAB Investment in Core Programs	(\$91,770)	(\$46,305)	(\$51,360)	(\$33,680)	(\$34,690)
	EAB Investment	(\$30,000)	(\$25,750)	(\$23,000)	(\$22,900)	(\$23,670)
	Total Cost to MSU	\$446,640	\$479,815	\$495,230	\$512,370	\$527,680

Estimate of All-In Cost to MSU	\$479,640	\$512,815	\$528,230	\$545,370	\$560,680
Digital Media Costs <sup>2</sup>	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Postage Costs⁴	\$23,000	\$23,000	\$23,000	\$23,000	\$23,000
RELATED COST ESTIMATES	YEAR 1 (FY 2021)	YEAR 2 (FY 2022)	YEAR 3 (FY 2023)	YEAR 4 (FY 2024)	YEAR 5 (FY 2025)

<sup>&</sup>lt;sup>3</sup>Campaign strategy, and associated audience composition and volume, is subject to change, in collaboration with MSU, following annual assessment of campaign efficacy.

<sup>4</sup>Postage and digital media costs are pass-through charges paid by EAB on MSU's behalf.



April 27, 2022

Morehead State University 180 Martindale Drive Morehead, KY 40351

#### Amendment to the Service Agreement Re:

This Amendment to the Service Agreement dated May 1, 2020 (as may be previously supplemented and/or amended, the "Agreement") is made as of March 14, 2022 ("Amendment Effective Date") by and between EAB Global, Inc. ("EAB") and the Morehead State University ("Client" or "you") (each of EAB and Client, a "Party" and collectively, the "Parties") amends and supplements the Agreement as set forth in more detail below. Capitalized terms not defined herein shall have the meaning attributed to them in the Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree:

- Client engaged EAB to provide Services that began May 1, 2020 with an intended expiration date of June 30, 2023 as defined in the Agreement (the "Term").
- 2. Upon execution of this Amendment, Client hereby agrees to exercise its opt in option for FY 2024 and FY 2025 pursuant to Section I, Service Descriptions and thus extend the term by the two (2) successive 12-month periods. For avoidance of doubt, the new expiration date of the Term will be June 30, 2025 ("Updated Term").
- 3. Additionally, in exchange for Client's full satisfaction of all payment obligations for FY 2024 and FY 2025, via a one-time payment of \$1,031,050. EAB is pleased to revise the Fees for FY 2024 and FY 2025 as outlined below, to account for the Updated Term:

	FY24	FY25	TOTAL
Current Program Costs	\$512,370	\$527,680	\$1,040,050
Revised Postage Cost	\$20,000	\$20,000	\$40,000
Revised Digital Media Cost	\$7,500	\$7.500	\$15.000
Special Pre-Pay Program Discount	(\$30,000)	(\$34,000)	(\$64,000)
Total Revised Fees	\$509,870	\$521,180	\$1,031,050

Invoicing:

Organization will be billed \$1,031,050 upon execution of this Amendment representing the Total Revised Fees for FY 2024 and FY 2025.

In all other respects, the Agreement, as amended, is hereby ratified and confirmed and shall remain in full force and effect. In the event of a conflict between this Amendment and the Agreement, then this Amendment will control. This Amendment may be signed using one or more counterparts. The multiple executed copies together will be considered an original and will be binding on the parties.

EAB Global, Inc.:		Morehead State	University
Signature:	Alyman. Franke	_ Signature:	of Mhulyn
Name:	Alyssa Franklin	Name: 0	Joseph Chorgan
Title:	Executive Director	Title:	president.
Date:	4/27/2022	Date:	5-31-22

# **EXHIBIT B**





# **Program Order Form**

Organization: Kentucky State University Date: 1/22/2023

Attn: Bridgett Golman 400 E Main Street Frankfort, KY 40601-2355

# **Program and Program Fees:**

Organization will have access to the Program services set forth below (the "Services"), which are as described in greater detail in each applicable Program Scope available here:

Enroll360 - https://scopes.eab.com/enroll360 Virtual Tour - https://scopes.eab.com/virtualtour

During the Program Term, the Services will be delivered in all material respects as described in each applicable Program Scope.

Program(s) Term: February 1, 2023 - June 30, 2	.023	Quantity	Fees
Enroll 360: Apply (Application Marketing)			\$ 110,347.14
Inquiry Pool		500 Names	
Previously Purchased Senior Names		5,000 Names	
Senior New Names		30,000 Names	
Enroll 360: Cultivate			\$ 116,898.82
Inquiry Generation, Re-engagement & Nurture			
Inquiry Generation		50,000 Names	
Enroll 360: Yield			\$ 19,923.83
Yield IQ - All Admits			
Virtual Tour			\$ 7,616.64
Additional Languages		1 Language(s)	
Audience Analytics Portal			
Conversational Inquiry Form			
Interactive Map			
Virtual Tour - Premium	20 destinations		
Total			\$ 254,786.43

Program(s) Term: July 1, 2023 - June 30, 2024	Quantity	Fees
Enroll 360: Apply (Custom Application Market	ting)	\$ 160,457.75
Inquiry Pool	2,000 Names	
Previously Purchased Senior Names	5,000 Names	
Senior New Names	30,000 Names	
Enroll 360: Cultivate		\$ 145,242.02
Inquiry Generation, Re-engagement & Nurture		
Inquiry Generation	50,000 Names	
Enroll 360: Yield		\$ 49,509.12
Yield IQ - All Admits		
Virtual Tour		\$ 22,712.11
Additional Languages	1 Language(s)	
Audience Analytics Portal		
Conversational Inquiry Form		
Interactive Map		
Virtual Tour - Premium	20 destinations	
Total		\$ 377,921.00

Program(s) Term: July 1, 2024 - June 30, 2025		Quantity	Fees
Enroll 360: Apply (Custom Application Mark	eting)		\$ 181,818.82
Inquiry Pool		2,000 Names	
Previously Purchased Senior Names		5,000 Names	
Senior New Names		30,000 Names	
Enroll 360: Cultivate			\$ 164,374.92
Inquiry Generation, Re-engagement & Nurture			
Inquiry Generation		50,000 Names	
Enroll 360: Yield			\$ 56,100.03
Yield IQ - All Admits			
Virtual Tour			\$ 25,938.23
Additional Languages		1 Language(s)	
Audience Analytics Portal			
Conversational Inquiry Form			
Interactive Map			
Virtual Tour - Premium	20 destinations		
Total			\$ 428,232.00

#### One Time Fee:

Program Term: February 1, 2023 - June 30, 2023		Fees
Enroll 360		
EAB Team Shoot (Photo Only)	\$	2,492.72
Implementation Fee	\$	1,384.85
Total	\$	3,877.57

#### **Estimates and Passthroughs:**

Program Term: February 1, 2023 - June 30, 2023	Fees
Postage Costs	\$ 16,937.00
Media Costs	\$ 7,840.00
List Costs	\$ 49,294.00

Program Term: July 1, 2023 - June 30, 2024	Fees
Postage Costs	\$ 17,747.00
Media Costs	\$ 8,199.00
List Costs	\$ 50,774.00

Program Term: July 1, 2024 - June 30, 2025	Fees
Postage Costs	\$ 18,280.00
Media Costs	\$ 8,447.00
List Costs	\$ 52,296.00

Organization agrees that Supplemental Fees, as detailed in Exhibit A, may apply in the event that actual quantity volumes under this Program Order Form exceed the quantities set forth in the tables above

The fees offered in this Program Order Form are based on the Program(s) above and any other existing Programs you may have purchased from us. In the event you terminate or discontinue any Program, including any Program in this Program Order Form, prior to the expiration of its Program Term, the Fees may be subject to increase. Any Fees, unless denoted as one-time, reflect the annual price for each year of the Program Term or any portion thereof (each, a "Year").

The Program Order Form is made pursuant to (i) the Terms & Conditions attached hereto, (ii) the Supplement attached hereto, and (iii) the applicable scopes of services for the Programs, all of (i) – (iii) are incorporated herein by reference and form the entire agreement between the parties with respect to the Programs (and together with any other applicable agreements or supplements, the "Agreement"). For purposes of the Terms & Conditions, "Service Agreement" shall mean "Program Order Form", "Client" shall mean "Organization", "Effective Date" shall mean February 1, 2023.

## Invoicing:

Services will commence at the designated Start Date of the Program Term. EAB will invoice Organization in advance of Services and payment is due within 30 days of the invoice date. Any One-Time Fees will be invoiced at 100% with The Program Fees on the initial invoice of each Year of this agreement as outlined below.

The first 75% of Program Fees for the first Year will be billed and due within 30 days of the signature of this Agreement or Start Date, whichever is later. The second invoice for 25% of Program Fees for the first Year will be billed and due on or before month 6 of that Year. In subsequent years, 75% will be billed and due on or before month 6 of each Year.

The Estimates and Passthroughs are invoiced at 100% on the initial invoice for each Year and are determined based on then-current available rates. Should actual costs exceed the Estimates and Passthroughs, EAB will invoice Organization for the difference. Estimates and Passthroughs

greater than the actual costs will be applied as credit to other services in the current or next Year as agreed upon by EAB and Organization unless Organization requests a refund of such excess costs. Organization will incur the estimated list costs in the above tables, which will be invoiced directly by, and should be paid directly to, the applicable list provider(s).

Each party represents and warrants to the other that the individual signing below on its behalf is authorized to enter into this Agreement and bind such party. The parties agree and acknowledge that any purchase order or other document subsequently provided by Organization with respect to the Program(s) above that contain additional, conflicting, or different term and condition or otherwise would amend, modify, or supplement this Agreement are unenforceable and shall be deemed null and void.

Please sign this Program Order Form and return it to Shanelle Delorenzo <u>sdelorenzo@eab.com</u> to initiate your participation in the Program(s) **no later than** 2/1/2023 (after which fees and terms set forth above are subject to change).

EAB Global, Inc.:	Kentucky State University:
Signature: Alyman. Franklin  Name: Alyssa Franklin	Signature:
Name: Alyssa Franklin	Name:
Title: Executive Director	Title:
Date: $\frac{1/21/2023}{1/2023}$	Date:
OPTIONAL FOR B	ILLING PURPOSES ONLY
·	
Billing Contact Name:	
Billing Contact Email Address:	
Billing Contact Phone:	
Purchase Order No. (if applicable):	

# **Exhibit A: Supplemental Fees**

Supplemental Fees (represents the costs to add additional volume above and beyond what is included in the tables above):

Program Term: February 1, 2023 - June 30, 2023				
Enroll 360: Apply				
Inquiry Pool				
'	Additional Program	\$	0.00 /M	
'	Additional Postage	\$	194.00 /M	
'	Additional Media	\$	80.00 /M	
Previously Purchased Senior N	ames			
'	Additional Program	\$	0.00 /M	
•	Additional Postage	\$	194.00 /M	
•	Additional Media	\$	80.00 /M	
Senior New Names				
•	Additional Program	\$	0.00 /M	
•	Additional Postage	\$	194.00 /M	
•	Additional Media	\$	80.00 /M	
Inquiry Generation, Re-engagement	t & Nurture			
Inquiry Generation				
•	Additional Program	\$	0.00 /M	
,	Additional Postage	\$	201.00 /M	
	Additional Media	\$	80.00 /M	

Program Term: July 1, 2023 - June 3	30, 2024		Fees
Enroll 360: Apply			
Inquiry Pool			
•	Additional Program	\$	0.00 /M
'	Additional Postage	\$	199.82 /M
•	Additional Media	\$	82.40 /M
Previously Purchased Senior Na	ames		
'	Additional Program	\$	0.00 / M
•	Additional Postage	\$	199.82 /M
•	Additional Media	\$	82.40 /M
Senior New Names			
•	Additional Program	\$	0.00 /M
•	Additional Postage	\$	199.82 /M
•	Additional Media	\$	82.40 /M
Inquiry Generation, Re-engagement	& Nurture		
Inquiry Generation			
•	Additional Program	\$	0.00 /M
•	Additional Postage	\$	207.03 /M
•		PROPO	SAL   Q-184920

Additional Media \$ 82.40 /M

Program Term: July 1, 2024 - June 30	), 2025	Fees
Enroll 360: Apply		
Inquiry Pool		
'	Additional Program	\$ 0.00 /M
'	Additional Postage	\$ 205.81 /M
'	Additional Media	\$ 84.87 /M
Previously Purchased Senior Nat	mes	
'	Additional Program	\$ 0.00 /M
•	Additional Postage	\$ 205.81 /M
•	Additional Media	\$ 84.87 /M
Senior New Names		
•	Additional Program	\$ 0.00 /M
,	Additional Postage	\$ 205.81 /M
•	Additional Media	\$ 84.87 /M
Inquiry Generation, Re-engagement &	& Nurture	
Inquiry Generation		
•	Additional Program	\$ 0.00 /M
•	Additional Postage	\$ 213.24 /M
	Additional Media	\$ 84.87 /M

<sup>\*</sup>Additional Program Cost per 1,000 ("\$/M"), Additional Postage Cost \$/M, Additional Media Cost \$/M, and/or Additional Cost per 100 ("\$/C") will be applied if the actual quantity volumes are higher than those included in the Program and Program Fees tables above.

#### **TERMS & CONDITIONS**

These Terms & Conditions, together with the Service Agreement to which these Terms & Conditions are attached (including any attachments or subsequent amendments thereto, the "Service Agreement"), constitute a binding agreement (the "Agreement") between the entity named in the Service Agreement (the "Client" or "you") and EAB Global, Inc. ("EAB" or "we"), effective as of the date set forth on the Service Agreement ("Effective Date") regarding the services set forth on such Service Agreement (the "Services"). In the event of a conflict between any term set forth in the Service Agreement and any term or condition set forth in these Terms & Conditions, the term set forth in the Service Agreement shall control.

## 1. GENERAL TERMS AND CONDITIONS

- 1.1. <u>Fees.</u> Fees for Services ("Fees") are set forth in the Service Agreement. Client will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on EAB's income), and any related penalties and interest for the grant of the Services hereunder. If Client is tax exempt and provide EAB with a valid tax exempt certificate issued by the relevant taxing jurisdiction, EAB will not charge Client any taxes that Client is not obligated to pay. Client will make all required payments to EAB free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to EAB will be Client's sole responsibility, and Client will, upon EAB's request, provide EAB with official receipts issued by appropriate taxing authorities, or such other evidence as EAB may reasonably request, to establish that such taxes have been paid.
- 1.2. Payment. Fees are due in full within thirty (30) days of invoice date. EAB's obligation to furnish Services (or to continue to furnish Services) is conditioned on Client's timely payment of invoiced amounts. Any past due balance will be subject to interest at the lower of the monthly rate of one percent (1%) per month or the highest rate permitted by law. Client will be responsible for all costs and expenses incurred by EAB in collecting any Fees or other sums owed by Client. In the event any invoice remains unpaid for thirty (30) days or more, EAB reserves the right to terminate this Agreement or suspend the provision of any Services until the account is brought current.

#### 2. RESPONSIBILITIES

- 2.1. <u>EAB Responsibilities</u>. EAB agrees to furnish the Services described in the Service Agreement. Any additional Services shall be set forth in additional Service Agreement(s) signed by both Parties.
- 2.2. <u>Client Responsibilities</u>. Client shall provide EAB with all information and data by the specified dates or milestones reasonably required by EAB to perform services and furnish Services to Client. Specifically, Client will be solely responsible for: (a) the accuracy and completeness of the Client Materials (as defined below); (b) the design of any marketing program created as part of the Services and its compliance with applicable laws, rules and regulations; and (c) the content of any mailings to a prospective student or his/her families for completeness, accuracy and compliance with applicable laws, rules and regulations.
- 2.3. Review of Marketing Materials. EAB shall send to Client for its approval a proof of the final communication template for each mailing (e.g., emails and/or direct mail). If Client discovers any problems after review, Client will immediately notify EAB. If there are any subsequent changes in the marketing communications or campaign details, Client will review again according to the above procedure. Client shall review all marketing materials created by EAB for Client to ensure that all such marketing materials are accurate, complete and in compliance with all applicable laws, rules and regulations, including, but not limited to, adherence with the U.S. Department of Education's misrepresentation regulations provided at 34 C.F.R. 668, Subpart F, any applicable FTC guidelines and other consumer marketing laws and regulations. Client acknowledges that delays in notification of approval in or changes to EAB may result in Service delays.
- 2.4. <u>Financial Aid Processing.</u> Client agrees to carry out, or cause to be carried out, the processing and awarding of all aspects of the financial aid process in compliance with federal regulations. Client will retain complete control of all aspects of awarding financial aid, including setting of budgets and disbursement schedules. It is understood and agreed that this Agreement does not render EAB as a "Third Party Servicer" as that term is defined at 34 C.F.R. § 668.2 and EAB is not subject to the requirements of 34 C.F.R. § 668.23 or 34. C.F.R. § 668.25. Client shall not report or characterize EAB to the U.S. Department of Education or any regulatory agency as such, and EAB shall not undertake any work pursuant to this Agreement inconsistent with this section.

## 3. TERM

- 3.1. <u>Term.</u> This Agreement shall be in effect as of the Effective Date and, unless terminated as set forth herein, will continue until all Services have been furnished pursuant to the Service Agreement (the "**Term**").
- 3.2. <u>Termination for Breach</u>. Either Party may terminate this Agreement immediately upon written notice in the event that the other Party materially breaches the Agreement and thereafter has failed to cure such breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the terminating Party) within thirty (30) days after receiving written notice thereof.
- 3.3. <u>Termination for Convenience</u>. Client may terminate this Agreement for any reason in its sole discretion upon 30 days written notice. The parties agree that if Client terminates this Agreement pursuant to this Section 3.3, no prepaid fees will be refunded.
- 3.4. <u>Upon Termination</u>. Upon expiration or termination of this Agreement, (a) Client will pay all outstanding invoices or amounts owing to EAB and (b) the following Sections will survive: 3.4, 4, 5, 6, 7 and 8.

#### 4. PROPRIETARY RIGHTS

- Client Materials. As between the Parties, Client will own all data 4.1. provided to EAB under a Service Agreement, including any admissions and financial aid data Client provides to EAB ("Client Data"). Client will also own all right, title and interest in and to all other content and materials, including any copyrights, trademarks, service marks, data, and other intellectual property Client may provide to EAB in order to allow EAB to provide the Services to Client under the terms of this Agreement and the applicable Service Agreement ("Client Materials"). Client grants to EAB a worldwide, non-exclusive, right and license to store, reproduce, modify, perform, display, distribute and utilize the Client Data and Client Materials: (a) to provide the Services; (b) for internal tracking, reliability testing and research purposes; and (c) in a manner that does not identify Client for any lawful purpose in EAB's discretion. The rights granted in the foregoing clauses (b) and (c) shall be perpetual and shall survive any termination or expiration of this Agreement. Notwithstanding the foregoing, upon written request following termination of the Agreement, EAB shall return or destroy all Client Data and Client Materials within thirty (30) days.
- Ownership of Services. As between the Parties, EAB owns all right, 42 title and interest in and to all Services (excluding any Client Data and Client Materials therein), as well as all products and services, including all hardware, systems, software, artwork, copy, concepts, techniques, and other intellectual property EAB uses to provide services and furnish Services hereunder, and any derivatives thereto. Client is authorized to use the Services only to the extent expressly authorized in these Terms & Conditions during the Term of this Agreement. Upon termination of this Agreement, Client's rights to and its use of the applicable Services shall promptly cease. To the extent EAB provides you Deliverables (as defined in the Services Agreement) as part of its Financial Aid Optimization services pursuant to the Service Agreement, EAB hereby grants Client the right to store, reproduce, perform, display and utilize the Deliverables for Client's internal business purposes; however, you may not (a) provide the Deliverables to any third party, or (b) modify, alter, reverse engineer, decompile, or disassemble the Deliverables to obtain or perceive any source code or algorithms.
- 4.3. <u>Additional Programs</u>. To the extent Client presently participates in more than one membership program or service offering or enrolls in or purchases additional membership programs or service offerings of EAB or its affiliates in the future ("**Programs**"), the data that Client provides to EAB in connection with a particular Program may be combined with data provided by Client in connection with other Programs or otherwise used by EAB and its affiliates in connection with other Programs to provide services to Client pursuant to the Agreement and other membership or services agreements between Client and EAB or its affiliates.
- 4.4. <u>No Other Licenses</u>. Except for the license and other rights granted to EAB under this Agreement, EAB claims no ownership or control over, and

shall have no liability with respect to, any Client Materials or Client Data.

#### 5. WARRANTIES AND DISCLAIMERS

- 5.1. <u>Limited Warranty</u>. EAB warrants that the services to be provided under this Agreement shall be performed in a professional manner conforming to generally accepted industry standards and practices.
- 5.2. <u>Client Data Warranty</u>. Client warrants that Client has or will have all necessary rights, and has obtained any necessary third party consents, authorizations or permissions required, to provide the Client Data to EAB for such Client Data to be used in the manner contemplated by this Agreement.
- Compliance with Laws. The Fees set forth in the Service Agreement are not intended to be incentive compensation payments. However, EAB represents, warrants and covenants that the compensation of its employees, subcontractors or other persons who perform any student recruitment activities for Client (if any) under this Agreement is and will be in material compliance with Section 487(a)(20) of the HEA (20 U.S.C. § 1094(a)(20)), or any successor provision, and the regulations promulgated thereunder by the U.S. Department of Education (currently located at 34 C.F.R. § 668.14(b)(22)), (the "Incentive Compensation Rules"), to the extent applicable. It is the intention of the Parties that if there are any payments that would be deemed incentive compensation payments, then this performance of the Services would fall under Example 2-B, page 12 of the letter titled "Implementation of Program Integrity Regulations" from the U.S. Department of Education issued on March 17, 2011. In the event the Incentive Compensation Rules change during the Term of this Agreement or the Department of Education revises or issues official guidance concerning such regulations such that, in either case, the calculation and payment of Fees is no longer feasible, the Parties will promptly negotiate in good faith an amendment to this Agreement to comply with such change and to preserve, as nearly as practicable, the payment provisions and other economic benefits and terms of this Agreement.
- 5.4. Client shall be responsible for obtaining and maintaining eligibility for student financial aid under Title IV of the HEA and the rules and regulations thereunder, for obtaining and maintaining all necessary state authorizations and approvals, and for maintaining its accreditation in full force and effect. Client shall promptly notify EAB in the event it is notified that any of the foregoing approvals and authorizations is, or is threatened to be, materially modified, suspended or terminated.
- 5.5. <u>Disclaimer</u>. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY KENTUCKY LAW, THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS," AND EAB MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

#### 6. <u>LIMITATION OF LIABILITY</u>

TO THE EXTENT PERMITTED UNDER KENTUCKY LAW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE WHICH THE OTHER PARTY MAY INCUR. EXPERIENCE OR CLAIM (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF SERVICES, INTERRUPTION IN USE OR AVAILABILITY OF DATA, LOST BUSINESS, LOST OPPORTUNITY, WORK STOPPAGE OR OTHER IMPAIRMENT OF ASSETS) ARISING OUT OF ANY ALLEGED BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, ON ACCOUNT OF ENTERING INTO OR RELYING ON THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED UNDER KENTUCKY LAW, EAB'S TOTAL LIABILITY FOR ANY CLAIM UNDER THIS AGREEMENT FROM ANY AND ALL CAUSES SHALL BE LIMITED TO AND SHALL NOT EXCEED TWO TIMES THE AMOUNT OF FEES ACTUALLY PAID BY YOU TO EAB FOR THE DELIVERABLES AND/OR SERVICES RELATED TO SUCH CLAIM DURING THE ONE-YEAR PERIOD PRIOR TO THE CAUSE FOR SUCH CLAIM, REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTIONS MAY BE BROUGHT, AND ANY SUCH DAMAGES SHALL CONSTITUTE YOUR SOLE AND EXCLUSIVE REMEDY.

## 7. CONFIDENTIALITY AND NONDISCLOSURE

- Confidentiality. Except as required by law or as reasonably necessary in the performance of the Services or as otherwise agreed to by Client, EAB will keep confidential any and all Client Data and Client Materials. Notwithstanding the foregoing, Client agrees that EAB shall not be obligated to maintain the confidentiality of non-personally identifying Client Data or Client Materials that are known to EAB prior to receiving the Client Data or Client Materials from Client or that becomes known (independently of disclosure by Client) directly or indirectly from a source other than one having an obligation of confidentiality to Client. The Services are confidential to EAB and its suppliers, if any. Thus, subject to the Kentucky Open Records Act, Client shall not disseminate to, or permit the use of, and shall take reasonable precautions to prevent such dissemination or use of, Services by any of its personnel to any third party. In addition, except as required by law, Client shall not disclose the fees charged by EAB to Client to any third party, other than its personnel or professional services providers (e.g., accountants or legal counsel) who need to know such information in order to provide their respective professional services to Client and, in each case, are bound by confidentiality obligations to Client. Client shall not remove from the Services any confidential markings, copyright notices and other similar indicia therein.
- 7.2 <u>FERPA</u>. To the extent applicable, EAB agrees to abide by the applicable requirements of the Family Education Rights and Privacy Act ("FERPA") in using Client Data.

#### 8. <u>MISCELLANEOUS</u>

- 8.1 <u>Governing Law and Venue</u>. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the Commonwealth of Kentucky, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Client hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for Franklin County, Kentucky. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 8.2 <u>Publicity</u>. EAB and its affiliates may publicly refer to Client, including on its or their website and in sales presentations, as an EAB client and may use Client's logo for such purposes with written permission by Client.
- 8.3 <u>Severability.</u> If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Client agrees that Section 6 will remain in effect notwithstanding the unenforceability of any provision in Section 5.5.
- 8.4 <u>Waiver</u>. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 8.5 No Assignment. This Agreement is not assignable by either Party without the other Party's prior written consent, which shall not be unreasonably withheld or delayed, except an assignment by operation of law shall not require the consent of the other Party. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.
- 8.6 <u>Force Majeure</u>. EAB shall not be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control. If any such an event of force majeure occurs, EAB shall provide Client with written notice.
- 8.7 <u>Independent Contractors</u>. EAB's relationship to Client is that of an independent contractor, and neither Party is an agent or partner of the other. Nothing herein shall be deemed to establish a partnership, joint venture or agency relationship between the Parties. EAB shall have the right to use third parties, including, without limitation, its affiliates, in performance of its obligations and in providing the Services under this Agreement.
- 8.8 <u>Notices.</u> All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered by a commercially recognized national courier (such as Federal Express or UPS) to the addresses set forth on the Service Agreement. In the event that the last address Client have provided to EAB is not valid, or for any reason is not capable of delivering to Client any notices required by this Agreement, EAB's dispatch of such notice will nonetheless constitute effective notice of the changes described on the notice.

8.9 <u>Entire Agreement.</u> The parties agree that Client's RFP-09-20 and EAB's response thereto are incorporated herein by reference into this Agreement. In the event of any conflict, this Agreement shall control. This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the Parties with respect to such subject matter.

# **Supplement to the Terms & Conditions**



This Supplement ("Supplement"), applicable to any Virtual Tour and Cappex Services, supplements and amends the Terms and Conditions to which it is attached as set forth herein. Capitalized terms not otherwise defined herein will have the meanings given to them in the Program Order Form.

- EAB Ownership of Certain Materials. The definition of Materials as set forth in the Master Agreement shall also include (i) the components displayed by EAB on behalf of Organization (except the O-P Data therein) on any Platform (as defined below), including without limitation, (i) taxonomy, graphics, icons, logos, buttons and aggregated data compilations; (ii) any photographs, 360 degree panoramas, videos and other media specific to Organization edited by EAB whether or not such original media was created by EAB or supplied by Organization ("Edited Media"); (iii) log files, event data, GPS data, cookies, clear gifs, scripts and other technologies used by EAB in the course of providing the Services and any related data collected, (iv) any and all software used to provide virtual experiences on any Platform, (v) any and all Cappex Inquiries and Cappex Candidates, and (vi) any trademarks, logos and service marks of EAB displayed on any Platform. Organization may not modify, decipher, decompile, disassemble, reverse engineer, distribute, transmit, republish, display or perform any of the Materials (i) except as expressly authorized in the Agreement, or (ii) without EAB's prior written consent. EAB may use any ideas, concepts, know-how or techniques regarding improvements or additions to the Services provided by Organization. For purposes of this Supplement, "Platform" shall mean any site to which the Services are posted, including (i) www.eab.com; (ii) www.youvisit.com; (iii) www.cappex.com or www.collegegreenlight.com; (iv) Organization's website, mobile applications and/or online services; (v) any website or mobile applications hosted by EAB on behalf of Organization; and (vi) any EAB partner or affiliate website. Without prior approval of EAB, Organization agrees that it will not publish or redistribute in any form any portion of EAB created photographs, 360 degree panoramas, videos, and any other media, to the extent such media contains the image or audio of any EAB employee or third party contractor or any actor hired in connection with any virtual experience, except with respect to an actor as may be contained in a completed and approved virtual experience.
  - For the avoidance of doubt, Organization owns any unedited source content that is delivered to Organization by EAB and is not edited by EAB in connection with the Services.
- b. <u>FERPA</u>. (a) Subject to subsection (b), and to the extent that EAB receives from Organization or otherwise has access to, on behalf of Organization, personally identifiable information from a student education record (collectively, **Student Records**), EAB agrees to maintain such Student Records in accordance with the requirements of the Family Educational Rights and Privacy Act, 20 USC § 1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (collectively **FERPA**). (b) Organization agrees (i) that EAB is performing for the Organization an institutional service or function for which the Organization would otherwise use its employees, (ii) that the Organization will retain control over all education records provided to EAB, and (iii) that

- the Organization is responsible for complying with FERPA, including with respect to the annual notification requirement (34 C.F.R. § 99.7) and with respect to providing Student Records to EAB.
- Organization will indemnify, defend and hold harmless EAB and its Personnel from any and all third party claims, liabilities, and expenses arising from Organization's breach of its obligations under this Section (b).
- Compliance with Laws. EAB represents, warrants, and covenants that the compensation of its employees. subcontractors or other persons who perform any student recruitment activities for Organization (if any) under the Agreement or any Order Form is and will be in material compliance with Section 487(a)(20) of the HEA (20 U.S.C. § 1094(a)(20)), or any successor provision, and the regulations promulgated thereunder by the U.S. Department of Education (currently located at 34 C.F.R. § 668.14(b)(22)), (the "Incentive Compensation Rules"), to the extent applicable. In the event the Incentive Compensation Rules change during the term of the Agreement or the Department of Education revises or issues official guidance concerning such regulations such that, in either case, the calculation and payment of fees as structured under the Agreement is no longer feasible, the parties will promptly negotiate in good faith an amendment to the Agreement to comply with such change and to preserve, as nearly as practicable, the payment provisions and other economic benefits and terms of the Agreement. Organization and EAB agree that Organization is solely responsible for making final decisions about enrollments and enrollment targets for all campaigns.
  - To the extent the Services include marketing activities, EAB shall send to Organization for its review and approval a proof of the final template for each deliverable (e.g., website design, tour) prior to finalization of such deliverable. If Organization discovers any problems after issuing its approval, Organization will immediately notify EAB and instruct EAB on all necessary corrections. If there are any subsequent changes in the deliverable, Organization will review again according to the above Organization shall review all marketing procedure. deliverables created by EAB for Organization to ensure that all such marketing materials are accurate, complete and in compliance with all applicable laws, rules and regulations, including, but not limited to, adherence with the U.S. Department of Education's misrepresentation regulations provided at 34 C.F.R. 668, Subpart F, any applicable Federal Trade Commission laws, regulations, or guidelines and all other consumer marketing laws and regulations. Organization will be solely responsible for the design of any marketing program created as part of the Services and its compliance with applicable laws, rules and regulations.
- d. General Posting and Acceptable Use Terms. Organization represents and warrants that it will comply with the General Posting and Acceptable Use Terms available at <a href="http://eab.com/terms/agency\_acceptableuse">http://eab.com/terms/agency\_acceptableuse</a>.

- e. <u>Indemnification; Liability</u>. To the extent not prohibited by law, Organization agrees to indemnify and hold harmless EAB and its affiliates from and against any third party claim to the extent arising from a breach of the General Posting and Acceptable Use Terms and Conditions.
  - To the extent that the Services include the Panoramic Accelerated Capture Kit that enables Organization to self-capture 360 video and 360 photos (the "PACK"), Organization is solely responsible for any Damages (as defined below) to the PACK. "Damages" means losses, damages, liabilities, claims, costs, or expenses of any kind.
- f. <u>Video Player</u>. To the extent the Services include posting video content to an embedded video player, Organization (i) acknowledges that such content will be accessed by EAB through such video player, and (ii) Organization acknowledges and agrees that any such video content will be subject to separate terms of use of the operator of the video player.
- g. EAB Capture of Media. To the extent that Organization requests that EAB capture or create any media including any photographs, 360 degree panoramas, videos or audio, Organization agrees that EAB has Organization's permission to enter Organization's premises and that Organization will be responsible for obtaining any permissions that may be required of any individuals appearing in such media and for clearance of any other intellectual property rights of a third party in such media. EAB and Organization shall coordinate in advance the dates at which EAB representatives will be on Organization's property to capture or create any such media. EAB will not make any virtual experience specific to Organization publicly available without prior consent of Organization.
- h. Improvements to Platform. EAB may update and enhance the Platform at any time and Organization agrees that, so long as such changes are not contrary to, or less than, any of the rights that it is entitled to receive under the products or services purchased as set forth in any Order Form, EAB may make any such changes to the Platform in its sole discretion.
- Cappex Inquiries and Cappex Candidates. Subject to the execution of an applicable Order Form, EAB may license to Organization lead information concerning individuals who meet the criteria specified in the applicable Order Form ("Cappex Inquiries" or "Cappex Candidates", as applicable) solely in connection with and for the purpose of outreach and recruitment services related to Organization's academic programs and offerings as may be further described in the Order Form, and in compliance with applicable law (the "Purpose"). Organization may not, directly or indirectly, rent, license, sell, or otherwise transfer Cappex Inquiries or Cappex Candidates provided by EAB to other third-party advertisers or lead aggregators, provided however, that Organization may share Cappex Inquiries information with its operational service providers who are engaged to assist Organization in carrying out the Purpose.
- <u>Survival</u>. Sections (b) through (h) of this Supplement, and any provision of the Agreement that by its nature should survive, shall survive the expiration or termination of the Agreement.



# KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

**ACTION ITEM 5G** 

# **ACTION ITEM**

Approval of the use of USDA grant funds to purchase the Agilent 5200 Fragment Analyzer for use by faculty, staff, and students in the College of Agriculture, Community and the Sciences.

# **FACTS**

Aquaculture is the Program of Distinction at KSU and is one of the top Aquaculture programs in the United States. Molecular biology tools using either DNA or RNA are now often used for determining genetic relationships among fish, as well as determining how the environment and other organisms affect the health and production of fish species. Dr. James Tidwell and Ms. Janelle Hager were awarded a \$740,000 grant from the highly competitive USDA NIFA program, Agriculture Microbiomes. To accomplish the objectives of this grant's project, the College of Agriculture, Community and the Sciences is requesting permission to use USDA grant funds to purchase an Agilent 5200 Fragment Analyzer for conducting DNA/RNA analyses at KSU. This device would be available for use by all research groups at the University. This equipment would also allow students to receive training on these new advanced technologies, thus supporting efforts to make students ready for the workforce.

# **BUDGETARY IMPLICATIONS**

The College of Agriculture, Community and the Sciences is requesting permission to use \$68,594.08 in Federal USDA Research Grant funds to purchase the Agilent 5200 Fragment Analyzer for use by faculty, staff, and students at KSU. By allowing the University to analyze samples on campus instead of through private entities, the Fragment Analyzer will lower the cost per sample for analyses.

# **RECOMMENDATION**

Interim President Ronald A. Johnson recommends that the Board of Regents approve purchase the purchase of the Agilent 5200 Fragment Analyzer.

# **MOTION**

Approve the use of USDA funds for the purchase of an Agilent 5200 Fragment Analyzer.

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	Request Date:		Delivery date:			Deliver to:	
	Vendor:						
Sį	pecial Instructions:						
Just	ification/Rationale for Purchase:						
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Page 2 02/20/2022

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Page 3 02/20/2022

Page 3						02/20/202
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# Quotation

Quote No.	Crea	te Date	Delivery Tim	e Page
4254097	01/1	1/2023	2 Weeks	1 of 4
Contact		Phone no.		Valid to
Matthew Kelso 513-51		16-7054	04/11/2023	

**To place an order**: Visit <a href="www.aqilent.com/store">www.aqilent.com/store</a> to place online order using a purchase order or credit card and track your order status.

**Product Email FAX** 302-633-8901 Consumables cag\_sales-NA@agilent.com Genomics orders@agilent.com 512-321-3128 Pathology customer.service@agilent.com 800-566-3256 Instruments Lscainstrumentsales@agilent.com 302-633-8953 1-800-227-9770 Option 1

Single Use Quote 5200 + Introductory Kit Offer

Item	Product/Description	Qty/Unit	Unit List Price	Discount Amount	Extended Net Price	
1000	M5310AA	1.000 EA	65,464.00 USD	1,963.92-	63,500.08	

Includes the 5200 Fragment analyzer instrument, computer and monitor, controller and analysis software, capillary array (price addedto instrument), and installation/familiarization services.

With the following configuration: Ship-to Country: USA FA Capillary Array 12x S Installation (44K) Introduction (44L)

Purchase Agreement discount of 3.00 % is applied G8X00

1						
2000	DNF-FSEW-OQ	1.000	EA	1,080.00 USD	32.40-	1.047.60

Fragment Analyzer Verification Kit

Purchase Agreement discount of 3.00 % is applied G8X00

**3000 DNF-472-0500** 1.000 EA **1,686.00 USD 337.20- 1,348.80** 

High Sensitivity RNA Analysis Kit (15NT), 500 Samples

Special discount of 20.00 % is applied.

**4000 DNF-464-0500** 1.000 EA **1,686.00 USD 337.20- 1,348.80** 

High Sensitivity Large Fragment 50kb Analysis Kit, 500 Samples



# Quotation

Quote No.	Crea	te Date	Delivery Tim	e Page
4254097	01/1	1/2023 2 Weeks		2 of 4
Contact		Pho	ne no.	Valid to
Matthew Kel	Matthew Kelso 513-51		16-7054	04/11/2023

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ProductEmailFAXConsumablescag\_sales-NA@agilent.com302-633-8901Genomicsorders@agilent.com512-321-3128Pathologycustomer.service@agilent.com800-566-3256InstrumentsLscainstrumentsales@agilent.com302-633-89531-800-227-9770Option 1

	m Product/Description	Qty/Unit	Unit List Price	Discount Amount	Extended Net Price
,	ecial discount of 20.00 % is applied.				
	00 DNF-473-0500	1.000 EA	1,686.00 USD	337.20-	1,348.80
Standard Sensitivity NGS Fragment Analysis Kit (1 - 6000bp), 500 Samples	Standard Sensitivity NGS Fragment	Analysis Kit (1 - 6000bp	), 500 Samples		

Gross Amount : \$ 71,602.00
Total Discount : \$ 3,007.92
Net Amount : \$ 68,594.08

Total : \$ 68,594.08



# Quotation

Quote No.	Crea	te Date	Delivery Tim	e Page
4254097	01/1	1/2023	2 Weeks	3 of 4
Contact		Phor	ne no.	Valid to
Matthew Kel	so	513-5	16-7054	04/11/2023

**To place an order**: Visit <a href="www.agilent.com/store">www.agilent.com/store</a> to place online order using a purchase order or credit card and track your order status.

Product	Email	FAX				
Consumables	cag_sales-NA@agilent.com	302-633-8901				
Genomics	orders@agilent.com	512-321-3128				
Pathology	customer.service@agilent.com	800-566-3256				
Instruments	Lscainstrumentsales@agilent.com	302-633-8953				
1-800-227-9770 Option 1						

Ask about our attractive payment options and how we can help you acquire the latest innovations while minimizing the upfront costs. Contact your Agilent sales representative today or visit us online at to learn why more and more labs are choosing these flexible payment plans and identify which works best for you.

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Product	Email	FAX
Consumables	cag_sales-NA@agilent.com	302-633-8901
Genomics	orders@agilent.com	512-321-3128
Pathology	customer.service@agilent.com	800-566-3256
Instruments	Lscainstrumentsales@agilent.com	302-633-8953
1-800-227-97	70 Option 1	

To place an order, the following information is required:

- · Purchase order number or credit card, delivery date, ship to, invoice to, end user, and quote number.
- . GSA customers please provide GSA contract #.

# EXCLUSIVE OFFERS FOR NEW INSTRUMENT CUSTOMERS, go to <a href="www.agilent.com/chem/exclusiveoffers">www.agilent.com/chem/exclusiveoffers</a> TO CHECK THE STATUS OF AN ORDER:

- 1) Visit agilent.com/store to check the status of your order.
- 2) Call 1-800-227-9770 (option 1) any weekday between 8 am and 8 pm Eastern time, in the U.S., Canada & Puerto Rico. You will need to know the purchase order or credit card number the order was placed on.

#### TERMS AND CONDITIONS:

This offer is subject to Agilent Technologies' Standard Terms and Conditions of G8X00.

- Pricing: Web prices are provided only for the U.S. in U.S.dollars. All phone prices are in local currency and for end use.
   Applicable local taxes are applied.
- · All Sales Tax is subject to change at the time of order.
- Shipping and Handling Charges: Orders with a value less than \$4000 or those requiring special services such as overnight delivery may be subject to additional shipping & handling fees. Some of these charges may be avoided by ordering via the Web
   Payment Terms: Net 30 days from invoice date, subject to credit approval.
- \* Quotation Validity: This quotation is valid for 90 days unless otherwise indicated.
- \* Warranty period for instrumentation is 1 year. The Warranty period for columns and consumables is 90 days.

#### Visit www.agilent.com/chem

- · For Training course information and registration including e-Seminars, select Education.
- · For Literature, Application notes, and other information, select Library.
- For Online Technical Support including the Technical Support Assistant and Frequently Asked Questions, select <u>Technical Support</u>.

It is Agilent Technologies intent to ship product at the earliest available date unless specified otherwise.



# Quotation

Quote No.	Quote No. Crea		Delivery Tim	e Page		
4254097	01/1	1/2023 2 Weeks		4 of 4		
Contact		Pho	ne no.	Valid to		
Matthew Kelso		513-516-7054		04/11/2023		

**To place an order**: Visit <a href="www.agilent.com/store">www.agilent.com/store</a> to place online order using a purchase order or credit card and track your order status.

Product	Email	FAX				
Consumables	cag_sales-NA@agilent.com	302-633-8901				
Genomics	orders@agilent.com	512-321-3128				
Pathology	customer.service@agilent.com	800-566-3256				
Instruments	Lscainstrumentsales@agilent.com	302-633-8953				
1-800-227-9770 Option 1						

The sale of Agilent Products and Services referenced in this quotation is subject to the then current version of Agilent's Terms of Sale, and any Supplemental Terms or Occasional Reseller Terms of Sale or other applicable terms referenced herein. The sale of Microplates Products shall be subject to Microplates Terms of Sale and any Supplemental Terms or other applicable terms referenced herein. All of the above "Terms" as applicable. A copy of the Terms is either attached or has been previously provided to you. Please contact us if you have not received a copy or require an additional copy. If you have a separate agreement in effect with Agilent covering the sale of Products and Services referenced in this quotation, the terms of that agreement will take precedence for those Products and Services and the terms of the time of the quotation. Actual delivery dates or delivery windows will be specified at the time Agilent acknowledges and accepts your purchase order. The above conditions shall apply to the fullest extent permitted by the law. You may have other statutory or legal rights available. Commodities, technology or software exported from the United States of America ("U.S.") or from other exporting countries will be subject to the U.S. Export Administration Regulations and all exporting countries' export laws and regulations. Diversion contrary to U.S. law and the applicable export laws and regulations is prohibited.

Agilent Payment Method: ACH Credit card accepted only at the time of order placement. Agilent will charge 3% of the invoiced amount, when term invoices are paid with a credit card.

Agilent Technologies, Inc. 5301 Stevens Creek Blvd Santa Clara, CA 95051 United States



# The Agilent Fragment Analyzer Systems - Unique Specifications and Facts

In the market, only the Agilent Fragment Analyzer systems provides:

# 1. Large sample handling capability

- Able to load and analyze at least three 96-well sample plates (288 samples) unattended without any user intervention or additional robotics/liquid handling requirement

## 2. Continuous illumination and detection of capillaries

- Has continuous LED illumination of the capillaries AND continuous uninterrupted detection of fluorescent signal through a CCD Detector
- Uses LED based fluorescence with excitation at 470 nm and detection at 520-580 nm

## 3. Uninterrupted operations

- Able to change 96-well sample plates without the need for stopping in-progress instrument operation

## 4. Ability to use different capillary arrays

 Utilizes a capillary array format with the ability to use capillary arrays of different lengths (22cm, 33cm and 55cm)

#### 5. Ability to switch between gel types

- Able to switch between 2 different gel/application types without stopping in-progress instrument operation

#### 6. High sensitivity

- Has demonstrated sensitivity for fragments of at least 5 pg/ $\mu$ L and demonstrated resolution to 3bp for fragments under 300 bp

#### 7. High resolution

- Has a sizing accuracy of ≤5% and sizing precision of ≤2%

# 8. A wide sample application range

- Able to use qualitative kit and quantitative kits
- Able to analyze dsDNA fragments from 35 bp to 50,000 bp, total RNA, messenger RNA, small RNAs, genomic DNA and DNA smears

# 9. Integrated data analysis package

- Has a data analysis software package capable of sizing, quantification, smear analysis, integrity determination and report generation

# 10. Automated operations

- Has automated flushing of the capillaries between every injection cycle
- Able to perform simultaneous, parallel injection and separation of at least 12 samples at once from a 96-well sample plate, and sample from all the wells of the plate



# KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

**ACTION ITEM 5H** 

# **ACTION ITEM**

Approval of pending personnel actions.

# **FACTS**

House Bill 250, an act relating to Kentucky State University, was signed into law on April 8, 2022. Pursuant to that Bill, the Council on Postsecondary Education must approve all KSU expenditures over \$5,000. To carry out this responsibility, the Council adopted a KSU Expenditure Approval Policy, which requires all personnel actions to be approved by the Kentucky State University Board of Regents or its designated Committee before any resulting expenditures will be approved.

# **BUDGETARY IMPLICATIONS**

The Kentucky State University Budget Office has approved all proposed positions and salary ranges.

# **RECOMMENDATION**

Interim President Ronald A. Johnson recommends that the Board of Regents approve the pending personnel actions.

# **MOTION**

Approve the pending personnel actions.

E&G-Funded Position Vacancy Authorization								
Position Title	Department	Annual Salary	* F	ringe Benefits (38%)	Tota	al Compensation	New/Existing	Justification **
Admissions Counselor	BREDS Office(Admissions)	\$ 40,00	ю \$	15,200	\$	55,200	Existing	Support the Mission of the University
BREDS Recruitment & CRM Manager	BREDS Office(Admissions)	\$ 39,52	20 \$	15,018	\$	54,538	Existing	Support the Mission of the University
CRM Consultant (part-time)	BREDS Office(Admissions)	\$ 26,50	00		\$	26,500	New	Support the Mission of the University
Recruiter (2) (\$45,000 each)	BREDS Office(Admissions)	\$ 90,00	ю \$	34,200	\$	124,200	Existing	Support the Mission of the University
Transfer Counselor	BREDS Office(Admissions)	\$ 45,00	ю \$	\$ 17,100	\$	62,100	Existing	Support the Mission of the University
Accounts Payable Clerk (\$18-\$20/hr)	Accounting	\$ 39,00	ю \$	14,820	\$	53,820	Existing	Support the Mission of the University
General Counsel (\$125,000-\$150,000)	Office of the General Counsel	\$ 150,00	00 \$	57,000	\$	207,000	Existing	Support the Mission of the University
Deputy General Counsel (\$85,000-\$100,000)	Office of the General Counsel	\$ 100,00	00 \$	38,000	\$	138,000	Existing	Support the Mission of the University
APRN	Student Health	\$ 90,00			\$	124,200	Existing	Support the Mission of the University
Payroll Manager (\$65,000-\$75,000)	Payroll	\$ 75,00			\$	103,500	Existing	Support the Mission of the University
Total Cost		\$ 695,02				949,058		İ

Grant-Funded Position Vacancy Authorization								
Position Title	Department	Annual Salary *	Fringe Benefits (38%)	Total Compensation	New/Existing	Justification **		
Director of Promising Youth Center	School of Family and Consumer Science	\$ 48,000	\$ 18,240	\$ 66,240	New	Support the Mission of College of Agriculture, Community and the Sciences		
Mentor Coordinator	School of Family and Consumer Science	\$ 38,000	\$ 14,440	\$ 52,440		Support the Mission of College of Agriculture, Community and the Sciences		
Executive Director Counseling & Advising	Student Engagement	\$ 90,000	\$ 34,200	\$ 124,200		Support the Mission of University		
Total Cost		\$ 176,000	\$ 66,880	\$ 242,880				



# KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

**ACTION ITEM 5I** 

## **ACTION ITEM**

Approval of action to make Regent attendance at the annual CPE Trusteeship Conference mandatory.

## **FACTS**

On October 31, 2022, the Board of the Council on Postsecondary Education (CPE) approved a management improvement plan for Kentucky State University. Section three (3) of the plan requires the University to maintain "[m]andatory board member training and development, including but not limited to financial oversight and effective committee structure." One mandate under that section is for the University to "[m]ake Regent attendance at the annual CPE Trusteeship conference mandatory."

# **BUDGETARY IMPLICATION**

The University will be responsible for contributing a certain amount toward the cost of the conference. The University will also reimburse Regents for any in-state travel costs that they incur.

# **RECOMMENDATION**

Interim President Ronald A. Johnson recommends that the Board of Regents approve the action to make Regent attendance at the annual CPE Trusteeship Conference mandatory.

# **MOTION**

Approve the action to make Regent attendance at the annual CPE Trusteeship Conference mandatory.

# 3. Mandatory board member training and development, including but not limited to financial oversight and effective committee structure

Effective institutional governance is key to a high functioning college or university. Institutional boards are responsible for strategic planning and oversight and approving the mission of the institution. Boards set institutional goals and objectives, policies for operations and charge a chief executive with the task of carrying them out.

As the institution's fiduciary entity, perhaps the most critical responsibility of a governing board is financial oversight. An institution simply cannot achieve its mission without sufficient financial resources. With rising costs associated with virtually all aspects of doing business, limitations in the availability of state resources and affordability concerns for students and families, it is more important than ever that institutions exercise sound fiscal stewardship. For institutions like KSU, these concerns are paramount because they serve a high percentage of low-income and first-generation college students who struggle to find resources to pay for college.

For KSU specifically, these issues were exacerbated by a lack of oversight and mismanagement of institutional funds beginning in 2017, which resulted in a \$23 million cash shortfall in fiscal year 2022. CPE's Financial Assessment of KSU completed in November 2022 found that the KSU Board of Regents would have been better equipped to prevent this crisis with standard financial reporting provided to the board on a regular and ongoing basis.

Senate Bill 265 (2022) reconstituted KSU's Board of Regents, and all appointed regents were replaced with individuals who were not connected to the University when the financial crisis occurred. While this provides a fresh perspective by a group of extremely qualified and dedicated citizens, many are new to institutional board service and need background and training to optimize their effectiveness.

## Objectives

- Complete Association of Governing Boards (AGB) training on Foundational Aspects of Trusteeship.
- Receive comprehensive reports from all functional units of the University to better understand institutional operations from both the academic and business perspective.
- Conduct a review of the current board committee structure as compared to those at peer institutions, as well as best practices for effective university board committees.
- Determine the optimal board committee structure and composition and outline the charge of each committee.
- Establish an Audit and Compliance Committee and define its relationship to the internal auditor.
- Establish a regular meeting calendar annually for both the full board and board committees.
- Receive approval of KSU's new board member orientation programs per KRS 164.020(25)(c).
- Create a Regent professional development policy and plan.
- Make Regent attendance at the annual CPE Trusteeship conference mandatory.
- Complete CPE-facilitated training on the history of the University as a state entity that covers its recent financial crisis.