

## SERVICE AGREEMENT

This Service Agreement (**Agreement**) is entered into by and between Academic Partnerships, LLC, a Delaware limited liability company (**AP**), and Emporia State University (the **University**) as of November 20, 2017 (the **Effective Date**). AP and the University are sometimes referred to in this Agreement each as a **Party**, and collectively as the **Parties**.

### Recitals Incorporated Into Agreement

- A. The University offers courses and degree programs at the undergraduate, graduate and post-graduate level as well as other courses and programs;
- B. AP provides services to universities to enable them to offer such courses, degree programs and other programs online;
- C. Subject to the terms and conditions set forth herein, the University desires to engage AP to provide such services with regard to the mutually agreed to courses, degree programs and other programs (as set forth in the attached Addendum[s]) (jointly called **Online Programs** and inclusive of all pre-requisite, co-requisite, and general education courses) (participants in Online Programs are **Students**).

### I. AP Obligations

AP shall have the following obligations, which it shall fulfill through its own efforts as well as through efforts of its agents and affiliates:

- A. **Marketing, Recruiting, and Promotion.** AP shall market and promote the University and its Online Programs using a variety of means as determined by AP. A marketing plan will be presented to the University at least annually, and the University shall review and approve said plan[s]. AP will then operate under the approved marketing plan for the coming year. Quarterly, the Parties will update the marketing plan, as necessary;
- B. **Program Development, Support and Implementation.** AP's implementation team will work with the University to launch or, in the case that the on-line program already exists, re-launch the University's Online Programs. AP's implementation support services will include:
  - (1) an integration team that works with the University's personnel from key departments;
  - (2) facilitation of various operational planning sessions for Online Programs;
  - (3) development of a "Program Guidelines" document;
  - (4) cross-functional project management services, including development of a project plan to drive program implementation activities.
- C. **Academic Support Services.** AP will work with faculty and the University on Online Programs' design, including but not limited to:
  - (1) assistance with program-level planning, course mapping, and course conversion of Online Programs into an electronic format;
  - (2) assisting University in structuring multiple annual start dates; and
  - (3) introducing best practices for the delivery of Online Programs.
- D. **Enrollment Specialist Representatives (ESRs).** ESRs will serve as a primary point of contact for all prospective Students for the Online Programs. The ESRs will help educate Students about the Online Programs. AP's responsibilities include:
  - (1) staffing and equipping a call center for ESRs;
  - (2) providing a team of ESRs to contact potential Students;
  - (3) providing a toll free number and website for prospective Students;
  - (4) recruiting in compliance with the academic standards of the University and regulatory requirements; and

(5) informing potential Students of the Program characteristics and referring potential Students to the University regarding financial aid and/or academic questions. In performing recruiting activities, ESRs shall use such marketing and promotional materials as deemed appropriate by AP and as are provided by or approved by the University in accordance with this Agreement, and AP is entitled to rely on the accuracy of any such materials.

AP agrees that in the course of recruitment of Students for enrollment in one or more Online Programs it will not provide any commission, bonus or other incentive payments based directly or indirectly upon success in securing enrollments to any person or entity directly engaged in any Student recruiting or admission activities, except in accordance with the provisions of 34 C.F.R. 668.14(b)(22)(2003) and any subsequent amendment thereto, and/or any other requirement of the United States Department of Education or the University's regional accreditor.

**E. Application Support.** In addition to recruiting, ESRs will:

- (1) inform applicants of University application requirements;
- (2) contact applicants regarding upcoming Online Programs' deadlines;
- (3) remind applicants to submit necessary paperwork (transcripts, etc.);
- (4) remind Students of the registration process, registration deadlines and payment deadlines once admitted to the University; and
- (5) refer Students to appropriate University resources if there are further questions about the Program(s).

**F. Student Support Services.** ESRs will provide Student support and retention services, including, but not limited to the following:

- (1) following up with Students periodically through graduation;
- (2) referring Students to University resources if academic questions persist;
- (3) welcoming new Students and providing upcoming registration dates and/or deadlines;
- (4) re-engaging inactive Students; and
- (5) reminding Students of upcoming start dates, registration deadlines and payment deadlines.

**G. Canvas.** AP recommends Canvas as the preferred learning management system, but the University may use the learning management system of its choice. If the University elects to use Canvas, AP will fund the University's use of Canvas for the Online Programs for the duration of this Agreement. Specifically, AP will fund the Canvas usage fees, Premium Support (as defined by Canvas), and administrative and instructor training. Any additional services and customization the University wishes to receive must be negotiated directly with Instructure (the Canvas Provider). Additionally, if University chooses to use Canvas for other programs not covered by this Agreement, the University, as a partner of AP, will receive preferential pricing from Canvas. To receive Canvas from Instructure, the University must enter into a master subscription services agreement with Instructure as soon as reasonably practicable following the execution of this Agreement.

Upon entering into a master subscription services agreement with Instructure, the University shall take the necessary steps in conjunction with Instructure to integrate the University into the Canvas environment. The University shall use commercially reasonable efforts to complete such integration within sixty (60) days.

If the University desires to host a Massive Open Online Course (**MOOC**) on the Canvas Open Network, Instructure will provide support on the Canvas Open Network at no additional charge

to the University if the University enters into a memorandum of understanding with Instructure specifically for this purpose.

- H. Data Protection.** AP shall use commercially reasonable efforts to ensure the data shared is not re-disclosed or otherwise breached. For any data shared that is subject to the regulations of the Family Educational Rights and Privacy Act (FERPA), (34 CFR Part 99), AP shall comply with the requirements of FERPA.

Notwithstanding the above, AP may utilize the information of denied applicants (**Denied Applicants**) to offer them information on other educational opportunities so long as AP obtains the Denied Applicants' consent. The University agrees to assist AP in this process by allowing AP to contact the Denied Applicants, under the University's name, to propose they further their education through other opportunities.

## **II. University Obligations**

The University shall maintain the sole authority in the (i) appointment of faculty, (ii) admission of Students, (iii) delivery of Online Programs, (iv) evaluation of Student performance, (v) decision to award course credit and/or academic credentialing, and (vi) decision to award scholarships or financial aid. During the Term of this Agreement, the University has the following obligations:

### **A. Marketing Deliverables.**

- (1) University shall deliver to AP its branding and style guidelines to be used by AP in marketing and recruiting associated with the Online Programs and hereby grants the right to AP to use its intellectual property (including to represent the University in forming affiliate relationships and related promotions without necessarily referencing AP) referenced in Section IV and Exhibit C in performance of the AP Obligations
- (2) University shall allow AP and/or its agents or affiliates to use the University web domain for marketing (i.e., <http://online.universityname.edu> or <http://degree.universityname.edu>) and host those subdomains for ease of maintenance and updates;
- (3) University shall allow AP to have access to current student and alumni email lists for marketing purposes; and
- (4) University shall ensure that AP is its exclusive third-party marketer and promoter with regard to the Online Programs covered by this agreement.

- B. Regulatory Approvals, Accreditations, and Licenses.** The Parties agree that AP is relying on the University's obligation to determine and obtain all necessary regulatory approvals and licenses for the Online Programs including as set forth below:

- (1) **Obtaining Regulatory Approvals.** As it is required by law, the University shall fulfill its obligation to determine if it is required to obtain any type of approval, authorization, certificate, or license to deliver online instruction, market degree programs, or recruit Students. If the University determines that it or its agents are required to obtain any sort of approval, authorization, certificate, or license in a state, then the University shall obtain all such necessary approvals and shall communicate them to AP in a timely manner.
- (2) **Informing AP of Obtained Approvals.** The University shall inform AP as to which states' residents the University is legally authorized to enroll Students, what types of marketing and recruitment activities it has obtained approval for, and in which locations such approvals have been obtained.

- C. Financial/Business Oversight.** The University will oversee the financial management of the Online Programs.

- D. Access to Data.** The University shall provide AP periodic extracts, as agreed upon between the University and AP, from its Student Information System and Learning Management System that contain information about applicants and Students enrolled in the Online Programs.

Essential data includes, but is not limited to, applicant, Student, section, course, enrollment, grade, and time-activity data. AP and its agents and/or affiliates may use the data in order for AP to fulfill its obligations and exercise its rights under this Agreement and to analyze and increase the effectiveness of the services it offers hereunder. Additionally, AP may share such data with its strategic partners, specifically AspirEDU, Inc., Zoom Video Communications, Inc., and Instructional Connections, LLC, in order for AP to improve retention efforts and enhance AP's other services. All strategic partners receiving data from AP will be bound by same FERPA requirements as AP.

**E. Competing Programs.** The University agrees that for the duration of this Agreement it will not offer any similar and/or competing online program(s) to the Online Programs that are represented by AP.

**F. Program Characteristics.** The University will assure that:

- (1) its tuition and fees for the Online Programs are no more than the campus-based tuition and fees and are market-competitive, as mutually agreed upon by the University and AP;
- (2) the Online Programs are in an accelerated format;
- (3) there shall be at least six program starts per year per Online Program;
- (4) the University shall work in good faith toward obtaining approval in as many jointly identified states with AP as soon as reasonably practicable;
- (5) the University shall work collaboratively with AP and establish parameters in conjunction with the annual marketing plan to offer promotions, including offering special scholarships and discounts to Employer Alliances ("Employer Alliances" are defined as relationships formed by AP on the University's behalf with relevant employers to allow AP to promote the University's Online Programs to the employer's employees); and
- (6) the University shall provide and maintain at least three high-demand Online Programs under this Agreement, as mutually defined in writing by the University and AP.

**G. Financial Aid.** The University agrees to carry out the administration of all aspects of the financial aid process in compliance with all applicable federal regulations. The University will make financial aid available to students in the same manner and to the same extent as made available to other students of University, and will be solely responsible for and will retain complete control over all aspects of awarding financial aid (including the federal student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended), including determining and verifying eligibility, monitoring and managing all aspects of student's award acceptance, loan counseling, and setting of budgets and disbursement schedules. In addition, AP will have no role in informing the University if, or when, a student withdraws from an academic program or of the last date of attendance of any student. It is agreed and understood that AP is not and shall not be reported by the University as a "third party servicer" (as that term is defined under the federal regulations, including 34 C.F.R. §§ 668.2 and 668.25) and that AP shall have no involvement in or responsibility for the financial aid process. AP personnel shall refer financial aid matters to the University and the University shall have the right to review and approve in advance any AP functions or activities, including call scripts, that may involve the financial aid matters or financial aid decisions of University students.

### **III. License Grants by AP**

During the Term of this Agreement, AP grants the University a limited, nonexclusive license to use AP's intellectual property, including but not limited to its trademarks, logos, websites, marketing materials, and know-how, for the specific and limited purpose of marketing and promoting the Online Programs. **Exhibit A** lists the initial AP trademarks that AP expects to be used under this Agreement.

#### **IV. License Grants by the University**

- A. License.** During the Term of this Agreement, the University grants AP a limited, nonexclusive license to use the University's intellectual property, including but not limited to its trademarks, logos, websites, marketing materials, pictures (of faculty, the University, and its students and alumni), and know-how, for the specific and limited purpose of marketing and promoting the Online Programs. **Exhibit B** lists the initial University trademarks that the University expects to be used under this Agreement.
- B. Agents and/or Affiliates.** AP is hereby given the right to allow its agents and/or affiliates (e.g. specialized providers of niche services such as digital marketing and operational suppliers) to utilize the University materials, as described in Section IV.A. above, where appropriate in AP's reasonable discretion to meet its obligations to the University and exercise its rights under this Agreement.

#### **V. Ownership**

- A. Ownership of Contributed Materials.** AP and the University each retain all ownership and intellectual property rights in the material they each contributed.
- B. Ownership of Developed Materials.** Any right, title and interest in and to any intellectual property arising from or attributed to any of the work or activities undertaken as part of this Agreement shall belong to the Party that creates such intellectual property, unless mutually agreed to otherwise in writing.

#### **VI. Term and Right of First Offer**

- A. Term.** The original term of this Agreement shall commence on the Effective Date and end on the tenth (10<sup>th</sup>) anniversary of the first Launch Date of an Online Program (**Launch Date** is defined as the first day instruction begins for Students enrolled in an Online Program), unless terminated earlier hereunder. Either party may terminate this agreement in the eighth (8<sup>th</sup>) through tenth (10<sup>th</sup>) years by providing written notice to the other Party of its desire to terminate at least 270 days before the expiration of the next anniversary date or the Agreement shall automatically renew. The original term shall automatically renew for one (1) year periods, unless either Party gives written notice to the other Party of its desire to terminate the Agreement at least 270 days before the expiration of the then current original term. During successor terms, written notice to the other Party of its desire to terminate the Agreement must be given at least 180 days before the expiration of the then successor term or the successor term shall automatically renew. To the extent that one or more Addendum(s) to this Agreement is entered into for a new Program, the term of each Addendum shall also be for a period of seven (7) years (**Addendum Term**) beginning on the first Launch Date of an Online Program identified in the Addendum notwithstanding the fact that the Addendum Term could exceed the period of the original term or the successor term. Each Addendum Term automatically renews for periods of one (1) year unless terminated by either party in writing 270 days before the expiration of the then current Addendum Term. To terminate during the one year renewal periods of an Addendum Term, written notice to the other Party of its desire to terminate the successor Addendum Term must be given at least 180 days before the expiration of the then successor Addendum Term or the successor Addendum Term shall automatically renew. In the event of an Addendum Term, all provisions of this Agreement shall remain in full force and effect for the duration of the Addendum Term with regard to the new Online Programs and any renewals of such thereafter.
- B. Right of First Offer.** During the term of this Agreement, if the University decides to use a third-party service provider to provide services similar to those in this Agreement for online programs other than those listed in any executed Addendum, the University will first offer the right to exclusively negotiate an Addendum for the new Programs to AP. If AP and University negotiate in good faith but cannot reach an agreement within 60 days from the date of the first

offer, University is free to contract with another service provider solely for online programs not listed in any executed Addendum.

## **VII. Payment and Taxes**

- A. AP Payment.** The University will collect all **Revenue** (defined to mean all tuition and related fees, , charged to Students enrolled in the Online Programs, inclusive of all pre-requisite, co-requisite, and general education courses) and will remit to AP an amount equal to the product of multiplying the AP Revenue Percentage (as defined below) times Revenue (the **AP Payment**). The AP Payment is due and payable to AP within thirty (30) days of the start of any Online Programs.
- B. AP Revenue Percentage:** The AP Revenue Percentage is 50%. However, as recognition for the University's existing enrollments in the Online Programs prior to retaining AP's services, the following modified AP Revenue Percentages will be in effect for the first 288 unique, named Students: Students 1-96=25%; Students 97-192=35%; Students 193-288=45%. Beginning with the 289<sup>th</sup> unique, named Student and for all subsequent Students, the AP Revenue Percentage is and remains 50%.
- B. Taxes.** Each Party will be responsible for any and all taxes due on their portion of Revenues received.
- C. Final Service Payment.** The University acknowledges that a significant portion of AP's cost is incurred before a Student enrolls, and that AP's only method of cost recovery is through the continuing payments as a Student progresses through the Online Programs. Additionally, the University recognizes that the nature of this Agreement and its payment schedule necessitates that a portion of the amount earned by, and owed to, AP be remitted after termination or expiration of the Agreement. Therefore, in addition to the payments described in Section VII.A. of this Agreement, upon expiration or termination of this Agreement for any reason, the University shall remit, as described in the following sentence, to AP the total AP Payment for the total number of courses remaining in each Student's Online Program of study as of 12AM on the day of termination or expiration (the **Final Service Payment**). Though the amount of the Final Service Payment is calculated as of the day of expiration, the University shall remit the Final Service Payment in four equal installments occurring every six months with the first installment due sixty (60) days after the day of termination.

## **VIII. Indemnification**

- A. AP.** AP will defend and indemnify the University, to the extent permitted by applicable law, against any loss or damage caused by AP's actions hereunder provided that: (a) the University notifies AP in writing within 30 days of the claim; (b) AP has sole control of the defense and all related settlement negotiations; and (c) the University provides AP with the assistance, information, and authority reasonably necessary to perform the above; reasonable out-of-pocket expenses incurred by the University in providing such assistance will be reimbursed by AP.
- B. University.** The University will defend and indemnify AP, to the extent permitted by applicable law against any loss or damage caused by the University's actions hereunder provided that: (a) AP notifies the University in writing within 30 days of the claim; (b) the University has sole control of the defense and all related settlement negotiations; and (c) AP provides the University with the assistance, information, and authority reasonably necessary to perform the above; reasonable out-of-pocket expenses incurred by AP in providing such assistance will be reimbursed by the University.

## **IX. LIMITATION OF LIABILITY**

**NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES EXCEPT AS OTHERWISE CONTEMPLATED IN THIS AGREEMENT.**

**X. Warranties**

- A. Authority.** Each Party warrants, to the best of its knowledge, that it has the authority to enter into the Agreement and to perform its obligations set forth herein.
- B. Ownership of Materials Provided.** Each Party warrants to the other that it is the sole and exclusive owner of the provided materials or has the license to use and sub-license any intellectual property owned by third parties and incorporated into such materials, and that, to the best of its knowledge; such materials do not infringe any third-party rights.

**XI. Cure for Breach.**

If either Party materially breaches the terms of this Agreement and fails to correct the breach within 60 days after the non-breaching Party provides written notification, the non-breaching Party shall follow the dispute resolution procedures contained herein under Section XIII-D.

**XII. Additional Obligations Upon Termination.**

In addition to any other obligations identified in this Agreement which extend beyond, or begin at, expiration or termination of this Agreement, both parties shall cease all use of the other's provided materials and return any such material in its possession to other Party.

**XIII. General**

- A. Relationship Between the Parties.** Each Party is an independent contractor and will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. Each Party will maintain appropriate worker's compensation for its employees as well as general liability insurance. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency or franchise relationship.
- B. Mutual Non-Disparagement.** The University and AP agree to make no statement, whether written or oral, about the other Party which could reasonably be expected to adversely affect the other Party's perception or reputation.
- C. Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Kansas law.
- D. Dispute.** In the event that some or all of the materials provided by either Party is held or is believed by the other Party to infringe third party rights, the alleged infringer shall have the option, at its expense to: (a) modify the materials to be non-infringing; or (b) obtain a license from the third party to continue using that portion of the materials that is infringing the rights of such third party. If it is not commercially feasible to perform either of the above options, then that Party may require the other to return the infringing materials and all rights thereto.

If a Party breaches this Agreement and does not cure within the proper period then the Parties shall attempt in good faith to resolve the matter together. If settlement is not reached, the Parties may pursue any remedy available to them under applicable law.

- E. Notice.** All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by certified mail or actually received to:

If to AP:

Academic Partnerships, LLC  
Attention: Finance Department  
600 North Pearl Street  
Suite 900

Dallas, Texas 75201

With copy to:

Academic Partnerships, LLC  
Attn: Legal Dept.  
2200 Ross Avenue  
Suite 3800  
Dallas, Texas 75201

If to the University:

Emporia State University  
ATTN: Vice President for Administration and Finance  
1 Kellogg Circle, Campus Box 4001  
Emporia, Kansas 66801

The Parties agree that they each may treat documents faxed and/or email attachments and/or a signature sent electronically by the other Party as original documents; nevertheless, either Party may require the other to exchange original signed documents.

- F. Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
- G. Waiver.** The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of either Party's intellectual property rights, no action, regardless of form, arising out of this Agreement may be brought by either Party more than two years after the cause of action has occurred.
- H. Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.
- I. Confidential Information.** Each Party agrees that it shall not use or disclose to any third party, except for the purpose of performing this Agreement, any business and technical information of the other Party which, in the exercise of reasonable judgment, should be recognized by such Party as confidential (**Confidential Information**). The obligation of confidentiality shall not apply to information which: (a) is or becomes part of the public domain through no fault of the receiving Party; (b) is furnished by the disclosing Party to others without restrictions on use and disclosure; (c) becomes known or available to the receiving Party without restriction from a source other than the disclosing Party without breach of any Agreement with the disclosing Party; (d) is disclosed with prior written approval of the disclosing Party; (e) is independently developed by the receiving Party without the use of any Confidential Information; (f) is previously known to the receiving Party on a non-confidential basis; or (g) is required by court order (other legal process) or government agency to be disclosed, in which case, the receiving Party shall give the disclosing Party as much notice as is reasonably practical so that the disclosing Party may seek a protective order or other confidential protection as the disclosing Party, in its sole discretion, may elect and the receiving Party shall reasonably cooperate with the disclosing Party in disclosing Party's efforts to obtain such order or protection.
- J. Force Majeure.** Neither Party will be liable for delays or failure in its performance hereunder to the extent such delay or failure is caused by any act of God, war, natural disaster, strike, lockout, labor dispute, work stoppage, fire, third-Party criminal act or act of government, or any other event beyond the reasonable control of that Party (an **Excusable Delay**). This Agreement may be



terminated with written notice by either Party under this section should the Excusable Delay of the non-performing Party continue for more than 30 days.

- K. Entire Agreement.** This Agreement with any documents referred to in it constitutes the entire agreement and understanding between the Parties and supersedes any previous agreement between them relating to the matters set forth herein.
- L. Successors and Assigns.** This Agreement will be binding upon, and will inure to the benefit of, the permitted successors and assigns of each Party hereto. Either Party may assign this Agreement upon providing written notice to the other Party.
- M. Variation.** No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the Parties.
- N. Survivability.** The following Sections shall survive the expiration and termination of this Agreement: I-H, V, VII, VIII, IX, X, XII, XIII.
- O. Contractual Provisions Attachment.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-17), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

**ACADEMIC PARTNERSHIPS, LLC**

Signature: \_\_\_\_\_

Name: Jeff Dawson

Title: CFO

Date: 11-29-17

**UNIVERSITY**

Signature: \_\_\_\_\_

Name: Allison Garrett

Title: President

Date: 11-20-2017

## CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-17), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, being the 20th day of November, 2017.

1. **Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require Emporia State University or any of its affiliates ("University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are defined under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, the University may terminate this agreement at the end of its current fiscal year. The University agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided under the contract for which it has not been paid. The University will pay contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement under this provision, title to any such equipment shall revert to contractor at the end of the University's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Kansas Law and Venue:** All matters arising out of or related to this agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit arising out of or related to this agreement shall reside only in courts located in the State of Kansas.

5. **Required Non-Discrimination Provision:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University. The provisions of this paragraph (except the provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the University cumulatively total \$5,000 or less during the fiscal year.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages or rights of action available to the University at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

## **CONTRACTUAL PROVISIONS ATTACHMENT - page 2**

8. **Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes:** The University shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance:** The University shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require the University to establish a "self-insurance" fund to protect against any such loss or damage.

11. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records. Accordingly, no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 *et seq.*). Moreover, no provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 *et seq.*

12. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but the University here reiterates that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

14. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the student's written consent, except to other University officials who seek the information within the context of his/her professionally assigned responsibilities and used within the context of official University business. Contractor shall promptly report to the University any disclosure of University's student educational records.

15. **Boycott of Israel Prohibited:** Kansas 2017 HB 2409 generally prohibits the University from entering into a contract with an individual or company to acquire or dispose of services, supplies, information technology or construction, unless such individual or company submits a written certification that such individual or company is not currently engaged in a boycott of Israel. For the purposes of this Section 15, "company" means a sole proprietorship, organization, association, corporation, partnership, venture or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. Accordingly, if Contractor is an individual or company, by executing this contract. Contractor hereby certifies that it is not currently engaged in a boycott of Israel.


## ADDENDUM A

This Addendum A (**Addendum**) dated as of November 13, 2017, is a supplement to that certain Service Agreement (**Agreement**) dated as of November 13, 2017 between Academic Partnerships, LLC (**AP**), and Emporia State University (the **University**) and is fully incorporated therein.


PROGRAM AND/OR DEGREE ("ONLINE PROGRAMS")	PROJECTED START DATE
Master's of Business Administration	July 2018
Master's of Accounting	July 2018
MS Educational Administration	July 2018
MS Curriculum & Instruction: Curriculum Leadership Pre-K-12; Effective Practitioner Pre-K-12; National Board Certification Pre-K-12	July 2018

This addendum contains trade secrets and commercial and financial information that are confidential and therefore may not be disclosed to any third party, except as allowable by applicable law. If the University receives an open records request for this information, it shall follow the applicable provisions of its state's open records law in regards to notifying AP of the request and seeking a ruling by its state's Attorney General or other open records authority regarding its confidentiality.

**ACADEMIC PARTNERSHIPS, LLC**

Signature:   
Name: Jeff Dawson  
Title: CFO  
Date: 11/29/17

**UNIVERSITY**

Signature:   
Name: Allison Garrett  
Title: President  
Date: 11-20-2017

**EXHIBIT A**  
(AP Trademarks, including those of its affiliates)

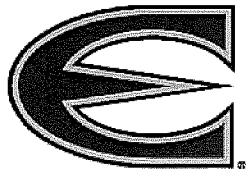
1. ACADEMIC PARTNERSHIPS, LLC
2. ACADEMIC PARTNERSHIPS
3. AP



## EXHIBIT B

(University Trademarks)

<https://www.emporia.edu/marketing/styleguide/>



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