



## *Request for Proposal (RFP)*

- Issue Date: Tuesday, March 2, 2010
- Title: Agreed Upon Procedures - Comfort Letter
- Purpose: To obtain a Comfort Letter related to the issuance of LIBOR Floating Rate Notes
- Proposal Deadline: Proposals must be received by 4:30 p.m. (EST), Thursday, March 11, 2010. Proposals may be sent via e-mail, fax or mail to:  
Elaine Prescott, Purchasing Manager  
Kentucky Higher Education Student Loan Corporation  
10180 Linn Station Road, Suite C200  
Louisville, KY 40223  
E-mail: [eprescott@kheslc.com](mailto:eprescott@kheslc.com)  
Phone: (502) 329-7134  
Fax: (502) 329-7134
- Proposal Questions: There will be no question or answer period for this RFP. If a firm needs additional clarification regarding any items contained herein, please contact the following.  
Elaine Prescott, Purchasing Manager  
Kentucky Higher Education Student Loan Corporation  
10180 Linn Station Road, Suite C200  
Louisville, KY 40223  
E-mail: [eprescott@kheslc.com](mailto:eprescott@kheslc.com)  
Phone: (502) 329-7134
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## ***I. Organizational Overview***

Kentucky Higher Education Student Loan Corporation (KHESLC), also known as The Student Loan People, and headquartered in Louisville, Kentucky, was created by the 1978 Kentucky General Assembly. KHESLC is an independent *de jure* municipal corporation that makes, finances, purchases, services, and collects educational loans. Our mission is to promote Kentucky's higher educational opportunities by providing loan programs and related services.

KHESLC is governed by a board of directors consisting of 15 board members, of whom ten (10) are appointed by the Governor from the general public and five (5) serve as ex-officio by reason of their positions – Treasurer of the Commonwealth, President of the Council on Postsecondary Education of the Commonwealth, Secretary of the Finance Cabinet, President of the Association of Independent Kentucky Colleges and Universities, and Commissioner of Education. The board may act by a majority of its members.

## ***II. Product/Service Requirements***

### **A. General**

All loans owned by KHESLC are currently serviced by KHESLC in Louisville, Kentucky, using the Student Loan Servicing System, designed and currently maintained by 5280 Solutions, Inc.

KHESLC plans to issue a LIBOR Floating Rate Note in April 2010 (\$225-\$250 million). In conjunction with this transaction, KHESLC needs a Comfort Letter that includes an opinion on the loan characteristics, weighted average lives, expected maturities, and percentage of original principal remaining at certain quarterly distribution dates for the notes, as disclosed in the offering documents.

### **B. Specifications**

The review will consist of the following procedures, at a minimum:

1. Obtain from KHESLC computer readable data file containing all FFELP loans expected to be included in the transaction.
2. Test the data file received from KHESLC, including but not limited to reviewing a sample of source documentation.
3. Obtain from Bank of America Merrill Lynch (BAML) loan characteristics as disclosed in the offering documents
4. Compare characteristics of the loans expected to be included in the transaction from the data file, received from KHESLC, to the loan characteristics provided by BAML, as disclosed in the offering documents.
5. Obtain BAML methodologies used to compute the assumed specific loan characteristics (Replines).
6. Using the data file from KHESLC and the methodologies from BAML,



- recompute the Replines and compare such recomputed information to corresponding information from BAML.
7. Obtain from BAML computer generated cash flow data file containing projected aggregate collateral cashflows, at each economic scenario indicated in the offering documents.
  8. Using the methodologies set forth in the offering documents, KHESLC and/or BAML, and the cashflow file provided by BAML, recompute the Weighted Average Lives, Payment Windows, and expected Maturity at various scenerios indicated in the offering documents. Compare recomputed information to the corresponding information in the offering documents.

**C. Additional Information**

1. KHESLC anticipates closing on the LIBOR Floating Rate Note in the third week of April, 2010, but based on conditions beyond KHESLC's control, the transaction may close on a later date. The selected firm must be able to complete all work and issue a report thereon to facilitate timely closing of this transaction.
2. All responses must include pricing, broken into two categories as follows:
  - a. All prodecures related to issuance of a comfort letter (listed within this RFP) excluding weighted average lives, expected maturities, and percentage of original principal remaining at certain quarterly distribution dates for the notes, as disclosed in the offering documents.
  - b. The procedures associated with weighted average lives, expected maturities, and percentage of original principal remaining at certain quarterly distribution dates for the notes, as disclosed in the offering documents.

***III. Proposal Requirements***

**A. General**

The proposal must provide the following minimal information to demonstrate the capability of the Vendor to provide the required product and services or it may be rejected as noncompliant. The Vendor is encouraged to provide any other information that will be beneficial in reviewing product and service capabilities.

1. Vendor's related experience in working on a Comfort Letter that includes an opinion on the loan characteristics, weighted average lives, expected maturities, and percentage of original principal remaining at certain quarterly distribution dates for the notes, as disclosed in the offering documents.
2. Vendor's related experience in working with BAML on a Comfort Letter that



includes an opinion on the loan characteristics, weighted average lives, expected maturities, and percentage of original principal remaining at certain quarterly distribution dates for the notes, as disclosed in the offering documents.

3. Vendor's most recent annual report, audited financial statements and computer security or service provider audit report (if available).
4. Description of Vendor's liability insurance coverage.
5. Vendor's company profile, including mission/value statement and background information.
6. Vendor must provide answers and/or information to all questions and requirements as specified in this proposal in order to be considered for contract award. All questions must be answered in sufficient detail for effective evaluation of the Vendor's product, service, and system. Proposals that contain a Vendor's own special terms and conditions in conflict with terms of the proposal and/or state statutes and regulations may be rejected.
7. Price quotation.
8. Name/contact information and experience of the primary individual who would work with KHESLC staff.
9. Vendor shall submit one response only to a proposal and shall not propose more than one price for each item listed in the proposal. Multiple or alternate offers of more than one price in total (or by line item) shall be cause for rejection unless specifically called for in special provisions elsewhere in this solicitation. Offers not conforming to this requirement shall be rejected.
10. Provide firm prices unless otherwise stated in the proposal. KHESLC is exempt from Federal Excise Taxes and State Sales Tax.
11. The Vendor shall provide a Federal Identification Number and/or Social Security Number (if an individual).
12. A completed, signed and notarized Required Affidavit for Bidders, Offerors and Contractors (*Attachment A*).
13. A completed, signed and notarized Vendor Business Practice Statement (*Attachment B*).
14. A signed KHESLC Graham Leach Bliley Service Provider Agreement (*Attachment C*).
15. The proposal must be signed by an officer or person with authority to bind the company.



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**IV. Contract Information**

1. *Subcontracting:* If the Vendor intends to subcontract any part of this service, the Vendor must provide full disclosure of the subcontractor's name and a description of the relationship. KHESLC must approve such an agreement. The Vendor remains fully liable for all work performed.
2. *Confidentiality:* The Vendor shall comply with the provisions of the Privacy Act of 1974 and consumer privacy and data security provisions of the Gramm-Leach-Bliley Act and any other applicable Federal or State privacy laws. Additionally, the Vendor will instruct its employees to use the same degree of care as it uses with its own data to keep information concerning client data and the financial affairs of KHESLC confidential.
3. *Conflict of Interest:* The Vendor covenants that it will have no interest, direct or indirect, that will conflict in any manner or degree with the performance of its contract services. The Vendor further covenants that, in the performance of the contract, the Vendor shall employ no person having any such known interests.
4. *Contract Requirements:* Any requirements contained in this proposal must be agreed upon contractually. The Vendor and any subcontractor(s) must be authorized to do business in Kentucky and have all required licenses. The contract will be administered by the laws of the Commonwealth of Kentucky, and any suit will be filed in Kentucky. If a contract is awarded, it may be subject to Government Service Contract Committee requirements and may require a 30-day cancellation provision.
5. *Timeline Requirements:*

RFP Issued: March 2, 2010

Proposal Deadline: March 11, 2010

**V. Selection**

The selection of a Vendor will be based upon KHESLC's review of the documentation submitted in response to this RFP. The Vendor must submit all documentation as specified in "Proposal Requirements" and may submit additional written information. The terms and provisions of the proposal must be valid for a period of 60 days from the proposal deadline.

KHESLC reserves the right to request additional information from a Vendor to assist in understanding or clarifying a proposal. This information may be considered in the evaluation of the proposal. With the exception of written inquiries regarding this RFP, no visits, electronic mail, telephone calls, or facsimiles with respect to the RFP will be accepted by the KHESLC contact from the issuance date of the RFP through the completion of the evaluation period unless such contact is initiated by KHESLC. Any answers to written questions about the RFP will be provided to all RFP recipients.



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KHESLC staff will independently review all compliant proposals. A selection, if any, will be made no later than March 19, 2010.

The following criteria, as requested in the proposal, will be considered in selecting a Vendor:

1. Price (50%)
2. Experience working with BAML (50%)

While we intend to contract with a single source, we reserve the right to accept or reject any or all proposals received, as deemed in the best interest of KHESLC. Each respondent submitting a proposal will receive notification of the selection.

There is no expressed or implied obligation for KHESLC to reimburse Vendors for any expenses incurred while preparing proposals in response to this request.

KHESLC reserves the right to retain all proposals submitted. All proposals will be subject to the Kentucky Open Records law, KRS 61.870-61.884.

KHESLC will ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. Accordingly, it is further the intent of KHESLC to conduct its business in accordance with the purpose of Title VI of the Civil Rights Act of 1964.

*KHESLC reserves the right to change any procedure as stated in this proposal.*



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**Attachment A**  
**Required Affidavit for Bidders, Offerors and Contractors**

**FOR BIDS AND CONTRACTS IN GENERAL:**

- I. Each bidder or offeror swears and affirms under penalty of perjury, that:
  - a. In accordance with KRS 45A.110 and KRS 45A.115, neither the bidder or offeror as defined in KRS 45A.070(6), nor the entity which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky; and the award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.
  - b. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and all subcontractors therein, are aware of the requirements and penalties outlined in KRS 45A.485; have properly disclosed all information required by this statute; and will continue to comply with such requirements for the duration of any contract awarded.
  - c. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and its affiliates, are duly registered with the Kentucky Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139, and will remain registered for the duration of any contract awarded.
  - d. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.

**FOR “NON-BID” CONTRACTS (I.E. SOLE-SOURCE; NOT-PRACTICAL OR FEASIBLE TO BID; OR EMERGENCY CONTRACTS, ETC):**

- II. Each contractor further swears and affirms under penalty of perjury, that:
  - a. In accordance with KRS 121.056, and if this is a non-bid contract, neither the contractor, nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of any contract awarded, have contributed more than the amount specified in KRS 121.150 to the campaign of the gubernatorial slate elected in the election last preceding the date of contract award.
  - b. In accordance with KRS 121.330(1) and (2), and if this is a non-bid contract, neither the contractor, nor officers or employees of the contractor or any entity affiliated with the contractor, nor the spouses of officers or employees of the contractor or any entity affiliated with the contractor, have knowingly contributed more than \$5,000 in aggregate to the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract award.



- c. In accordance with KRS 121.330(3) and (4), and if this is a non-bid contract, to the best of his/her knowledge, neither the contractor, nor any member of his/her immediate family, his/her employer, or his/her employees, or any entity affiliated with any of these entities or individuals, have directly solicited contributions in excess of \$30,000 in the aggregate for the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract.

As a duly authorized representative for the bidder, offeror, or contractor, I have fully informed myself regarding the accuracy of all statements made in this affidavit, and acknowledge that the Commonwealth is reasonably relying upon these statements, in making a decision for contract award and any failure to accurately disclose such information may result in contract termination, repayment of funds and other available remedies under law.

_____	_____
Signature	Printed Name
_____	_____
Title	Date

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_,

(Affiant) (Title)

of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

(Company Name)

\_\_\_\_\_ My commission expires: \_\_\_\_\_

(Notary Public)

[*seal of notary*]



**Attachment B**  
**Vendor Business Practice Statement**

THE UNDERSIGNED \_\_\_\_\_ (“VENDOR”) understands that Kentucky Higher Education Student Loan Corporation (the “Corporation”) will not do business with any vendor that violates KRS 45A.343 (2) and (3) or 45A.455 and does not comply with this Vendor Business Practice Statement (the “Statement”).

COMPLIANCE WITH KRS 45A.343 (2) AND (3):

KRS 45A.343 (2) and (3) provide as follows:

- (2) After July 15, 1994, any contract entered into by a local public agency, whether under KRS 45A.345 to 45A.460 or any other authority, shall require the contractor to:
  - (a) Reveal any final determination of a violation by the contractor within the previous (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor; and
  - (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 341, and 342 that apply to the contractor for the duration of the contract.
- (3) A contractor’s failure to reveal a final determination of a violation of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency’s:
  - (a) Cancellation of the contract; and
  - (b) Disqualification of the contractor from eligibility for future contracts awarded by the local public agency for a period of two (2) years.

Other statutes referenced in those sections are as follows:

- KRS Chapters
- 136 REVENUE AND TAXATION - CORPORATION AND UTILITY TAXES
- 139 REVENUE AND TAXATION - SALES AND USE TAXES
- 141 REVENUE AND TAXATION - INCOME TAXES
- 337 LABOR AND HUMAN RIGHTS - WAGES AND HOURS
- 338 LABOR AND HUMAN RIGHTS - OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES
- 341 LABOR AND HUMAN RIGHTS - UNEMPLOYMENT COMPENSATION
- 342 LABOR AND HUMAN RIGHTS – WORKERS’ COMPENSATION

**VENDOR REPRESENTS AND COVENANTS that (check one):**  There has been no final determination of violation; or  The attached list reflects all final determinations of violations of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 which have been rendered against the Vendor within the five (5) years preceding this certification.



COMPLIANCE WITH KRS 45A.450 AND 45A.455:

VENDOR REPRESENTS AND COVENANTS that it will not directly or indirectly offer or give any personal benefit, including but not limited to, commissions, kickbacks, payments, loans, gratuities (including travel and entertainment), bribes, gifts, samples, services, promises of future employment or personal considerations (hereinafter collectively referred to as “benefits”), in connection with any Corporation contract or work, to any Corporation director, officer, or employee or their families, to any entity in which VENDOR knows a Corporation director, officer, or employee or member of the Corporation’s director, officer, or employee’s family who own a direct or indirect interest, or to any person affiliated with any subcontractor or consultant for the Corporation. VENDOR further understands that the Corporation’s directors, officers, or employees are not permitted to accept any benefit and are required to comply with KRS 45A.450 and 45A.455 (See: <http://www.lrc.ky.gov/KRS/045A00/CHAPTER.HTM>).

VENDOR REPRESENTS that (check one):  no list is attached; or  it has attached and returned herewith a list of any “benefits” provided, directly or indirectly, in the past year to a director, officer, or employee or a director, officer, or employee’s family member, including any employment or consulting relationship (excluding any meals of a nominal value).

VENDOR REPRESENTS that except as set forth on a list attached and returned herewith, no one has solicited or requested benefits of any vendor’s directors, officers, employees, subcontractors, agents or representatives in connection with any contract with, purchase from, sale to, or other work with the Corporation (hereinafter collectively referred to as “contractor”), and VENDOR covenants it will henceforth PROMPTLY report any future such solicitation or request to the Corporation.

COMPLIANCE WITH KRS 45A.395 (2) AND 45A.400:

KRS 45A.395 (2) AND 45A.400 provide:

A written determination of a responsibility of a bidder or offeror shall not be made, and no supplier shall be prequalified as a responsible prospective contractor until the bidder or offeror provides the local public agency with a sworn statement made under penalty of perjury that he has not knowingly violated any provisions of the campaign finance laws of the Commonwealth and that the award of a contract to the bidder or offeror will not violate any provisions of the campaign finance laws of the Commonwealth. “Knowingly” means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

VENDOR CERTIFIES that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056 (2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this certification. The undersigned further swears under the penalty of perjury, that neither he/she nor the Company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the Company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.



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COMPLIANCE WITH KRS 11A.040 (6) AND (8) – FORMER STATE EMPLOYEES SEEKING TO DO BUSINESS WITH THE STATE OR CONTEMPLATING REPRESENTATION OF ANOTHER BEFORE A STATE AGENCY:

KRS 11A.404 (6) AND (8) provide:

(6) No present or former officer or public servant listed in KRS 11A.010 (9) (a) to (h) shall, within six (6) months following termination of his/her office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which he was directly involved during the last thirty-six (36) months of his/her tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he/she was involved prior to taking office or beginning his/her term of employment, provided that, for a period of six (6) months, he/she personally refrains from working on any matter in which he/she was directly involved during that last thirty-six (36) months of his/her tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

(8) A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, for a period of one (1) year the latter of:  
(a) The date of leaving office or termination of employment; or (b) The date the term of office expires to which the public servant was elected.

The law's applicability may be different if you hold elected office or are contemplating representation of another before a state agency. Also, if you are affiliated with a firm which does business with the state and which employs former state executive branch employees, you should be aware that the law might apply to them. In case of doubt, the law permits you to request an advisory opinion from the Executive Branch Ethics Commission, Room 136, Capitol Building, 700 Capitol Avenue, Frankfort, Kentucky 40601; (502) 564-2611.

VENDOR REPRESENTS AND COVENANTS that Vendor has no employees that are in violation of KRS 11A.040 (6) and (8).

COMPLIANCE WITH KRS 11A.201 TO 11A.246 – EXECUTIVE AGENCY LOBBYING:

VENDOR REPRESENTS AND COVENANTS that it is in compliance with KRS 11A.201 to 11A.246 (See: <http://www.lrc.ky.gov/KRS/011A00/CHAPTER.HTM>).

VENDOR REPRESENTS that it will cooperate in responding to reasonable requests by the Corporation or its representatives to provide information and documentation regarding transactions with the Corporation.

If the foregoing representations and covenants are violated by VENDOR, its directors, officers, employees, subcontractor, agents, or representatives, it will constitute grounds for termination of any contracts between the Corporation and VENDOR, at the Corporation's sole discretion.

VENDOR will inform its directors, officers, employees, agents, and subcontractors of the requirements of this Statement.

***Request for Proposal***



WHEREBY, VENDOR has executed this Statement by its duly authorized representative on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

VENDOR NAME: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Printed Name)

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

Telephone: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_, \_\_\_\_\_,  
(Affiant) (Title)

of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2010.  
(Company Name)

\_\_\_\_\_ My commission expires: \_\_\_\_\_  
(Notary Public)

[*seal of notary*]



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***Attachment C***  
**Kentucky Higher Education Student Loan Corporation (KHESLC)**  
**Gramm Leach Bliley Service Provider Agreement**

I. Compliance with the Privacy Requirements

Throughout the term of this Agreement, Service Provider shall comply with the Privacy Requirements, which means Subtitle A of Title V of the Gramm Leach Bliley Act (“the GLBA”), Pub. L. 106-102, 15 U.S.C. § 6801 et seq, as it may be amended, the Banking Agencies’ regulations promulgated thereunder, the Interagency Guidelines for Safeguarding Customer Information (“the Safeguarding Guidelines”), 66 Fed. Reg. 8616, February 1, 2001 (codified in Appendix B to 12 C.F.R. part 30), the Federal Trade Commission’s Safeguards Rule (“Safeguards Rule”), 16 C.F.R. § 314, and other applicable federal and state acts, rules, and regulations concerning the security, confidentiality, handling, use and protection of consumer or customer information.

II. Customer Information

Service Provider acknowledges that KHESLC owns all right, title and interest in and to all Customer Information, including without limitation all data, information, records, correspondence, reports or other documentation by, about, or relating to such customers received or obtained by Service Provider from or at the direction of KHESLC, or otherwise directly or indirectly obtained, prepared or maintained by Service Provider pursuant to or in connection with performing the terms of this Agreement. Service Provider also acknowledges that KHESLC has a responsibility to its customers to keep KHESLC’s Customer Information confidential and proprietary.

For purposes of this Agreement, “Customer/Consumer Information” means nonpublic information relating to persons covered under a loan guaranty issued by KHEAA, and customers or borrowers of KHESLC, including without limitation names, addresses, telephone numbers, e-mail addresses, credit information, account numbers, account balances or other account information, and lists derived therefrom, regardless of whether KHESLC’s relationship with the customer ceases, including all “nonpublic personal information” regarding a “consumer,” as those terms are defined by federal law including but not limited to the GLBA, as it may be amended, any regulations promulgated thereunder, and any other customer information protected by applicable state law.

III. Non-Disclosure of Customer Information

Service Provider agrees on its own behalf and on behalf of any permitted subcontractor that it: (i) will use Customer Information solely for the purpose of performing its duties under any contractual relationship it has with KHESLC and in compliance with the terms of this Agreement, (ii) will not use Customer Information for any other purpose, especially the direct or indirect marketing or cross-selling of any products or services of any kind to KHESLC customers, and (iii) will not disclose or communicate Customer Information, directly or indirectly to any non-affiliated third party. Service Provider further agrees that Customer Information will be disclosed only to such of its representatives who need to examine Customer Information for the purposes described above.

The foregoing prohibition shall not apply to disclosures: (i) made in the ordinary course of the Service Provider’s business to the attorneys, accountants, auditors or agents of the Service Provider; (ii) made in response to official inquiry by the legislative, executive or judicial branch of governments of the United States, the Commonwealth of Kentucky, or any state in which the Service Provider transacts business, or any agency of such governments, including, but not limited to, the U.S. Department of Education; (iii) made in response to subpoena or process issued by the Securities and Exchange Commission; (iv) made in response to subpoena or process issued by any state or federal court, arbitrator, grand jury, or administrative law judge; or (v) made upon the advice of counsel to the Service Provider in order to comply with securities registration or disclosure laws and regulations of the United States or any State applicable to the Service Provider or securities issued by the Service Provider, provided, however, the Service Provider shall notify KHESLC as quickly as reasonably practicable under the



circumstances then existing of any disclosure made with respect to the matters set forth in clauses (ii) through (v) above, unless the Service Provider is restricted or precluded from so doing by judicial or administrative process or order.

#### IV. Information Security Program

Service Provider shall at all times have in place and cause any affiliate that possesses KHESLC Customer Information, permitted subcontractor or designee of the Service Provider to have in place an Information Security Program (“the Program”) for protecting all KHESLC Customer Information delivered to Service Provider by KHESLC pursuant to this Agreement. The Program must fulfill the objectives set forth in the Safeguarding Guidelines and the Safeguards Rule. KHESLC, its representatives, attorneys or auditors, and the Comptroller of the Currency, shall have the right upon reasonable prior written notice to audit and inspect any and all aspects of Service Provider’s Program, at any time or times during Service Provider’s normal business hours. Any cost or expense of Service Provider shall be borne by KHESLC. Service Provider shall make available for audit, copying, inspection or review at any reasonable time all records, documents, books, procedures, systems and operations of the Service Provider with respect to its Program or any other security measures, including Service Provider’s disaster recovery or business continuity plans.

Should the aforementioned review or inspection result in the discovery of material security risks to KHESLC Customer Information, KHESLC shall immediately notify the Service Provider of such risks and the Service Provider shall respond to KHESLC in writing with the Service Provider’s (or any permitted subcontractor’s) plan to take reasonable measures to promptly correct, repair, modify the Program, or any system or application, to effectively eliminate the risk, at no cost to KHESLC. The Service Provider shall have ten (10) business days to cure or cause the cure of such security risk, unless the parties agree to a longer period of time for such cure. KHESLC may terminate this Agreement upon notice to the Service Provider if the security risk is not cured within such ten (10) day period or within any longer period of time agreed upon by the parties. In the event of a security risk, KHESLC may review any system and transaction logs related thereto which pertain to Customer Information.

#### V. Security Breaches

Service Provider agrees that it will promptly notify KHESLC of each instance of: (i) unauthorized access to or use of KHESLC nonpublic Customer Information while in the custody of the Service Provider, its affiliates or subcontractors that could result in substantial harm or inconvenience to a customer of KHESLC or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of that nonpublic Customer Information, and to indemnify KHESLC against the cost of providing any legally required notice to its customers or other consumers of such event.

#### VI. Remedy for Breach of This Agreement

Service Provider agrees that its breach of this Agreement will cause irreparable and continuing damage to KHESLC for which money damages are insufficient, and KHESLC shall be entitled to injunctive relief, without posting bond, and/or a decree of specific performance, and such other relief as may be proper (including money damages if appropriate).

Service Provider shall forever defend and hold KHESLC harmless from all claims, liabilities, damages, or judgments involving a third party, including KHESLC’s costs and attorney fees, which arise as a result of Service Provider’s failure to meet any of its obligations under this Agreement. Service Provider shall further agree to reimburse KHESLC for its direct damages (e.g., costs to reconstruct lost or altered information) resulting from any security breach, loss, or alteration of KHESLC nonpublic Customer Information caused by the Service Provider or its subcontractors or agents.



VII. Termination

KHESLC retains the right to unilaterally terminate the Agreement, without prior notice, if Service Provider has improperly disclosed Customer Information, allowed a material breach of its Program in violation of its obligations under the GLBA and regulations promulgated thereunder, if Service Provider has lost or materially altered KHESLC nonpublic Customer Information, or if KHESLC reasonably determines that Service Provider's Program is inadequate (with the exception noted in Clause IV of this Section that the Service Provider shall have 10 days to cure a security risk in its Program).

VIII. Return of Customer Information

Within thirty (30) days of the termination or expiration of this Agreement, Service Provider shall, at the election of KHESLC, either: (1) return to KHESLC or (2) destroy (and shall cause each of its subcontractors and agents to destroy) all records, electronic or otherwise, in its or its subcontractor's or agent's possession that contain such nonpublic Customer Information and shall deliver to KHESLC a written certification of the destruction thereof.

IX. Survival of this Agreement

Service Provider's obligations under this Agreement shall survive any termination, non-renewal, or permitted assignment of this or any other Agreement.

_____	
Service Provider Name	KHESLC
_____	_____
By	Diana L. Barber
_____	<u>General Counsel</u>
Title	Title
_____	_____
Date	Date