2.17 – SALES TO EXTERNAL COMMUNITY

Effective: XXXXX, 2026

Purpose: To establish the conditions under which Emporia State University may sell products and services to the external community in support of its instructional, research, and public service missions, while safeguarding public resources, applying appropriate pricing, and addressing concerns about competition with private enterprise.

Scope: This policy applies to external sales conducted by University academic and administrative units, centers, institutes, auxiliary enterprises, affiliated corporations, and employees or students acting on behalf of the University, whether on campus, off campus, or online.

Responsible Office: Business & Finance Office; Controller's Office

Policy Statement:

General Requirements

An external sale is permissible when it is integral to, or reasonably related to, an activity essential to the University's instructional, research, or public service mission and qualifies as an eligible product or service. External sales must also satisfy the applicable pricing requirements and receive the required approvals. Generating revenue for a University purpose, standing alone, does not establish the required mission relationship.

The availability of similar products or services from a private business does not, by itself, prohibit a qualifying University sale.

Private availability, comparability, and pricing shall be considered in evaluating the proposal and any competition complaint.

University resources may be used only within the approved scope and applicable legal, funding, licensing, and contractual restrictions. Sales shall not materially impair the University's primary responsibilities or create unauthorized private benefits.

All activities under this policy shall be done in compliance with other applicable University and KBOR policies.

Eligible Products and Services

Subject to the general requirements above, an external sale must fall within at least one of the following categories established by KBOR:

- Products or services directly advancing the University's institutional mission statement;

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- Activities that enhance the academic, cultural, recreational, or artistic environment of the University community, including public lectures, performances, athletic events, museum exhibits, and art exhibitions;
- Products or services resulting as by-products of instruction, research, or public service;
- Agricultural or mineral products generated by research or by University-owned or leased land.
- Food service, limited to the University's campus;
- Clothing, gifts, and souvenirs bearing University or conference identifying names, marks, initials, emblems, or mascots;
- Gifts and souvenirs associated with University museums or similar facilities;
- Products or services specifically authorized or required by a state or federal statute;
- Products or services furnished under a governmental grant or contract to the governmental entity or the public;
- Products or services reasonably related to the University's mission that are unavailable elsewhere in the community, considering convenience, quality, or quantity;

A unit relying on an instructional or research basis shall document the actual educational or research objectives, appropriate supervision, and relationship of the work to those objectives. Student participation or designation as a student-operated program does not establish eligibility by itself.

Community unavailability, assessed by convenience, quality, or quantity, is required when relying on the last category, but is not an additional condition for every other category.

Tobacco sales or distribution on campus are prohibited.

Approval of Activities and Changes

Before initiating a covered sales activity, or substantially changing the type or level of an existing activity, the sponsoring unit shall obtain written approval from the Vice President of Finance. The unit shall submit its proposal for review by the Controller and Office of General Counsel. The Provost shall review proposals involving academic programs or student instruction. Other responsible offices shall review matters within their authority.

The proposal shall identify:

- The responsible unit and manager or advisor;
- Eligible category and mission connection;
- Customers, scope, volume, and delivery method;
- Personnel, student involvement, and resources;
- Comparable private offerings;
- Direct and indirect costs and proposed prices;
- Any subsidy and its funding source;
- Expected receipts and expenses;

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- Advertising; and
- Applicable legal, licensing, tax, and contractual requirements.

Approval shall identify the authorized activities, customers, pricing method, resource commitments, conditions, and review date. A standing program approval may cover recurring transactions within these limits. Changes in services, customer groups, scale, resources, or educational character that materially affect the approval require renewed review. The Controller shall approve rate changes within an authorized pricing method. No unit may advertise an unapproved offering, accept orders, or collect an unapproved charge. Approval under this policy does not confer contract-signing authority or replace approvals reserved to the President, KBOR, or another authority. Service clearing activities are also subject to KBOR policy, including advance presidential approval for services to outside organizations or classes of individuals, ordinarily upon their written request, and University review of individual projects on written application.

Pricing and Permitted Cost Recovery Exceptions

The unit shall submit a documented cost and market analysis to the Controller. Prices should generally recover direct and indirect costs and should, at a minimum, reflect comparable private marketplace prices. Direct costs include attributable salaries, fringe benefits, supplies, and capital costs. Indirect costs shall be determined using the University's negotiated federal indirect cost rate, applied to the appropriate base as determined by the Controller. Costs shall not be omitted solely because another University budget pays them, and costs shall not be counted twice.

Market comparisons shall use reasonably comparable scope, quality, timeliness, and conditions of service. Material differences must be documented. A program's educational character does not automatically justify a reduced market benchmark. If reliable comparators are unavailable, the Controller shall document the alternative basis for evaluating the proposed price.

When an activity is integral to the University's instructional, research, or public service mission, the President or the President's expressly authorized designee may approve prices below full cost recovery. The written approval shall identify the mission justification, unrecovered costs, lawful funding source, duration, and conditions. Approval of reduced cost recovery does not, by itself, authorize departure from KBOR's private marketplace pricing standard. Any proposed departure from that standard requires separate review by the Controller and Office of General Counsel and may proceed only when permitted by controlling law and KBOR policy. No exception may override a statute, award restriction, license, or other binding requirement.

Advertising and Customer Communications

Approved external offerings may be advertised to the external community. Advertising content and cost must be reasonably related to the product or service offered and must comply with Policy 2.07 and Marketing and Media Relations requirements. Communications

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shall accurately describe the provider, authorized services, material limitations, and student participation when relevant to the customer's decision. No unauthorized endorsement, credential, result, or guarantee may be represented.

An offering approved only for students, faculty, staff, or University guests shall not be promoted to the general public. Advertising for those offerings shall be directed to the University community or confined to campus as required by KBOR. External customers shall not be classified as University guests merely because they visit campus to obtain a product or service.

Fees, Receipts, and Taxes

The Controller shall determine the necessary fee authorization, account structure, and treatment under the Comprehensive Fee Schedule and applicable KBOR delegations. Units shall not collect charges until all required University and KBOR approvals are obtained. Approval of an activity does not independently authorize a fee that requires additional approval.

University receipts shall be recorded and deposited intact through authorized University accounts and processes under Policy 2.09. Units shall not use personal accounts or unapproved payment applications, retain receipts outside authorized accounts, or spend directly from collections. Payment processing shall comply with University security and payment card requirements.

The Controller shall determine applicable sales and use taxes, sourcing, rates, exemptions, and reporting requirements. Taxable sales require collection and remittance unless a lawful exemption is adequately documented. The University's exemption on eligible purchases does not automatically exempt its sales. The Controller shall also evaluate unrelated business income tax and associated reporting obligations. Neither taxability nor payment of tax independently authorizes an otherwise impermissible activity.

Monitoring and Corrective Action

The Controller shall maintain a register of approved activities. Each responsible unit shall review its activity and pricing at least annually and report material changes or noncompliance. Internal Audit, or another official designated consistent with KBOR policy, shall regularly review product and service sales and report noncompliant activities to the Designated Vice President. Reviews may be coordinated with the University's audit plan.

The Vice President of Finance shall evaluate reported deficiencies and, when noncompliance is confirmed, prescribe corrective conditions or require the activity to be curtailed. The University may suspend new orders or advertising while correcting a deficiency. Existing obligations shall be addressed with General Counsel. Records of approvals, pricing, transactions, complaints, and corrective action shall be retained under applicable retention schedules and legal holds. Disclosure is governed by the Kansas Open

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Records Act and other applicable law and confidentiality shall not be promised beyond lawful authority.

Competition Grievances

Complaints from private enterprises alleging inappropriate or unreasonable competition shall be processed in line with KBOR policy, which is incorporated by reference and controls in the event of a conflict. The Vice President of Finance shall make submission instructions available through the Business and Finance Office. The following requirements apply:

- A formal complaint must be written and signed. Upon receipt, the Vice President of Finance shall investigate compliance and attempt administrative resolution. A complaint not resolved within fifteen (15) working days of receipt is presumed unresolved through administrative channels. Informal concerns may also be addressed, but do not replace the formal process.
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- An unresolved complaint shall be transmitted to the President for referral, within ten (10) working days, to an Institutional Competition Review Committee. The President shall appoint a separate five-member committee for each complaint: three (3) University community members, one serving as chair, and two (2) private-sector representatives. Members shall disclose conflicts and be able to evaluate the complaint impartially.

- Within five (5) working days after receiving the complaint, the committee shall consult the complainant and determine whether the complainant wishes to present orally or have the matter decided on written submissions. A requested oral presentation shall occur within twenty (20) working days after the committee receives the complaint. The committee shall hear both the complainant and a representative of the unit offering the product or service.

- The committee shall determine compliance with the KBOR sales policy and issue a written conclusion and recommended action within fifteen (15) working days after the oral presentation concludes or after receipt of the written submissions, as applicable.

- Within fifteen (15) working days after receiving the committee's recommendation, the President shall accept, reject, or modify it and inform the KBOR President and Chief Executive Officer and the other state university chief executive officers of the recommendation and action taken. The President shall also provide the complainant and affected unit the recommendation and written decision, including information about appeal rights.

- If dissatisfied, the complainant may appeal to KBOR within twenty (20) working days after receiving the committee's recommendations, as provided in KBOR policy. If review is granted, the Board Chair shall appoint a Regents Review Committee within

twenty (20) working days of receipt of the appeal. Its three members are the Board Chair or designee as chair, a member designated by the University President, and a member designated by the complainant. It shall complete its review within thirty (30) working days of receiving the complaint and provide its written report and decision to the KBOR President and Chief Executive Officer for implementation and reporting to the Board.

- The process is intended for discussion and resolution rather than a formal judicial proceeding. Neither party may be represented by counsel in this process, as prescribed by KBOR. Time limits shall not be used to prejudice a complaint; unusual circumstances may justify waiver consistent with KBOR policy. The parties shall make a good-faith effort at early resolution. This procedure does not replace other policies or create additional rights for claims governed by an established institutional grievance procedure, and is available only as provided by KBOR to complainants without access to such a procedure.

Definitions: All words and phrases shall be interpreted utilizing their plain meanings unless otherwise defined in University or Board of Regents policy or by statute or regulation.

External Community – Persons and entities other than students, faculty, staff, and University guests acting in those capacities. A purchase on behalf of an outside business or organization is external even when made by a student or employee.

University Guest – A person entering campus for an educational, research, or public service activity, whose primary purpose is not purchasing or receiving products or services. A guest sale must relate to the purpose or needs of the campus visit.

Sale – Providing a product, service, access, or use in exchange for a fee or other consideration. Cost reimbursement, noncash exchanges, and required payments labeled as donations are included. Genuine gifts and separately authorized uncompensated public service remain subject to their governing policies.

University Resources – University-controlled funds, facilities, equipment, software, supplies, personnel time, systems, data, and intellectual property.

Procedures: All procedures linked and related to the policies above shall have the full force and effect of policy if said procedures have first been properly approved by the University's administrator in charge of Business and Finance.

[Hyperlink to Business and Finance procedures]

Related Policy Information: 2.07 – Purchasing and Contracts

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History: Adopted: XX/XX/XXXX [Included in UPM as Policy 2.17 – Sales to External Community]

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