KCSD
Kenton County School District | *It's about ALL kids.*

THE KENTON COUNTY BOARD OF EDUCATION
1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017
TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531
WEBSITE: www.kenton.kyschools.us
Dr. Henry Webb, Superintendent of Schools

KCSD ISSUE PAPER

DATE:
December 19, 2019

AGENDA ITEM (ACTION ITEM):
Consider/Approve: Agreement with PSST, LLC to provide ACA Track Reporting and Payroll Data Monitor Software Solutions for calendar year 2020, with annual automatic renewal.

APPLICABLE BOARD POLICY:
01.1   Legal Status of the Board

HISTORY/BACKGROUND:
The Affordable Care Act (ACA) requires employers to annually report health insurance coverage information to all employees and the Internal Revenue Service. Reporting includes specific coverage information by month for employees and their dependents on Form 1095. The ACA Track Reporting software will assist in preparing and filing the annual 1095 Forms with the IRS. The Payroll Data Monitoring software will assist in the bi-weekly payroll verification process. Both software products will be utilized by the Finance Dept. in the daily and monthly payroll and benefits process.

FISCAL/BUDGETARY IMPACT:
$15,385.00 General Fund

RECOMMENDATION:
Approval of the Agreement with PSST for ACA Track Reporting and Payroll Data Monitor Software Solutions

CONTACT PERSON:
Susan Bentle

Susan Bentle
Principal

_____
District Administrator

_____
Superintendent

TERMS AND CONDITIONS

1. <u>Subscription.</u> Client is purchasing a non-exclusive, non-transferable, non-assignable, terminable subscription ("Subscription") for use of the PSST products listed on the first page of this Agreement (collectively "Product") by Client and those employees Client registers with the Product as "Designated Employees."

2. <u>Term.</u> The Subscription shall begin upon the execution of this Agreement and Product installation and Product availability, and continue through the Initial Term, set forth on the first page of this Agreement (i.e., one (1) year). If neither party has given the other at least thirty (30) days written notice of its intent not to renew prior to the end of the Initial Term or any Renewal Term, the Subscription shall automatically renew for the next year (each, a "Renewal Term").

3. <u>Payment.</u>

    i. Setup and Training fees are due within 30 days of the Agreement signing date. All invoices must be paid within forty-five (45) days or Client's Subscription is subject to cancellation.
    ii. Annual Subscription Fee due 30 days after pushing live data or 60 days from contract date, whichever comes first. All invoices must be paid within forty-five (45) days or Client's Subscription is subject to cancellation.
    iii. PSST reserves the right to increase any of the fees after the Initial Term, by providing at least thirty (30) days prior written notice of same to Client.

4. <u>Product Support.</u> PSST shall provide Client with commercially reasonable: (a) support in the initial installation and setup of Product, and (b) ongoing telephone support regarding the use of Product during the Initial Term and any Renewal Term during normal EST business hours Monday through Friday. Initial product installation and support hours would include up to 6 hours of product training and assistance. All telephone assistance rendered by PSST shall only be to Client's Product Administrator; and PSST shall not be required to provide "help desk" support for any questions or assistance not directly related to Product.

5. <u>Product Operation.</u> Client acknowledges and agrees that it must properly enter data and information onto Product in order for Product to operate properly. Client shall be responsible to verify the accuracy of any of Client's data entered on Product.

6. <u>Product Administrator.</u> At all times, Client must have an employee who has obtained Product administrator certification training from PSST and who is certified by PSST as a Product administrator ("Product Administrator"). If the Product Administrator ceases to serve as such, Client shall promptly and at its expense have a new employee obtain PSST Product administrator certification and be designated as a Product Administrator.

7. <u>Subscription Restrictions.</u>

    i. Client shall not assign, transfer, pledge, sub-license or otherwise encumber or dispose of any of Client's rights or obligations under this Agreement.
    ii. The Subscription does not extend to any individual or entity not a party to this Agreement, any employees of Client who are not either the Designated Employees or the Product Administrator, or any business, school or operation acquired by Client by merger, consolidation, purchase, operation of law or otherwise, unless PSST agrees in writing to the extension or assignment of the Subscription. No right is granted for the use or access of Product by any third party. A transfer of control or ownership of Client shall be considered a prohibited transfer of Client's Subscription.
    iii. PSST may assign this Agreement to any third party acquiring all or substantially all of PSST's assets or stock.
    iv. Information regarding Client's employees acquired by PSST shall be confidential. Aggregated data not relating to individual employees of Client acquired by PSST in the course of performing this Agreement will be the sole property of PSST.

8. <u>Compliance.</u> PSST shall maintain compliance with all state and federal laws, rules and regulations, and is continually

enhancing Product to assure compliance. Given the changing nature of federal and state guidelines and regulations, PSST commits to keeping Product fully compliant based upon the current understanding of mandatory regulations. Ultimately it is the Client's responsibility, with their legal representative, to ensure all reports filed with the federal and state agencies are complete, legal and accurate.

9. <u>Data Breach.</u> PSST makes every effort to protect Client's data in a highly secure environment. The Client shall also make every effort to not allow any Security Breach into the secured environment by way of its negligence or malfeasance. If either party becomes aware of any unlawful access to any Client data stored on PSST equipment or in PSST data centers, or unauthorized access to such data resulting in loss, disclosure, or alteration of Client data or any other data belonging to the parties or either of them (each a "Security Incident"), the discovering party will: (a) notify the other by written communication (including but not limited by email) of the Security Incident within twenty four business hours (24) from the time of discovery of the same; (b) PSST will investigate the Security Incident and provide the Client with information about the Security Incident; and (c) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. An unsuccessful Security Incident will not be subject to this Section. An unsuccessful Security Incident is one that results in no unauthorized access to Client data or to any of our equipment or facilities storing Client data. This may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents. The obligation to report or respond to a Security Incident under this Section is not and will not be construed as an acknowledgement by either party of any fault or liability with respect to the Security Incident. The parties recognize that a Security Incident caused by one of the parties can be damaging to other party and that a party damaged by a Security Incident caused by the other party shall have the ability to seek recourse against the precipitating party and recover any and all remedies available at law and equity against the precipitating party following any Security Incident. Notification of a Security Incident, if any, will be delivered to one or more of your administrators by any means we select, including via email. It is your sole responsibility to ensure your administrators maintain accurate contact information at all times.

10. <u>Integration.</u> In the event Client integrates Product with a third-party product or service, whether with or without PSST's Assistance, Client understands and agrees: (a) that PSST is authorized to provide Client data to a specified third-party or permit such third party to have access to Client's data, as required to accomplish the integration services; and (b) PSST is not responsible for, does not warrant, support, or make any representations regarding: (i) third-party products or services, (ii) Client's data in the possession of third parties, including, without limitation, a third party's storage, use or misuse of Client data, or (iii) Client's uninterrupted access to a third party's services due to circumstances outside of the control of PSST.

11. <u>Indemnification.</u>

   i. **THE PARTIES SHALL BE LIABLE AND SHALL INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY FOR ALL DAMAGES, CLAIMS, LOSSES AND EXPENSES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND ARBITRATION AND COURT COSTS, AS WELL AS ANY DAMAGES, CLAIMS, LOSSES OR EXPENSES RELATING TO ANY ERROR, FAILURE, MALFUNCTION, OR DEFECT OF PRODUCT, ANY BREACH OF THIS AGREEMENT AND ANY NEGLIGENCE OR OTHER MALFEASANCE BY A PARTY, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, ATTORNEYS, OFFICERS, AND DIRECTORS.**
   ii. Upon termination of this Agreement for any reason, the provisions of this Section shall survive termination and continue in full force and effect.

12. <u>Termination.</u>

   i. Client may terminate this Agreement at any time, for any reason or no reason, on thirty (30) days prior written notice to PSST. In the event Client terminates this Agreement pursuant to this Section, PSST shall be entitled to retain all monies received from Client pursuant to this Agreement, to be paid for fees due up to the termination; and shall be relieved of further obligations to Client except for the obligations as set forth in Sections 8 and 9 above. PSST shall promptly return to Client any data, confidential information, materials, records and other information furnished to PSST by Client. PSST shall return to Client, on a pro-rata basis, any fees paid in advance by Client that were not earned as of the date of termination.
   ii. PSST may terminate this Agreement for any breach by Client.
   iii. PSST will remove all client's data from our system and deactivate all users within 90 days of termination date.
      a. Upon written request from the client, PSST will provide to client all relative data information we have

received and processed; such as ACA PDF files and XML Data files.

    b.   Ongoing access to online compliance reports such as ACA is available with an ongoing yearly maintenance fee.

13.   <u>Public Disclosure.</u> Client grants to PSST the right to disclose publicly the fact that Client is using Product, for PSST's advertising and promotional purposes, unless Client notifies PSST to the contrary.

14.   <u>Copyright and Trademarks.</u> All intellectual property pertaining to Product, including trademarks and copyrights, is and shall remain the sole property of PSST and its affiliated companies.

15.   <u>Entire Agreement.</u> This Agreement states the entire understanding reached between the parties hereto with respect to the subject matter contained herein and supersedes all prior or contemporaneous agreements, understandings, representations and warranties between the parties, and may not be amended except by written instrument executed by the parties hereto.

16.   <u>Governing Law.</u> This agreement is governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respect by the statutes, laws and decisions of the Commonwealth of Kentucky, without reference to Kentucky's conflict of laws principle. Any controversy or dispute between the parties arising out of this Agreement will be resolved by arbitration under the Kentucky Uniform Arbitration Act (KRS 417) with claims heard by a panel of three (3) arbitrators. The parties hereby waive any defense of lack of personal jurisdiction, lack of subject matter jurisdiction, improper venue, and/or forum non-conveniens to arbitration in Jefferson County, Kentucky which might otherwise apply but for this Section 16. The costs of arbitration will be shared equally by the parties. Each party shall choose one disinterested person to act as an arbiter and the two arbiters shall choose a third disinterested arbiter. The panel of arbitrators will have no authority to change any of the terms of this Agreement. The parties shall timely present their claim to the panel of arbitrators whose majority decision shall be final and binding upon the parties. The prevailing party may be awarded reasonable attorney's fees incurred in the arbitration in addition to any other relief awarded as such may be allowed upon application by the panel of arbiters. Judgment upon any award rendered by the arbitrator may be entered in the Jefferson Circuit Court and then in any other competent Court for the purposes of enforcement.

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_____ Initials

BY SIGNING BELOW, CLIENT CERTIFIES THAT THE ADDITIONAL TERMS AND CONDITIONS HAVE BEEN READ AND AGREE TO THE TERMS ATTACHED HERETO AND INCORPORATED HEREIN AND SHALL BE BOUND BY THE SAME. Customer also agrees that the terms and conditions of this Agreement and the Additional Terms are confidential information of PSST, LLC. (PSST) and are not to be shared with any third party without the prior written consent of PSST.

Client Representative	**PSST Representative**
Name: Susan Bentle	Name: Bill Fowle
Signature:	Signature:
Title: Finance Officer	Title: Area Sales Manager
Date:	Date:

PSST makes every effort to maintain compliance with all state and federal regulations, and is continually enhancing Product to assure compliance. Given the changing nature of federal and state guidelines and regulations, PSST commits to keeping Product fully compliant based upon the current understanding of mandatory regulations. Ultimately it is the Client's responsibility, with their legal representative, to ensure all reports filed with the federal and state agencies are complete, legal and accurate.

The following information is required to ensure a successful implementation.

Local Implementation Contact
Name: _____
Phone: ( ) _____ - _____ ext _____
Email: _____

Technology Contact
Name: _____
Phone: ( ) _____ - _____ ext _____
Email: _____

Billing Contact
Name: _____
Phone: ( ) _____ - _____ ext _____
Email: _____