

## CONTRACTUAL PROVISIONS ATTACHMENT

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 the University of Kansas or any of its affiliates (collectively, "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 sufficient funds are not appropriated to continue the function performed in this contract and for the payment of the charges hereunder, the University may terminate this contract 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 contract 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 contract 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 contract shall reside only in courts located in the State of Kansas.

5. **Anti-Discrimination Clause:** Contractor 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 Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (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 or federal or other state equivalent; (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 such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it determined that the Contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, 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. In accordance with the Governor's Executive Order 18-04, the University has policies prohibiting sexual harassment, discrimination, and retaliation. The University's applicable policies on sexual harassment, discrimination, and retaliation are available at <http://policy.ku.edu/> and provide for confidentiality and anonymous reporting.

**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 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, including, but not limited to the signature of an authorized representative of the University, as defined in University policy.

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. As an agency of the State of Kansas, University is subject to the Kansas Judicial Review Act (K.S.A. 77-601 et seq.), which provides the exclusive means of appeal and judicial review of agency action by University. "Agency Action" is defined as: (a) The whole or a part of a rule and regulation or an order; (b) The failure to issue a rule and regulation or an order; or (c) An agency's performance of, or failure to perform, any other duty, function or activity, discretionary or otherwise.

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 et seq.), 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.

8. **Representative's 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 Contractor for conducting business which is 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. **Export Control:** Contractor agrees to comply with all U.S. laws relating to the transfer, export, or re-export of technology and technical data, as defined in the export controls under the International Traffic in Arms Regulations (ITAR) 22 Code of Federal Regulations Parts 120-130 or the Export Administration Regulations (EAR) 15 Code of Federal Regulations Parts 730-774. The release of information to any employee or other person, who is not a U.S. Citizen or permanent resident, as well as to corporations or to any other entity, organization, or group that is not incorporated or otherwise organized to do business in the United States may require advanced written authorization from the appropriate U.S. agency. Contractor shall notify the University in writing prior to disclosure of any technical data or other items subject to EAR or ITAR and identify the export-controlled items at issue and the applicable categories and subcategories of the United States Munitions List and/or Export Control Classification Number(s). The University reserves the right to decline to accept any items or information controlled under ITAR or EAR.

16. **Facility Access:** To the extent Contractor is required to be on the University's premises in the performance of any contract, Contractor and its representatives will adhere to the University's reasonable safety and security policies and procedures and will use commercially reasonable efforts not to interfere with the University's regular operations. Contractor further agrees to, upon request, include the University as an additional insured on its general liability insurance policy on a primary and non-contributory basis and provide the University with a certificate of insurance.

17. **Certification:** Contractor hereby certifies that to the best of its knowledge neither it nor any of their principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.27, or otherwise declared ineligible for the award of contracts by any Federal agency. Contractor shall provide immediate written notice to the University if at any time it learns that this certification was erroneous when submitted or has become erroneous because of changed circumstances.

18. **Publicity:** No contractual provision shall give express or implied permission for Contractor to use the University's name(s), symbols, logos, trademarks, service marks, designs, trade dress, or slogans (collectively, the "Marks") in any manner.

19. **Set-Off Program:** If, during the course of this contract, Contractor is found to owe a debt to the State of Kansas, University payments to Contractor may be intercepted/set-off by the State of Kansas as set forth by law. (K.S.A. 75-6201 et seq.). Kansas law allows the Director of Accounts and Reports to set off University payments to Contractor against debts owed by Contractor to the State of Kansas. Payments set off in this manner constitute lawful payment for services or goods received. Notice of the setoff action will be provided to Contractor. Pursuant to K.S.A. 75-6201 et seq., Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, Contractor shall credit the University's account showing payment has been made in an amount equal to the funds intercepted. Contractor benefits fully from the payment because its obligation to the State of Kansas is reduced by the amount subject to setoff.

20. **Contractor Certification with Certain Federal Education Licensure Requirements:** Contractor certifies that its owners, officers, employees, and agents have not: (a) Been convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; (b) Been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; (c) Had their participation in the Title IV programs terminated, certification revoked, or application for certification or recertification for participation in the title IV programs denied; (d) Been an owner, director, officer, or employee who exercised substantial control over an institution, or a direct or indirect parent entity of an institution, that owes a liability for a violation of a title IV, HEA program requirement and is not making payments in accordance with an agreement to repay that liability; or (e) Been a 10 percent-or-higher equity owner, director, officer, principal, executive, or contractor affiliated with another institution in any year in which the other institution incurred a loss of Federal funds in excess of 5 percent of the participating institution's annual title IV, HEA program funds. Contractor shall notify University immediately if Contractor experiences or otherwise becomes aware of an occurrence(s) listed in (a)-(e) of this section. This contract terminates upon such notice from Contractor to University.

21. **Contractor Certification of Compliance with Federal Prohibition of Certain Equipment, Services, or Systems:** Pursuant to the John S. McCain National Defense Authorization Act of 2019 and the requirements of the Kansas Department of Administration's Office of Procurement and Contracts (Information Circular 24-02), Contractor hereby certifies that it shall not provide or procure to the University any covered telecommunications equipment, either in whole or in part, of any product or during the commission of any service. "Covered telecommunications equipment or services" is hereby defined as: (a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (b) Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) Telecommunications or video surveillance services provided by such entities or using such equipment; (d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

"Covered foreign country" is hereby defined as any of the following: (1) The People's Republic of China, (2) The Russian Federation, or (3) any country that is a state sponsor of terrorism.

Furthermore, and notwithstanding any other contracts or agreements with Contractor, if Contractor has violated, misrepresented, or otherwise fails to comply with this provision as determined by the University or the State of Kansas, the University may terminate any contract with Contractor immediately without penalty.