

CONTRACTUAL PROVISIONS ATTACHMENT

Important: Paragraphs 1-14 of this form contain statutorily mandated 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 ESU-146a, Rev. 12-23), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that partial or full performance of an agreement with these provisions attached constitutes acceptance of these terms as part of the agreement.

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, or in the judgment of the Chief Financial Officer of the University, 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 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; (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.

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.

INFORMATION TECHNOLOGY RELATED PROVISIONS

15. **Digital Accessibility Provision:** Emporia State University affords equal opportunity to individuals in its employment, services, programs, and activities in accordance with federal and state laws. This includes effective communication and access to electronic and information communication technology resources for individuals with disabilities. Contractor shall: (1) deliver all applicable services and products in reasonable compliance with applicable university standards (for example, Web Content Accessibility Guidelines 2.X, Level AA or Section 508 Standards for Electronic and Information Technology as applicable); (2) upon request, provide the university with its accessibility testing results and written documentation verifying accessibility; (3) promptly respond to and resolve accessibility complaints; and (4) indemnify and hold the university harmless in the event of claims arising from inaccessibility.

16. **Information Security Provision:** Contractor agrees to comply with all applicable requirements of the Family Educational Rights and Privacy Act ("FERPA"), Gramm-Leach-Bliley Act ("GLBA") and the Health Insurance Portability and Accountability Act ("HIPAA"), together hereinafter the "Acts", and guarantees that all information covered by the Acts and provided to Contractor by the University ("University Information") will be used only in conjunction with the product or service being provided, that it will not be used for any other purpose, or be released by Contractor or copied in any manner for any other use and will be promptly returned or destroyed upon termination of agreement. Contractor shall use commercially reasonable efforts to notify all of its foreseeable agents, employees, subcontractors and assigns who will come into contact with University Information that they shall comply with, and are subject to the confidentiality requirements set forth in the Acts and shall provide each with a written explanation of the Acts' requirements for confidentiality before they are permitted to access the University Information.

Contractor shall meet NIST SP 800.x. Contractor shall provide and maintain a secure environment that ensures confidentiality of all University Information, wherever located. No University Information shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by an Agreement and as approved by the University. Contractor agrees to notify the University, within seventy-two (72) hours, of any security breach that could result in the unauthorized disclosure of University Information. University Information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in an Agreement and approved by the University. Disclosure of University Information may be cause for legal action against Contractor or its agents. Defense of any such action shall be the sole responsibility of Contractor.

Contractor agrees, upon termination, cancellation, expiration, or other conclusion of this Agreement, within 30 days to return to the Institution or if return is not feasible, destroy and not retain any copies (and furnish the Institution with an appropriate Certificate of Destruction) of any and all Confidential Information that is in its possession.

17. **Ownership of Data:** All data and/or content collected, created, or prepared by the University and provided to Contractor in the performance of its obligations under the Agreement shall be the exclusive property of the University. Contractor shall not use, willingly allow or cause to have such data used for any purpose other than the performance of University's obligations under the Agreement without the prior written consent of the University. This provision shall survive the termination of any agreement.

18. **Data Security and Control:** Contractor attests that it has implemented administrative, physical, and technical safeguards for its data security that at a minimum meet industry best practice. Contractor shall ensure that all such safeguards, including the manner in which data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Contractor further attests that all University data shall be stored in the United States.

Contractor shall timely notify University of any data breach whether or not it is University data, including a data breach involving any of Contractor third-party service providers that process, store or transmit data.

Contractor will provide assessment, audit, examination, or review of all controls in Contractor's physical and/or technical environment in relation to all data being handled and/or services being provided to University pursuant to this Agreement. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or transmits data pursuant to this Agreement.

If at any time, University wants to change or remove data and/or content, University shall notify Contractor. Contractor will use its best efforts to immediately respond to the request and at a minimum change or remove data and/or content.

19. **General Data Privacy Regulation (GDPR):** Emporia State University is subject to the European Union's General Data Privacy Regulation [Regulation (EU) 2016/679] (the "GDPR") when the University is a "controller" or "processor" of "personal data" from an individual "data subject" located in the European Union, as those terms are defined in the GDPR. Contractor acknowledges and agrees that it is acting as a "processor" of "personal data" for the University under this Agreement and that all applicable requirements of the GDPR are incorporated by reference as material terms of this Agreement. Contractor represents and warrants that (1) it is aware of and understands its compliance obligations as a "processor" under GDPR; (2) it has adopted a GDPR compliance policy/program, a copy of which has been provided to the University; (3) it will process "personal data" only in accordance with the University's instructions; and (4) with regard to its obligations under this Agreement, it shall comply with all applicable requirements of the GDPR to the same extent as required for the University. Additionally, the Contractor shall indemnify and hold the University, its trustees, officers, and employees harmless from and against any claims, demands, suits, damages, penalties, fines, or costs arising from any violation of GDPR by the Contractor.