

SECTION 4 - JCCC ADDITIONAL TERMS & CONDITIONS

1. AGREEMENT TO PERFORM WORK

Contractor hereby agrees to provide or furnish goods and/or services to the College as specified in the Scope of Work and in accordance with these terms and provisions of this Agreement. All of the Contractor's work shall be performed with the highest degree of skill in accordance with applicable laws and generally accepted practices and standards of similar professionals in the industry and completed in accordance with the Agreement. All times provided for in this Agreement, or in any other document executed hereunder, for the performance of any act will be strictly construed, with time being of the essence. Contractor's failure to deliver goods and/or services within the time specified in the Scope of Work will be cause for College to cancel this Agreement, in its sole discretion, and obtain the goods and/or services from another vendor and seek any and all remedies available from Contractor.

2. INCORPORATION

These Additional Terms & Conditions are supplemented by additional documents, all of which are incorporated herein by this reference. These documents are as follows and, to the extent that JCCC's documentation related to this RFP/RFB and Contractor's Response contain terms, conditions or provisions that may be in conflict or be inconsistent with each other, their order of authority shall be as follows: (1) the Contractual Provisions Attachment; (2) the Award Contract; (3) a purchase order, if any; (4) JCCC Additional Terms & Conditions; (5) JCCC RFP/RFB Instructions/Procurement Process; (6) JCCC's solicitation Addenda (if any); (7) JCCC Scope of Work; and (8) Contractor's Response.

3. NOTICES

Any notice under this Agreement shall be in writing and be delivered in person or by public or private mail, or by courier service, or by certified mail with return receipt requested, or by electronic mail. All notices shall be addressed to JCCC at the following address or other addresses as the parties may from time to time direct in writing. Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day electronic mail delivery is verified.

Johnson County Community College
Procurement Services, Box 56
12345 College Blvd.
Overland Park, KS 66210
procurement@jccc.edu

4. INVOICES

All invoices must contain the JCCC Contract number or purchase order (PO) number, an itemization of materials and services, and a notation of the correct contract pricing.

A. Invoices for payment must be submitted by the Contractor to:

Johnson County Community College
Accounts Payable, Box 45
12345 College Blvd.
Overland Park, KS 66210
accountspayable@jccc.edu

Requests for additional compensation will be rejected by the College unless otherwise provided in this Agreement.

Payments shall be due and payable within (30) days after acceptance of such goods or services or after receipt of properly completed invoice, whichever is later. No advance payment shall be made for goods or services furnished pursuant to this Agreement.

Upon request, Contractor must provide a record of all items ordered and/or services rendered under the Agreement and/or a "usage" report of services rendered, items ordered, quantities, and pricing, which includes invoice numbers.

5. TERMINATION

The College may terminate this Agreement, in whole or in part, at any time during an effective term (as provided in the Scope of Work), with or without cause, by written notice to the Contractor. The Contractor shall be paid all amounts due and owing for work performed as of the date of termination. The Contractor shall submit a final claim for payment for actual work performed within ten (10) Business Days of the date of termination. If the Contractor has any property in its possession belonging to the College, the Contractor will account for the same and dispose of it in the manner the College directs. In the event termination of this Agreement stems from a breach by Contractor of any of the provisions of this Agreement, the College reserves the right to terminate this Agreement as set forth above and Contractor shall be liable for damages suffered by the College resulting from Contractor's breach of Agreement.

6. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

- A. Any commitment by the Contractor within the scope of this Agreement shall be binding upon the Contractor. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for actual damages incurred by the College by reason of such failure of the Contractor. The rights and remedies of the College provided in this provision shall not be exclusive and are in addition to other rights and remedies provided by law or under the terms of this Agreement. For purposes of this Agreement, a commitment by the Contractor includes:
1. Prices and options committed to remain in force over a specified period of time;
 2. Any warranty or representation made by the Contractor in a Response as to performance or any other physical, design, or functional characteristics;
 3. Any warranty or representation made by Contractor concerning the characteristics or items in (2) above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a Response;
 4. Any modification of, affirmation, or representation as to the above that is made by Contractor in writing or during the course of negotiation, whether or not incorporated into a formal amendment to the Response, supporting documents or negotiations subsequent thereto as to training to be provided, services to be performed, prices, and options committed to remain in force over a fixed period of time, or any other similar matter, regardless of the fact the duration of such commitment may exceed the duration of this Agreement.
- B. In addition to any other representations and warranties contained herein, Contractor represents and warrants the following:
1. That it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to provide the equipment and goods, complete the services, and perform its obligations required hereunder;
 2. That it is authorized to do business in Kansas, properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and the equipment, goods, and/or services required hereunder, and has or will obtain all licenses and permits required by law prior to the beginning date of the initial term of the Agreement; and
 3. That all documents, agreements and other information provided to the College by Contractor or that Contractor has caused to be provided to the College are true and correct in all respects and do not omit to state any material fact or condition required to be stated, necessary to make the statement or information not misleading, and there are no other agreements or conditions with respect thereto.

7. CONTRACTOR'S INSURANCE

Contractor will secure, purchase and maintain, at its own expense, the insurance policies, with the minimum insurance coverages noted, to remain in full force and effect during all periods of use or service covered by the Agreement:

- A. **Statutory Workers' Compensation Insurance** in accordance with the laws of the State of Kansas, including Employer's Liability Insurance in the amount of at least one million dollars (\$1,000,000) per accident or disease.
- B. **Commercial General Liability Insurance** (including broad form contractual liability) in the amount of at least one million dollars (\$1,000,000) each occurrence bodily injury and property damage combined, one million dollars

(\$1,000,000) per occurrence personal and advertising liability, two million dollars (\$2,000,000) products/completed operations aggregate, and two million dollars (\$2,000,000) general aggregate. **The Commercial General Liability Insurance policy shall be written on an occurrence basis and shall be endorsed to include "Johnson County Community College, its agents, its employees, and its assigns" as additional insureds.** Further, coverage for these additional insureds shall apply on a primary and non-contributory basis irrespective of any other insurance, collectable or not.

- C. **Comprehensive Automobile Liability Insurance**, including owned, non-owned, and hired vehicles, in the amount of at least one million dollars (\$1,000,000) each occurrence bodily injury and property damage combined.
- D. **Umbrella Liability Insurance** with limits of liability of not less than three million dollars (\$3,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate. **The Umbrella Liability insurance policy shall also list JCCC as additional insured.**
- E. **Property Insurance** with limits adequate to replace any equipment located on the premises of the College and a waiver of subrogation shall be issued on the College's behalf.
- F. **Professional Liability Insurance** in the amount of \$3,000,000 per occurrence. If Contractor will provide or furnish professional services under this Agreement, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of related services and caused by a negligent error, omission or act for which the insured party is legally liable **and shall be maintained throughout the contract.** If such professional services are performed by a subcontractor, and not the contractor itself, then the requirements in this paragraph may be satisfied through the purchasing and maintenance of such insurance by such subcontractor.
- G. **General Requirements:** All insurance required hereunder shall be maintained in full force and effect in a company or companies reasonably satisfactory to the College and shall be maintained at Contractor's expense. All insurance required hereunder shall contain a clause requiring written notice to the College thirty (30) days in advance of the cancellation, non-renewal, or material modification of said insurance as evidenced by an official email notifying JCCC Procurement Services, procurement@jccc.edu. Certificates of insurance shall be supplied contemporaneously with the execution and delivery of a final contract. Said certificates shall evidence compliance with all provisions of this section.

The Contractor will further require any subcontractors or others acting under its direction or control to maintain the same insurance coverage as set forth above and provide certificates of insurance evidencing the required coverage to the Contractor. It will be the Contractor's responsibility to maintain any subcontractor's Certificate of Insurance for the duration of the contract. "Johnson County Community College, its agents, its employees, and its assigns" shall be named as additional insureds on any Commercial General Liability Insurance policy and be evidenced on such certificate.

8. INDEMNIFICATION

To the fullest extent permitted by law, Contractor, including its respective officers, directors, partners, employees, insurers, agents, subcontractors, invitees or others acting under its direction or control (collectively, "Contractor Party"), agrees to defend, indemnify and hold harmless College, College's officers, directors, partners, employees, agents and representatives from and against any and all actual or alleged claims, costs, losses, damages and costs of defense (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all courts or arbitration or other dispute resolution costs) of any nature whatsoever, resulting from, arising out of or in consequence of, any action or cause of action in connection with the execution, performance and furnishing of Contractor Party's commitments, obligations and services under this Agreement including, but not limited to: monies owed by Contractor Party to third parties (including without limitation subcontractors) and/or damage to property or any injuries or death sustained by any person or persons, including any third parties, employees, agents, invitees and the like, caused by the negligent acts or omissions or intentional acts of Contractor Party. Contractor Party further waives any rights of subrogation against College, College's officers, directors, partners, employees, insurers, agents or representatives.

9. CONFIDENTIALITY

The parties hereto agree that the terms and provisions of this Agreement shall be held in confidence except as required by or for applicable disclosure laws, financing sources, enforcement of the Agreement, mergers and acquisitions, or as otherwise mutually agreed by the parties, and such agreement shall not be withheld unreasonably. Contractor recognizes that JCCC is a public governmental body subject to the provisions of the Kansas Open Records Act (K.S.A. 45-215 through 45-223). As such, JCCC is required to allow citizens to inspect and copy documents deemed to be "public records" under the law. Contractor agrees to use the procedure set out in Section 2 - General Instructions / JCCC Procurement Process to properly identify proprietary information. Except as provided in this Agreement, the College shall satisfy a request to inspect and copy public documents to the extent allowed by law.

10. TRADEMARKS

Contractor shall not use the name, trade name, trademark, or any other designation of the College, or any contraction, abbreviation, adaptation, or simulation of any of the foregoing, in any advertisement or for any commercial or promotional purpose (other than in performing under this Agreement) without the College's prior written consent in each case.

11. TAXES

The College is exempt from the tax levied by the Kansas Retailers' Sales Tax Act and the Compensating Tax Act for the reason that KSA 79-3606(c) provides that all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes.

12. TERMS FOR THE PURCHASE OF GOODS

- A. THIS ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND PROVISIONS STATED HEREIN. ALL ADDITIONAL OR DIFFERENT TERMS PROPOSED BY CONTRACTOR ARE OBJECTED TO AND ARE HEREBY REJECTED, UNLESS OTHERWISE PROVIDED FOR IN WRITING BY THE DIRECTOR OF PROCUREMENT SERVICES, JOHNSON COUNTY COMMUNITY COLLEGE.
- B. CHANGES: No alteration in any of the terms, conditions, delivery, price, quality, quantity or specifications of this order will be effective without the written consent of Procurement Services. All changes in scope to the Agreement must be in writing and submitted on a Procurement Services Change Order Form.
- C. DELIVERY: For any exceptions to the delivery date as specified on the order, Contractor shall give prior notification and obtain approval thereto from Procurement Services.
- D. ORDER NUMBERS: Award Contract numbers or purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- E. PACKING: No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified.
- F. PAYMENT, CASH DISCOUNT: Invoices will not be processed for payment nor will the period of computation for cash discount commence until receipt of a properly completed invoice or invoiced items are received and accepted, whichever is later. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Payment shall not be considered late if a check or warrant is available or mailed within the time specified.
- G. PRICE WARRANTY FOR COMMERCIAL ITEMS: Contractor warrants that prices charged to the College are based on Contractor's current catalog or market prices of commercial items sold in substantial quantities to the

general public and prices charged do not exceed those charged by Contractor to other customers purchasing the same item in like or comparable quantities.

- H. **PRODUCT WARRANTIES:** Contractor warrants that all products delivered under this Agreement shall be new, unless otherwise specified, free from defects in material and workmanship, shall be fit for the intended purpose, and shall not infringe upon the rights of any third party. All products found defective shall be replaced by the Contractor upon notification by the College. All costs of replacement, including shipping charges, are to be borne by the Contractor. Contractor further warrants that all products and services shall be delivered and performed in a professional manner in accordance with applicable laws and generally accepted practices and standards of similar professionals in the industry.
- I. **QUALITY STANDARDS:** Brand names, models, and specifications referenced herein are meant to establish a minimum standard of quality, performance, or use required by the College. No substitutions will be permitted without written authorization of the Johnson County Community College Procurement Services Office.
- J. **REJECTION:** All goods, materials, or services purchased herein are subject to approval by the College. Any rejection of goods, materials, or services resulting from nonconformity to the terms, conditions or specifications of this Agreement, whether the goods are held by the College or returned, will be at Contractor's risk and expense.
- K. **SHIPPING INSTRUCTIONS:** Unless otherwise instructed, all goods are to be shipped prepaid and allowed, FOB Destination.

13. SAFETY AND SECURITY

A. ACCESS CARDS AND KEYS

To the extent applicable, access cards or keys ("Keys") to College buildings and certain areas may be issued to Contractor at the discretion of the College. Contractor shall be responsible for safe-keeping of all issued Keys.

Any lost Keys must be reported immediately to the College's Police Department. Contractor will be charged for the replacement of any lost Keys. If the security of an area where the Key is lost necessitates replacement of lock cylinders, locks or any other hardware, Contractor must pay the cost of such replacement and re-keying.

Contractor agrees to return issued Keys upon the expiration or termination of this Agreement and if Contractor fails to return Keys, the cost of any replacement Keys, including hardware replacement, will be deducted from the final payment due to Contractor under this Agreement and any remaining amounts owed will be paid by Contractor within 30 days of notice by College.

B. SUPERVISION

Contractor will ensure that all personnel it provides to the College will be thoroughly instructed by their supervisors as to the required duties and methods of performance. Contractor agrees that its personnel will receive close and continuing first-line supervision, will maintain a courteous and respectful attitude toward College students, employees and third parties and will not solicit nor request gratuities while on College premises.

C. BACKGROUND CHECKS

To the extent that Contractor or its personnel provide direct, on-premises services under this Agreement, Contractor shall conduct appropriate reference and federal, state and county of residence criminal background checks in advance on all personnel who are expected to come onto the College premises in connection with this Agreement, including all individuals that Contractor employs, contracts or sub-contracts with to perform services under this Agreement.

Additionally, as applicable, Contractor also shall conduct appropriate reference and federal, state and county of residence criminal background checks in advance on all personnel who are expected to access Restricted Data and Sensitive Data, as defined by the College Data Classification and Security Policy Operating Procedure 530.01

("Restricted Data" and "Sensitive Data" respectively), including all individuals that Contractor employs, contracts or sub-contracts with to perform services under this Agreement.

As a result of Contractor's background and reference checks, Contractor shall exclude from direct, on-premises participation in the performance of services under this Agreement, any personnel convicted of a criminal or civic offense that indicates a lack of business integrity or business honesty that currently, seriously, and directly affects the performance of services under this Agreement or otherwise poses a safety or security risk. This includes, but is not limited to, any personnel convicted (a) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (b) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property; (c) under state or federal antitrust statutes; or (d) of any other offense to be serious and compelling as to affect performance of services under this Agreement.

D. COMPLIANCE WITH THE LAW

Contractor agrees to abide by all applicable federal or state laws, rules, ordinances and regulations related to performance of services under this Agreement, including, but not limited to, the Fair Credit Reporting Act ("FCRA"), the Fair and Accurate Credit Transaction Act ("FACTA"), the Family Educational Rights and Privacy Act of 1974 ("FERPA"), the EU General Data Protection Regulation ("GDPR"), and any equal opportunity laws rules, ordinances and regulations related to its duties under this paragraph. Failure to comply with this paragraph shall constitute an event of default under this Agreement, and any resulting fines or damages will be the sole responsibility of Contractor.

E. LICENSES AND TRAINING

Contractor will ensure that all personnel who perform services under this Agreement are appropriately licensed or certified and in good-standing, as applicable, and that such personnel are duly qualified to perform the services under this Agreement. As necessary, Contractor must train its personnel to meet all legal and industry requirements, qualifications and standards.

At the discretion of the College and to the extent applicable, Contractor's personnel may be required to attend College training covering campus safety, security, environmental health or safety. If this training is required by the College, Contractor will ensure that its applicable personnel attend any such training. Regardless of any training offered by the College, Contractor is solely responsible for enforcement of, and compliance with, all JCCC policies and procedures as to its personnel.

F. PROHIBITED ITEMS

In performing the services under this Agreement, Contractor acknowledges and agrees that it and its personnel will comply with the College's Weapons Policy 660.00, and that neither it nor its personnel will perform any services under this Agreement while under the influence of alcohol or drugs and will otherwise act in compliance with the College's Substance Abuse and Alcohol Policy 424.03.

G. BLOOD-BORNE PATHOGENS AND HAZARDOUS MATERIALS

To the extent applicable, Contractor agrees that its personnel have received industry-appropriate blood-borne pathogen training, and that its personnel will observe best practices from such training to clean and handle any blood-borne pathogens.

To the extent Contractor uses products requiring Safety Data Sheets ("SDS"), Contractor agrees that it will provide such SDS to the College for all SDS products prior to using any SDS products on the College premises. Contractor also agrees that it will properly dispose of any hazardous materials that are used or generated by the Contractor in the provision of services under this Agreement. Such disposals shall be as specified by the SDS and in accordance with all local, state and federal laws, codes, rules, regulations and guidelines, as well as JCCC policy.

H. PRODUCTS, SUPPLIES AND EQUIPMENT

College must approve all products, supplies, chemicals, or equipment utilized by Contractor in the performance of services under the Agreement in advance. Contractor must provide and use its own vehicles to carry its

responsibilities under the Agreement, and Contractor agrees to follow the College's guidelines and instructions regarding where vehicles may be driven on campus (e.g., vehicles are not allowed on pavers).

I. MOVEMENT OF COLLEGE FURNITURE OR EQUIPMENT

When Contractor is performing services in areas where College furniture or equipment is located, Contractor will coordinate the relocation of any furniture or equipment in accordance with JCCC Campus Services' instructions and ensure furniture, walls, windows, baseboards, doors, carpets, stairs, etc., are covered by the Contractor to protect surfaces from chemicals, scratches and other damages. Repair of any damages shall be at Contractor's expense.

J. COMMUNICATION

To the extent applicable, Contractor shall provide adequate communication equipment (i.e. pagers, phones, computers, radios, etc.) and services to its personnel to communicate with College dispatch personnel for immediate service requirements. Communication equipment must operate in locations with limited cellular and web access and maintain a constant link of communication between Contractor personnel on duty and key College personnel.

For Contractors providing direct, on-campus services, all of Contractor's personnel who provide services under this Agreement must have proficient communication skills to adequately communicate with Contractor's and/or College's supervisory team and to the extent applicable, be capable of reading and understanding safety and chemical signs/labels.

K. CRIME REPORTING

For Contractor's providing direct, on-campus security-related services, Contractor understands that certain services provided by Contractor under this Agreement may qualify Contractor as a Campus Security Authority ("CSA") under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act") (20 U.S.C. § 1092(f)). If Contractor is a CSA, Contractor understands and agrees that it must report crimes to College Police in accordance with this Act.

14. MISCELLANEOUS PROVISIONS

- A. ADDITIONAL ACTS (FURTHER ASSURANCES). Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties, the parties hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, deeds and assurances as any party hereto may reasonably require to consummate the transaction contemplated hereunder.
- B. APPROPRIATION OF FUNDS AND BOARD OF TRUSTEES APPROVAL. The College's obligations and liabilities hereunder are subject to the appropriation of funds. If funds are not appropriated for the purpose of this Agreement, the Agreement shall terminate and neither party shall have any further obligations hereunder. The Agreement may be subject to approval by the College's Board of Trustees, and if such approval is required but not granted the Agreement shall be void and neither party shall have any further obligations or liabilities hereunder.
- C. ASSIGNMENTS. Neither Agreement or any interest herein shall be transferred by Contractor to any other party without the approval in writing of the Director of Procurement Services. Transfer of the Agreement or any interest herein without approval may cause termination of the Agreement at the option of the College. Notwithstanding any assignment, Contractor shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and provisions of this Agreement.
- D. BINDING EFFECT. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.
- E. COLLEGE POLICIES. Contractor shall follow and comply with all policies and procedures of the College and the reasonable instructions of College personnel.

- F. CONFLICT OF INTEREST. It is the duty of the Contractor to disclose all circumstances that constitute an actual or potential conflict of interest as those terms are defined in the College's [Conflict of Interests Policy 431.00](#). This duty is ongoing, and such circumstances must be disclosed to the College immediately upon Contractor's knowledge.
- G. CONTINUATION DURING DISPUTES. The Contractor agrees, notwithstanding the existence of any dispute between the parties, insofar as possible under the terms of the Agreement to be entered into, each party will continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by any court.
- H. BUSINESS CONTINUITY AND FORCE MAJEURE. Contractor shall maintain a commercially reasonable business continuity plan to ensure the continuity of Contractor's business, which shall be invoked upon the occurrence of any significant event that may adversely affect Contractor's ability to perform its obligations under this Agreement. Contractor warrants that its business continuity plan enables the Contractor to recover its mission critical functions, including certain services outlined in any service level agreement, and complies in all material respects with applicable industry regulations and standards. Contractor agrees that if it must allocate limited resources among its customers, Contractor will not prioritize other customers over the College. Contractor shall test its business continuity plan at least annually and upon request, will provide a copy of the business continuity plan and the most recent test results to the College.

Neither the College nor Contractor will be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay is wholly or principally caused by any Force Majeure Event. Each party will make all reasonable efforts to remove or eliminate such a cause of delay or default related to its own operations. As soon as reasonably practical after the occurrence of the Force Majeure Event, Contractor agrees to institute its business continuity plans and to diligently pursue performance of its obligations under this Agreement. This provision does not excuse Contractor's performance or obligations to mitigate the effects of any significant event, including a Force Majeure Event, which adversely affects the Contractor's ability to perform its obligations under this Agreement.

- I. GOVERNING LAW: This Agreement shall be construed in accordance with and governed by the laws of the State of Kansas. Any legal proceeding related to this Agreement shall be instituted in the courts of the State of Kansas with venue in Johnson County, and Contractor agrees to submit to the jurisdiction/venue of such court.
- J. LIENS, CLAIMS AND ENCUMBRANCES. Contractor warrants and represents that all the goods and materials delivered herein are free and clear of all liens, claims or encumbrances of any kind.
- K. LAWS, REGULATIONS AND PERMITS. The Contractor shall give all notices required by law and comply with all applicable federal, state, and local laws, ordinances, rules, and regulations relating to the conduct of the work and as required in the related industry, including without limitation laws specific to institutions of higher education, such as (and again without limitation): Section 504 of the Rehabilitation Act of 1973, FERPA, Clery Act, as well as FCRA, FACTA and the GDPR. The Contractor shall be liable for all violations of the law in connection with work furnished by the Contractor, including the Contractor's subcontractors, if any.
- L. MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT. The Provisions found in Contractual Provisions Attachment State of Kansas Department of Administration Form DA-146a, (Rev. 07-19), which is attached hereto, are hereby incorporated in the Agreement and made a part thereof. Contractor's request to modify or delete any term of such attachment is rejected and not part of the Agreement. For the purposes of the Contractual Provisions Attachment, the College shall be included in the terms "State of Kansas and its agencies" and "State."
- M. NO JOINT VENTURE. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment or agency relationship between the parties.

- N. NO WAIVER. Failure of the College to insist on the strict performance of the terms and provisions of this Agreement shall not constitute or be construed as a waiver of relinquishment of the College's right thereafter to enforce strict compliance with any such terms or provision, but the same shall continue in full force and effect.
- O. NONDISCRIMINATION: Contractor represents and agrees that it will not discriminate in the performance of this Agreement or in any matter directly or indirectly related to this Agreement on the basis of sex, race, color, national origin, disability, age, religion, marital status, veteran's status, sexual orientation, gender identity or genetic information.

To the extent applicable, the contractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), 60-741.5(a), and 60-1.4(b). 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, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

- P. PROOF OF COMPLIANCE: In order that the College may determine whether the Contractor has complied with the requirements of the Agreement documents, the Contractor shall, at any time when requested by the College, submit to the College properly authenticated documents or other satisfactory proofs as to compliance with such requirements.
- Q. RECORD OF PURCHASES: At the request of the College, Contractor must provide a record of all items ordered and/or services rendered under the Agreement. The Contractor must provide Procurement Services with a "usage" report of services rendered, items ordered, quantities, and pricing, on a quarterly basis. This usage report must include invoice numbers and be sent to: Johnson County Community College, Procurement Services, 12345 College Blvd., Overland Park, KS 66210.
- R. RISK OF LOSS. Until all improvements, equipment, or goods to be provided under this Agreement are installed on property owned or controlled by the College and working properly, or unless the College provides otherwise, the Contractor shall bear all risks of all loss or damage to the improvements, equipment, or goods, excluding loss or damage caused by acts, omissions, or negligence of the College. Once all improvements, equipment, or goods to be provided under this Agreement are installed on property owned or controlled by College and working properly, the risk of all loss or damage shall be borne by College, excluding loss or damage caused by acts, omissions, or negligence of the Contractor.
- S. SEVERABILITY; ENTIRE AGREEMENT. If any term or provision of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms or provisions that can be given effect without the invalid term or provision; to this end the terms and provisions of this Agreement are declared severable. This Agreement constitutes the entire Agreement between the parties with respect to the matter addressed herein. No change thereto shall be valid unless communicated in writing in the agreed manner and signed by the College and the Contractor.
- T. SURVIVAL OF TERMS. The terms and provisions hereof, and all documents being executed hereunder, if any, including, without limitation, the representations and warranties, shall survive this Agreement and shall remain in full force and effect thereafter.

Attachment A
CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory 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 DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof. The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the ___ day of _____, 20__.

1. **Terms Herein 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. **Kansas Law and Venue:** 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 in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (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 ninety (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 State under the contract. State will pay to the 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 by State, title to any such equipment shall revert to contractor at the end of the State'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. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.).
5. **Anti-Discrimination Clause:** The 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; (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 contracting state agency or the Kansas Department of Administration; (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 is 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 contracting state agency or the Kansas Department of Administration.
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 State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do 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 available to the State of Kansas or its agencies 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 State of Kansas and its agencies 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 State of Kansas and its agencies 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 them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** 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 with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing 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.