

## Contract Award

**Date of Award:** March 20, 2018

**CONTRACT No.** 18010742  
RFP No. 9311901

Replaces Contract: 33281368

Buyer: Carla Swoyer  
Telephone: 785-864-5972  
E-Mail Address: cswoyer@ku.edu  
Web Address: <http://www.procurement.ku.edu/>

**Item:** **Kansas Board Of Regents (KBOR) Professional Insurance Broker Services**

Agency: The Universities and/or the Kansas Board Of Regents

**Period of Contract:** **July 1, 2018 to June 30, 2021**  
With two (2) Annual renewal options available

**Contractor:** **Arthur J. Gallagher & Co.**  
**2850 Golf Road**  
**Rolling Meadows, IL 60008-4050**

**Contacts:** Cheryl Kelley, Area VP Client Service Exec (972) 663-6130 [cheryl\\_kelley@ajg.com](mailto:cheryl_kelley@ajg.com)  
Paul Pousson, Area Sr. VP (512) 652-2443 | (512) 844-8087 | [paul\\_pousson@ajg.com](mailto:paul_pousson@ajg.com)  
Scott Wightman, Area Executive VP (314) 800-2211 | (314) 605-8280 [scott\\_wightman@ajg.com](mailto:scott_wightman@ajg.com)  
John McLaughlin, Managing Director (630) 285-4380 [john\\_mclaughlin@ajg.com](mailto:john_mclaughlin@ajg.com)  
Kevin Downs, Exec VP Healthcare Life Sciences (630) 694-5376 [kevin\\_downs@ajg.com](mailto:kevin_downs@ajg.com)  
Walker Taylor, Area President-Life Sciences (910) 239-1090 [walker\\_taylor@ajg.com](mailto:walker_taylor@ajg.com)  
Joan Rupar, Area Sr. VP Multinational Client Practice (225) 906-0115 [joan\\_rupar@ajg.com](mailto:joan_rupar@ajg.com)

**Prices:** See Attached

**Scope:** Contractor shall provide Professional Insurance Broker Services for all Kansas Board of Regents Institutions.

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The above referenced contract award was recently posted to the University of Kansas website. The document can be downloaded by going to: <http://www.procurement.ku.edu>

University of Kansas  
Procurement Services  
Department of Purchasing  
KU-45 (Rev. 5-15)

Contract No.: 18010742  
DATE March 20, 2018

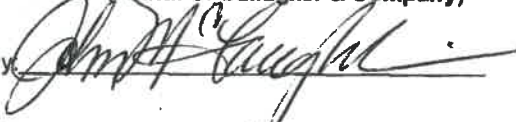
CONTRACT

This contract is entered into this 20<sup>th</sup> day of March 2018 by and between the Universities and/or Kansas Board of Regents (KBOR) Institutions and Arthur J. Gallagher & Company. (Contractor)

The parties agree as follows:

1. Subject to the terms and conditions of this contract, Universities and/or KBOR hereby accepts the offer of Contractor as expressed by Contractor's response submitted to the KU Purchasing Services in response to Solicitation Number 93119017 – Professional Insurance Broker Services (the Solicitation), hereby incorporated by reference.
2. It is understood and agreed that pursuant to the Solicitation, Contractor agrees to furnish Professional Insurance Broker Services for the Universities and/or KBOR for the period from July 1, 2018 – June 30, 2021 with options available for two (2) annual contract renewals on order of KBOR at the price or prices contained in the Solicitation. The Universities and/or KBOR agrees to pay the amount(s) due to the Contractor in accordance with the Solicitation as shown on proper delivery invoice(s) of the Contractor to the Universities and/or KBOR. Payment will be made as soon after receipt of the invoice(s) as possible in accordance with state law.
3. It is understood and agreed that all of the provisions set out in the Universities and/or KBOR Solicitation Number 93119017 are incorporated and made a part of this contract by reference as though fully set forth herein. Contractor agrees and understands that those provisions are controlling over Contractor's offer, invoice, agency order forms or any other documents of the Contractor unless otherwise agreed below.
4. The provisions found in Contractual Provisions Attachment (KU-146a) are incorporated and made a part of this contract by reference.

Contractor: (Arthur J. Gallagher & Company)

By: 

Title: Managing Director, Higher Education Practice

Date: 3/22/18


University of Kansas

By:   
Richard Beattie

Title: Chief Procurement Officer

Date: 3/22/2018

University of Kansas / University of Kansas Medical Center

By:   
Leisa Julian

Title: Vice Chancellor & Chief Financial Officer

Date: 3/21/18

**KANSAS STATE**  
**UNIVERSITY®**

*Cindy Boutrager*

Cindy Boutrager / Kansas State Vice President for Administration and Finance

*3/21/18*

Date

# EMPORIA STATE UNIVERSITY

*Diana E. Kuhlmann*

*3-19-2018*

**Diana E. Kuhlmann** / Emporia State Vice President for Administration and Finance

Date



**FORT HAYS STATE  
UNIVERSITY**

*Forward thinking. World ready.*

*[Handwritten signature]*  
VPAP

Michael Barnett / FHSU Vice President for Administration and Finance

*3/19/18*

Date

Approved as to Form  
Fort Hays State University  
General Counsel  
*3/21/18 WJ*



# Pittsburg State University

*Doug Ball*

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**Doug Ball** / Pittsburg State University Chief Financial Officer &  
Vice President for Administration

*3-19-2018*

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Date



*W. M. Golling*

\_\_\_\_\_  
Werner Golling / Wichita State Vice President for Finance and Administration

*3/19/18*

\_\_\_\_\_  
Date

## **Contract Pricing:**

### **Annual Base fee:**

**\$119,540**

Includes; labor, materials, transportation, and other such services to cover the current insurance portfolio in place at time the Contract is awarded.

### **Compensation for new lines of coverage:**

12.5% commission for the initial year coverage is placed and then 10% for the remaining years of the agreement. Should the premium for a new line of coverage exceed \$100,000, commissions will be reduced to 10% and 8% respectively.

### **Optional Fees to manage various activities related to the Universities and/or the KBOR property program are as follows:**

- |  |                 |
|--|-----------------|
| • Fee if program is marketed   | <b>\$22,500</b> |
| • Fee if program placed outside of MHEC <sup>1</sup>   | <b>\$22,500</b> |
| • Fee to collect and consolidate underwriting <sup>2</sup><br>data, invoice and allocate premium | <b>\$ 8,333</b> |

### **Optional Enterprise Risk Management Consulting:**

A broad scope of Enterprise Risk Management (ERM) consulting services in our base fee noted above.

- Meet with current ERM stakeholders to discuss and review status of the current ERM initiative.
- Discuss with KU team about how they would like to see the ERM initiative evolve.
- Host a workshop with key stakeholders to plan a strategy for moving the program forward.
- Other basic services that may be requested.
- Software for ERM Consulting (& Compliance) is available and will be purchased by the KBOR Institution if this consulting is awarded at any time during the term of the contract.

The cost to provide additional ERM consulting services, identified as Medium Level services, is shown below. Projects can be purchased individually.

- |  |                 |
|--|-----------------|
| • Train all risk owners on their job duties and reporting responsibilities.  | <b>\$ 4,000</b> |
| • Work with individual risk owners to develop comprehensive and sustainable treatment plans on the institution's top ten risks.  | <b>\$10,000</b> |
| • Develop report templates for the board, senior administration, and individual departments.   | <b>\$ 2,000</b> |
| • Work with ERM stakeholders to integrate an enterprise view of risk into other business practices such as strategic planning, quality improvement, budgeting, employee engagement, committee structures, and decision-making. | <b>\$ 3,000</b> |

Scott Wightman will be the lead consultant for the ERM consulting services.

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<sup>1</sup> If the Property program is placed outside of MHEC, the annual service fee would be **\$45,000**, \$22,500 to market the program and \$22,500 to service the program during the year.

<sup>2</sup> The cost for collecting and managing KBOR Property underwriting data to be **\$15,000 for year one** and **\$5,000 for each following year. Average cost over the 3 year contract period is \$8,333/year.** If the contract is extended beyond 3 years, AJG will recognize the ongoing cost of \$5,000/year.



## Professional Insurance Broker Services

The contracted Broker of Record shall provide a **full range of services**. Such services shall include, but not be limited to:

- (1) Procurement of insurance on a cost-effective basis on behalf of the Universities from traditional insurance markets or risk pools in the areas of property, casualty, liability, and
- (2) Other services such as processing policy change endorsements, policy review and audit. Monitoring of appropriate claims may also be included.

The Contractor must be duly licensed by, and be in good standing with, the Kansas Insurance Department.

KBOR includes the following six state universities and select controlled affiliates as noted below:

Emporia State University, Emporia, KS: [www.emporia.edu](http://www.emporia.edu)

Fort Hays State University, Hays, KS: [www.fhsu.edu](http://www.fhsu.edu)

Kansas State University, Manhattan, KS: [www.k-state.edu](http://www.k-state.edu)

Pittsburg State University, Pittsburg, KS: [www.pittstate.edu](http://www.pittstate.edu)

University of Kansas Lawrence, KS: [www.ku.edu](http://www.ku.edu)

**University of Kansas Center for Research  
Kansas Memorial Union**

Including University of Kansas Medical Center (KUMC), Kansas City, KS: [www.kumc.edu](http://www.kumc.edu)

**University of Kansas Medical Center Research Institute**

Wichita State University, Wichita, KS: [www.wichita.edu](http://www.wichita.edu)

## 1.1 Scope:

### Insurance Broker:

The contracted Broker of Record shall provide, possess and keep in force all licenses and permits required to perform the services listed herein, and shall have experience in providing broker of record services for commercial organizations, higher education and/or governmental non-profit organizations.

The contracted broker of record shall be a duly authorized representative of the insurance company for which the bid is submitted and such company must be properly licensed and admitted to transact the insurance business herein described in the State of Kansas.

Agents representing the Contracted Broker of Record must be affiliated with a licensed agency appointed by that insurer in the State of Kansas. In the event the agent is individually licensed by an insurance company, the agent shall be appointed by that insurer in the State of Kansas. The required appointment shall occur no later than the policy period effective date.

Additionally, the contracted Broker of Record shall:

- A. Market the program for coverage when instructed to do so by the Universities and/or the KBOR, including assisting in the completion of all applications, documents and gathering data which may be requested by insurance companies.
- B. Analyze proposals received from various insurance companies and other parties, negotiate changes for the benefit of the Universities and/or the KBOR and verify the reasonableness of the price for the coverage provided.
- C. Provide budget estimates and premium allocations for use by the Universities and/or the KBOR, as needed.
- D. Represent the Universities and/or the KBOR in all negotiations with insurers, underwriters and other parties with regard to the insurance program.
- E. When instructed to do so by the Universities and/or the KBOR, administer the placement of coverage and provide original binders, policies and endorsements as required in the timetable specified by the Universities and/or the KBOR.
- F. Provide extensive review of binders and policies including verification of conformity to specifications. Request any necessary endorsements/changes/revisions that may be required.
- G. Provide insurance coverage summaries/descriptions as requested by the Universities and/or the KBOR.

- H. Assure that insurance policies are placed with reputable and financially responsible insurers (based on insurance rating among other required criteria designated by authorized University and/or KBOR representative), including keeping the Universities and/or the KBOR informed of any changes in rating of the insurers and making recommendations should ratings change during the policy term.
- I. Oversee and coordinate all relevant services performed by insurance companies/underwriters or any service agencies arranged for insurance program related issues and concerns.
- J. Perform administrative and clerical services relative to account management, including but not limited to, issuance of certificates of insurance, verification of the accuracy of bills, audits and all premium adjustments. Make available online services where appropriate.
- K. Submit all premiums/payments to carriers and other parties. All payments/premiums will be made to the contracted Broker of Record by a single University, collectively by the Universities and/or other KBOR institutions for selected services and products.
- L. Assign an Account Manager to the Universities and/or the KBOR who will be responsible for communication with the Universities and/or the KBOR and who, along with any other team members assigned, must be available on a daily basis to the Universities and/or the KBOR for advice and consultation on insurance program related issues and concerns.
- M. Attend meetings related to the insurance program with the Universities and/or the KBOR staff and other parties, as requested. Review any related insurance company audits for accuracy.
- N. Review various insurance publications and provide the Universities and/or the KBOR with copies of articles applicable to property, casualty and liability insurance issues.
- O. Upon request and at least once a year, coordinate claims meetings with the Universities and/or the KBOR staff and a representative of the underwriters.
- P. Act as a liaison between the Universities and/or the KBOR and the carriers to resolve claims.
- Q. Advise the Universities and/or the KBOR, when requested, on coverage application to specific claims.
- R. Consult with the Universities and/or the KBOR regarding the proposed claims counsel the insurance company plans to use with any claim.
- S. Review loss runs monthly, provide copies of the loss runs to the Universities and/or the KBOR and advise the Universities and/or the KBOR of any anticipated problems. Provide technical services personnel to work with the Universities and/or the KBOR, as needed, in developing and reviewing loss control programs, loss cost modeling and other tools.
- T. Perform other miscellaneous services within the expertise of Broker that the Universities and/or the KBOR may request from time to time.

- U. Continually monitor all regulatory bodies for changes in laws, rules and regulations that affect the Universities and/or the KBOR. Gather information and make recommendations to the Universities and/or the KBOR.
- V. If requested, provide the Universities and/or the KBOR with a summary of various insurance program options, including but not limited to: limits, coverages, retention levels, terms, conditions, payment options and self-insurance.
- W. If requested, design specifications for the insurance program, including assisting the Universities and/or the KBOR in the completion of all applications, documents and gathering data which may be requested by insurance companies.

Broker may utilize the services of other intermediaries to assist in the marketing of the Universities and/or the KBOR insurance (including brokers in the London and other markets), when in the Broker's professional judgment those services are necessary or appropriate. Such intermediaries may be affiliates of the Broker or not related to the Broker.

## 1.2 Fees and Payment of Premiums:

- A. All fees or commissions paid by or to intermediaries, whether owned or not owned by the contracted Broker of Record, **must be disclosed to the Universities and/or KBOR.** The compensation of such intermediaries is not included in Broker compensation and will be paid by insurers out of paid premiums.
- B. The contracted Broker of Record's fee will be paid as mutually agreed upon.
- C. All premiums for insurance placed by the contracted Broker of Record on behalf of the Universities and/or KBOR shall be invoiced to the appropriate University by the contracted Broker of Record upon initiation of the coverage.
- D. The Universities and/or KBOR shall remit premium payments to the Broker in accordance with the specified terms and conditions.
- E. All premium refunds shall be paid immediately by the contracted Broker of Record to the Universities and/or KBOR Institutions upon receipt of the refund by the Broker within 30 days.

## 1.3 Contracted Broker of Record Requirements

1. Members of the contracted Broker of Record shall have a working knowledge of the Kansas Insurance Statutes as relates to educational institution liability and insurance.

2. The contracted Broker of Record shall have a working knowledge of sovereign immunity as it relates to state agencies, charitable healthcare providers, students, and health care providers.
3. The contracted Broker of Record shall have resources dedicated to the Universities and/or KBOR including organizational structure and headcount.
4. The contracted Broker of Record shall have experience with large public research institutions, comparable to the Universities and/or KBOR.
5. The contracted Broker of Record shall have experience in the area of healthcare, medical malpractice and clinical trials for medical centers/schools.
6. The contracted Broker of Record shall have international capabilities and serve comparable higher education clients and research clients with activities outside the United States similar to the Universities and/or KBOR.
7. The contracted Broker of Record shall offer various risk management services available internally throughout your firm. (e.g., exposure identification, property valuation, loss prevention and control services, and identifying gaps in coverage and coverage overlaps).
8. The contracted Broker of Record must demonstrate best practices for insurance and risk management for large public research institutions.
9. The contracted Broker of Record shall have resources for benchmarking.
10. The contracted Broker of Record shall return all phone calls from the Universities and/or KBOR same day (within 24 hours).
11. The contracted Broker of Record shall issue invoices and related documents within 8 working days of effective date.
12. The contracted Broker of Record shall Issue certificates within 24 hours of receipt or as needed.
13. The contracted Broker of Record shall process premium-bearing endorsements within 8 working days of receipt for carrier.
14. The contracted Broker of Record shall process non-premium-bearing endorsement within 10 working days of receipt from carrier
15. The contracted Broker of Record shall process audits within 7 working days of receipt from

carrier.

16. The contracted Broker of Record shall issue Auto ID Cards within 24 hours.
17. The contracted Broker of Record shall check policies within 60 working days or effective date and delivery within 10 working days.

#### **“General Terms and Conditions”**

1. **Captions; References:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract. For purposes of this contract, the term “University” collectively and individually, refers to the Kansas Board of Regents and its six Universities and controlled affiliates, as identified in the University’s solicitation.
2. **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be unless otherwise specified and agreed upon by the University.
3. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
4. **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.
5. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Douglas County, unless otherwise specified and agreed upon by the University. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the University is a party.
6. **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING** and addressed as follows:

**KU Procurement Services**  
**1246 W. Campus Rd., Rm. 30**  
**Lawrence, KS 66045-7505**  
**Contract number 18010742**

**Supplier address:** \_\_\_\_\_

or to any other persons or addresses as may be designated by notice from one party to the other.

7. **Contract Documents; Order of Precedence:** This solicitation and any amendments thereto, and the Contractor’s proposal or bid and any amendments thereto are hereby incorporated, along with the KU-146a, into this contract by this reference and shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- Form KU-146a;
  - Subsequent written modifications to this contract, executed by both parties hereto;
  - Additional Terms and Conditions
  - General Terms and Conditions;
  - University's solicitation including any and all addenda; and
  - Contractor's written proposal submitted in response to this solicitation as finalized.
8. **Integration:** This contract, in its final composite form, will represent the entire agreement between the parties and will supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties will be independent of and have no effect on any other contracts of either party.
9. **Contract Formation:** No contract shall be considered to have been entered into by the University until all statutorily required signatures and certifications have been rendered and a written contract has been signed by Contractor.
10. **Modification:** This contract may only be modified by written agreement of the parties. No alteration or variation of the terms and conditions of this contract will be valid unless made in writing and signed by the parties. Every amendment must specify the date on which its provisions will be effective.
11. **Termination for Cause:** The KU Director of Procurement Services (Director) may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
- the Contractor fails to make delivery of goods or services as specified in this contract; or the Contractor provides substandard quality and/or workmanship;
  - the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.
- The Director shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as the University may authorize in writing), the Director shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.
12. **Termination for Convenience:** The KU Director of Procurement Services (Director) may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director shall determine that the termination is in the best interest of the University. In the event that the Director elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.
13. **Accounts Receivable Set-Off Program:** K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes vendors against debts owed by the vendors to the State of Kansas. Payments setoff in this manner constitutes lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

During the course of this contract if the Contractor is found to owe a debt to the State of Kansas, payments to the Contractor may be intercepted / set off by the State of Kansas. Notice of the setoff action will be provided to the Contractor. The Contractor shall credit the University's account in an amount equal to the funds intercepted.

**14. Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and who are providing services involving this contract or services similar in nature to the scope of this contract to the University. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two (2) years after that state employee's termination of employment with the State.

**15. Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers' compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

**16. Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of this contract and/or damages.

**17. Subcontractors:** The Contractor shall be the sole source of contact for the contract. The University will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

The Universities and/or KBOR require tax information regarding all subcontractors be disclosed upon request.

**18. Industry Standards:** Materials or work called for in this contract will be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations that apply.

**19. Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any University employee at any time.

**20. Assignment:** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the University.



This contract may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the University.

21. **Third Party Beneficiaries:** This contract does not provide any enforceable rights to any third party.
22. **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.
23. **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.
24. **Proof of Insurance:** Upon request, the Contractor shall present satisfactory evidence of Workers' Compensation, Commercial Liability, and Property Damage Insurance to KU Procurement Services.
25. **Hold Harmless:** The Contractor shall indemnify the University against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The University shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to State property. The Contractor shall do nothing to prejudice the University's right to recover against third parties for any loss, destruction or damage to State property.

26. **Care of University Property:** The Contractor shall be responsible for the proper care and custody of any University-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse University for such property's loss or damage caused by Contractor, normal wear and tear excepted.
27. **Confidentiality:** All University information or data is considered confidential information. Contractor agrees to return any or all information or data furnished by the University promptly at the request of University, in whatever form it is maintained by Contractor. Upon termination or expiration of this contract, the Contractor and each of the persons and entities working for the Contractor shall destroy or return at University's request all data, information electronic, written, or descriptive materials or any related matter of any type including but not limited to drawings, blueprints, descriptions, or other papers or documents which contain any such confidential information.
  - A. **Treatment of Confidential Information.** Contractor may have access to information and private or confidential data ("confidential information"), maintained by University, to the extent necessary to carry out Contractor's responsibilities under this contract. This confidential information may include, but is not limited to security arrangements, personal financial information, information regarding undercover law enforcement agents, social security numbers, student employees, medical providers and/or their recipients, etc. Contractor agrees that any confidential information it may have in its custody regarding any participant or other information identified by the University as being private or confidential shall be kept strictly confidential. Except as otherwise expressly provided, Contractor may not disclose any confidential information at any time to any person or entity. Contractor agrees to comply with all state

and federal confidentiality laws in providing services under this contract. Contractor also agrees to the following:

1. Contractor shall be fully responsible for providing adequate supervision and training to its agents and employees to ensure compliance with all applicable State and Federal laws regarding confidentiality and/or open records issues. No private or confidential data collected, maintained, or used in the course of performance of this contract may be disseminated by Contractor except as required by statute, either during the period of this contract or thereafter. Contractor shall only use confidential information as required by this contract. All electronic data shall be secured through encryption or other comparable security measures.
  2. Contractor shall limit access to confidential information solely to staff of Contractor who has a business need to know for purposes of fulfilling Contractor's obligations under this contract. Contractor shall not remove confidential information from the University without the University's prior written approval.
  3. The Contractor shall hold all such confidential information in trust and confidence for the University, and agrees that its employees will not, during the performance or after the termination of this agreement, disclose to any person, firm, or corporation, or use for its own business or benefit any information obtained by it while in execution of the terms and conditions of this contract.
  4. Upon University's request, any staff, individual or entity assigned to work for Contractor under this contract shall separately sign a non-disclosure agreement(s) and be bound by the requirements of this Subsection and any University or State of Kansas computer security user agreement, which is incorporated by reference herein.
  5. All confidential information of the University shall be and remain the sole property of the University. Upon termination of this contract or at the request of the University, the Contractor shall deliver all confidential information promptly to the University and shall not make, retain or distribute any copies thereof.
- B. **Unauthorized Use.** The Contractor shall not use the names, home address, phone numbers, or any other information obtained by implementation or execution of this contract about employees, citizens, vendors or other information for any purpose other than the performance of this contract.
- C. **Press Releases, Public Statements, and/or Communications.** Contractor agrees that no public statement, release, or communication acknowledging or implying that the University is a customer of Contractor is allowed under this contract. Any approval by the University for such public statement, release, or communication shall only be provided in writing by University. The University may refuse such a request for any reason.
- D. **Injunctive Relief.** Contractor acknowledges that any breach of its confidentiality obligations hereunder will constitute immediate and irreparable harm to the University, and/or its successors and assigns, which cannot adequately and fully be compensated by money damages and will warrant, in addition to all other rights and remedies afforded by law, injunctive relief, specific performance and/or other equitable relief.
- E. **Confidential Information.** Contractor shall hold harmless and indemnify the University for expenses or damages, of any kind, incurred or suffered by the University as a result of the unauthorized disclosure or failure to protect or secure confidential information identified by Contractor or any agent, representative, employee or subcontractor of Contractor. Contractor shall notify the University of any loss or breach of confidential information within twenty-four (24) hours of such knowledge. Contractor shall also be responsible and liable for any and all damages to individuals due to such breaches or loss of confidential

information. In the event of any security breach in which the confidential information of one or more individuals is compromised or is potentially compromised, Contractor shall be responsible and pay for any and all damages, expenses, and costs (including lost wages and efforts spent to defend or correct against identity theft) caused to the University or any individual for the disclosure of any confidential information. Contractor shall provide notice to the University and affected individuals of such disclosure. In addition to any remedial measures required by law or applicable legal, governmental or regulatory authority, Contractor shall cover costs of losses for remedial measures to individuals to include but are not limited to, costs of notification to individuals, establishment and operation of call centers, credit monitoring for a period of twelve (12) months and restoration services. Contractor will require these same terms herein to apply to any of third party vendor or subcontractor of Contractor. The University shall in its sole discretion make the final determination of necessary remedial measures required by this provision.

- F. **Survive Termination.** The provisions of this Section, Confidentiality, shall survive termination of this contract.
28. **Injunctions:** Should the University be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the University, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.
29. **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.
30. **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by University shall not constitute a waiver.
31. **Criminal Or Civil Offense:** Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction 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; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in termination of the contract.
32. **Rights and Remedies:** If this contract is terminated, the University, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the University in the manner and to the extent directed, any completed materials that are owned by the University. The University shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by University subject to any offset by University for actual damages including loss of federal matching funds.

The rights and remedies of the University provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

- 33. Retention of Records:** Unless the University specifies in writing a different period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal, state and university representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of university, state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post-contract period. Delivery of and access to the records shall be at no cost to the University.

- 34. Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to the University all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the Universities and/or KBOR relating to the particular products or services purchased or acquired by the University pursuant to this contract.

- 35. Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) form.

With the acceptance of this contract, the Contractor hereby certifies without exception that such Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the University's option, may subject the contract to termination and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce to University any documentation or other such evidence to verify Contractor's compliance with any provision, duty, certification or like under the contract.

- 36. Federal Defend Trade Secrets Act (DTSA):** All contractors are expected to comply with the Federal Defend Trade Secrets Act (DTSA), as may be amended from time to time. Contractor warrants and represents that Contractor has complied with the notice requirements of DTSA's whistleblower immunity provisions. Contractor agrees to indemnify, defend, and hold harmless University and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any violation of DTSA by Contractor or its employees, directors, officers, subcontractors, agents or other members of its workforce. Contractor's obligation to indemnify any Indemnified Party shall survive the expiration or termination of the contract.

- 37. HIPAA/FERPA Language (if applicable):**

**A. Use and Disclosure of University Data.** Contractor agrees to comply with all state and federal confidentiality laws in providing services under this Contract. Any University data that Contractor may

access in performing its obligations (including individually identifiable health information covered by FERPA or HIPAA) shall be held in strict confidence and shall not be further used or disclosed unless authorized in writing by University or required by law. Only if applicable, the Contractor shall be required to sign a Business Associate Agreement as required by the Health Insurance Portability and Accountability Act (HIPAA)

- B. Safeguards.** Contractor shall develop, implement, maintain, and use reasonable and appropriate administrative, technical, and physical safeguards (including any required by federal law) to protect the confidentiality, integrity and availability of University data in any form or media, created, received, maintained or transmitted on behalf of the University. Contractor shall document and keep these security measures current. Contractor shall cooperate in good faith in response to any reasonable requests from University to discuss, review, inspect, and/or audit Contractor's safeguards.
- C. Subcontractors.** If Contractor provides any University data received from, or created for, University to a subcontractor or agent, then Contractor shall require such subcontractor or agent to agree in writing to the same restrictions and conditions as are imposed on Contractor.
- D. Notice of Unauthorized Use or Disclosure, Security Incident or Breach.** Contractor agrees to notify the University of any use or disclosure of University data that is not permitted by the contract, or any security incident or breach involving the University data, within five (5) business days of discovery of the unauthorized use, security incident or breach. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a misuse or unauthorized disclosure of University data by the Contractor in violation of the requirements of this Section.
- E. Red Flags.** Contractor shall be responsible for implementation of an Identity Theft Monitoring Policy and Procedure to protect individuals' information that may be breached by the Contractor under applicable Federal Trade Commission Regulations Red Flag Rules.
- F. Disclosure of Practices, Books and Records.** Contractor agrees to make internal practices, books and records relating to the use and disclosure of University data received from the University, or created or received by Contractor on behalf of University, available to the University or the U.S. Department of Health and Human Services or the U.S. Department of Education in a time and manner designated by the University or relevant Department, for the purposes of determining the parties compliance with applicable federal confidentiality laws and corresponding regulations.
- G. Termination.** Upon termination, cancellation, expiration, or other conclusion of the contract, Contractor shall return to University or, if return is not feasible, destroy all University data in whatever form or medium that Contractor received from or created on behalf of University. This provision shall also apply to all University data that is in the possession of subcontractors or agents of Contractor. In such case, Contractor shall retain no copies of such information. Contractor shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this contract. Within such thirty (30) day period, Contractor shall certify in writing to University that such return or destruction has been completed. If Contractor destroys the University data, it shall be done with the use of technology or methodology that renders the data unusable, unreadable, or undecipherable to unauthorized individuals as specified by the U.S. Department of Health and Human Services ("HHS") for data covered by HIPAA. If Contractor believes that the return or destruction of the data is not feasible, Contractor shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is not feasible, Contractor shall extend the protections of the contract to the University data received from or created on behalf of University, and limit further uses and disclosures of such University data, for so long as

Contractor maintains the data.

**H. Indemnification.** Contractor agrees to indemnify, defend and hold harmless University and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this section entitled "Confidentiality" or from any acts or omissions related to this "Confidentiality" section by Contractor or its employees, directors, officers, subcontractors, agents or other members of its workforce. Contractor's obligation to indemnify any Indemnified Party shall survive the expiration or termination of the contract.

**I. HIPAA Confidentiality.** Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the University could not. This protection continues as long as the data is in the Contractor's possession.

The Contractor shall establish and maintain procedures and controls acceptable to the University to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement.

**38. Incorporated Terms:** The Vendor Suspension, Vendor Debarment, and Dispute Resolution sections of the University's Purchasing Procedures Manual, which is available at <https://policy.ku.edu/purchasing-procedures-manual> are incorporated herein by this reference for all purposes and shall govern the parties' obligations and responsibilities with respect to the same subject matter. The University may revise and update these sections of the Purchasing Procedures Manual at any time and at the University's discretion and without notice. When any change is made, a revised version will be posted upon effective date.

**39. Transition Assistance:** In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to University to allow for a functional transition to another contractor.

**38. Prices:** Prices shall remain firm for the entire contract period and subsequent renewals. Prices quoted shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the University. Failure to provide available price reductions may result in termination of the contract.

**39. Price Adjustments:** On the yearly anniversary date of this contract, costs will remain at the price bid or Contractor may a request for adjustment, either upward or downward, keyed to industry changes. Contractor shall furnish documentation in writing at least 30 days prior to the anniversary date to substantiate any claim for increase. Price increases shall not exceed five percent (5%) of the existing contract price. The Universities and/or KBOR reserves the right to accept, amend or deny any such price increase. If parties to the contract cannot agree on renewal terms, the contract will expire or terminate at the end of the term.

**40. Payment:** Payment Terms are Net 30 days. Payment date and receipt of order date shall be in accordance with the Kansas Prompt Payment Act, K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30<sup>th</sup> calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the Contractor and the state agency. NOTE: If the 30<sup>th</sup> calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in the Contractor's response to the University's solicitation.

41. RESERVED

42. RESERVED

43. **Contingencies:** The Contractor warrants and represents that Contractor is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the proposal for all contingencies. Later claims for labor, work, materials, equipment, and tax liability required for any difficulties encountered which could have foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to the University.

44. RESERVED

45. **Acceptance:** No contract provision or use of items by the University shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

46. **Ownership:** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the University. The Contractor may not release any materials without the written approval of the University.

47. **Software Code and Intellectual Property Rights:** As applicable, all original software and software code and related intellectual property developed or created by the Contractor in the performance of its obligations under this contract, shall become the sole property of the University. The Contractor will surrender all original written materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, used to develop this software and/or software code and related intellectual property to the state entity for which it was developed.

48. RESERVED

State of Kansas  
University of Kansas  
KU-146a (Rev. 01-2018)

### 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 ("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, 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 to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (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.