

JOHNSON COUNTY COMMUNITY COLLEGE

Procurement Services
12345 College Blvd., CSB 170
Overland Park, KS 66210-1299
Phone (913) 469-3812
procurement@jccc.edu

REQUEST FOR BID No. 19-068

FOR

Active Learning Classroom Renovations

Buyer:	Larry Allen Lallen35@jccc.edu
Bid Opening:	March 13, 2019: 2 pm Central Standard Time (CST)
Bid Clarifications Due:	March 11, 2019: 5 pm CST
Pre-bid/Site Tour:	March 5, 2019: 3 pm CST
Bid Opening & Pre-bid Location:	Johnson County Community College Campus Services Bldg. - Procurement Services 12345 College Blvd, CSB 170 Overland Park, KS 66210-1299

Requests for Bids are made up of the following documentation which is attached herein or incorporated by reference and also available in the solicitation's Documents tab in <https://jccc.procurement.com>:

- [BIDDER/PROPOSER ACKNOWLEDGEMENT COVER SHEET](#)
- [SECTION 1 - SCOPE OF WORK](#)
- [SECTION 2 - GENERAL INSTRUCTIONS/JCCC PROCUREMENT PROCESS](#)
- [SECTION 3 - BID/PROPOSAL RESPONSE FORMAT](#)
- [SECTION 4 - JCCC TERMS & CONDITIONS](#)

BIDDER/PROPOSER ACKNOWLEDGEMENT COVER SHEET

By signing below, the Bidder/Proposer hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Contractual Provisions Attachment A (DA-146a) located in the [JCCC Terms and Conditions](#) section. The Bidder/Proposer further agrees that the language of this solicitation shall govern in the event of a conflict with his/her proposal. The Bidder/Proposer further agrees that upon receipt of an authorized Purchase Order from Johnson County Community College's Procurement Services or when a Notice of Contract is signed and issued by an authorized official of the College, a binding contract shall exist between the Bidder/Proposer and Johnson County Community College.

SIGNATURE REQUIRED

COMPANY INFORMATION		
LEGAL BUSINESS NAME	DBA (if applicable)	
STATE OF INCORPORATION	TAX ID INFORMATION (please specify one)	
	TIN	
	FEIN	
	SSN	
	OTHER	
STREET ADDRESS	CITY, STATE, ZIP	
COMPANY WEBSITE	COMPANY CONTACT INFORMATION	
	PHONE	
	EMAIL	
	FAX	
AUTHORIZED INDIVIDUAL OF THE FIRM		
NAME & TITLE	CONTACT INFORMATION	
	PHONE	
	EMAIL	
	FAX	
SIGNATURE OF AUTHORIZED INDIVIDUAL	DATE	

SECTION 1 - SCOPE OF WORK

The document provides Contractors a description of the goods/services being purchased under this solicitation. The information contained in this document will be incorporated by reference into the final Agreement and/or Purchase Order between Johnson County Community College (JCCC) and Contractor.

1-1 PRE-PROPOSAL/PRE-BID CONFERENCE

A conference/site tour with interested Contractors will be held at 3:00 pm, March 5, 2019 in the Campus Services Building Room CSB170 on the Johnson County Community College main campus at 12345 College Blvd., Overland Park, Kansas 66210. This conference will enable Contractors to request clarification on any questions they have on the project. Attendance at the conference is highly recommended.

1-2 SCOPE OF WORK

Johnson County Community College (the “College” or “JCCC”) intends to contract for all work necessary for the renovations of up to four (4) classrooms in three (3) buildings on the Johnson County Community College main campus as identified in the specifications. Project coordination and work to commence as soon as possible after award, as coordinated with owner.

Active Learning Classroom Renovation (ALCR) – interior renovation of four (4) existing classrooms:

- Two (2) classrooms that will be renovated from standard lecture, forward facing classrooms to technology based active learning style classrooms.
- One (1) Computer lab will be renovated to allow more team centered projects.
- One (1) drafting classroom will be renovated to become more computer focused drafting.

Full detailed project details to include specifications & drawings can be downloaded on the Bid’s Documents tab in ProcureWare <https://jccc.procureware.com> (after the required registration).

1-3 TERM OF AGREEMENT

The Agreement will continue until all deliverables have been satisfactorily met as specified in this Section 1 and the Agreement. Work on the project can commence on May 27, 2019 but shall not extend beyond August 1, 2019 unless agreed upon by both parties by written Amendment. In the event funding approval is not obtained by the College, this Agreement shall become null and void effective the start date of the most recent extension. During any agreed upon extension periods, all terms and conditions of this Agreement shall remain in effect.

1-4 EVALUATION CRITERIA (INTENTIONALLY OMITTED)

1-5 SPECIFIC PROJECT AND PRICING INFORMATION REQUESTED

Base Bid for the interior renovation of four (4) existing classrooms across three (3) campus buildings:

- Two (2) classrooms will be renovated from standard lecture, forward facing classrooms to technology based active learning style classrooms.
- One (1) Computer lab will be renovated to allow more team centered projects.
- One (1) drafting classroom will be renovated to become more computer focused drafting.

Contractor to provide deduct alternate pricing for each Active Learning Classroom Renovation as follows (amounts to be stated as appropriate on the “Questions” tab in ProcureWare <https://jccc.procureware.com>):

1. ALCR Deduct Alternate 1 (Classroom 1 - GEB 356/358)
2. ALCR Deduct Alternate 2 (Classroom 2 - CLB 316)
3. ALCR Deduct Alternate 3 (Classroom 3 - CLB 402)
4. ALCR Deduct Alternate 4 (Classroom 4 – RC 323)

1-6 BONDS

- A. Bid Guaranty: A bid guaranty equal to five percent (5%) of the bid total and made payable to Johnson County Community College must accompany this bid to ensure faithful performance with the conditions of this solicitation and/or resulting Agreement.
 - 1. A bid guaranty must be: 1) a certified or cashier check or certificate of deposit payable to the College or 2) a properly executed bid bond payable to the College. A check or certificate of deposit bid guaranty shall be returned after a bidder has entered into a binding contractual relationship with the College. If the successful Contractor fails or refuses to enter into a written contract, the College shall retain as liquidated damages the bid guaranty. A check or certificate of deposit bid guaranty of an unsuccessful Contractor shall be returned after an Agreement is executed with the successful Contractor.
 - 2. Proof of bid guaranty must be submitted in the JCCC electronic Procurement Portal.
- B. Performance Bond: Prior to initiation of any work, the successful Contractor will be required to submit a performance bond to the College's Procurement Services Office for the total amount (100%) of the Agreement as security for the faithful performance of this Agreement. The performance bond shall provide for recovery by the College of any and all damages, including attorneys' fees, suffered by it by reason of the Contractor's failure to perform any of its obligations, recovery being permissible from the Contractor and the surety or either of them.
- C. Public Works Bond: Prior to initiation of any work, the successful Contractor shall also file with the Clerk of the District Court in Johnson County, Kansas, with an original stamped bond document to the College's Procurement Services Office, a Public Works bond as required by K.S.A. 60-1111, and amendments thereto, in an amount equal to one hundred percent (100%) of the total price. The Public Works Bond is not required for projects with a contract price below \$100,000; however, in such instances, i) a list of all subcontractors must be provided to the College at the initiation of the Project, to be supplemented on a monthly basis as new subcontractors are identified and ii) Contractor must provide fully executed unconditional lien waiver and release forms by all subcontractors prior to receipt of progress and final payments related to work tied to each subcontractor.
 - 1. The Performance and Public Works guaranties will be released to the Contractor upon final payment by JCCC to the Contractor, pursuant to the terms of the Agreement, and subject to total or partial forfeiture for failure to perform adequately the terms of the Agreement. If damages exceed the amount of the guaranty, the College may seek additional damages.
 - 2. Necessary bond forms will be furnished by JCCC Procurement Services. Bonds shall be issued by a Surety Company licensed to do business in the State of Kansas.

1-7 SUPPLEMENTAL INSURANCE (INTENTIONALLY OMITTED)

SECTION 2 - GENERAL INSTRUCTIONS / JCCC PROCUREMENT PROCESS

2-1 GENERAL INFORMATION

A. COLLEGE OVERVIEW

Johnson County Community College (“JCCC” or the “College”) is a comprehensive, public, two-year institution of higher education. It was founded in 1967 and moved to its current 234-acre campus location in Overland Park, Kansas in 1972. The current location can accommodate approximately 20,000 credit students. It is the state’s third largest institution of higher education and the largest of the 19 community colleges in the state of Kansas. Known for excellence in programming and teaching, JCCC offers a full range of undergraduate credit courses and 150 career and certificate programs that prepare students for employment.

B. REQUEST FOR PROPOSAL/REQUEST FOR BID OVERVIEW

The College is issuing this Request for Proposal/Request for Bid (also herein referred to as “Solicitation”) for the purpose of soliciting bids/proposals (also herein referred to as “Response”) for goods/services.

The specific scope of work is described in [Section 1 - Scope of Work](#). Proposers/Bidders/Potential Contractors (also herein referred to as “Contractors”) will execute and submit all Responses in accordance with these general instructions and the applicable provisions of the specifications of the Scope of Work.

2-2 RESPONSE INSTRUCTIONS

To aid in the evaluation process, it is required that Responses comply with the directions in [Section 3 - Bid/Proposal Response Format](#). Failure to comply may result in rejection of the response. The Response should be specific and complete in every detail and prepared in a simple and straight-forward manner.

Contractors are expected to examine the entire Solicitation, including all specifications, standard provisions and instructions. Failure to do so will be at the Contractor's risk. Each Contractor shall furnish the information required by the Solicitation. Periods of time, stated in number of days, in the Solicitation or in the Contractor’s response, shall be in calendar days. Propose your best price on each item.

2-3 SUBMISSION OF RESPONSES

A. Contractors accessing this document from the College’s eProcurement website at <https://jccc.procureware.com> are responsible for accessing and acknowledging any addenda posted in the Bid’s Documents tab or Questions and Answers posted in the Bid’s Clarifications tab, if issued. NOTE: While automatic notifications of addenda are sent to registered/interested bidders, it is the bidder's responsibility to access any addenda and applicable Questions and Answers (Q/A) posted on the bid’s Clarifications tab. Bids received by the College that do not include acknowledgement of addenda and Q/A may be rejected.

Johnson County Community College is using the ProcureWare website to facilitate improved communications with bidders and suppliers: <https://jccc.procureware.com>. The site is used to post information on solicitations and provide access to respond electronically to all bids, quotes and proposal opportunities.

To register, click the “Register” button under the “Create New Company Account” section of the login page: <https://jccc.procureware.com/Login>.

Once you select the “Register” button, you must fill out the required information on the next screen such as: “Company Name,” “Email Address” “Address” etc. Once you are finished filling out these fields, click the “Next” button. A message will then be sent to the email address you provided with instructions on how to continue the registration process.

Next, you will see a page with multiple sections related to the registration process in a navigation bar. Fill out the required information for each of these sections. A red X icon indicates a section with incomplete information. A green Check icon indicates all required information has been provided. Once you complete all the required registration information, the orange “Submit Registration” button will become clickable in the upper-right corner of the screen. Once you submit your company’s information via the registration process, a summary of the data you entered will become visible. In addition, your “Registration” status will be listed as

“Review Complete” and you will be able to place bids and utilize the full functionality of ProcureWare from a vendor’s perspective.

Once you are approved, you will be able to place bids and utilize the full functionality of ProcureWare from a vendor’s perspective.

IMPORTANT: To ensure that you receive future email messages from our procurement system, please add “@procureware.com” to your safe senders list. All messages will come from noreply@procureware.com.

When you receive bid invitations by email from us, you can click on a link in the email message to access our solicitations. You will need to login each time with your email address and the password you created.

Please check the online Help link in the upper right corner of the website if you need additional help in creating or updating your registration. You may also contact us at procurement@jccc.edu.

- B. Electronic Responses may be withdrawn or modified any time prior to the scheduled closing time for receipt of Responses. It is the Contractor’s responsibility to ensure that adequate time is allowed for any modifications to be completed, certified and submitted prior to the closing time.
- C. All Responses shall be valid and constitute an irrevocable offer to contract on the Terms and Conditions contained in the Solicitation for 120 days after opening, but the College reserves the right to accept or reject Responses on each item or service separately or as a whole, to reject any or all Responses, to waive informalities or irregularities, and to contract in the best interest of the College.
- D. The submission of a proposal herein constitutes the agreement of Contractor that any Agreement to be drawn as the result of an award herein shall be prepared by the College and shall include at a minimum, all terms and conditions set forth in this Request for Proposals. The submission of a proposal shall further constitute the agreement of each Contractor that it will not insist on the use of standard contract agreements, documents, or forms, that it waives any demand for the use of its standard agreements, and that it will not insist on or require any modifications to the Contractual Provisions Attachment A (Form DA-146a, Rev. 06-12).
- E. Anytime the College is closed on days other than scheduled holidays, any opening scheduled for that day will be held on the next normal working day at the scheduled time. Any time opening hours of College are delayed, solicitation openings will be delayed by the same amount of time; e.g., if the College opens two hours late, solicitation responses will be opened two hours late. It shall be the Contractors’ responsibility for making themselves aware of these situations.
- F. Unless otherwise specified, only one price, brand and/or model may be proposed for each item or service in the Solicitation. Contractors must determine their single best offering based on the quality specified. Responses not conforming to this requirement will be rejected.
- G. **ALTERNATE BRANDS/SPECIFICATIONS:**
 - 1. Brand names and specifications referenced in the Solicitation are meant to establish a minimum standard of quality, performance or use desired. Unless otherwise noted, Responses on “equals” may be considered provided Contractor clearly identifies the alternate product or service to those specified in the Solicitation and furnishes descriptive literature and other proof required by the College to determine that the “equal” being proposed meets the minimum essential specifications.
 - 2. When brand names or specifications are not changed, it will be assumed that Contractor’s proposal response is as specified.
 - 3. Samples, when required by the College, must be furnished free of charge, including freight to and from the College.

4. In the event the College elects to contract for a brand purported to be an equal by the Contractor, the acceptance of the item will be conditioned on the College's inspection and testing after receipt. If, in the sole judgment of the College, the item is determined not to be equal, the material will be returned at the Contractor's expense and the Agreement terminated.

2-4 PRICING

- A. Except as otherwise provided, prices must be firm and based on the units specified. The proposed price(s) shall include everything necessary for the execution and completion of the Agreement including, but not limited to, furnishing all materials, equipment, management, superintendence, labor and service, except as may be otherwise provided in the Agreement. Prices quoted by the Contractor shall include all freight and/or delivery charges, unless specified otherwise. In the event of a discrepancy between the unit price and the total price, the unit price will govern, and the total price will be adjusted accordingly. Contractor's submission of a proposal response guarantees that prices have not been arrived at through collusion with other eligible contractors and without effort to preclude the College from obtaining the lowest possible competitive prices. The proposed price(s) shall not include any allowance for Kansas State sales or use tax.
- B. The College will evaluate the total price for the basic requirements with any option(s) exercised at the time of award. Evaluation of option(s) will not obligate the College to exercise the options(s).
- C. The College may reject a proposal response if it is materially unbalanced. A proposal response is materially unbalanced when it is based on prices significantly less than the cost for some goods/services and prices that are significantly overstated for other goods/services.
- D. Please refer to [Section 1 - Scope of Work](#) for specific details on requested pricing information.

2-5 INTERPRETATION, CORRECTIONS OR CHANGES

- A. Contractors requesting any interpretations or clarifications shall submit questions via the JCCC Procurement Portal by the date/time specified within ProcureWare and also within this solicitation's cover page.
- B. Procurement Services is the first and only point of contact on all matters related to the procedures associated with the Solicitation. If additional information is needed from any source, the College's Procurement Services will work with the Contractor and with the various offices of the College to gather that information.
- C. Any interpretation, correction or change in the Solicitation will be posted on the JCCC Procurement Portal. Interpretations, corrections or changes to the Solicitation allegedly made in any other manner will not be binding on the college and Contractors may not rely upon any such interpretation, correction or change.

2-6 QUALIFICATIONS OF CONTRACTORS

Upon request by the College, the apparent successful Contractor shall furnish documentation satisfactory to the College which confirms qualification requirements. Any conviction for a criminal or civic offense that indicates a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor, must be disclosed. This includes: (a) 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; (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property; (c) conviction under state or federal antitrust statutes; and (d) any other offense to be serious and compelling as to affect responsibility as a state contractor (see K.S.A. 75-37,103).

2-7 CONFLICTS 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 Interest Policy 431.00](#). This duty is continuing throughout the procurement process, and such circumstances must be disclosed to the College immediately upon Contractor's knowledge. Failure to do so could jeopardize the procurement process and result in rejection of a Contractor's submission or rescission of a proposal response.

2-8 BID/PROPOSAL RESPONSE CONFIDENTIALITY

Each Contractor agrees that the contents of each Response submitted in response to a Solicitation is confidential, proprietary, and constitutes trade secret information as to all technical and financial data, and waives any right of access to such Response, except as provided for by law. Except as determined by the College's Procurement Services, in its sole discretion, no information will be given regarding any Response or evaluation progress until after an award is made, except as provided for by law.

2-9 ORDER OF AUTHORITY

To the extent that JCCC's documentation related to the Solicitation 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. State of Kansas Department of Administration DA-146a (Section 4, Contractual Provisions, Attachment A);
2. The JCCC Terms & Conditions (Section 4);
3. Instructions/Procurement Process (Section 2);
4. Scope of Work (Section 1); and
5. Contractors Response to the Solicitation

2-10 PRE-PROPOSAL/PRE-BID CONFERENCE

In the event a pre-proposal/pre-bid conference is necessary, details for the conference will be listed in [Section 1 - Scope of Work](#).

2-11 BASIS OF AWARD(S)

The College shall make the award(s) to the responsible Contractor(s) whose Response will be most advantageous to the College, in the College's sole discretion, with respect to price, conformance to the specifications, quality and other factors as evaluated by the College. The College shall not in any event be required or constrained to award the Agreement(s) to the Contractor(s) proposing the lowest price(s), nor shall the College be required to make any award whatsoever. The College may award Agreement(s) on the basis of initial Response received, without discussion; therefore, each initial proposal response should contain the Contractor's best terms from a cost and technical standpoint.

2-12 APPEAL OF AWARD

A Contractor aggrieved by the award of an Agreement may file an appeal in writing to the College's Director of Procurement Services. The appeal must be received by the Director of Procurement Services within five working days after the award is made, must describe the basis for the appeal, and must include all arguments and evidence the Contractor wishes the Director of Procurement Services to consider. Keeping track of the date an award is made is the responsibility of the appealing Contractor.

2-13 PROCUREMENT PROCESS

- A. Bid/Proposal Response Classification: For the purpose of conducting discussions with individual Contractors, if required, Responses will initially be classified as Potentially Acceptable or Unacceptable. Discussions may be conducted with any or all of the Contractors whose Responses are found potentially acceptable.
- B. Contractor Investigation: The College may make such investigations as it considers necessary to obtain full information on the Contractor(s) selected for discussions, and each Contractor shall cooperate fully in such investigations.
- C. Final Offers and Awards: Following any discussions with Contractors regarding their technical Responses, alternative approaches, or optional features, a selection of the Contractors may be requested to submit best and final offers. In such cases, the College will rank the final Contractors for the project, giving due consideration to the established evaluation criteria. Ultimately, the College will recommend an award to the Contractor(s) whose proposal response is found to be most advantageous to the College, based on the factors set forth in the Solicitation.
- D. Sustainability: In support of the College's signing of the American College & University Presidents Climate Commitment, the JCCC Procurement Services is dedicated to applying principles in all procurements to the

maximum degree as practical in order to procure products and services that promote the minimization of environmental impact and the conservation of energy during the entire life cycle of products.

The College will give favorable consideration to the procurement of products and services that support these aforementioned standards and that do not have negative residual impacts on the environment at the end of their useful lives. Favorable consideration will be given to those Contractors who support these standards.

The Contractor will coordinate with a representative from the College's Office of Sustainability to responsibly recycle where possible, including potential staging (on-site) of recyclable materials or items that the College may reuse, repurpose, or recycle. The College has first right of refusal on all recyclable materials but may elect to have Contractor remove and responsibly recycle or dispose of waste.

CONSTRUCTION WASTE MANAGEMENT AND DISPOSAL PLAN

Provide a Construction Waste Management and Disposal plan that includes, but not limited to, details on the following:

1. Salvaging nonhazardous demolition and construction waste.
 2. Recycling nonhazardous demolition and construction waste.
 3. Disposing of nonhazardous demolition and construction waste.
- E. College's Right to Reject / Award: The College reserves the right to reject any or all Responses, or portions thereof. The selection of a successful Contractor, if any, will be made based upon which Response the College determines would best meet its requirements and needs.
- F. Evaluation Process: The evaluation criteria, if applicable, are listed in the [Section 1 - Scope of Work](#).

SECTION 3 - BID/PROPOSAL RESPONSE FORMAT

3-1 BID/PROPOSAL RESPONSE OUTLINE

Please upload one complete proposal response as a .PDF in the requested ProcureWare section. Please structure your Response, **specific to the following outline**, clearly identifying each section, and numbering your pages:

- A. Cover Sheet: Include a completed [Bidder/Proposer Acknowledgement Cover Sheet](#) located at the beginning of this solicitation.
- B. Background and History: Describe your company, organization, officers or partners, number of employees, and operating policies. State the number of years your organization has been continuously in business.
- C. Financial Stability: Provide evidence of financial status and stability (Typical examples include financial statements, letters from financial institutions, or written narratives. JCCC will consider all submitted evidence as responsive to the Solicitation but reserves the right to ask for additional information as deemed necessary.)
- D. Experience and Support: Describe your experience in performing the services requested in the Solicitation.
- E. Project Approach: Please describe your approach to the Solicitation's [Section 1 - Scope of Work](#), including any specific information requested.
- F. Products/Services Costs: Include itemized costs for all components and features to be delivered. Costs should be identified as one-time or continuing. Purchase prices, lease prices, installation charges, and maintenance charges must be identified. All equipment prices must be stated as F.O.B. Destination, prepaid and allowed. Include any specific pricing information requested in the solicitation's [Section 1 - Scope of Work](#).
- G. References: Contractor shall provide a minimum of three (3) references including contact names, addresses, and phone numbers for whom Contractor is providing or has provided similar goods or services.
- H. Insurance: Contractor shall include evidence of existing insurance coverages consistent with those specified in [Section 4 - JCCC Terms & Conditions](#) (Paragraph 7, *Contractor's Insurance*).
- I. Warranties: Provide all warranty information to include standard manufacturer warranties, extended warranties (and cost if applicable), design and installation warranties. Include discussions of any additional support provided after the sale.
- J. Contractor Exceptions: Describe any exceptions to the terms and conditions contained within the Solicitation including the JCCC Agreement, provided however, that proposed exceptions to the Form DA-146a Contractual Provisions Attachment shall NOT be binding on the College and shall NOT be incorporated into the final Agreement.
- K. Disclosure of Potential Conflict of Interests: Describe any circumstances or relationships held by the Contractor that constitute or could reasonably be perceived as a Conflict of Interest pursuant to the College's [Conflict of Interests Policy 431.00](#).
- L. Subcontractors: Please list the names and addresses of all proposed subcontractor(s) (if any). Failure to provide this information may be grounds for rejection of Response. The College reserves the right to approve or reject the Contractor's subcontractor(s).
- M. Construction Waste Management and Disposal Plan: Provide (with bid submittal) a Construction Waste Management and Disposal Plan per Section 2-13.D
- N. Acknowledgment of ALL Solicitation Sections: Confirm that you have read and understand the information contained in: Section 1 - Scope of Work, Section 2 - Instructions/Procurement Process, Section 3 - JCCC Terms & Conditions, Section 4 - Bid/Proposal Response Format.

SECTION 4 - JCCC 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 attached Scope of Work and in accordance with the terms and conditions contained in this. 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 Documents. All times provided for in this Agreement, or in any other document executed hereunder, for the performance of any act will be strictly construed, 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 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 Solicitation 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) State of Kansas Department of Administration DA-146a (Rev. 06-12); (2) JCCC Terms & Conditions; (3) JCCC RFP/RFB Instructions/Procurement Process; (4) JCCC Scope of Work; and (5) Contractors Response to the Solicitation.

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 79
12345 College Blvd.
Overland Park, KS 66210
procurement@jccc.edu

4. INVOICES

All invoices must contain the College's Agreement number or Purchase Order (PO) number, an itemization of materials and services, and a notation of the correct Agreement 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 defined 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 clause 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 bid/proposal 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 bid/proposal;
 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 bid/proposal, 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 which 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.
- 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 contract, 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 and for a minimum of 2 years after substantial completion. 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 return receipt of United States certified mail. 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. "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, "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 Party's commitments, obligations and services under this Agreement including, but not limited to: monies owed by 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 any Party. 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 conditions 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. Nothing herein shall prohibit the College from satisfying a request to inspect and copy documents.

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 CONDITIONS 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 JCCC Procurement Services. All changes in scope to the agreement must be in writing and submitted on a JCCC 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 Johnson County Community College Procurement Services.
- D. ORDER NUMBERS: Agreement order 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 Johnson County Community 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 order 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 Johnson County Community 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 Johnson County Community College. Any rejection of goods, materials, or services resulting from nonconformity to the terms, conditions or specifications of this order, whether the goods are held by Johnson County Community 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

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

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.

D. Criminal Offenses

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.

E. Compliance with the Law

Contractor agrees to abide by all applicable federal or state laws, rules, ordinances and regulations regulated to performance of services under this Agreement, including, but not limited to, the Fair Credit Reporting Act 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.

F. 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, Contractor's personnel may be required to attend College training covering campus safety, security, environmental health, and 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.

G. 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.

H. Blood-Borne Pathogens and Hazardous Materials

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.

I. 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).

J. 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.

K. Communication

To ensure the safety of Contractor and College personnel, all of Contractor's personnel who provide services under this Agreement must be capable of reading and understanding safety and chemical signs and labels. 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.

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.** No Agreement, order, or any interest therein shall be transferred by Contractor to any other party without the approval in writing of the Director of Procurement Services, Johnson County Community College. Transfer of an Agreement without approval may cause the rescission of the transferred Agreement at the option of Johnson County Community College. Notwithstanding any assignment, Contractor shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants, and conditions 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. **FORCE MAJEURE.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes thereof, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (except for financial ability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.
- 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, the Family Educational Rights & Privacy Act, The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”). 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 (Form DA-146a, Rev. 06-12), 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, conditions and agreements herein contained or any of these 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, agreement or condition, 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 race, sex, color, religion, national origin, disability, ancestry or status as a veteran. This nondiscrimination requirement includes, but is not limited to, any matter directly or indirectly related to employment.
- 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 the College’s 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 condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions 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.

CONTRACTUAL PROVISIONS ATTACHMENT A

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. 06-12), 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 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 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 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, 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) if it is determined that the contractor has violated applicable provisions of ADA, 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.
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.
The provisions of this paragraph number 5 (with the exception of those 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 contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
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.