State of Kansas

Department of Administration

DA-146a (Rev. 07-19)

**CONTRACTUAL PROVISIONS ATTACHMENT**

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the

day of ,20 .

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.).*
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.)* and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.)* and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.)* (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

1. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
2. **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.

1. **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.
2. **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.
3. **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.***
4. **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."
5. **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.

**Local Assurances/Contractual Agreements**

**We, as an eligible recipient for funds under the Carl D. Perkins Career and Technical Education, Strengthening Career and Technical Education for the 21st Century Act hereby agree to the following assurances and contractual agreements:**

* To administer each program, service, or activity covered in this application in accordance with all applicable statutes and regulations governing Carl D. Perkins Career and Technical Education Act of 2006, and
* To be in compliance with Executive Order 11246; Title VI of the Civil Rights Act of 1964, as amended; Title IX Regulations; Section 504 of the rehabilitation Act of 1973, as amended; Individuals with Disabilities Education Act and any other federal or state laws, regulations and policies which apply to the operation of the programs. The institution does not discriminate on the basis of sex, race, color, national origin or handicap in the educational programs, services or activities being provided.
* The Uniform Grant Guidance, 2 CFR 200 all applicable subrecipient requirements, notably including but not limited to 2 CFR Part 200, Appendix II
  + (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
  + (B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
  + (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
  + (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
* To perform grant fund accounting, auditing monitoring procedures as may be necessary to maintain records as CTE determines to ensure fiscal control, proper management and proper expenditure of grant funds. The award recipient shall maintain books, records, documents and other evidence to summarize costs in such a manner so as to identify the costs directly with the delivery of services outlined in the approved grant application. This means that at a minimum the award recipient shall keep records which segregate the grant funds from all other funds received by the award recipient, to keep its accounting for this grant project separate from the accounting of other funds and to spend and report in accordance with the approved grant project budget by program and budget line items. It is understood that this includes invoices and other financial documentation for all paid expenses; the portion of the grant project supplied by other sources of revenue; contracts for services; and other records which facilitate effective grant compliance.
* To assure all records shall be subject at all reasonable times to inspection, review, or audit by State personnel and other personnel duly authorized by KSDE. The award recipient assures that all financial records, supporting documentation, statistical records and all other records pertinent to the grant award shall be retained by the award recipient for at least **five years** following the end of the grant project period.
* The award recipient assures that grant funds will not be used to supplant state or local funds.
* If the activities described in the grant application have not commenced within **60 days** after acceptance of the grant award, the award recipient shall report in writing the steps taken to initiate the grant project, the reasons for delay and the expected starting date. If the activities have not commenced within **30 days** of receipt of the above letter, the award recipient shall submit to CTE a further statement in writing regarding the delay. Upon receipt of the second letter, KSDE may terminate the grant, and the award recipient shall return to KSDE all unused grant funds with a complete accounting of all expenditures.
* KSDE reserves the right to terminate any grant award and cease payment to the award recipient for failure to comply with applicable laws, regulations, and/or terms of the grant assurances. Further, KSDE may seek reimbursement of any or all grant funds and may reclaim durable goods purchased with these grant funds if the award recipient fails to perform in accordance with the terms of the grant assurances and reporting requirements.
* The award recipient shall return to KSDE any grant funds not expended or encumbered by June 30, 2021, within 15 days after the end of the grant project period.

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*Name of District/Consortium*

assures the Kansas State Department of Education of its intent to comply with the assurances and contractual agreements as outlined in this document. Further, we are willing to explain, in writing, how we intend to comply with each of these assurances and agreements.

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Name or Signature of Authorized Administrator Title Date

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