INVITATION FOR BIDS/PROPOSALS: 40732
REPLACES CONTRACT NO.: New
DATE SENT: 08/18/2020
CLOSING DATE, 2:00 PM: 09/15/2020
PURCHASING CONTACT: Joyce Polson
TELEPHONE: 785-532-6214
E-MAIL: kspurch@k-state.edu

NOTICE TO VENDORS

Invitations are extended for bids/proposals on the attached document.

ITEM: Service Maintenance Agreement on an Ultra High Pressure Liquid Chromatography and Mass Spectrometer

USING DEPARTMENT: Kansas State University – Anatomy & Physiology

PERIOD OF CONTRACT: Date of Award through September 30, 2021 with three (3) one (1) year renewal options

GUARANTEE: NONE REQUIRED

SCOPE OF INVITATION:

The intent of this Invitation for Bid is to establish a contract for service and preventative maintenance coverage for a ThermoFisher Ultra High Pressure Liquid Chromatography (Model Vanquish) and ThermoFisher Mass Spectrometer (Model QExactive Orbitrap).

Kansas State University reserves the right to enter into negotiations with vendors should it be determined to be in the best interest of the University.

READ THIS INVITATION CAREFULLY

Failure to abide by all of the conditions of this Invitation may result in the rejection of a bid. Inquiries about this Invitation should indicate the proposal number and be directed to the purchasing contact. Return the signature page, cost page, and supporting documentation no later than the closing date indicated above. Retain the remaining documents for reference.
**BID INSTRUCTIONS**

1. **PREPARATION OF BID:** Each bid must be legible and signed. Prices are to be entered in spaces provided on the bid form. Computations and totals shall be indicated where required. In case of error in computations or totals, the unit price shall govern.

2. **SIGNATURE OF BIDS:** Each bid shall give the complete mailing address of the vendor and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line.

3. **ACKNOWLEDGMENT OF ADDENDA:** All vendors shall acknowledge receipt of any addenda to this Invitation. Failure to acknowledge receipt of any addenda may render the bid to be non-responsive. Changes to this Invitation shall be issued only by Kansas State University Purchasing in writing.

4. **SUBMISSION OF BID:** The official Signature Sheet, Cost Proposal form, and any other required documentation must be uploaded to the Vendor Bid Submission Secure File Upload portal, https://www.k-state.edu/finsvcs/purchasing/bidsubmission.html, prior to 2 p.m. CT on the closing date. Proposals submitted via any other method will not be considered (effective March 23, 2020). Under all circumstances, it shall be the vendor’s responsibility to ensure their bid is properly received by the appropriate date/time at the Kansas State University Purchasing Office.

5. **QUESTIONS:** Questions requesting clarification of this Invitation are to be submitted by the close of business on 08/31/2020 to kspurch@k-state.edu with the proposal number referenced in the Subject line.

   Failure to notify the Purchasing Office of any conflicts or ambiguities in the Invitation may result in items being resolved in the best interest of K-State. Any modification to this Invitation as a result of any pre-proposal conference or written answers to written questions shall be made in writing by addendum and emailed to all vendors who received the original request from K-State Purchasing. Only written communications are binding.

   Answers to questions will be provided in the form of an addendum and posted on Kansas State University Purchasing’s website: https://dfs.ksu.edu/rfq/.

   It shall be the responsibility of all participating vendors to acquire any and all addenda and additional information as it is made available from the website cited above. Vendors are required to check the website periodically for any additional information or instructions.

6. **CLOSING DATE FOR BIDS:** All bids shall be received promptly at 2:00 p.m. Central Standard or Daylight Savings Time on 09/15/2020 whichever is in effect. Bids received after the closing date will not receive consideration and will remain sealed in the bid file.

7. **MODIFICATION OF BIDS:** A vendor may modify a bid by email any time prior to the deadline for receipt of bids, and the Purchasing Office is satisfied that a written confirmation of the modification signed by the vendor was emailed prior to the deadline.

8. **WITHDRAWAL OF BIDS:** A bid may be withdrawn via email from the vendor to the purchasing agent at the K-State Purchasing Office prior to the closing date.

9. **BID DISCLOSURE:** As of March 23, 2020, Kansas State University is maintaining limited operation status based on the latest guidance from the CDC and KDHE. As a public health precautionary measure, Kansas State University Purchasing will not hold any public bid openings until further notice. Bid tabulations will be available after the release of a purchase order or the contract is finalized. Results may be obtained by sending the contract proposal number for each tab requested to kspurch@k-state.edu

   Copies of individual proposals may be obtained under the Kansas Open Records Act by submitting a written request to Open Records, Communications and Marketing, 128 Dole Hall, Kansas State University, Manhattan, KS 66506 (EMAIL openrecords@k-state.edu or FAX 785-532-7355). An estimate of the amount of time and copies it will take to complete the request will be compiled. After payment has been received, the documents will be released. Should a check be returned to Kansas State University for insufficient funds, the vendor will be suspended from all bidding until such time as the vendor makes good on payment. More information regarding the Kansas Open Records Act is available at http://www.k-state.edu/policies/ppm/3000/3060.html

   Information in bid files will not be released until a bid has been awarded or all bids have been rejected.
GENERAL CONDITIONS

1. **CONTRACT:** The successful vendor will be required to enter into a written contract with Kansas State University. The vendor agrees to accept the provisions of form KSU-146a, Contractual Provisions Attachment, which is incorporated into all contracts with the University and is available at https://www.k-state.edu/policies/ppm/3000/3070.html

2. **CONTRACT DOCUMENTS:** This Invitation and any addenda and the response and any addenda of the successful vendor shall be incorporated along with the KSU-146a into the written contract which shall compose the complete understanding of the parties.

3. **CONTRACT FORMATION:** No contract shall be considered to have been entered into by Kansas State University until all statutorily required signatures and certifications have been rendered; funds for the contract have been encumbered; and a purchase order, signed by the Purchasing Office, has been deposited in the mail OR a written contract has been signed by the successful vendor.

4. **FEDERAL, STATE AND LOCAL TAXES-GOVERNMENTAL ENTITY:** Unless otherwise specified, the bid price shall include all applicable federal, state and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Invitation. The University is exempt from state sales or use taxes and federal excise taxes. These taxes shall not be included in the vendor's price quotations.

5. **EVALUATION OF BIDS:** Award shall be made in the best interest of the University. Consideration may focus toward but is not limited to:
   - Cost. Vendors are not to inflate prices in the initial bid/proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations (if indicated). The University reserves the right to award to the lowest responsive bid without conducting formal negotiations.
   - Adequacy and completeness of proposal
   - Vendor's understanding of the project
   - Compliance with the terms and conditions of the Invitation
   - Experience in providing like services
   - Qualified staff
   - Methodology to accomplish tasks
   - Response format as required by this Invitation

6. **ACCEPTANCE OR REJECTION:** The University reserves the right to accept or reject any or all bids / proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this Invitation; and unless otherwise specified, to accept any item in a proposal.

7. **COMPETITION:** The purpose of this Invitation is to seek competition. The vendor shall advise the Purchasing Office if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Purchasing Office no later than five (5) business days prior to the bid closing date. The Purchasing Office reserves the right to waive minor deviations in the specifications which do not hinder the intent of this Invitation.

8. **NEW MATERIALS, SUPPLIES OR EQUIPMENT:** Unless otherwise specified, all materials, supplies or equipment offered by a vendor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.

9. **EQUIVALENT ITEMS:** Whenever a material, article or piece of equipment is identified in the specifications by reference to a manufacturer’s or vendor’s name, trade name, catalog number, etc., it is intended to establish a standard, unless otherwise specifically stated. Any material, article or equipment of other manufacturers or vendors shall perform to the standard of the item specified. Equivalent bids must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to the State and if not destroyed in the evaluation process, shall be returned at vendor’s expense, if requested.

10. **DEFAULT ON DELIVERY:** Any vendor, who defaults on delivery as defined in this Invitation may, at the discretion of the Purchasing Office, be barred from bidding on any subsequent Invitation for a period to be determined.
11. INSURANCE: The State shall not be required to purchase any insurance against loss or damage to any personal property nor shall the State establish a "self-insurance" fund to protect against any loss or damage. Subject to the provisions of the Kansas Tort Claims Act, the vendor shall bear the risk of any loss or damage to any personal property.

12. INSPECTION: The State reserves the right to reject, on arrival at destination without cost to the State, any items which do not conform with the specifications of this Invitation.

13. TERMINATION: Kansas State University Purchasing may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
   (1) The Contractor fails to make delivery of goods or services as specified in this contract; or
   (2) 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 using department or Kansas State University Purchasing shall provide the Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within 10 days from the receipt of the notice (or such longer period as may be authorized in writing), Kansas State University Purchasing shall issue the Contractor an order to stop work immediately. Receipt of this notice shall be presumed to have occurred within three (3) days of the date of the notice.

Kansas State University Purchasing may terminate performance of work under this contract in whole or in part whenever, for any reason, it is determined that the termination is in the best interest of the University. In the event that Kansas State University Purchasing elects to terminate this contract pursuant to this provision, he/she shall provide the Contractor written notice at least 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.

14. RIGHT AND REMEDIES: If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State may be obligated only for those services and materials rendered and accepted prior to the date of termination. Subject to proof of market price, the measure of damages for non-delivery or repudiation by the Contractor shall be the difference between the market price at the time when the State learned of the breach and the contract price together with any incidental and consequential damages less expenses saved in consequence of the contractor's breach. Market price shall be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

If it is determined, after notice of termination for cause, that the Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination in the best interest of the State.

The Contractor shall not be liable if the failure to perform this contract arises out of causes beyond the control of or negligence of the Contractor. Causes may include, but are not limited to, acts of nature, fires, quarantine, strikes other than by the Contractor's employees, and freight embargoes.

In 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 the State.

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

15. 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 the State shall not constitute a waiver.

16. HOLD HARMLESS. The Contractor shall indemnify the State against any and all claims for injury to or death of any persons; for loss or damage to any property; 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 State 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 State's right to recover against third parties for any loss, destruction or damage to State property.
17. **PROHIBITION OF GRATUITIES.** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer to give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.

18. **FEDERAL, STATE AND LOCAL TAXES-CONTRACTOR.** The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

19. **ANTITRUST.** The Contractor assigns to the State all of its rights to and interests in any causes of action it has or may acquire under the antitrust laws of the United States and the State of Kansas relating to the particular product or services purchased or acquired by the State pursuant to this contract.

20. **MODIFICATION.** This contract shall be modified only by the written agreement of the parties with the approval of Kansas State University Purchasing.

21. **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 State which consent will not be unreasonably withheld or delayed. This contract shall immediately terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.

22. **THIRD PARTY BENEFICIARIES.** This Contract shall not be construed as providing an enforceable right to any third party.

23. **CAPTIONS.** 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.

24. **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.

25. **GOVERNING LAW.** This agreement shall be governed by the laws of the State of Kansas.

26. **NOTICE OF AWARD.** The K-State Purchasing Office shall issue either a purchase order or a written contract to the successful vendor.

27. **POLITICAL SUBDIVISIONS.** Political subdivisions [including but not limited to, the Kansas Board of Regents and its member institutions, Riley County, City of Manhattan, and local Unified School Districts (USDs)] are permitted to utilize contracts administered by Kansas State University. Conditions included in this contract shall be the same for political subdivisions. The University has no responsibility for payments owed by political subdivisions. The vendor must deal directly with the political subdivision. Bidders shall indicate below if pricing is available to political subdivisions.

28. **TAX CLEARANCE CERTIFICATE.** A “tax clearance” is a comprehensive tax account review to determine and ensure that the account is compliant with all primary Kansas Tax Laws administered by the Kansas Department of Revenue (KDOR) Director of Taxation. Kansas State University supports the State of Kansas tax clearance process. Vendors submitting bids, proposals, contracts, etc., are required to provide a current tax clearance certificate. For more information regarding this process please go to: [http://www.ksrevenue.org/taxclearance.html](http://www.ksrevenue.org/taxclearance.html)

29. **ACCOUNTS RECEIVABLE SET-OFF PROGRAM.** During the course of this contract if the vendor is found to owe a debt to the State of Kansas, payments to the vendor may be intercepted (setoff) by the State of Kansas. Notice of the setoff action will be provided to the vendor. The vendor shall credit the account of the department making the payment in an amount equal to the funds intercepted.

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 constitute lawful payment for services or goods received. The vendor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.
SPECIAL CONDITIONS

1. **TERM OF CONTRACT.** The term of this contract is from Date of Award through September 30, 2021 with three (3) one (1) year renewal options.

2. **OPEN-ENDED CONTRACT.** This Invitation is for a contract between a vendor and Kansas State University to furnish an undetermined quantity of a good or service in a given period of time.

3. **QUALITY.** Materials used and workmanship shall be of the highest quality. Failure to produce and/or supply materials of the highest quality may result in rejection of an order entirely at the contractor’s expense.

   The decision of Kansas State University Purchasing shall be final in all instances of dispute herein. The proof of accuracy or manufacture and quality of material rests with the contractor.

4. **PRICE.** Prices shall remain firm throughout the contract period. On the contract anniversary date, the price may be adjusted up or down (maximum 3%) keyed to market conditions. It is understood that in the event the parties cannot agree upon the renewed price the contract will be terminated.

5. **DELIVERIES.** All orders shall be shipped FOB destination, prepaid and included, unless stated otherwise. Deliveries must be clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall notify the ordering department of the expected delivery date or partial delivery date. The order may be canceled if delivery time is unsatisfactory. The Contractor shall inform Kansas State University Purchasing of any supply or delivery problems.

6. **INVOICES.** Each purchase order must be individually invoiced. Invoices shall be forwarded to the using department in duplicate and shall state the following:

   (1) Date of invoice;
   (2) Date of shipment (or completion of work);
   (3) Purchase Order number and contract number;
   (4) Itemization of all applicable charges; and
   (5) Net amount due.

7. **PAYMENT.** Payment Terms shall be net 30, unless stated otherwise. Payments will be made in regular routine per K.S.A. 75-6403 upon receipt by the ordering department of the contractor’s invoice in duplicate.
BACKGROUND

Kansas State University (K-State/KSU) was founded in 1863 as the country's first operational land-grant university. The first semester comprised of 52 students, equal of gender, becoming only the second public institution of higher learning in the U.S. to admit women and men equally. Between physical campuses in Manhattan, Salina and Olathe, and the University's online learning platform, Global Campus, K-State boasts an enrollment of approximately 21,000 students, drawing from all 50 states and no less than 100 countries. Students can choose from in excess of 250 majors and options from nine colleges: Agriculture; Architecture, Planning & Design; Arts & Sciences; Business Administration; Education; Engineering; Health & Human Sciences; Polytechnic; and Veterinary Medicine. The Graduate School offers upwards of 165 graduate degrees and certificates.

K-State's main Manhattan campus covers 2,320 acres, including agricultural and research facilities, and is host to seven war memorials. The Polytechnic campus in Salina is one of the first and still few universities in the nation to implement a bachelor's degree in unmanned aircraft systems. Kansas State University Olathe focuses on animal health and nutrition, food safety, and security. Global Campus administers 70 online programs and delivers at least 600 online courses every semester to students across the world.

K-State Research and Extension has a presence in every county throughout Kansas and supports research in over twenty K-State departments. From the 8,616-acre Konza Prairie Biological Station to the Johnson Cancer Research Center, the University is home to 90 plus research facilities, ensuring researchers and partners have the tools they need to solve global challenges.

Kansas State University is consistently recognized by Princeton Review, U.S. News & World Report and Forbes magazine has one of the nation’s best colleges, including being the most military-inclusive.

SPECIFICATIONS

This proposal is for service and one scheduled annual maintenance on a ThermoFisher Vanquish Ultra High Pressure Chromatography System (UPLC) and ThermoFisher QExactive Orbitrap Mass Spectrometer.

The equipment has been serviced in the past and a preventative maintenance has been scheduled and will be performed prior to this contract ensuring the equipment is in top condition.

1. Responsibilities of Contractor:
   a. Responsibility for State Property: The Contractor shall assume full responsibility for all State property including any equipment, supplies, accessories, or parts furnished, while in their custody.
   b. The successful bidder shall carry sufficient liability to cover the work performed. At a minimum, the contractor should carry the following types and amounts of insurance.
      Workman Compensation and Employer’s Liability $100,000
      General Liability $500,000 per occurrence

2. Service and Preventative Maintenance to be provided for the following equipment:

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<thead>
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<th>Type</th>
<th>Module</th>
<th>Manufacturer</th>
<th>Model</th>
<th>Serial Number</th>
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<td>ThermoFisher</td>
<td>Vanquish P/N VF-A10-A</td>
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<td>QExactive</td>
<td>Mass spectrometer</td>
<td></td>
<td>QExactive Orbitrap</td>
<td>02899L</td>
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3. Repair Service and Maintenance:
   a. Preventative maintenance coverage shall be scheduled one (1) time per year.
   b. Work to be performed will be based on the original manufacturer’s suggested preventative maintenance guidelines and shall consist of but not limited to:
      i. Cleaning, lubricating, adjusting, replacing parts where needed and keeping the equipment in first-class operating condition.
      ii. Repairs necessitated by fire, abuse or negligence are exempted.
c. Work to be performed from 8:00 am - 5:00 pm (CST), Monday – Friday.
d. All work must be performed by a service engineer from the contracted vendor. No subcontracting.
e. All parts shall be new and Original Equipment Manufacturer (OEM).
f. Service shall include repair of the equipment, all parts and labor associated with the repair (bid price to be inclusive of these items).
g. Unlimited Repair – shall not restrict the number of service call requests.

4. **Travel:**
   a. Covered expenses shall include all travel costs and per diem (bid price to be inclusive of all travel related costs)

5. **Support:**
   a. Unlimited telephone support with access to technical support within 4 hours
   b. Phone or email response within 4 hours of service request
   c. Technical support is available from 7:00 am - 8:00 pm (CST)
   d. Priority Response – on-site response shall be expected within 24-72 hours
   e. Remote access to allow for troubleshooting remotely
Closing Date: 09/15/2020

Item: Service Agreement on an Ultra High Pressure Liquid Chromatography and Mass Spectrometer

Department: Kansas State University – Anatomy & Physiology

**SIGNATURE SHEET**

We submit a proposal to furnish requirements during the contract period in accordance with the specifications.

LEGAL NAME OF PERSON, FIRM OR CORPORATION ________________________________

ADDRESS ________________________________________________________________

CITY & STATE ____________________________ ZIP CODE __________

WEBSITE ________________________________________________________________

CONTACT NAME ________________________________

CONTACT E-MAIL _________________________________________________________

CONTACT PHONE NUMBER ________________________________

AUTHORIZED SIGNATURE & DATE ________________________________

TYPED NAME ____________________________________________________________

TITLE ________________________________________________________________

E-MAIL ________________________________________________________________

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

ADDRESS ________________________________________________________________

CITY & STATE ____________________________ ZIP CODE __________

PHONE NUMBER _________________________________________________________
COST PROPOSAL

Vendor Name: ________________________________

Monthly Total – $_____________________

Annual Total - $_____________________

Optional Services:
Year 2 Optional Renewal $_____________________
Year 3 Optional Renewal $_____________________
Year 4 Optional Renewal $_____________________

Is your pricing available to political subdivisions of the State of Kansas?  Yes  /  No

Payment Terms: __________  Will P-Card be accepted for payment?  Yes  /  No
Will ACH (direct deposit) be accepted for payment?  Yes  /  No

Proposal responses shall include a list of 3 (minimum) references on a separate sheet. Company name, contact, phone number and email address information shall be included for each reference.
CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to and specifically incorporated in all contractual agreements by adding the following statement to the main body of the contract: “The Provisions found in Contractual Provisions Attachment (Form KSU-146a, Rev. 7-20), which is attached hereto, are hereby incorporated in this contract and made a part hereof.”

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 contract, subcontract, or agreement in connection with the contract (including, without limitation, all other attachments) in which this attachment is incorporated. Any terms that conflict with or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue:** All matters arising out of or related to 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 arising out of or related to this contract shall reside only in courts located in the State of Kansas.

3. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require Kansas State University or any of its controlled corporations (collectively “University”) to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability set forth in this attachment shall be controlling as to Kansas State University and its employees, and to the extent the provisions of the Kansas Tort Claims Act (K.S.A. 75-5101 et seq.) apply, such provisions shall supersede any restrictive indemnification provisions contained in the University’s policy documents.

4. **Arbitration, Damages, Warranties:** 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.

5. **Termination Due To Lack Of Funding Appropriation:** If 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 write 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 any contract for which it has not been paid. The University 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 the University, 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.

6. **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.

7. **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.

8. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the required approvals and certifications have been given, including, but not limited to, the signature of an authorized representative of the University as defined in the University Contracts Policy: https://www.k-state.edu/policies/ppm/3000/3070.html.

9. **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.

10. **Export Control:** Prior to providing University with any items under this contract that are subject to export controls regulations, including items controlled under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130, or the Export Administration Regulations (EAR), 15 C.F.R. §§ 730-774, Contractor will notify University and identify the export controlled items at issue and the applicable categories and subcategories of the United States Munitions List and/or Export Control Classification Number(s). University reserves the right to decline to accept any items or information controlled under ITAR or EAR. Contractor will direct all notices under this section to the appropriate University contact as follows: comply@k-state.edu.

11. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g). To the extent Contractor possesses any education records of University’s students under this contract, Contractor is deemed to be a school official with a legitimate educational interest in the records and Contractor agrees to comply with FERPA and its regulations. Contractor specifically agrees that it shall use personally identifiable education records only for purposes related to this contract, and shall not disclose such records to any third party without authorization from the University. Contractor shall promptly report to the University any request for, or improper disclosure of, University student educational records.

12. **Anti-Discrimination Clause:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. When requested by University, Contractor shall cooperate with University in meeting obligations under University’s own policies and procedures, including but not limited to the University’s anti-discrimination policy: http://www.k-state.edu/policies/ppm/3000/3010.html. Contractor specifically acknowledges that its employees on campus and/or participating in University programs or activities have reviewed, understanding, and will comply with University’s anti-discrimination policy and its reporting website at https://www.k-state.edu/compliance/ and also agrees to comply with 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.

13. **Information/Confidentiality:** As a state agency, the University’s contracts and prices paid for goods and services are generally public records, and therefore 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.

14. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but prudence requires the University to reiterate that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.

15. **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. In no event shall the awarding of any state money or any other consideration by the University constitute or be construed as a contribution or an inducement to make a contribution to any political party, political action committee, or any other political organization. No part of the funds provided through this agreement 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 authoring, extension, continuation, renewal, amendment or modification of any governmental contract, grant, loan, or cooperative agreement.

16. **Facility Access:** To the extent Contractor is required to be on the University’s premises in the performance of any contract, Contractor and its representatives will adhere to the University’s policies and procedures, and will commercially reasonably efforts not to interfere with the University’s regular operations. Contractor shall not be given any preferential treatment by the University that is not afforded non-contracted parties. Contractor shall agree to comply with the University’s written policies and procedures and any and all regulations and policies in effect at the University, and shall, in cooperation with the University, develop a written safety plan for Contractor’s operations on the University’s property. Contractor shall also agree to indemnify the University, its employees, agents, and representatives from and against any claims, losses, damages, costs, and expenses, attributable to the Contractor’s use of University property, or the return of such property, including any injury to the Contractor or any property of the Contractor.

17. **Electronic Signature:** The parties agree that the contract may be signed with electronic signatures. If an electronic signature is used, the parties agree that it is the equivalent to a handwritten signature. Whenever either party uses an electronic signature on the contract, it has the same validity and meaning as a handwritten signature. The parties agree that an electronic signature will, at any time, constitute the meaning of any electronic signature or claim that an electronic signature is not legally binding.

18. **No Endorsement:** Contractor agrees it will not use or display the name, marks, or images of the University to advertise and/or endorse its enterprises or products, or for any other purpose without the prior written approval of the University.