

Contract Award

Date of Award: August 30, 2017

Contract Number: 17010701
Replaces Contract: 87100 / 12156AB / 12156 AC

Contract Coordinators:	Jim Hughes	Chris Howe
<i>Agency:</i>	<i>Pittsburg State University</i>	<i>University of Kansas</i>
Telephone:	620-235-4154	785-864-2025
E-Mail Address:	jhughes@pittstate.edu	chowe@ku.edu

Item: Copiers / Multi-Function Devices (MFDs)

Period of Contract: September 1, 2017 through December 31, 2022
(With opportunities to negotiate renewals)

Contractor: SumnerOne
aka Unisource Document Products / UDP
8058 Flint
Lenexa, KS 66214

Contact Person: Ryan Harms, Solutions Consultant
Direct: (913) 322-5018
Cell: (913) 636-7926
Email: rharms@udpcorp.com

Payment Terms: Net 30

Procurement Cards: Agencies **MAY** use a P-Card for purchases from this contract.

Administrative Fee: Administrative Fees **HAVE NOT BEEN** incorporated into this contract.

Project Origins: This contract was negotiated by procurement officials associated with the institutions governed by the Kansas Board of Regents. KU Procurement Services will maintain the contract file and related documents as prescribed by the Kansas Open Records Act.

Political Subdivisions/Participating Users: Political Subdivisions/Participating Users [including but not limited to, the Kansas Board of Regents and its member institutions, counties, cities, school districts], not-for-profits, and the Lawrence Memorial Hospital are permitted to utilize this contract. Conditions included in this contract shall be the same for participating users. The University has no responsibility for payments owed by participating users. The vendor must deal directly with the participating user.

Contract Documents

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

1. Form KU-146a;
2. written modifications (amendments or addenda) to the executed contract;
3. written contract signed by the parties;

Renewal Periods: Contract Coordinators may choose to negotiate extensions to the Original Contract Period. Participation in the exercise of these renewals are at the discretion of each individual agency/political subdivision/participating user (“Users”).

Initial Fleet Installations: As different agencies are working under different existing contracts, Contractor shall work with each Agency/Political Subdivision/Participating User to schedule installation of devices in a manner which best fits the institutions need.

Transition Assistance: During the initial fleet deployment, during any changeover at the end of the contract, and/or in the event of contract termination situation, Contractor shall provide all reasonable and necessary assistance to Participating Users to allow for a functional transition to another vendor.

Contractor Responsibilities:

1. **Contract Website(s):** Contractor will work with Agency/Political Subdivision/Participating User to provide information on website to inform end users of the programs available under the contract. Contractor can add as much information from below to help with end users for device selection, service, supplies, etc.
 - a. Contract Product Offerings and Options
 - b. Up-to-date pricing.
 - c. Authorized partners that are authorized to work with the primary Contractor.
 - d. Tools designed to assist individual departments make cost effective decisions based on individual needs.
 - e. User Training Guides for Print, Copy, Scan, Fax operation on devices
 - f. Other items might include:
 - g. Ability to place and track service calls
 - h. Allow for the ordering of supplies
2. **Equipment Additions/Deletions** – During the term of the contract, Contractor may add or delete contract equipment introduced to or removed from the market by the manufacturer provided that such equipment changes are approved in advance by the Contract Coordinators. Upon approval, Contractor shall update the dedicated contract website(s) to reflect this change. Pricing must utilize the same pricing structure as was used for other equipment falling into the same product category.
3. **Equipment Inspection/Testing/Acceptance** – Inspections, tests, measurements, or other acts or functions performed by the ordering Customer shall in no manner be construed as relieving the Contractor from full compliance with contract requirements. At a minimum, an installed device must demonstrate the capability of providing the functions and services specified in the manufacturer’s published literature.
4. **Contract Timing Issues** - No contract term for service, supplies, lease payments or rental payments may begin prior to successful delivery, installation and acceptance of the ordered equipment by the Customer. As such, no valid invoice may be issued by the Contractor prior to the acceptance by the Customer.
5. **Survivability** – Placements made using the authority provided by this Contract may survive the Contract itself. Those Customers renting or leasing the equipment will continue to receive ongoing service from the Contractor at the agreed upon Contract rate through the term of their placement contract agreement. The Contract terms and conditions will survive the authorizing contract through that final term and any subsequent renewals and extensions. Upon the Contract termination, Users and Contractor may agree to further extend a placement with the approval of the Contract Coordinators.
6. **Equipment:** All new equipment placements must be newly manufactured equipment, previously unused and currently in production.
7. **Redeployment of Equipment:** Notwithstanding the requirements for placement of new equipment, a User may request the redeployment of a copier to a new Agency or customer at the User’s sole discretion. Any perceived abuse of this clause must be brought to the attention of the Contract Coordinators.

8. **Energy Star Ratings:** Equipment must be Energy Star® compliant. Contractor shall supply proof of compliance upon request.
9. **Installation and Environmental Requirements** – Prior to order acceptance, Contractor must advise Customer of any and all specialized installation and environmental Customer site requirements for the delivery and installation of contract equipment. This information should include, but is not limited to the following: Air conditioning; electrical requirements; special grounding; cabling requirements; space requirements; humidity and temperature limits, and; any other considerations critical to the installation.
10. **Warranty** – Equipment must carry a minimum 90-day warranty that it is free from defects in material and workmanship. If defects are identified, the Contractor agrees to repair or replace defective parts promptly on a like-for-like basis without additional cost to the Customer. Any and all items failing during the warranty period will be replaced promptly free of charge. Upon significant failure, the warranty period will commence again for a minimum 90 additional days. Significant failure shall be determined by the User.
11. **Availability of Repair Parts** –The Contractor must guarantee the availability of repair parts for a minimum of five (5) years after Customers acceptance of the contract equipment, and for any subsequent contract extensions. All branded equipment components, spare parts, application software, and ancillary equipment purchased and supplied under any resulting contract must conform to manufacturer specifications. The Contractor is responsible for ensuring that these items are operable and installed in accordance with manufacturer’s specifications.
12. **On-Going Point of Contact** –The Contractor shall provide a single point of contact for all issues and questions regarding the equipment and services provided including but not limited to: Pricing, Equipment Additions/Moves, Contract Issues and Service Escalation Issues. That contact person is typically listed on the cover page of the Master Contract Agreement.
13. **Service Hours** – Contractor must perform full service support for all proposed copiers during normal business hours (Working Days, 8:00 am – 5:00 pm).
14. **Service Requests** –Contractor must provide toll free phone, local phone, facsimile, e-mail, internet and/or any electronic automated method for Customers to place servicecalls during normal business hours (Working Days, 8:00 am – 5:00 pm).
15. **Electronic Meter Readings** – Contractor must provide an electronic method for providing periodic meter readings. These electronic methods may include online submission and/or automated electronic submission to be performed by the equipment in place via an available network connection if approved by the Users.
16. **Service, Parts** – Contractor must use all OEM parts. Used parts will not be accepted within this contract except as an emergency repair to maintain uptime.
17. **Service, Technician Training** – All service technicians must be factory trained by official OEM representatives, who themselves are certified to service the equipment.
18. **Service, Response Times:** Contractor must maintain at least a 4 hour on site response time during normal business hours (Monday – Friday, 8:00 a.m. through 5:00 p.m.) unless otherwise allowed by the User.
19. **New Orders:** New orders for equipment must be installed by the Contractor no later than thirty (30) days ARO. Excess installation time may be afforded by the User. Software related to the equipment must be installed within five (5) working days of the equipment installation unless the User extends this time.
20. **Equipment Transfers:** Moves, equipment pickups and equipment trade-ins must be accomplished in fewer than thirty (30) days.
21. **Service, Confirmation of Service Requests:** Contractor must acknowledge service calls via phone, on-site service call or e- mail within one hour of the placement of a service call.

22. **Pricing Inclusions:** Pricing includes (but is not limited to) all in-house delivery of equipment and software, installation of equipment/accessories/software, network installation, removal of all waste material, initial training costs.
23. **Network Installations:** Contractor shall work with User's IT Departments on network installation issues, to include (but not be limited to): configuration of the copier for the proper network protocols; and installation of the appropriate print drivers on up to five (5) computers per unit ordered.
24. **Excessive Installation Requirements:** Contractor may charge for excessive installation requirements including rigging, excessive access alterations and access to non-ground floors via stairs. Any such excessive installation charges must be quoted to the User prior to the signature of any lease, rental or purchase agreement and the resulting charge may not exceed this quote; but shall be based on the actual expenditures by the Contractor.
25. **Business Review Meetings:** In order to maintain and enhance the long-term business relationship, the supplier's account management team and KU shall meet once annually, at a minimum, to review reports, pricing, product updates, performance, service-related issues, and proposed initiatives. Supplier will also provide cost reduction recommendations to further reduce costs related to KU's account as they become apparent.
26. **Reporting:** Supplier shall make every effort to provide reporting as requested by KU. If requested to provide usage reports, supplier shall deliver the report within 5 business days of request at no additional charge to KU or any using agency. At a minimum, the ability to report on the following criteria is required:
 - a. Total dollar value of purchases / payments;
 - b. Total purchases by item number and participating user;
 - c. Number of returns / requested returns;
 - d. Total dollar value of surcharges, transaction fees, delivery charges such as expedited freight, and other miscellaneous charges, if any.

Pricing, Leasing Programs

- A. All leases are **60-month** Non-Cancelable Rentals, unless otherwise modified/redeployed as listed within this document, or upon mutual agreement between the Contractor and the User.
- B. All leases may be bought out to return equipment to the Contractor, although the rentals may be subject to a termination charge. The termination charge may not exceed the balance of rental payments or 25% of the remaining term, whichever is less. No termination charges shall be applicable in the case of non-appropriations of funds for a government entity. Supporting documentation of non-appropriation action or activity may be required.
- C. Notwithstanding the requirements for placement of new equipment, a User may request the redeployment of a copier to a new Agency or customer at the User's sole discretion. Any perceived abuse of this clause must be brought to the attention of the Contract Coordinators. Users with a small number of deployed devices may be limited in the use of redeployment options.
- D. Contractor may assign the leases produced under this contract with the approval of the Contract Coordinators upon occurrence; but the obligations, terms and conditions may not be altered and shall remain with the Contractor.

Pricing, Service and Supplies Inclusions

- A. Supplies pricing shall include all parts, supplies and consumables with the exception of paper and staples.
- B. Service pricing must include technician installed parts with the exception of paper, staples and toner.
- C. Contractor must perform all preventative maintenance services at the manufacturer's suggested intervals, if applicable.
- D. Contractor may not charge for a scan.
- E. Pricing includes training during initial fleet deployment and on-going training for each device. Trainings will be scheduled at a time convenient for end users. These trainings can be in a group setting or with key users, custom to each user/department.

Pricing, Service and Supply Programs

- A. Contractor must produce and maintain a list of the defined Service Partners for each area. Contractor must contact the Contract Coordinators if there are any changes within the contract period or any extensions.
- B. Contractor must offer, at a User's request, various terms for the reconciliation of overage charges. The terms for the reconciliation may be monthly, quarterly or annually.

Network Connections: Equipment must use only one network connection to accomplish network printing and scanning.

Print Drivers

- A. All software and drivers shall be compliant with Windows 7 or newer, as well as Server 2012 or newer.
- B. Equipment must have pre-configurable print drivers for scripting and push method installation on PC's.

Technology, Authentication and Access

Any network connected devices (with the exception of Desktop groups) must offer authentication for all features utilizing LDAP and/or Windows AD and the ability to disable authentication for any or all features.

The credential information for any remote authentication method may not be maintained within the copier's memory or persistent storage.

Access to the device's administrative functions must be password protected as per the User's password requirements and must be changed from default at the time of install.

Technology, Security

- Console copiers must have as an available option, Secure Socket Layer (SSL) and TLS 1.2 encryption for any data stored on the device and hard drive.
- Device should have option for user password for all fax, scanning and printing capabilities.
- Hard drives should be encrypted and have the ability to be periodically overwritten and during the lease term and at the end of term.
- The customer will have the option to take the hard drive at the end of the lease term, **at the cost listed in pricing pages.**
- Provide explanation of device vulnerability against security attack.
- Provide explanation as to how your devices are HIPAA and Gramm-Leach-Bliley compliant.
- Are your devices certified in accordance with Common Criteria/ISO 15408 EAL3 standards?
- Does the device align with the User's SMTP Authentications and email transfer encryption?
- Do fax protocols permit the incoming fax to be held in an inbox as opposed to printing out automatically. (HIPAA would not look kindly on private faxes printing out and sitting in plain view.)
- Does the Contractor provide notifications of security risks involving their devices?
- Please provide a copy of your security and incident management policy.
- Contractor must maintain a disaster recovery plan in the event of multiple device failure, recall or other vulnerability
- Contractor will work with each Participating User to set a standard configuration for each device
- Firmware and/or security updates will be provided and installed by the contractor.

i.

Managed Print Services

As defined by Gartner, Managed Print Services (MPS) is a generic Gartner term for a service offered by an external provider to optimize or manage a company's document output to meet certain objectives, such as driving down costs, improving efficiency and productivity, or reducing the IT support workload. Under MPS, a service provider takes primary responsibility for meeting the customer's office printing needs, including the printing equipment, supplies, services, and/or the overall management of the printer fleet.

During the contract the contractor may request to add new technology for MPS. Any new technology must be approved in advance and in writing by the Contract Coordinators.

Participating Users may engage the Contractor in Managed Print Services on a case-by-case basis. Because each case could be vastly different, the following items are examples of the types of services that might be available through the Contractor. Pricing for these services will be determined based upon the development of an MPS Project Statement of Work.

Contractor may be able to provide (but not be limited to) the services listed below.

1. Consulting and Project Management;
2. Assessments;
3. Monitor and manage Agency's fleet;
4. Service Level Agreement (SLA), reporting and invoicing;
5. Software;
6. Implementation;
7. Training;
8. Change Management Plan;
9. Helpdesk/Customer Service.

All services below are considered general MPS services and may be included into an agency's individual MPS Project Statement of Work (SOW). These descriptions are intended to be general in nature and not limiting to the development of SOWs.

1. **Consulting and Project Management:** Consulting and project management services are considered services that help organizations improve their print performance, development of plans and schedules for improvement, change management, technology implementation, and strategy development.
2. **Initial Assessment** - Contractor can provide, at a minimum, an initial no cost assessment. An Initial Assessment does not guarantee an agency contract for MPS. An Initial Assessment shall include a review of the current print environment providing recommendations for a rationalized print environment and provide an estimate of potential future savings.

The initial assessment should contain the minimum requirements listed below (unless otherwise changed per mutual agreement) and must identify all software and associated costs proposed:

- a. Document Workflow Assessment;
- b. Agency's future needs versus current practices
- c. Identify cost of services, supplies and parts for fleet (exclude paper and staples);
- d. Identify current equipment output and Total Cost of Ownership including phone line charges for fax functionality, toner purchases, time and materials calls, service agreements;
- e. Identifying user-to-device ratio with right device, right location and right functions;
- f. Preliminary estimated cost savings and efficiencies;
- g. Employee productivity requirements;
- h. Environment impact analysis;
- i. Documented security assessment

Managed Print Services (continued)

3. **Monitor and Manage Agency's Fleet** – If engaged, Contractor will work with the Participating Agency to choose monitoring factors which may become a part of the Statement of Work:
 - a. Network access
 - b. Fleet configuration and utilization
 - c. Multi-Contractor Support and Maintenance: Management of legacy owned devices including parts, labor and supplies, installing, moving, and changing;
 - d. Removing and disposing of devices, including recycling programs;
 - e. Remote monitoring and management of all print devices for use in the management and reporting of consumable spend, break/fix, technical support and the improvements of efficiencies for supplies and/or cost reductions. Monitoring fleet performance and cost saving opportunities. Include how your organization performs meter collection for those devices that are not networked.
 - f. Continual optimization of print output environment, regardless of printer brand, business process reviews to ensure that the Agency's objectives are being met.
 - g. Innovative ways your organization helps eliminate unnecessary printing; reduce carbon footprint usage, waste, or "green spend", etc.
 - h. On-going Assessment: Contractor may provide a regular On-going Assessment to evaluate the Agency's identified objectives outlined in the initial assessment. The On-going Assessment shall include but not limited to continuous process improvement, and business reviews such as; device utilization, fleet performance, cost saving opportunities, department/site usage, green spend, consumables monitoring report, remote management, service level agreement monitoring etc. The frequency of the On-going Assessment should be either on a quarterly or semi-annual basis and will be identified in the SOW.

4. **Service level agreements, reporting and invoicing** – Examples of available reports will be available:
 - a. ensure SLA compliance and support;
 - b. device performance;
 - c. device inventory detail;
 - d. helpdesk call-log detail;
 - e. incident detail per device;
 - f. meter volume metric;
 - g. consumable spend and detail;
 - h. line item billing detail;
 - i. total output of each device
 - j. Additional reports as may be required and addressed at the Participating User

5. **Software** - Contractor may provide software required to perform MPS, including:
 - a. Device management software to monitor and manage the print devices in an environment on-site and remotely;
 - b. Discovery and design software to analyze and plan for the change required in implementing MPS;
 - c. Security services to review security solutions such as; intrusion detection, device security integration, user authentication, secure document release, document privacy, securing data, protecting content integrity, job tracking (document in transit and at rest), printed documents, printing from mobile devices, pull printing, content management, imaging and printing fleets, network security, security compliance and audit services including cloud access.
 - d. Hard drive security procedures as defined in US Department of Defense (DoD) 5220.22-M.

6. **Implementation:** Contractor may provide to Participating User an implementation plan and show how their analysis, assessment, and planning come together for delivery of recommended solution to meet the entity's goals.

7. **Change Management Plan** – When deploying MPS, the Contractor may provide a change management plan.

Managed Print Services (continued)

8. **Helpdesk/Customer Service** – For MPS-based projects, the SOW should specify what levels are necessary to maintain adequate service representation during the Participating Agency’s regular business hours.

9. Value Added Services Available to Participating Users

- a. onsite print center, including staffing;
- b. options for on-site full-time and/or part-time staff;
- c. customized reports;
- d. other recycling programs;
- e. print management software to manage the volume and nature of print and authenticate the users;
- f. scan routing software to route scans to various destinations including fax servers, network folders and email;
- g. mobile device printing software;
- h. provide an overview of additional software that is utilized in your MPS offering if different than above items;
- i. rules based software;
- j. job based accounting software;
- k. Content Document Management and Workflow Process;
- l. Pull printing

Training: The Contractor sees training as an ongoing process and provides training as described below, and can provide the following training for all of its traditional and Managed Print Services (MPS) customers, as described in an individual SOW.

- **Train the Trainer:** Where possible, the contractor could identify key operator type of individuals to help with client familiarization when Contractor training staff is not present.
- **On-Site** - When equipment is first installed, dedicated trainers and IT staff may be deployed to ensure all relevant employees of an agency receive proper training. Agencies training sessions can be prescheduled with each department either in advance with a key contact at the agency or on delivery. Generally, a basic training is done for employees upon delivery.
- **Web Based** – Contractor may have web-based training programs and videos that are product based from an end user standpoint. These may be made available through either a link on the Contractor’s website or the website that would be activated for the Participating User upon the award of the SOW.
- **Classroom Based** – Contractor may offer the ability to have employees of their clients to Contractor offices to get full training on the specific MPS solution implemented. Classroom based trainings could include written documentation of all software installed and the proper operation of that software.

MPS Costs - Managing How Costs are Assessed

“Toggling” between a lease and Managed Print Services (MPS)

Contractor may provide the option for Users to “toggle” between a leased multifunction device and Managed Print Services (MPS) and vice versa. It will be the responsibility of the agency to work with the Contractor to facilitate switching between options. Use of the existing fleet of devices during these “toggle” exercises is expected.

Switching from a lease to MPS: The agency may convert to a MPS agreement at any time with cost per copy service program rates. All Base Service Components in the Managed Print Services document will also apply. Contractor will work with the agency to determine an agreed upon date that the service contract will switch over. The appropriate service rates will apply. Equipment rental base price will remain the same as it was on the MPS contract.

Switching from MPS to a lease: After an agency has been on a MPS contract for a minimum of 12 months, the agency may convert to a MFP rental equipment with a Zero-Based, Medium or High Service Plan pricing contract. Contractor will work with the agency to determine an agreed upon date that the service contract will switch over. The appropriate service rates will apply. Equipment rental base price will remain the same as it was on the MFP contract.



Managed Print Services (MPS) ADIMO Method

SumnerONE, Inc. follows the ADIMO method when consulting for MPS services. ADIMO is described below.

SumnerONE, Inc. optimizes a customer's document environment in five carefully designed phases: Assess, Design, Implement, Manage and Optimize (ADIMO). The ADIMO process ensures a cohesive approach to customer needs by identifying their business challenges and then implementing a solution which can improve a customer's overall performance and reduce costs.

Assess

SumnerONE owns and supports its own PrintFleet server. Print Fleet is a product that can remotely collect and centrally manage device information. Management features provide centralized management and monitoring of all networked devices under an MPS agreement. Direct connect devices can also be managed under this agreement. This management includes the ability to

- Read counters
- Create reports
- Check status of consumables
- Assist in online or automated ordering
- Monitor device operation status

On the initial meeting and consultation with a SumnerONE representative the PrintFleet DCA will be loaded onto the client's print server. This DCA is what will collect all of the MIB information that the print and multifunction devices can provide regardless of brand.

This initial assessment also includes a walkthrough of the customer's location to identify locations and special functions of all devices to be included in the MPS agreement. Supply closets will also be inventoried to identify supplies on hand and to be considered when making future recommendations.

Mapping of all current devices is done using the latest device mapping software providing a detailed visual display of current device locations within an organization

Design

SumnerONE specialists will gather the information from the Assessment stage and begin to evaluate all data and devices. During this stage the specialists will evaluate with the client all devices and cost per pages of each device. Devices will be considered for consolidation, upgrade, downgrade, elimination, color, size and capabilities to either add or remove.

Since SumnerONE is not limited to just one brand of device we have experts from a support and service standpoint to make the proper recommendations regarding devices without being biased by just the one product line we represent.

New mappings showing current and future designs are developed during this stage. These mappings are presented to the client at the time of presentation for approval.

In the design stage, all client capabilities are considered and a comprehensive device and cost evaluation is presented.



Implementation

SumnerONE Specialists develop a detailed plan and once approved by the client an implementation schedule is developed. During this stage we work closely with IT and the end users to make sure that all pre-installation work that can be done to make for a smooth transition is performed in advance. Items included in this are

- Pre-Loading of Print Drivers
- Submission, if required, of MAC addresses for IP reservations
- Loading of DCA (PrintFleet) if required
- Development of rules with client regarding proactive supply fulfillment
- Service call and help desk implementation processes
- Proper stocking of initial supply levels

Once an installation schedule is developed we work on a plan of installation in regards to delivery, removal and training on all new devices. Training is a key component of the initial installation and the ongoing usage of all devices under the agreement. We have full time trainers who are there to walk end users through the proper operations of their new and existing devices. Web based trainings are also available for many of the devices we provide. We design training schedules around the customers' needs and availability.

Management

Managing a MPS location is much like any other location where we are solely managing the Multi-Function devices. We monitor the equipment to be proactive in regards to

- Service reliability
- Proactive Automatic Supply Fulfillment
- Preventative maintenance scheduling
- Excessive and minimal volume reporting
- Potential Firmware Updates
- Help Desk Support

All devices are serviced in a prompt and reliable manner by factory trained technicians according to the SLA's that have been quoted and guaranteed in the initial contract period. Dedicated Supply and Support representatives will be assigned strictly for partners that purchase under this contract.

Optimize

The final component of our MPS program is the optimization of the fleet that is installed and under contract. Optimization is a function of constantly monitoring the current fleet based on

- Service reliability
- Print and copy volumes
- End user needs and changes
- Product replacements or upgrades
- Repositioning, removal or addition of new devices

Optimization includes making changes when there is a monetary savings that can be created as well as changes when productivity can be enhanced with these optimization procedures. Client meetings are scheduled on a quarterly or annual basis to review any necessary changes that can benefit the client in terms of financial, production or reliability enhancements.

State of Kansas
University of Kansas
KU-146a (Rev. 07-17)

CONTRACTUAL PROVISIONS ATTACHMENT

1. **Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the University of Kansas or any of its affiliates ("University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, the University may terminate this agreement at the end of its current fiscal year. The University agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided under the contract for which it has not been paid. The University will pay contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement under this provision, title to any such equipment shall revert to contractor at the end of the University's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Kansas Law and Venue:** All matters arising out of or related to this agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit arising out of or related to this agreement shall reside only in courts located in the State of Kansas.

5. **Required Non-Discrimination Provision:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University. The provisions of this paragraph (except the provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the University cumulatively total \$5,000 or less during the fiscal year.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

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

7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages or rights of action available to the University at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes:** The University shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance:** The University shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require the University to establish a "self-insurance" fund to protect against any such loss or damage.

11. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records. Accordingly, no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 et seq.). Moreover, no provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

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

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

14. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the student's written consent, except to other University officials who seek the information within the context of his/her professionally assigned responsibilities and used within the context of official University business. Contractor shall promptly report to the University any disclosure of University's student educational records.

15. **Boycotts of Israel Prohibited:** Kansas 2017 HB 2409 generally prohibits the University from entering into a contract with an individual or company to acquire or dispose of services, supplies, information technology or construction, unless such individual or company submits a written certification that such individual or company is not currently engaged in a boycott of Israel. For the purposes of this Section 15, "company" means a sole proprietorship, organization, association, corporation, partnership, venture or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. Accordingly, if Contractor is an individual or company, by executing this contract, Contractor hereby certifies that it is not currently engaged in a boycott of Israel.

Accepted By: The University of Kansas

Richard E. Beattie
KU Director of Procurement Services

Signature: _____

Date: _____

Accepted By: SumnerOne/Unisource Data Products/UDP

Chris Gaunce
President

Signature: _____

Date: _____

“General Terms and Conditions”

1. **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.
2. **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Lawrence, Douglas County, Kansas, unless otherwise specified and agreed upon by the University of Kansas *and Contract Coordinators*.
3. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
4. **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.
5. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Douglas County, unless otherwise specified and agreed upon by the University of Kansas *and Contract Coordinators*. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the University is a party.
6. **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING** and addressed as follows:

KU Procurement Services
1246 W. Campus Rd., Rm. 30
Lawrence, KS 66045-7505
RE: 17010729

SumnerOne / UDP
8058 Flint
Lenexa, KS 66214

7. **Contract Documents; Order of Precedence:** In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:
 - Form KU-146a;
 - Subsequent written modifications (addenda, amendments, etc.) to this contract, executed by both parties hereto;
 - This contract document
8. **Integration:** This contract, in its final composite form, will represent the entire agreement between the parties and will supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties will be independent of and have no effect on any other contracts of either party.
9. **Contract Formation:** No contract shall be considered to have been entered into by the *User* until all statutorily required signatures and certifications have been rendered and a written contract has been signed by Contractor.

- 10. Modification:** This contract may only be modified by written agreement of the parties. No alteration or variation of the terms and conditions of this contract will be valid unless made in writing and signed by the parties. Every amendment must specify the date on which its provisions will be effective.
- 11. Contract Termination for Cause:** The KU Director of Procurement Services (Director) may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
- the Contractor fails to make delivery of goods or services as specified in this contract; or the Contractor provides substandard quality and/or workmanship;
 - the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within *sixty (60)* days from the receipt of the notice (or such period as the Director may authorize in writing), the Director shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

Language related to termination and remedies for individual copier leases may be found elsewhere in these contract documents.

12. Termination for Convenience – Intentionally Omitted.

- 13. Accounts Receivable Set-Off Program:** K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes vendors against debts owed by the vendors to the State of Kansas. Payments setoff in this manner constitutes lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

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

- 14. Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and who are providing services involving this contract or services similar in nature to the scope of this contract to the *Users*. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two (2) years after that state employee's termination of employment with the State.
- 15. Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

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

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

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

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

The University of Kansas requires tax information regarding all subcontractors be disclosed upon request.

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

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

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

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

21. Third Party Beneficiaries: This contract does not provide any enforceable rights to any third party.

22. Nondiscrimination and Workplace Safety: The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.

23. Environmental Protection: The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.

24. Proof of Insurance: Upon request, the Contractor shall present satisfactory evidence of Workers' Compensation, Commercial Liability, and Property Damage Insurance to KU Procurement Services.

25. Hold Harmless: The Contractor shall indemnify the *University/Political Subdivisions/Participating Users* (“*Users*”) against any and all loss or damage to the extent arising out of the Contractor’s negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The *Users* 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 *Users* right to recover against third parties for any loss, destruction or damage to *User’s* property.

26. Care of User Property: The Contractor shall be responsible for the proper care and custody of any *University-owned, Political Subdivision-owned or Participating User* personal tangible property and real property furnished for Contractor’s use in connection with the performance of this contract, and Contractor will reimburse *using entities* for such property’s loss or damage caused by Contractor, normal wear and tear excepted.

27. Confidentiality: All *User* information or data is considered confidential information. Contractor agrees to return any or all information or data furnished by a *User* promptly at the request of *the User*, in whatever form it is maintained by Contractor. Upon termination or expiration of this contract, the Contractor and each of the persons and entities working for the Contractor shall destroy or return at *User’s* request all data, information electronic, written, or descriptive materials or any related matter of any type including but not limited to drawings, blueprints, descriptions, or other papers or documents which contain any such confidential information.

A. **Treatment of Confidential Information.** Contractor may have access to information and private or confidential data (“confidential information”), maintained by *Users*, to the extent necessary to carry out Contractor’s responsibilities under this contract. This confidential information may include, but is not limited to security arrangements, personal financial information, information regarding undercover law enforcement agents, social security numbers, student employees, medical providers and/or their recipients, etc. Contractor agrees that any confidential information it may have in its custody regarding any participant or other information identified by the *User* as being private or confidential shall be kept strictly confidential. Except as otherwise expressly provided, Contractor may not disclose any confidential information at any time to any person or entity. Contractor agrees to comply with all state and federal confidentiality laws in providing services under this contract. Contractor also agrees to the following:

1. Contractor shall be fully responsible for providing adequate supervision and training to its agents and employees to ensure compliance with all applicable State and Federal laws regarding confidentiality and/or open records issues. No private or confidential data collected, maintained, or used in the course of performance of this contract may be disseminated by Contractor except as required by statute, either during the period of this contract or thereafter. Contractor shall only use confidential information as required by this contract. All electronic data shall be secured through encryption or other comparable security measures.
2. Contractor shall limit access to confidential information solely to staff of Contractor who has a business need to know for purposes of fulfilling Contractor’s obligations under this contract. Contractor shall not remove confidential information from the *User* without the *User’s* prior written approval.
3. The Contractor shall hold all such confidential information in trust and confidence for the *User*, and agrees that its employees will not, during the performance or after the termination of this agreement, disclose to any person, firm, or corporation, or use for its own business or benefit any information obtained by it while in execution of the terms and conditions of this contract.

4. Upon *User's* request, any staff, individual or entity assigned to work for Contractor under this contract shall separately sign a non-disclosure agreement(s) and be bound by the requirements of this Subsection and any *User* computer security user agreement, which is incorporated by reference herein.
 5. All confidential information of the *User* shall be and remain the sole property of the *User*. Upon termination of this contract or at the request of the *User*, the Contractor shall deliver all confidential information promptly to the *User* and shall not make, retain or distribute any copies thereof.
- B. **Unauthorized Use.** The Contractor shall not use the names, home address, phone numbers, or any other information obtained by implementation or execution of this contract about employees, citizens, vendors or other information for any purpose other than the performance of this contract.
- C. **Press Releases, Public Statements, and/or Communications.** Contractor agrees that no public statement, release, or communication acknowledging or implying that the *User* is a customer of Contractor is allowed under this contract. Any approval by the *User* for such public statement, release, or communication shall only be provided in writing by *User*. The *User* may refuse such a request for any reason.
- D. **Injunctive Relief.** Contractor acknowledges that any breach of its confidentiality obligations hereunder will constitute immediate and irreparable harm to the *User*, and/or its successors and assigns, which cannot adequately and fully be compensated by money damages and will warrant, in addition to all other rights and remedies afforded by law, injunctive relief, specific performance and/or other equitable relief.
- E. **Confidential Information.** Contractor shall hold harmless and indemnify the *User* for expenses or damages, of any kind, incurred or suffered by the *User* as a result of the unauthorized disclosure or failure to protect or secure confidential information identified by Contractor or any agent, representative, employee or subcontractor of Contractor. Contractor shall notify the *User* of any loss or breach of confidential information within twenty-four (24) hours of such knowledge. Contractor shall also be responsible and liable for any and all damages to individuals due to such breaches or loss of confidential information. In the event of any security breach in which the confidential information of one or more individuals is compromised or is potentially compromised, Contractor shall be responsible and pay for any and all damages, expenses, and costs (including lost wages and efforts spent to defend or correct against identity theft) caused to the *User* or any individual for the disclosure of any confidential information. Contractor shall provide notice to the *User* and affected individuals of such disclosure. In addition to any remedial measures required by law or applicable legal, governmental or regulatory authority, Contractor shall cover costs of losses for remedial measures to individuals to include but are not limited to, costs of notification to individuals, establishment and operation of call centers, credit monitoring for a period of twelve (12) months and restoration services. Contractor will require these same terms herein to apply to any of third party vendor or subcontractor of Contractor. The *Users* shall in its sole discretion make the final determination of necessary remedial measures required by this provision.
- F. **Survive Termination.** The provisions of this Section, Confidentiality, shall survive termination of this contract.
28. **Injunctions:** Should a *User* be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the *User*, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.
29. **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.

- 30. Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by *User* shall not constitute a waiver.
- 31. Criminal Or Civil Offense:** Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
- 32. Rights and Remedies:** If this contract is terminated, the *User*, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the *User* in the manner and to the extent directed, any completed materials that are owned by the *User*. The *User* shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

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

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

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

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

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

- 34. Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to the *User* all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and *Participating Users* relating to the particular products or services purchased or acquired by the *User* pursuant to this contract.
- 35. Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) form.

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

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

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

37. HIPAA/FERPA Language (if applicable):

- A. **Use and Disclosure of *User* Data.** Contractor agrees to comply with all state and federal confidentiality laws in providing services under this Contract. Any *User* data that Contractor may access in performing its obligations (including individually identifiable health information covered by FERPA or HIPAA) shall be held in strict confidence and shall not be further used or disclosed unless authorized in writing by *User* or required by law. Only if applicable, the Contractor shall be required to sign a Business Associate Agreement as required by the Health Insurance Portability and Accountability Act (HIPAA)
- B. **Safeguards.** Contractor shall develop, implement, maintain, and use reasonable and appropriate administrative, technical, and physical safeguards (including any required by federal law) to protect the confidentiality, integrity and availability of *User* data in any form or media, created, received, maintained or transmitted on behalf of the *User*. Contractor shall document and keep these security measures current. Contractor shall cooperate in good faith in response to any reasonable requests from *User* to discuss, review, inspect, and/or audit Contractor's safeguards.
- C. **Subcontractors.** If Contractor provides any *User* data received from, or created for, *User* to a subcontractor or agent, then Contractor shall require such subcontractor or agent to agree in writing to the same restrictions and conditions as are imposed on Contractor.
- D. **Notice of Unauthorized Use or Disclosure, Security Incident or Breach.** Contractor agrees to notify the *User* of any use or disclosure of *User* data that is not permitted by the contract, or any security incident or breach involving the *User* data, within five (5) business days of discovery of the unauthorized use, security incident or breach. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a misuse or unauthorized disclosure of *User* data by the Contractor in violation of the requirements of this Section.
- E. **Red Flags.** Contractor shall be responsible for implementation of an Identity Theft Monitoring Policy and Procedure to protect individuals' information that may be breached by the Contractor under applicable Federal Trade Commission Regulations Red Flag Rules.

- F. **Disclosure of Practices, Books and Records.** Contractor agrees to make internal practices, books and records relating to the use and disclosure of *User* data received from the *User*, or created or received by Contractor on behalf of *User*, available to the *User* or the U.S. Department of Health and Human Services or the U.S. Department of Education in a time and manner designated by the *User* or relevant Department, for the purposes of determining the parties compliance with applicable federal confidentiality laws and corresponding regulations.
- G. **Termination.** Upon termination, cancellation, expiration, or other conclusion of the contract, Contractor shall return to *User* or, if return is not feasible, destroy all *User* data in whatever form or medium that Contractor received from or created on behalf of *User*. This provision shall also apply to all *User* data that is in the possession of subcontractors or agents of Contractor. In such case, Contractor shall retain no copies of such information. Contractor shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this contract. Within such thirty (30) day period, Contractor shall certify in writing to *User* that such return or destruction has been completed. If Contractor destroys the *User* data, it shall be done with the use of technology or methodology that renders the data unusable, unreadable, or undecipherable to unauthorized individuals as specified by the U.S. Department of Health and Human Services (“HHS”) for data covered by HIPAA. If Contractor believes that the return or destruction of the data is not feasible, Contractor shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is not feasible, Contractor shall extend the protections of the contract to the *User* data received from or created on behalf of *User*, and limit further uses and disclosures of such *User* data, for so long as Contractor maintains the data.
- H. **Indemnification.** Contractor agrees to indemnify, defend and hold harmless *User* and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as “Indemnified Party”) against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this section entitled “Confidentiality” or from any acts or omissions related to this “Confidentiality” section by Contractor or its employees, directors, officers, subcontractors, agents or other members of its workforce. Contractor’s obligation to indemnify any Indemnified Party shall survive the expiration or termination of the contract.
- I. **HIPAA Confidentiality.** Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the *User* could not. This protection continues as long as the data is in the Contractor’s possession.

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

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