



WSU TERMS AND CONDITIONS OF PURCHASES SERVICES AND GOODS

1. DEFINITIONS

- 1.1 "Contract" means the contract formed between WSU and Seller as set forth herein.
- 1.2 "Delivery Location" means the address specified in the Order where the Goods shall be delivered or the Services shall be performed.
- 1.3 "Goods" means the goods, equipment, materials, or other articles to be supplied by Seller under the Order.
- 1.4 "Order" means the purchase order issued by WSU for the supply of Goods and/or Services.
- 1.5 "Price" means the price of the Goods and/or Services.
- 1.6 "Quote" means a written quotation for Goods and/or Services provided to WSU from Seller.
- 1.7 "Services" mean any and all services to be performed by Seller under the Order.
- 1.8 "Seller" means the person, firm, organization, governmental entity, or company identified on the Order supplying the Goods and/or Services.
- 1.9 "Terms" means these WSU Terms and Conditions of Purchases – Services and Goods.
- 1.10 "WSU" means Wichita State University and any affiliates, subsidiaries, successors or assigns thereof, as expressly designated in the Order.
- 1.11 "WSU Indemnitees" means WSU, its affiliates, successors, assigns, its respective directors, officers, and employees, and WSU's customers.

Terms capitalized in these Terms include those that are (1) specifically defined herein or (2) the titles of numbered sections.

2. APPLICABILITY OF TERMS

- 2.1 These Terms only apply to transactions that are not subject to a separate written agreement, duly executed by both Seller and WSU (referred to individually as "Party" and collectively as "Parties"). If there is such an agreement, then those terms shall be the terms that govern the transaction between the Parties. In the absence of such a written agreement, then these Terms shall govern.
- 2.2 These Terms are available for download at <https://wichita.edu/administration/generalcounsel/terms-conditions.php> (the "Website"). WSU may change these Terms at any time in its sole discretion. Such changes shall be effective upon posting of such updates on the Website. Seller is responsible for periodically visiting the Website to review changes to these Terms.
- 2.3 The Website also contains supplemental terms that may be applicable to the Order based on the nature of the Goods and/or Services (if applicable, referred to herein as the "Supplemental Terms"). Such Supplemental Terms are applicable in addition to these Terms. WSU may change these Supplemental Terms at any time in its sole discretion. Such changes shall be effective upon posting of such updates on the Website. Seller is responsible for periodically visiting the Website to review changes to the Supplemental Terms. In the event of a conflict between such Supplemental Terms and these Terms, the Supplemental Terms shall control.

- 2.4 Seller warrants it has fully reviewed, understands, and can fulfill its obligations under these Terms and agrees to be bound by these Terms and any further changes to them.

3. CONSENT AND FORMATION OF CONTRACT

- 3.1 The Order constitute an offer by WSU for the purchase of the Goods and/or Services from Seller pursuant to these Terms. This offer is not an acceptance or a confirmation of any previous offer or proposal from Seller, and this offer shall be deemed to be a rejection and counteroffer with respect to any previous offer or proposal from Seller. Neither acceptance of any shipment of Goods nor performance of any Services shall be construed as an acceptance of any such previous offer or proposal or an acceptance of any different or additional terms proposed by Seller.
- 3.2 This offer shall become a "Contract" upon acceptance by Seller. Seller shall be deemed to have accepted this offer by commencement of performance called for in the Order, by delivery of the Goods to WSU, by written acceptance or confirmation of this Contract, or by any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein.
- 3.3 These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with the Order. No terms or conditions put forward by Seller and no representations, warranties, guarantees, or other statements not contained in the Order, nor otherwise expressly agreed in writing by WSU, shall be binding on WSU. WSU expressly objects to and rejects any such additional or different provisions.
- 3.4 These Terms apply to any repaired or replacement Goods or substituted Services provided by Seller hereunder.
- 3.5 WSU is not obligated to any minimum purchase or future purchase obligations under this Contract.

4. VALIDITY OF QUOTE AND PRICE

Any prices listed in a Quote are good for a period of sixty (60) days after the Quote is issued to WSU unless otherwise stated on the Quote.

5. PRICE

If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. If the Price includes any taxes from which WSU is exempt, Seller agrees to reissue the Quote with such taxes removed. No increase in the Price is effective, whether due to increased material, labor, or transportation costs or otherwise, without the prior written consent of WSU.



6. EXTERNAL FUNDING

The Parties acknowledge and agree that this Contract may be supported in whole or in part by federal, state, city, or third party funding ("External Funding"). Any purchase made with External Funding must be consistent with all External Funding requirements and restrictions, which are hereby deemed incorporated into this Contract and will be provided separately. In the event such External Funding is removed or reduced, WSU may terminate the Contract.

7. MOST FAVORED CUSTOMER

Seller represents and warrants that the price for the Goods and/or Services is the lowest price charged by Seller to any of its external customers for similar volumes of similar Goods and Services. If Seller charges any other customer a lower price, Seller must apply that lower price to all Goods and/or Services under the Order. If Seller fails to meet the lower price, WSU, at its option, may terminate the Contract without liability.

8. NON-EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Seller. This Contract shall not restrict WSU from acquiring similar, equal, or like Goods and/or Services from other entities or sources, nor shall it restrict Seller from providing similar, equal, or like Goods and/or Services to other entities or sources.

9. SALE OF GOODS AND SERVICES

- 9.1 Seller agrees to sell, transfer and deliver the Goods and/or Services to WSU for the Price, subject to this Contract.
- 9.2 WSU agrees to purchase the Goods and/or Services, subject to this Contract, and to pay Seller the Price.
- 9.3 Typographical and other clerical errors in the Order are subject to correction.
- 9.4 WSU reserves the right at any time to modify the Order upon notice to Seller. Should any modification increase or decrease the Price or the time required for performance, Seller must make a request for an equitable adjustment, in writing, within thirty (30) days of receiving notice of modification from WSU.
- 9.5 Seller agrees to obtain from WSU an Order number for all purchases of Goods and/or Services. Seller will clearly reference the Order number on any applicable invoice(s). Seller acknowledges that any invoice submitted to WSU that does not clearly reference WSU's Order number may be considered invalid by WSU and may result in delayed payment.

10. PAYMENT

Payment shall be made (a) in full but subject to set-off in the amount of any amount owed to WSU or the State of Kansas by Seller; (b) in United States Dollars; and (c) if payment is not made in advance, within forty-five (45) days of receipt of acceptable invoice unless otherwise agreed to in writing by the Parties. Services will be invoiced after they are completed and Goods will be invoiced after they have been delivered to the Delivery Location.

11. DELIVERY DATE

Seller shall deliver the Goods and/or Services in the quantities and on the date(s) specified in the Order or as otherwise agreed to in writing by the Parties (the "Delivery Date"). Timely delivery of the Goods and/or Services is of the essence. If Seller fails to deliver the Goods and/or Services in full on the Delivery Date, WSU may terminate the Contract immediately by providing written notice to Seller and Seller shall indemnify WSU against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods and/or Services on the Delivery Date. WSU has the right to return any Goods delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Goods on the Delivery Date.

12. ADDITIONAL TERMS APPLICABLE TO THE PURCHASE OF SERVICES

- 12.1 Seller will furnish all equipment, personnel, and material sufficient to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as WSU may so require.
- 12.2 Seller will devote only its best-qualified personnel to work under the Order and will ensure that all personnel assigned to perform any Services are fully trained and qualified to do so. Should WSU inform Seller that anyone providing the Services is not working to this standard, Seller will immediately remove such personnel from providing Services and he or she will not again, without WSU's written permission, be assigned to provide Services.
- 12.3 If the Order designates that Services must be performed by key personnel, Seller shall not substitute any key personnel without prior written approval by WSU.

13. ADDITIONAL TERMS APPLICABLE TO PURCHASE OF GOODS

- 13.1 If Seller delivers more than five percent (5%) or less than five percent (5%) of the quantity of Goods ordered, WSU can: (a) reject the Goods, provided that any rejected Goods shall be returned to Seller at Seller's risk and expense; or (b) accept the Goods at the increased or reduced quantity, provided that the Price for the Goods shall be adjusted on a pro-rata basis.
- 13.2 Seller shall give WSU reasonable advance written notice of any production change related to the Goods, including but not limited to any change in the manufacturing process, formulation, raw materials or production location. For any change that could affect the form, fit, or function of the Goods, Seller shall complete any reasonable qualification processes of WSU and address WSU's concerns about the change.
- 13.3 All Goods shall be delivered to the Delivery Location during WSU's normal business hours or as otherwise instructed by WSU.
- 13.4 Delivery shall be made as follows: (i) FOB WSU (in accordance with Incoterms 2020) for domestic shipments, (ii) DDP/DAP WSU (in accordance with Incoterms 2020) for international shipments, or (iii) in accordance with the terms on the face of the Order. Seller bears all risk of loss or damage to the Goods until



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delivery of the Goods to the Delivery Location.

- 13.5 Prices for all Goods should include cost of delivery in accordance with Section 13.4 or in accordance with the terms of the Order.
- 13.6 Seller shall give written notice of shipment to WSU when the Goods are delivered to a carrier for transportation. Seller shall provide WSU all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release the Goods to WSU within one (1) business day after Seller delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order.
- 13.7 Title passes to WSU upon delivery of Goods to the Delivery Location.
- 13.8 All Goods shall be packed for shipment according to WSU's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide WSU prior written notice if it requires WSU to return any packaging material. Any return of such packaging material shall be made at Seller's expense.
- 13.9 Seller shall: (a) package, label, transport and ship hazardous material, items containing hazardous materials, and any other regulated materials, in accordance with all applicable federal, state, and local laws, rules, ordinances and regulations; and (b) furnish any appropriate Material Safety Data Sheets. Seller, prior to each hazardous or regulated material shipment, shall notify WSU of: (i) every article ordered or supplied under the Order or stored or to be used by Seller on WSU property that contains hazardous materials or any other regulated materials for which the law requires a Material Safety Data Sheet; and (ii) the nature and shipment data for such material, which shall be communicated in a manner that will allow for WSU's proper preparation for acceptance of delivery and shall be identified on all shipping documents.
- 13.10 WSU has the right to inspect the Goods on or after the Delivery Date. WSU, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If WSU rejects any portion of the Goods, WSU has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If WSU requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, WSU may replace them with goods from a third party and charge Seller the cost thereof and terminate this Contract. Any inspection or other action by WSU under this Section shall not reduce or otherwise

affect Seller's obligations under the Order, and WSU shall have the right to conduct further inspections after Seller has carried out its remedial actions.

14. TERMINATION

WSU may terminate this Contract, in whole or in part, at any time, without limitation, upon the provision of five (5) days' prior written notice to Seller. WSU may terminate this Contract with immediate effect upon written notice to Seller if: (a) either before or after the acceptance of the Goods or Services, Seller has not performed or complied with any of these Terms, in whole or in part; or (b) Seller becomes insolvent, files a petition for bankruptcy or commences, or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. In no circumstances shall Seller deliver any Goods and/or perform any Services after receiving notice of termination. Upon receipt of a termination notice, Seller shall immediately refund any pre-paid fees. If WSU terminates the Contract for any reason, Seller's sole and exclusive remedy is payment for the Goods and/or Services received and accepted by WSU prior to the termination.

15. SELLER'S WARRANTIES

- 15.1 Seller will use its best efforts, skill, judgment, and abilities to deliver the Goods and/or perform the Services, to further the interests of WSU in accordance with WSU's requirements and procedures, and in accordance with the highest standards of Seller's profession or business.
- 15.2 Seller shall be responsible for all Goods and Services and warrants to WSU that for a period of twenty-four (24) months from the Delivery Date, all Goods and Services will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by WSU; (c) be fit for their particular purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights.
- 15.3 These warranties survive any delivery, inspection, acceptance or payment of or for the Goods or Services by WSU. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of WSU's discovery of the noncompliance of the Goods and/or Services with the foregoing warranties.
- 15.4 If WSU gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and/or re-perform all Services, and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to WSU.

16. SELLER'S REPRESENTATIONS

Seller hereby represents, warrants, covenants and agrees to



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WSU as follows:

- 16.1 Seller is duly organized, validly existing and in good standing and has the power and authority to execute and deliver, and to perform its obligations under, this Contract.
- 16.2 This Contract is Seller's legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).
- 16.3 Seller shall obtain and maintain all permits necessary for the exercise of its rights and performance of Seller's obligations under this Contract, including any permits required for the import of Goods or any raw materials and other manufacturing parts used in the production and manufacture of the Goods, and the shipment of hazardous materials, as applicable.
- 16.4 To the best of its knowledge, neither Seller nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.27, or otherwise declared ineligible for the award of contracts by any Federal agency. Seller shall provide immediate written notice to WSU if at any time Seller learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 16.5 Seller shall act in a manner consistent with WSU's Code of Ethics and Business Conduct Policy, which is available for review at www.wichita.edu or upon request. WSU may change such policy at any time in its sole discretion.
- 16.6 Seller will deliver the Goods and/or perform the Services in compliance with all applicable national, federal, state, local, and municipal, laws, regulations, codes, ordinances and orders, including all rules and regulations of the appropriate authority having governing authority in any jurisdiction over Seller and/or any of the Services or Goods being supplied (collectively, the "Applicable Laws"). Seller will cause its employees, representatives, agents, and subcontractors to comply with the Applicable Laws.
- 16.7 As required by Section 889(a)(1)(B) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), Seller has conducted a reasonable inquiry to determine whether any Goods or Services provided by Seller to WSU use "covered telecommunications equipment or services" as defined in Federal Acquisition Regulation (FAR) clause 52.204-25(a) as a substantial or essential component of any system, or as critical technology as part of any system. To date, Seller has not identified that any Goods or Services provided by Seller to WSU use "covered telecommunications equipment or services." Seller shall notify WSU within one (1) business day of any change to Seller's certification hereunder.
- 16.8 If Seller is required to be on WSU's premises as part of the Contract, Seller and its representatives will adhere to WSU's reasonable compliance, safety, and security

policies and procedures, including any required citizenship verification, and will use commercially reasonable efforts not to interfere with WSU's regular operations.

- 16.9 In accordance with Kansas Executive Order 18-04, WSU has policies prohibiting sexual harassment, discrimination, and retaliation. These policies provide for confidentiality and anonymous reporting. To view these policies or to make a report of sexual harassment, discrimination, or retaliation, please visit <http://webs.wichita.edu/inaudit/tablepp.htm>.
- 16.10 The Parties agree that this Section and all of its subparts are a material inducement for the execution of this Contract. Any violation of this Section or its subparts will be regarded as a breach of this Contract and shall entitle the other Party to seek damages and/or injunctive relief.

17. FORCE MAJEURE

Neither Party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, without such Party's fault or negligence, and which by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (each a "Force Majeure Event") provided that the Party that is prevented from carrying out its obligations hereunder (the "Affected Party") (a) notifies the other Party (the "Non-Affected Party") immediately of any Force Majeure Event, and (b) uses its reasonable best efforts to mitigate and remedy the adverse effects of such a Force Majeure Event. Force Majeure Events include, but are not limited to, acts of God or the public enemy, a failure to furnish necessary information, sabotage, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, shortages of fuel or raw materials or equipment, technical failures, government restrictions, floods, fire, earthquakes, explosion, epidemic, pandemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than five (5) business days, WSU may terminate this Contract immediately by giving written notice to Seller. In the event of termination due to a Force Majeure Event, WSU shall be entitled to a refund of any pre-paid fees.

18. INDEPENDENT CONTRACTOR

WSU and Seller are not (and nothing in the Contract may be construed to constitute them as) partners, agents, representatives, or employees of the other, nor is there any status or relationship between them other than that of independent contractors. WSU shall not control or have the right to control what Seller does or how Seller performs the work. Neither Party has any responsibility nor liability for the actions of the other Party except as specifically provided in the Contract. Neither Party has any right or authority to bind or obligate the other Party in any manner or make any



representation of warranty on behalf of the other Party. Seller shall receive no compensation except that set forth in this Contract and Seller shall not be entitled to any of the benefits, perquisites, or emoluments of employment normally provided to WSU employees.

19. NOTICES

Any notice of dispute, claim, lawsuit, or any other official communication given under the Order to either Party shall be in writing and shall be deemed delivered when received by certified first class mail, registered mail, overnight courier, or by electronic mail. All such notices shall be addressed to the Parties at the addresses set forth on the face of the Order or to such other address that may be designated by the receiving Party in writing, with a copy to WSU Office of General Counsel, 1845 Fairmount Street, Wichita, Kansas 67260-0205; general.counsel@wichita.edu.

20. DISPUTES

The Parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute. Notwithstanding anything in this Section shall prevent and/or prohibit either Party from exercising any right available to it, either at law or in equity.

21. INDEMNIFICATION

21.1 Seller shall defend, indemnify, and hold harmless WSU Indemnitees against any and all loss, injury, death, damage, liability, claim, arbitration, deficiency, action, judgment, interest, award, penalty, fine, royalty, interest, cost, or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses"; each a "Loss") that arise out of or occur in connection with: (a) the Goods or Services purchased from Seller; (b) Seller's negligence, willful misconduct, or breach of these Terms; or (c) any claim that WSU's or WSU Indemnitees' use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret, or other intellectual property right of any third party.

21.2 Seller shall not enter any settlement without WSU's or WSU Indemnitees' prior written consent.

21.3 No provision of this Contract will be given effect that attempts to: (a) waive any applicable sovereign immunity, or (b) require WSU to defend, hold harmless, or indemnify any entity, individual, or third party for any acts or omissions. The liability of WSU is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

21.4 Any Party entitled to indemnification (the "Indemnified Party") under this Contract shall give notice to the indemnifying party (the "Indemnifying Party") of any claims that may be subject to indemnification, promptly after learning of such claim, and the Indemnifying Party shall assume the defense of such claims with counsel reasonably satisfactory to the Indemnified Party and, to the extent required, approved by the Kansas Attorney General.

22. CONTROL OF DEFENSE

Any Party entitled to indemnification (an "Indemnified Party") under this Contract shall give notice to the indemnifying party (the "Indemnifying Party") of any Loss that may be subject to indemnification, promptly after learning of such Loss, and the Indemnifying Party shall assume the defense of such Loss with counsel reasonably satisfactory to the Indemnified Party and, to the extent required, approved by the Kansas Attorney General.

23. INSURANCE

For the duration of this Contract, Seller shall, at its own expense, maintain and carry insurance in full force and effect, which comports with WSU's insurance requirements set forth on the Website or in the Order.

24. CONFIDENTIAL INFORMATION AND SENSITIVE DATA

24.1 In the performance of the Contract, Seller may receive information that is confidential ("Confidential Information") to WSU. Seller acknowledges that all Confidential Information is and shall remain the sole property of WSU. Seller further agrees to maintain the confidentiality of such Confidential Information for a period of five (5) years following expiration or termination of this Contract. Seller agrees that it: (a) will not use, disclose, or grant use of such Confidential Information except as required to perform under this Contract; (b) shall only disclose Confidential Information to those within its organization who need to use it in performance of the Order; and (c) shall not disclose Confidential Information to third parties unless it obtains WSU's prior written consent. Seller agrees to promptly notify WSU upon discovery of any unauthorized use or disclosure of the Confidential Information. "Confidential Information" shall include, but is not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, whether disclosed or accessed orally, in writing, electronically, or in some other form or media, and regardless of whether marked, designated, or otherwise identified as confidential.

24.2 If Seller determines that it must disclose to WSU any sensitive or classified information or data ("Sensitive Data") (which shall include but not be limited to personally identifiable information, controlled unclassified information, classified information, or protected health information), Seller agrees to identify to WSU such data and the classification thereof prior to disclosure. If WSU determines that it cannot handle the Sensitive Data in accordance with any applicable requirements, WSU will notify Seller not to disclose the Sensitive Data and Seller shall not do so.

24.3 If Seller receives any Sensitive Data from WSU, Seller agrees to comply with all applicable laws and regulations governing such Sensitive Data.

25. ADVERTISING, PUBLICITY, NAMES, AND MARKS

25.1 Each Party agrees to obtain the other Party's written consent, in each instance, prior to doing any of the



following: (i) using any names, service marks, trademarks, trade names, logos, insignias, other identifying names, domain names, or identifying marks of the Party ("Marks"), including in any publicity, advertising, promotional materials, news releases, or websites; (ii) issuing a press release or public statement regarding the Contract or naming the other Party; or (iii) representing or implying any endorsement or support of any Good or Service in any public or private communication.

- 25.2 Any permitted use of WSU's Marks must comply with WSU's policies and procedures, including but not limited to WSU's [Visual Identity Standards](#), as amended from time to time.
- 25.3 Either Party may use the name of the other Party in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements.

26. EXPORT COMPLIANCE

- 26.1 To the extent applicable, Seller shall comply with the most current export control and sanctions laws, regulations, and orders applicable at the time of the export, re-export, transfer, disclosure or provision of Goods or Services including, without limitation, the (i) Export Administration Regulations ("EAR"); (ii) International Traffic in Arms Regulations ("ITAR"); (iii) the Office of Foreign Assets Control Regulations ("OFAC"); and (iv) any other applicable laws and regulations (collectively, "Export Control Laws").
- 26.2 Seller shall not export, re-export, transfer, disclose or otherwise provide WSU's technical data controlled by Export Control Laws ("Technical Data") to any foreign persons or foreign commercial entities unless Seller receives advance, written authorization from WSU. Any subcontracts between foreign persons in the approved country for manufacture of Goods or provision of Services shall contain all the limitations of this Section, shall comply with all applicable Export Control Laws, and shall be subject to all applicable export licenses or authorizations. Upon completion of its performance under this Contract, Seller and its subcontractors shall destroy or return all Technical Data to WSU.
- 26.3 Seller shall notify WSU in writing prior to disclosure of any Technical Data or other items subject to Export Control Laws. Seller will reasonably cooperate with and support WSU in obtaining the correct Export Control Classification Number, the harmonized Tariff Schedule number, the United States Munitions List Category Numbers, or other classification of a defense article.
- 26.4 The Parties agree that each may retain one archival copy of all documents for the purposes of (a) proving what information it did or did not receive hereunder in the event of a future dispute, or (b) complying with governmental regulatory requirements.

27. INTELLECTUAL PROPERTY

- 27.1 The title to any tangible property – including, but not limited to materials, goods, equipment, apparatuses, documents, and literary property (e.g., plans, drawings,

manuscripts, artwork, motion pictures, video programs, and computer software) – provided to Seller by WSU or produced by Seller in submitting a Quote or in carrying out an Order for WSU shall be vested in WSU, and Seller agrees to return or deliver such tangible property to WSU upon request. Seller hereby expressly assigns to WSU all copyrights in and to any documents or literary property produced by Seller for WSU.

- 27.2 In the event the Contract relates to Services, every work or idea created or acquired by or on behalf of Seller for WSU (past and future) shall be considered a "work made for hire" on behalf of WSU. It is the intent of the Parties that WSU shall have unrestricted ownership in and to all such works and to any derivative works, without further compensation of any kind to Seller. To the extent that the law would fail to automatically vest in WSU, the full unrestricted ownership of all such works under "work made for hire" treatment or similar concepts, Seller hereby assigns to WSU the copyright and any and all other rights in and to every such work, including any derivatives, and Seller waives any claim of moral right that it may have in or in connection with such work.

28. AUDIT OF RECORDS

In order to assess Seller's performance under and compliance with the Contract, including but not limited to Seller's compliance with respect to pricing, specifications, warranties and certifications, WSU and/or its designated representative(s) shall have the right upon reasonable notice to Seller to access and audit Seller's facilities, 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. Delivery and access to the records shall be at no cost to WSU.

29. LIMITATION OF LIABILITY

IN NO EVENT SHALL WSU OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES ARISING OUT OF OR RELATING TO ANY BREACH OF THIS CONTRACT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER WSU WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED; OR (D) THE FAILURE OF ANY WARRANTIES.

30. ASSIGNMENT AND SUBCONTRACTING

- 30.1 WSU shall be entitled to assign its rights or obligations hereunder without the prior written consent of Seller.
- 30.2 Seller shall not be entitled to assign its rights or obligations hereunder without the prior written consent of WSU.
- 30.3 Seller shall not directly or indirectly subcontract the provision of any Goods, Services or portion thereof, including any ancillary or related services, to any person or entity without WSU's prior written consent.
- 30.4 Any subcontract approved by WSU shall be between Seller and the subcontractor and shall be subject to



terms substantially similar to this Contract.

30.5 Seller is responsible for the performance or non-performance of any subcontractor and will indemnify, defend, and hold harmless WSU from and against all losses arising from any subcontractor's acts or omissions.

31. DA-146A TERMS AND CONDITIONS

31.1 The provisions found in Contractual Provisions Attachment (Form DA-146a – as modified by WSU), which can be accessed at: <https://www.wichita.edu/administration/generalcounsel/DA-146a.php>, are hereby incorporated into this Contract and a made part thereof. These Terms will take precedence over the terms of any conflicting terms in the Contractual Provisions Attachment.

31.2 WSU may change the Contractual Provisions Attachment at any time in its sole discretion. Such changes shall be effective upon posting of such updates to the web address listed herein. Seller is responsible for periodically visiting the Contractual Provisions Attachment to review changes, if any.

32. COMPLETE AGREEMENT AND WAIVER

This Contract shall constitute the complete understanding and contract between Seller and WSU with respect to the subject matter hereof and supersedes any prior written or oral understandings with regard thereto. No purported amendment, modification or waiver of any provision of the Contract shall be binding on WSU unless set forth in a written document signed by an authorized representative of WSU. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of the Contract between Seller and WSU or of the same circumstance or event upon any recurrence thereof. Any waiver shall be in writing and provided to all Parties. Failure to insist upon strict performance of any of these Terms, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party hereto.

33. SEVERABILITY

The illegality or invalidity of any provision of the Contract shall not impair, affect or invalidate the other provisions of the Contract. If any provision hereof is held to be unenforceable by the final order of any court of competent jurisdiction, such provision shall be severed here from and shall not affect the interpretation or enforceability of remaining provisions hereof.

34. AMENDMENT AND MODIFICATION

No change to the Order is binding upon WSU unless it is in writing, specifically states that it amends the Order, and is signed by an authorized representative of WSU.

35. SURVIVAL

Notwithstanding anything herein to the contrary, any Section of this Contract that expressly or impliedly survive completion, expiration, or termination, shall survive the completion, expiration, or termination of this Contract.

36. ATTORNEY'S FEES

In the event of litigation or other action brought to enforce contract terms, each Party shall bear its own attorney's fees and costs.

37. ORDER OF PRECEDENCE

In the event of an inconsistency or conflict between or among the provisions of the Contract, the inconsistency or conflict will be resolved by giving precedence in the following order: (a) any applicable Supplemental Terms; (b) these Terms; (c) the Contractual Provisions Attachment; (d) the Order; and (e) any other agreement or document signed by authorized signatories of both Parties.