

SERVICES AGREEMENT

KSU Contract No. [TBD]

This Services Agreement ("Agreement") is made on [TBD] ("Effective Date") by and between Kansas State University, a Kansas state agency and public state university ("University"), for and on behalf of [TBD] ("Department"), and , [TBD], a [TBD] with its principal place of business at [TBD] ("Contractor").

The Contractor was selected by a competitive solicitation process, by which the University, to provide and implement a Policy Management SaaS Solution on the terms and conditions set forth per Request for Proposal (RFP) herein incorporated by reference. Contractor agrees and understands that those provisions are controlling of the Contractor's offer, invoice, agency order forms or other documents of the Contractor unless otherwise agreed below.

University and Contractor hereby agree as follows:

1. **Contractor Services.**
Contractor will provide the services as set forth in **Exhibit B**, attached hereto and incorporated for all purposes ("the Services"), to the satisfaction of University.
2. **Pricing.**
In consideration of the timely and satisfactory performance of Services in accordance with this Contract, University agrees to make payment to Contractor at the pricing and in the manner described in **Exhibit C**. Payment for services performed will be processed within thirty (30) days of receipt and approval of invoice in accordance with **Exhibit C**.
3. **Term.**
This Agreement is effective as of the Effective Date and will terminate TBD years from the Effective Date unless earlier terminated as provided for herein.
4. **Licenses, Permits, Taxes, Fees, Laws and Regulations.**
 - 4.1 Contractor warrants that it will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for Contractor's performance of this Agreement.
 - 4.2 Contractor will be responsible for the payment of all taxes, excises, fees, payroll deductions, employee benefits (if any), fines, penalties or other payments required by federal, state, or local law or regulation in connection with Contractor's performance of this Agreement.
 - 4.3 Contractor will comply with, and will be responsible for requiring its officers and employees to comply with, all applicable federal, state, and local laws and regulations; and the rules and regulations of the University.
5. **Ownership and Use of Work Material.**
The University retains full and exclusive ownership of all work product developed or created under and relating to this Agreement, including without limitation all writings, drawings, plans, software, programs, records, papers, reports, specifications, calculations, documents, technical information, other materials, and copyright interests (collectively, the "Work Product"). Contractor retains no right, title, or interest in the Work Product and grants to the University all right, title, and interest in the Work Product as a condition of this Agreement. The parties agree the University may utilize the Work Product in its sole discretion without

limitation, and that this section will control over any other conflicting section or provision in this contract.

6. Confidentiality and Safeguarding of University Records; Press Releases; Public Information.

6.1 Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, "**University Records**"). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**"). If University Records are subject to FERPA, University designates Contractor as a University official with a legitimate educational interest in University Records. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to commercially reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, the Gramm-Leach-Bliley Act, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than best practices in the data security industry; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with the University's rules, policies, and procedures regarding access to and use of University's computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

6.1.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

6.1.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.

6.1.3 **Disclosure.** If Contractor discloses any University Records to a permitted subcontractor or agent, Contractor will require the permitted subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.

6.1.4 **Press Releases.** Except when defined as part of the Services, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.

- 6.1.5 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached this Agreement, University may terminate this Agreement by providing thirty (30) days' written notice to Contractor specifying the breach. The termination will become effective at the end of the thirty (30) day period unless Contractor cures such breach and provides University written confirmation of said action to cure during such thirty (30) day period.
- 6.1.6 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 6.1.7 **Public Information.** Contractor acknowledges that Kansas State is obligated to strictly comply with the Kansas Open Records Act, (K.S.A. 45-215 et seq), in responding to any request for public information pertaining to this Contract, as well as any other disclosure of information required by applicable Kansas law. Upon KSU's written request, Contractor will promptly provide specified contracting information exchanged or created under any resultant contract for or on behalf of KSU. Contractor acknowledges that KSU may be required to post a copy of the fully executed Contract on its Internet website in compliance with Kansas Open Records Act, (K.S.A. 45-215 et seq).

7. Independent Contractor.

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance.

8. Termination.

- 8.1 If either party is in default of performance of any material obligation under this Agreement, the party that is not in default may give written notice of the default to the other party and if the party notified fails to correct the default within ten (10) days or within such period fails to satisfy the party giving notice that the default does not exist, the party giving notice may terminate this Agreement upon expiration of the thirty (30) day period.
- 8.2 University may terminate this Agreement immediately in the event of the filing by or against Contractor of a petition for relief in bankruptcy or for receivership, or in the event that Contractor becomes insolvent.
- 8.3 The termination of this Agreement will not affect any right or remedy that has accrued to either party at the time of termination.
- 8.4 Upon termination of this Agreement, Contractor will deliver to the appropriate representative of University all Work Material related to the services performed by Contractor in the format requested by the University together with any keys, identification badges, or equipment owned by University.
- 8.5 Termination under Sections 6.1, 8.1 or 8.6 will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 8.6 University may terminate this Agreement, without cause, upon 30 day written notice to Contractor.

9. Indemnification.

Contractor will indemnify and hold harmless University, and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents from all claims, demands, causes of action, and judgments for taxes, license fees, excises, fines, and penalties; for supplies, services, or merchandise purchased by Contractor; for wages and fringe benefits of Contractor's employees; and for injury or death of any person or damage to property that result directly or indirectly from the negligent or intentional acts or omissions of Contractor or its officers, agents, or employees in the performance of this Agreement.

10. Insurance.

10.1 Contractor agrees to maintain, at Contractor's sole expense, and to cause its agents, suppliers and permitted subcontractors (if any) to maintain, at their sole expense, the following insurance coverage in at least the amounts specified:

10.1.1 **Statutory Worker's Compensation Insurance.** Under the laws of the State of Kansas and any other applicable laws, all Contractors are required to maintain workers' compensation insurance with statutory limits. Coverage "B" Employers Liability must have limits of at least \$1,000,000 per accident for bodily injury and disease.

10.1.2 **Commercial General Liability Insurance.** Subject to limits of at least \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage must be provided for Bodily Injury Liability, Broad Form Property Damage Liability, Contractual Liability, and Products and Completed Operations coverage.

10.1.3 **Automobile Liability Insurance.** Subject to limits of at least \$1,000,000 combined single limit for each accident. Such Automobile Liability Insurance must be for all owned, leased, non-owned, and hired automobiles.

10.1.4 **Cyber, Technology Products & Services Liability Insurance Requirements.**

All Contractors providing Information Technology or similar services shall maintain Cyber and Technology Products & Services Liability insurance with limits of at least \$1,000,000 for each wrongful act, that provides coverage for:

- a. Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of Kansas State University Data, whether by Contractor or any of its subcontractor or cloud service provider used by Contractor.
- b. Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management/public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals.
- c. Expenses related to regulatory compliance, government investigations, fines, fees/assessment and penalties.
- d. Liability for technological products and services.
- e. Payment Card Industry (PCI) fines, fees, penalties, and assessments.
- f. Cyber extortion payment and response costs.
- g. First and Third-Party Business Interruption Loss resulting from network security and system failure.
- h. Costs of restoring, updating, or replacing data.
- i. Liability losses connected to network security, privacy, and media liability; and
- j. Other necessary and customary coverages.

10.1.5 Kansas State University reserves the right to require additional insurance coverage, as needed, or as required by state or federal law.

- 10.2 All policies (except Workers' Compensation) will name University as an Additional Insured. A Waiver of Subrogation in favor of University and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to University prior to commencement of any services under this Agreement. If a policy contains deductible provisions, Contractor will be responsible for payment of the deductible amount for any claim(s) or the pursuit of any claim(s) or asserted claim(s) against University, its agents, employees or representatives.
- 10.3 Contractor will provide Verification of Insurance Coverage in the University vendor registration portal and update any expiring certificates prior to expiration date.

11. Available to Political Subdivisions.
TBD

- 12. 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 must be **IN WRITING** and addressed as follows and/or sent to the email address, if noted:

Kansas State University Purchasing Office Contractor - TBD
RE: # 7662
2323 Anderson, Suite 500
Manhattan, KS 66502
kspurch@k-state.edu

If legal issue, copy to:
Office of General Counsel
Kansas State University
4021 College of Business
1301 Lovers Lane
Manhattan, KS 66506
attys@k-state.edu

13. Miscellaneous.

- 13.1 Assignment. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.
- 13.2 Representations and Warranties by Contractor. If Contractor is a corporation, limited liability company, or other business organization, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Kansas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 13.3 Tax Certifications. If Contractor is a taxable entity, then Contractor certifies that it is not currently delinquent in the payment of any taxes due and is compliant with all primary Kansas Tax Laws administered by the Kansas Department of Revenue (KDOR), or that Contractor is exempt from the payment of those taxes. Contractor is required to provide current tax clearance

certificate upon request of the University.

- 13.4 Payment of Debt or Delinquency to the State. K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes vendors against debts owed by the vendors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received.

During the course of this contract if the Contractor is found to owe a debt to the State of Kansas or to federal creditor agencies, payments to the Contractor may be intercepted (setoff) by the State of Kansas. Notice of the setoff action will be provided to the Contractor by the State of Kansas. The Contractor shall credit the account of the department making the payment in an amount equal to the funds intercepted.

- 13.5 Loss of Funding. Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Kansas State Legislature (the "Legislature") and/or allocation of funds by the Kansas Board of Regents (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

- 13.6 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by authorized representatives of University and Contractor.

In the event of a conflict of term language among the documents, the following order of precedence governs:

1. Contractual Provisions Attachment (KSU-146a, Rev. 3-24), Exhibit A;
2. This Services Agreement ("Agreement"); and,
3. Contractor's proposal, including any and all attachments, submitted in response to RFP26-134.

The Agreement represents the entire contract between the parties and supersedes all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract is independent of and has no effect on any other contracts of either party.

- 13.7 State Auditor's Office. Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Kansas Department of Administration, Fund Sponsor or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

- 13.8 Force Majeure. Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, riots, civil unrest, flood, fire, tsunami, volcano, sabotage, air space closure, ground stop(s), a U.S. Department of State Travel Warning or any other circumstances of like character ("force majeure occurrence").

- 13.9 Venue; Governing Law. Riley County, Kansas will be the sole and exclusive venue for suit with respect to this Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted, and governed by the laws of the State of Kansas.
- 13.10 Ethics Matters; No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <https://www.k-state.edu/provost/universityhb/fhxs.html>, and State of Kansas Governmental Ethics and Statutes at <https://ethics.kansas.gov/state-level-conflict-of-interest/statutes/>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by State of Kansas Governmental Ethics and, or applicable state ethics laws or rules.
- 13.11 Waivers. No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 13.12 Access by Individuals with Disabilities. Contractor represents and warrants that its product or service complies with the [Kansas Information Technology Policy 1210: State of Kansas Web Accessibility Requirements \(IT Policy 1210\)](#), Section 508 of the Rehabilitation Act of 1973, as amended, or WCAG 2.1 AA with respect to accessibility for individuals with disabilities. If the University receives any complaints or concerns regarding the accessibility of the product or service, Contractor agrees promptly to respond to and resolve those concerns. Further, Contractor agrees to indemnify and hold University harmless for any claims arising from the inaccessibility of its product or service.
- 13.13 Data Breach Notification. If the Contractor becomes aware of any confirmed or reasonably suspected unauthorized access, acquisition, use, or disclosure of University Data ("Data Breach"), within Contractor managed systems or resulting from Contractor's acts or omissions, it shall notify University within seventy-two (72) hours, describing the incident, data involved, estimated impact, mitigation steps, and a contact point. Contractor shall provide ongoing updates, cooperate with University's investigation and response, and provide reasonable access to relevant records, systems, and personnel as necessary to evaluate the breach and in a manner that does not compromise Contractor's system security or violate applicable law.. Contractor shall not notify affected individuals, regulators, or media without University's prior written consent unless legally required, in which case Contractor shall, to the extent legally permissible, provide prior notice to University. Contractor shall ensure that any third parties handling University Data on its behalf are bound by obligations no less protective than this Agreement and shall remain responsible for their acts and omissions. If the Data Breach results from Contractor's failure to comply with this Agreement or applicable law, Contractor shall bear all reasonable, documented, and verifiable costs associated with investigation, notification, mitigation, and remediation.

14. Contractual Provisions Attachment.

The Provisions found in Contractual Provisions Attachment (Form KSU-146a, Rev. 3-24), **Exhibit A**, which is attached hereto, are hereby incorporated in this contract and made a part hereof.

UNIVERSITY AND CONTRACTOR HAVE EXECUTED AND DELIVERED THIS AGREEMENT TO BE EFFECTIVE AS OF THE EFFECTIVE DATE.

Company Name [TBD]

Kansas State University

By

By

Name

Name

Title

Title

Date

Date

OGC Review:

Dept. Review:

Attached:

Exhibit A – Contractual Provisions Attachment

Exhibit B – Statement of Work

Exhibit C – Payment for Services

PREVIEW

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EXHIBIT A
CONTRACTUAL PROVISIONS ATTACHMENT
(Form KSU-146a, Rev. 3-24)

To be inserted

Exhibit B
STATEMENT OF WORK

To be inserted

Exhibit C
PAYMENT FOR SERVICES

To be inserted

PREVIEW

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