

AGREEMENT

This agreement ("**Agreement**") effective as of the 1st day of July, 2023 ("**Effective Date**"), is entered into by and between the Unified School District No.233, Johnson County, Kansas ("Olathe Public Schools") having an address of 14160 Black Bob Road, P.O. Box 2000, Olathe, Kansas 66063-2000, and KidsTLC, Inc., a Kansas non-profit charitable corporation, ("KidsTLC") having an address of P.O. Box 3505, 480 South Rogers Road, Olathe, Kansas 66063-3505 with related buildings and facilities on and adjacent thereto (the "**Facilities**") on its Olathe, KS based campus (collectively with Facilities, the "**Premises**").

WITNESSETH:

WHEREAS, KidsTLC desires to provide educational services to students with severe social and emotional challenges originating from school districts outside the state of Kansas;

WHEREAS, KidsTLC has requested that Olathe Public Schools help provide for the educational needs of these students by providing general and/or special educational services on its Premises;

WHEREAS, the Olathe Public Schools has agreed to provide such educational services; and

WHEREAS, KidsTLC requests that the Olathe Public Schools provide reimbursement for the salary and benefits related to the position shared by both entities and necessary to provide educational services, as well as clarification on educational spaces and furnishings provided by both entities;

NOW, THEREFORE, for and in consideration of the promises hereinafter contained, the parties agree as follows:

1. **FACILITIES.** All educational and related services will be provided on the KidsTLC Premises in accordance with the Olathe Public Schools calendar and during regular school hours.
2. **PURPOSE.** The purpose of this Agreement is for Olathe Public Schools staff to provide general and/or special education services to non-resident out of state students (hereinafter, "**NR Students**") residing at KidsTLC. In addition, Olathe Public Schools will reimburse KidsTLC for the salary and benefits of paraeducators/care facilitators hired to provide educational services to students residing on the KidsTLC campus, \$40,000 of the salary and benefits of a Board-Certified Behavior Analyst, and \$40,000 of the salary and benefits of a part-time Educational Programming Administrator.
3. **DEFINITIONS.** For the purposes of this Agreement and determining if a student is a resident of the Olathe Public Schools, "Residency," "parent," and "person acting as parent" will be defined according to the definitions in K.S.A.72-3122.
4. **TERM.** The initial term ("**Initial Term**") of this Agreement shall be from its Effective Date until June 30, 2023 and shall automatically renew for successive one (1) year (July 1st – June

30th) terms (each a “**Renewal Term**” and, collectively, with the Initial Term, the “**Term**”) unless written notice is given by one (1) party to the other party no later than April 30th of the Initial Term or any then current Renewal Term of the notifying party’s intent to non-renew this Agreement for the following school year. However, the foregoing to the contrary notwithstanding, either party may terminate this Agreement early during the Initial Term or any Renewal Term hereof if the other party has committed a material breach of this Agreement and failed to cure such breach, or, upon mutual agreement, as otherwise provided in Section 16 (Termination).

5. STAFF/INSTRUCTIONAL MATERIALS/EQUIPMENT. Olathe Public Schools shall be responsible for providing all staff necessary to provide general education, special education, and related services in accordance with this Agreement and the individual NR Student’s individualized education program as defined under the Federal Individual Disability Education Act (“**IEP**”). KidsTLC will provide any staff necessary to supervise and manage NR Student behavior in the educational setting and, when necessary, temporarily remove NR Students to their PRTF Unit in order to maintain a safe, orderly, and effective educational environment.

Olathe Public Schools shall be responsible for obtaining written authorizations from its staff to provide KidsTLC with the necessary and required criminal/background/history information available under local, state or federal laws including, without limitation, the information described in K.S.A. 22-4701 (b), K.A.R. 10-1-1(b), (c) and (d) and the Kansas Child Abuse and Neglect Registry, as well as those checks required by Kansas Department of Aging and Disability Services as well as the Kansas Department for Children and Families. KidsTLC shall have the right to refuse access to its Premises and/or all or part of its Facilities by any Olathe Public Schools staff should any information so provided be deemed by KidsTLC to be an actual or alleged threat to KidsTLC's licenses to operate its Facilities.

Olathe Public Schools staff will remain employees of Olathe Public Schools at all times. Olathe Public Schools agrees to accept full and exclusive liability for, shall collect, deduct and pay and also shall protect, defend and indemnify KidsTLC against the payment of any and all taxes, contributions and withholding deductions for income taxes, unemployment insurance, worker's compensation insurance/benefits, pensions, annuities, or any other employee benefits now or hereinafter imposed by any local, state or federal law including, without limitation, those measured by the wages, salaries or other compensation paid (a) to persons employed by Olathe Public Schools or any of its staff in connection with Olathe Public Schools’ utilization of the Premises and/or Facilities or (b) to Olathe Public Schools by others as compensation for providing services to Olathe Public Schools.

The Olathe Public Schools will provide similar general education curriculum, instructional materials, and devices for NR Students served under this Agreement as are provided for all students enrolled in the Olathe Public Schools. The Olathe Public Schools will also provide differentiated curriculum and instructional materials necessary for the provision of special education and related services, excluding special education assistive technology devices, individual student communication devices, and/or medical equipment. Assistive technology devices, communication devices, and medical equipment remain the responsibility of the

sending state agency/school district of residence.

6. STUDENTS. The Olathe Public Schools and KidsTLC will convene to engage in mutual problem solving if at any point in the future the Olathe Public Schools does not have staff available to provide services to additional NR Students. The Olathe Public Schools and KidsTLC acknowledge that future state funding and availability of Olathe Public Schools staff could impact the ability of the Olathe Public Schools to provide services to NR Students.

KidsTLC shall enter into separate written agreements (available to the Olathe Public Schools upon request) with each out-of-state school district as set forth in section 7.

KidsTLC will obtain a signed FERPA (Family Education Rights and Privacy Act) compliant reciprocal release of information between KidsTLC, the sending state agency, and the NR Student's school of residence, to share information, including relevant educational, medical, and mental health records.

7. AGREEMENTS WITH OUT-OF-STATE AGENCIES AND/OR DISTRICTS OF RESIDENCE. KidsTLC will include the following provisions in their contract with the out-of-state agency placing the NR Student at KidsTLC:

- The Olathe Public Schools will not enroll the applicable NR Student. The NR Student will maintain residence and enrollment in the state and/or school district that placed the NR Student at KidsTLC.
- The Olathe Public Schools does not assume any responsibility or liability for providing a FAPE (Free Appropriate Public Education) to the NR Student. The responsibility to provide a FAPE, meet special education procedural obligations, and all other state and federal special education requirements remains the responsibility of the state agency/school district that placed the NR Student at KidsTLC.
- The Olathe Public Schools will provide 365 minutes of alternative education services on days school is in session in the Olathe Public Schools on a contracted fee for service basis with KidsTLC. The alternative education and related services available are limited to those listed in this Agreement.
- The out-of-state agency and/or school district placing the NR Student at KidsTLC is responsible for scheduling and conducting all IEP team meetings and for annual reviews, reevaluations, and any needed revisions or amendments to the NR Student's IEP.
- All special education dispute resolution processes (formal complaints, mediations, and due process hearings) with regard to any NR Student will be the sole responsibility of the out-of-state agency and/or school district that placed the NR Student at KidsTLC, and will be addressed through the dispute resolution processes in the NR Student's state of residence.
- The Olathe Public Schools is not responsible for progress monitoring the NR Student's IEP goals, but will provide KidsTLC with grades and student data documenting the NR Student's academic progress. KidsTLC is responsible for sharing grades and such NR Student data with the out-of-state agency/district that placed the NR Student at

KidsTLC and the NR Student's parents.

- The Olathe Public Schools will not provide educational services during times when the NR Student is removed from the educational environment for any reason, including NR Student behavior or health related needs.

8. INDEMNIFICATION. In the event that KidsTLC fails to include any of the provisions required by this Agreement in their contracts with out-of-state agencies placing NR Students at KidsTLC, or KidsTLC or the sending out-of-state agency breaches their contract KidsTLC agrees to indemnify and hold harmless the Olathe Public Schools for all damages, costs and legal fees caused in whole or in part by the breaches of contract by KidsTLC or the sending out-of-state agency related to the applicable NR Student(s).

9. SERVICES PROVIDED BY OLATHE PUBLIC SCHOOLS.

If included in the NR Student's current IEP, the Olathe Public Schools will provide the following special education and/or related services as part of the 365 minute school day:

- Assistive Technology Services
- Audiology
- Gifted Education
- Music Therapy
- Occupational Therapy
- Physical Therapy
- Special Education Academic Instruction
- Speech and Language Services
- Transition Services (limited to services provided on the KidsTLC Premises only)
- Services for NR Students with hearing impairments (sign language interpreter, instruction by a certified teacher for the hearing impaired, close captioning) may be available for an extra fee to be determined on an individual student basis.
- Services for NR Students with vision impairments (instruction by a certified teacher of the visually impaired, braille, braille instruction, and O&M) may be available for an extra fee to be determined on an individual student basis.

The related services included above will be provided in a comparable manner with the NR Student's out-of-state IEP. Special education academic instruction and supports will be provided during a resource class period as part of the school day.

10. POSITIONS. KidsTLC shall employ paraeducators/care facilitators to assist the Olathe Public Schools in providing educational services to students residing on the KidsTLC campus. The duties of the paraeducators/care facilitators shall include but not be limited to assisting students with classroom work, delivery of positive behavioral supports, assisting in carrying out behavior intervention plans, and assisting in crisis response. The paraeducators/care facilitators shall be under the day-to-day supervision of Claire Learning Center Administration and shall be subject to all policies as adopted by Olathe Public Schools Board of Education. The persons employed under this agreement shall be considered employees at-will. Additionally, KidsTLC shall employ a full-time school-based Board Certified Behavior Analyst who along with the Program Implementation Manager, (at no charge) will provide direct supervision of KidsTLC staff, behavioral management of students, and coordinate with Olathe Public Schools administration regarding staff training and daily operations of the

school, as well as a part-time Educational Programming Administrator to oversee and liaison with the Olathe Public Schools to implement educational services on the KidsTLC, Inc. Campus.

11. SPACE UTILIZATION AND FURNISHINGS. Space and furnishing will be provided for educational services by Olathe Public Schools at the Claire Learning Center (owned by Olathe Public Schools). Additionally, KidsTLC will provide five classroom spaces on their property at no charge to the district. Classroom supplies and all furnishings will be provided by Olathe Public Schools for those KidsTLC classroom spaces. The KidsTLC's Kelly Gymnasium will be used for Olathe Public Schools PE classes during the school day at no charge. KidsTLC will utilize Claire Learning Center from May 31st through July 31st at no charge to support summer programming. KidsTLC will be responsible for all supplies and materials used in Claire Learning Center during the summer months.
12. REIMBURSEMENT. Olathe Public Schools agrees to fully reimburse KidsTLC for the salary and benefits incurred by KidsTLC to employ the paraeducators. Olathe Public Schools shall reimburse KidsTLC for the paraeducators at a rate of \$22.50/hour based on working 6.0 hours per day for days school is in session. Olathe Public Schools agrees to pay a set fee of \$40,000 annually toward the salary and benefits of a Board-Certified Behavior Analyst. Olathe Public Schools agrees to pay a set fee of \$40,000 annually toward the salary and benefits for a part-time Educational Programming Administrator who will assist and liaison with Olathe Public Schools daily to successfully implement educational services while school is in session. KidsTLC shall invoice Olathe Public Schools on a monthly basis and each invoice shall be paid within 45 days of receipt. Hourly rates for all staff in the agreement include the combined cost of salary and benefits.
13. STAFFING: KidsTLC and Olathe Public Schools agree to pay the agreed upon reimbursement noted above for 20 paraeducators, 1 full-time Board-Certified Behavior Analyst and a part-time Educational Programming Administrator.
14. PAYMENT AND INVOICING. In exchange for providing the general and/or special education and related services on the IEPs for each NR Student, KidsTLC will pay the Olathe Public Schools \$90 per day, per NR Student, not to exceed the maximum state reimbursement for a similarly situated student enrolled in the Olathe Public Schools for the applicable then current school year. Once the maximum has been paid by KidsTLC for the then current school year, payment for the next school year will commence on July 1st each year. KidsTLC will be responsible for invoicing each NR Student's district of residences for these services.

Olathe Public Schools will invoice KidsTLC on a monthly basis and each undisputed invoice will be paid within 45 days of receipt. Disputes, if any, will be resolved promptly by the parties and payments due as a result will be paid promptly thereafter.

15. INSURANCE
 - (a) Throughout the term of this Agreement the Olathe Public Schools and KidsTLC shall maintain the following insurance, in form and with insurers acceptable to the Olathe Public

Schools and KidsTLC, which provides the following coverages:

(1) Comprehensive General Liability. Olathe Public Schools and KidsTLC shall maintain comprehensive General Liability Insurance with limits of not less than Two Million dollars (\$2,000,000) per occurrence for bodily injury, including death, and One Million Dollars (\$1,000,000) per occurrence for property damage, or alternatively, Two Million Dollars (\$2,000,000) per occurrence combined single limits for bodily injury and property damage. Such insurance shall contain coverage for broad form property damage and contractual liability (including, without limitation, any specifically assumed herein). Any such insurance will (i) be endorsed to name the other party and its affiliated corporations and their respective directors, officers, employees, agents, volunteers and invitees (collectively, the applicable party's "**Affiliates**") as additional insureds as their interests may appear ("**ATIMA**"), (ii) be endorsed to be primary and non-contributory in regard to any insurance maintained by the other party and its Affiliates; (iii) contain a waiver of any rights of subrogation (where permitted by law) in favor of the other party and its Affiliates; and (iv) contain a separation of insureds provision regarding the other party.

(2) Automobile Liability. If licensed vehicles will be used in connection with the Olathe Public Schools' or KidsTLC (and their respective Affiliates) performance under this Agreement, the Olathe Public Schools and KidsTLC shall carry and maintain Automobile Liability Insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence combined single limits for bodily injury and property damage.

(3) Workers Compensation. The Olathe Public Schools and KidsTLC shall carry and maintain insurance in accordance with the applicable laws relating to workers' compensation, with respect to all of their respective staff working on the Premises, regardless whether such coverage or insurance is mandatory or elective under the law. The Olathe Public Schools shall also maintain employer's liability coverage with limits of not less than One Million Dollars (\$1,000,000) per accident. If KidsTLC is required by any applicable law to pay any workers' compensation premiums or benefits with respect to employees of Olathe Public Schools, the Olathe Public Schools shall reimburse KidsTLC for such premiums or benefits.

(4) Umbrella Liability. The Olathe Public Schools and KidsTLC will maintain an umbrella policy which is following form to all underlying Commercial General Liability, Automobile and Employer's Liability in the amount of Two Million Dollars (\$2,000,000).

(b) EVIDENCE OF COVERAGE. Upon execution of this Agreement, prior to commencement of any work or services allowed or required under this Agreement, and thereafter upon reasonable request, the Olathe Public Schools and KidsTLC shall provide for review and approval certificates of insurance and policy endorsements reflecting compliance

with all the foregoing insurance requirements. Such certificates will be in the same form and substance as the ACORD 25 form (or then current ACORD form) and will state the deductibles and/or SIRS (*i.e.*, self-insured retentions) applicable to the different coverages. Such certificates and policy endorsements shall be kept current throughout the period when work or services is being performed under this Agreement, and the parties shall endeavor to provide for thirty (30) days advance written notice in the event of cancellation or material change adversely affecting the interests of the other party.

In jurisdictions requiring mandatory participation in a monopolistic state or other governmental workers' compensation fund, the insurance certificate requirements for the coverage required under subsection (3) (Workers Compensation) above will be satisfied by a letter from the appropriate state or other governmental agency confirming participation in accordance with statutory requirements and that the applicable party (and its Affiliates) are current in payment of all required remittances, assessments, levies, penalties and fines.

Unless waived in writing by a party in a signed amendment to this Agreement, insurer(s) will be rated A - or better in the Best's Key Rating Guide.

Failure of a party to demand any insurance certificates or policy endorsements or any other evidence of full compliance with the insurance requirements of this Section, or a party's failure to identify any deficiency regarding same will not be construed as a waiver of the other party's (and its Affiliates) obligations to carry and maintain the insurance required hereunder. By requiring insurance herein, a party does not represent that coverage and limits will necessarily be adequate to protect the other party's liability from an insurance standpoint or under the indemnities granted under the parties' Agreement. Further, such coverage and limits shall not be deemed or construed to be any limitation on a party's (and its Affiliates, as applicable) liabilities under any indemnification obligations provided to a party under this Agreement.

(c) SUBCONTRACTING SERVICES. If Olathe Public Schools or KidsTLC shall subcontract any of its services to a third party, the Olathe Public Schools or KidsTLC shall cause such third party to carry and maintain insurance as set forth in this Section 11, unless the parties agree to other insurance limits for such sub-contractors, and shall furnish evidence of same to the other party as required under subsection (b) above.

(d) INSURANCE REQUIREMENTS MODIFICATIONS. The foregoing minimum insurance requirements are subject to review and revision prior to entering into any new agreement after expiration of any term of this Agreement in order to ensure that such insurance limits are consistent the Olathe Public Schools and KidsTLC's then current requirements.

16. TERMINATION. Prior to expiration, this Agreement may be terminated as follows:

(a) In the event of a breach of a material provision of the terms and conditions hereof by either party, the non-breaching party may terminate this Agreement for cause if the breach is not cured within ten (1) business days after receipt of written notice specifying

the nature of the breach; provided, if said breach is impossible to cure within said ten (10) day period, the non-breaching party shall not have the right to terminate this Agreement so long as the other party commences corrective action within said ten (10) day period and thereafter proceeds with due diligence to correct such breach.

(b) At any time upon mutual agreement of the parties.

(c) NR Students being served by the Olathe Public Schools under this Agreement at the time of this Agreement's termination will continue to be served by the Olathe Public Schools until they are medically discharged from KidsTLC.

17. PARTIES IN INTEREST / ASSIGNMENT. This Agreement shall inure to the benefit of and be binding upon KidsTLC and Olathe Public Schools, their respective successors and assigns; nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement. This Agreement shall not be assigned by either party without the prior written consent of the other party and any attempted assignment without such consent shall be null and void; provided, however, that any such consent shall not be unreasonably withheld, conditioned or delayed.
18. PARTIES RELATIONSHIP. The relationship of the parties hereto is that of independent contractor and under no circumstances shall either be deemed to be an employee, partner or joint venture of the other.
19. WAIVER: The failure of either party to insist on strict performance of the terms and conditions of this Agreement or to exercise any right or remedy under it will not be construed as thereafter waiving any such terms, conditions, rights or remedies and the same will continue and remain in full force and effect as though no waiver had occurred unless a waiver is signed by the party to be charged with the waiver.
20. AUTHORITY. Each party warrants and represents that the making and performance of this Agreement are within its legal powers and each has been duly authorized to sign this Agreement.
21. COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Copies of the signature of the parties hereto transmitted by facsimile, email or other electronic means shall be considered originals for all purposes.
22. SEVERABILITY If any term or condition of this Agreement shall be held invalid by a court of competent jurisdiction the remainder of this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.
23. RIGHTS CUMULATIVE. The rights and remedies of each of the parties under this Agreement as well as those provided or accorded by law, shall be cumulative, and none shall be exclusive of any other rights or remedies hereunder or allowed by law. Failure of any

party to enforce its rights hereunder shall not be deemed or construed to be a continuing waiver of any breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default.

24. NOTICES. All notices to be given by the parties to this Agreement shall be in writing and shall be deemed to have been properly given to the other party (a) when delivered personally, (b) sent by fax or email with written confirmation of receipt, (c) seven (7) calendar days after having been sent via the United States mail, postage prepaid, registered or certified mail to the addresses listed herein or (d) two (2) business days after deposit with a nationally recognized private industry express courier (e.g., Fed X, DHL, etc.) with written confirmation of receipt. Either party may change its address or representatives to receive such notices by giving the other party written notice of such a change from time to time.

Unless or until changed, notices to KidsTLC shall be addressed to:

KidsTLC, Inc.
480 South Rogers Road
Olathe, KS 66062
ATTN: Dr. Erin Dugan, President / CEO

Email: Edugan@kidstlc.org
Fax: 913-780-3387

Unless or until changed, notices to Olathe Public Schools shall be addressed to:

Dr. Judy Martin
Assistant Director of Special Services
14090 South Black Bob Road
Olathe, Kansas 66062

Email: jjmartin@olatheschools.org
Fax: 913-780-8209

Copy to:

Dr. Brent Yeager
Superintendent
14160 S. Black Bob Road
P.O. Box 2000
Olathe, KS 66063-2000

Email: byeagerec@olatheschools.org
Fax: 913-780-8011

25. GOVERNING LAW. This Agreement shall be governed by, interpreted and construed under the laws of, and enforced in the courts of, the State of Kansas applicable to agreements made and to be performed entirely within such State, including all matters of enforcement, validity


and performance. Each party is responsible for its own attorneys' fees, costs and expenses attributable to the execution and enforcement of this Agreement.

26. MARGIN CAPTIONS. The various headings, numbers and groupings of the provisions of this Agreement into separate paragraphs are for the purpose of convenience only and shall not be considered when interpreting the scope or intent of the provisions of this Agreement.
27. NEGOTIATED TRANSACTIONS. The provisions of this Agreement were negotiated by the parties hereto and shall be deemed to have been drafted by all parties hereto.
28. ENTIRE AGREEMENT /AMENDMENTS. This Agreement contains the entire agreement between the parties concerning the matters it covers and, except as otherwise provided herein, no part of it may be changed, altered, modified or limited orally or by any agreement between the parties unless such agreement be expressed in writing and be signed by both parties or their respective representatives, successors or assigns.
29. CONTRACTUAL PROVISIONS ATTACHMENT: The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev.07-19), which is attached hereto as Exhibit C, are hereby incorporated in this contract and made a part thereof as required by K.S.A. 72-1148.

- *[Remainder of page left blank intentionally. Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and effective as of the Effective Date first stated above.

KidsTLC, Inc.

By: 
Printed
Name: ERIN DUGAN
Title: PRESIDENT & CEO

Unified School District No.233, Johnson
County, Kansas ("Olathe Public Schools")

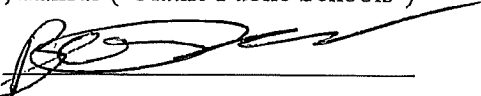
By: 
Printed
Name: Brent Yeager
Title: Superintendent

EXHIBIT "C"



CONTRACTUAL PROVISIONS ATTACHMENT

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

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

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1st day of July 2023.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in Johnson County, Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, Olathe Public Schools (OPS) may terminate this agreement at the end of its current fiscal year. OPS agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided OPS under the contract. OPS will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by OPS, title to any such equipment shall revert to contractor at the end of OPS's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to OPS or the contractor.
4. **Disclaimer of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or OPS to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas and OPS is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the agreement may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by OPS or the Kansas Department of Administration.
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, including, but not limited to the signature of an authorized representative of OPS, as defined in OPS policy.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall

find that the State or OPS have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and OPS do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or OPS at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and OPS 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 State of Kansas and OPS 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 it to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the State of Kansas 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 with the State of Kansas and need not be reserved, but prudence requires the State and OPS to reiterate that nothing 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 OPS or 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:** The contractor understands that OPS is subject to the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) (FERPA) and agrees to handle any student education records it receives pursuant to the contract in a manner that enables OPS to be compliant with FERPA and its regulations. The 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 parent's/guardian's written consent, except to other OPS officials who seek the information within the context of their professionally assigned responsibilities and used within the context of official OPS business. Contractor shall promptly report to OPS any request for or improper disclosure of OPS's student educational records.
15. **Confidentiality.** As a state agency, OPS contracts are generally public records. Accordingly, no provision of this contract shall restrict OPS's ability to produce this contract and/or any corresponding documents in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 et seq.).