

# Information Technology Executive Council (ITEC)

## ITEC-1500-P

- 1.0 TITLE: Ownership of Software Code and Related Intellectual Property
  - 1.1 EFFECTIVE DATE: June 20, 2023
    - 1.1.1 TYPE OF ACTION: Update
- 2.0 PURPOSE: To establish a common, uniform policy for State entities regarding ownership and distribution of Software Code and related Intellectual Property developed by any personnel on behalf of the State of Kansas to provide guidance for entities in their pursuit of this policy.
  - 2.1 Legal Advice Disclaimer—The information contained in this policy is for general guidance to support the policy. The application and impact of laws can vary widely based on the specific facts involved. Given the changing nature of laws, rules and regulations, there may be omissions or inaccuracies in information contained in this policy. Accordingly, the information in this policy is provided with the understanding the authors and publishers are not herein engaged in rendering legal advice and services. As such, the information should not be used as a substitute for consultation with professional legal advisers. Before implementing this policy, or pursuing any of these Intellectual Property approaches, always consult your agency's counsel.
  - 2.2 While the State entity owns the rights to the Software Code and related Intellectual Property, this policy does not pertain to Commercial off the shelf (COTS) software code that was developed by the vendor. It only pertains to customizations, modifications or additional software code developed by any personnel on behalf of the state of Kansas.
- 3.0 ORGANIZATIONS AFFECTED: All divisions, departments, and entities of the state, with exceptions identified below. Exempt entities should consider this policy's content when contracting with non-state entities.
  - 3.1 Kansas Regents' Institutions are exempt from this policy.
  - 3.2 America's Workforce Technologies Solutions (AWTS) AJLA-TS, formerly ESSI, of the Kansas Department of Commerce is exempt from this policy.
  - 3.3 The Information Network of Kansas (INK) is exempt from this policy.
- 4.0 REFERENCES:
  - 4.1 [K.S.A. 75-7203 \(a\)](#) authorizes the Information Technology Executive Council (ITEC) to adopt information resource policies and procedures and provide direction and coordination for the application of the state's information technology resources for all state agencies.
  - 4.2 [K.S.A. 45-221\(A\)\(16\)](#) Public records not required to be disclosed.

- 4.3 [United States Copyright Act \(Title 17 United States Code\).](#)
- 4.4 [“Computer Program”](#) (January 2023). In Wikipedia.
- 4.5 [“Copyright”](#) (1/22/2023). In Wikipedia.
- 4.6 [ITEC-1500-S – Attachment A](#) – Sample Contractual Statements
- 4.7 [ITEC-1500-S - Attachment B](#) - Intent to Sell or Share Software Code or Intellectual Property.

## 5.0 DEFINITIONS:

- 5.1 Computer Program - is a sequence or set of instructions in a programming language for a computer to execute. Computer programs are one component of software, which also includes documentation and other intangible components.
- 5.2 Copyright - a type of intellectual property that gives its owner the exclusive right to copy, distribute, adapt, display, and perform a creative work, usually for a limited time. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself. Legal protection arises automatically when an original work of authorship is fixed in a tangible medium of expression. Registration with the United States Copyright Office is optional. However, registration is required before an infringement lawsuit may be filed.
  - 5.2.1 Copyright protection for a computer program extends to all the copyrightable expression embodied in the program. The copyright law does not protect the functional aspects of a computer program, such as the program’s algorithms, formatting, functions, logic, or system design.
- 5.3 Intellectual Property - an umbrella term for a variety of legal entitlements which attach to certain products of the human intellect, including copyrights (original works of authorship fixed in a tangible medium of expression) and patents (exclusive rights granted by the government for inventions that are useful, novel, and non-obvious.)
- 5.4 Software Code - programming statements created and saved in a file. Programming statements typically conform to the structure and syntax rules of a particular programming language.

- 6.0 POLICY: This document establishes a common, uniform policy for all State entities regarding the protection of Software Code and related Intellectual Property developed by or for these entities. Chapter 45, Article 2 of the Kansas Statutes, “Public Records, Documents and Information -- Records Open to Public”, describes certain records not required to be open. Specifically, K.S.A. 45-221(a) provides a list of records public agencies shall not be required to disclose. Subpart (16) states, "Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes: (A) The information which the agency maintains on computer facilities; and (B) the form in which the information can be made available using existing computer programs.”

- 6.1 Unless explicitly covered in a Contract executed by an authorized state official, all computer Software Code and related Intellectual Property developed by any personnel on behalf of the State of Kansas is the sole property of the state. The Software Code may not be distributed for sale or shared with other entities outside the state without authorization from the Chief Information Technology Officer (CITO) of the appropriate branch of state government. The CITO will report such authorizations to the Information Technology Executive Council (ITEC) on a quarterly basis.
- 6.2 Software Code and related Intellectual Property created by state employees, whether on state-owned equipment or non-state-owned equipment, on behalf of the state is the property of the state, and all state ownership, copyright, security, access policies and standards apply.
- 6.3 Contracts for programming or implementation services shall clearly identify the state's position on ownership of the Software Code and related Intellectual Property.
- 6.4 When an entity is selling or sharing Software Code and related Intellectual Property, the seller must attach to the code an Intent to Sell or Share Software Code or Intellectual Property form. This form disavows any responsibility for incidental or consequential damages, maintenance, or upgrading of the Software Code and related Intellectual Property. Refer to ITEC-1500-S Attachment B - Intent to Sell or Share Software Code or Intellectual Property for further information.
- 6.5 All entities having software code developed or modified shall maintain a record of the software code version and modifications to the entity's software code repository. These records are to be updated by the entities any time a change is made. Refer to ITEC-1500-S.

## **7.0 RESPONSIBILITIES:**

- 7.1 Heads of entities are responsible for establishing procedures for their organization's compliance with the requirements of this policy.
- 7.2 The Chief Information Technology Officer, Executive Branch, is responsible for the maintenance of this policy.

## **8.0 CANCELLATION:** All previous versions of this policy.

## **9.0 HISTORY:** Policy was enacted on July 27, 2000, revised on 1/24/2008 and revised again on June 20, 2023