

# Information Technology Executive Council (ITEC)

## ITEC-1500-S

- 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 define the ITEC 1500-P minimum standards and procedures.
- 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 [Code of Federal Regulations 45 CFR 95.617\(a\)](#) Software and ownership rights.
  - 4.4 [“Computer Program”](#) (January 2023). In Wikipedia.
  - 4.5 [ITEC-1100-P](#) – Software Use and Licensing
  - 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 Federal Financial Participation (FFP) - the portion paid by the federal government to states for their share of expenditures for providing services.
- 5.4 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.)
- 5.5 Ownership of Software Code - receiving compensation for Software Code and/or relinquishing rights to Software Code results in one of the following circumstances of ownership.
- 5.6 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 **PROCEDURES:** 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.
  - 6.1.1 State entities are responsible for publishing and distributing the ITEC Policy 1500-P, Ownership of Software Code and Related Intellectual Property policy to all IT managers and employees responsible for the development and maintenance of software, in their respective entities.
- 6.2 Software Code and related Intellectual Property written by state employees, on non-state-owned equipment, on behalf of the state is the property of the state, and all state ownership, copyright, security, and 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. (See ITEC Policy 1500-S - Attachment A – Sample Contractual Statements)

- 6.3.1 When federal funding is involved, pursuant to 45 CFR 95.617(a), "the State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal Financial Participation (FFP) under this subpart".
  - 6.3.1.1 Note that other provisions of 45 CFR 95.617(b) provide, "Federal license. The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation."
  - 6.3.1.2 Note that other provisions of 45 CFR 95.617(c) provide, "Proprietary software. Proprietary operating/vendor software packages which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (a) and (b) of this section. FFP is not available for proprietary applications software developed specifically for the public assistance programs covered under this subpart."
- 6.4 When Software Code and related Intellectual Property is being sold or shared, an Intent to Sell or Share Software Code or Intellectual Property form shall be attached to the Software Code and related Intellectual Property disavowing any responsibility for incidental or consequential damages, maintenance or upgrading of the Software Code and related Intellectual Property.
  - 6.4.1 State entities may not sell or share Software Code and related Intellectual Property unless the sale or sharing of the asset has been approved by the Branch CITO. Agency shall use ITEC Policy 1500-S – Attachment B - Intent to Sell or Share Software Code or Intellectual Property to make such request to the Branch CITO. The Branch CITO will report such authorizations to the ITEC on a quarterly basis.
  - 6.4.2 State entities shall receive approval for the sale or sharing of software by first preparing the Intent to Sell or Share Software Code and Intellectual Property form. This form shall be submitted to the CITO for the affected branch of government. The CITO must approve the sale or sharing before any action is taken.
  - 6.4.3 If multiple branches of government are affected, the CITO for each branch must be notified and approve the transaction. The affected state entity and the appropriate CITO must consider any security ramifications, as well as restrictions and conditions applied to the software by the federal government.
    - 6.4.3.1 All transactions for the sale of Software Code and related Intellectual Property shall be documented. The documentation shall include provisions for ownership of Software Code and Intellectual Property and any limitations of use by acquiring parties.
    - 6.4.3.2 An Intent to Sell or Share Software Code or Intellectual Property form shall be attached specifying the state shall not be

responsible for any incidental or consequential damages, maintenance, or upkeep of the software by the state. (See ITEC Policy 1500-S - Attachment B - Intent to Sell or Share Software Code or Intellectual Property)

- 6.5 All entities having software code developed or modified shall maintain a record of the software code information and modifications being made. These records are to be updated by the entities any time a change is made. This information is to be stored in the entities software code repository and are to include the following:
- Title of Software
  - Description of software
  - Date of development or modifications
  - Version
  - Software code
  - Modifications made to the software code

7.0 **RESPONSIBILITIES:**

7.1 Heads of entities are responsible for establishing procedures for their organization's compliance with the requirements of this standard.

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 standard.

9.0 **HISTORY:** Standard was enacted on July 27, 2000; revised on January 24, 2008 and revised again on June 20, 2023.