

Additional terms

The following terms represent “Additional Terms” agreed to between Kent State University (“KSU” or “University”) and the Contractor engaged by KSU to perform Services as provided for in a written agreement between the parties including, but not limited to, the Independent Contractor Terms of Agreement (such agreement and these Additional Terms collectively referred to herein as “Agreement”).

ARTICLE I: NATURE OF CONTRACT

- 1.1 Contractor shall be retained as an independent contractor, on a non-exclusive basis, to fulfill the terms of this Agreement. KSU may, from time to time, communicate specific requests to Contractor concerning the performance of the work described in this Agreement. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this Agreement. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with the Contractor.
- 1.2 KSU enters into this Agreement in reliance upon Contractor’s representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience. Furthermore, Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the contractor to its terms. The person(s) executing this contract on behalf of Contractor warrant(s) that such person(s) have full authorization to execute this contract.
- 1.3 Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Agreement. Contractor may not disclose any information obtained by it as a result of this Agreement, without the written permission of KSU. The Contractor must assume that all information, documents, data, records or other material is confidential. Contractor further agrees to abide by any and all pertinent federal, state and local laws and regulations. Contractor affirms that it has knowledge of, understands, and complies with the Family Educational rights and Privacy Act (“FERPA”). All provisions of this Agreement relating to “confidentiality” shall remain binding upon Contractor in the event of cancellation, unless law requires such disclosure.

Contractor’s obligation to maintain the confidentiality of the information will not apply where it: (1) was already in Contractor’s possession before disclosure by KSU, and it was received by Contractor without the obligation of confidence; (2) is independently developed by Contractor; (3) is or becomes publicly available without breach of this Agreement; (4) is rightfully received by Contractor from a third party without an obligation of confidence; (5) is disclosed by Contractor with the written consent of KSU; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the KSU of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be serviced by the original order of production. Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Agreement.

Unless required by law, Contractor and/or KSU will not disclose or otherwise make the terms of this Agreement, other confidential materials or information of Contractor or its suppliers, available to anyone except its authorized personnel for purposes related to this Agreement.

Contractor and KSU will take all reasonable precautions to maintain confidentiality and, without limiting the generality of the foregoing, shall take such precautions as shall be at least equivalent to those employed by Contractor by way of protection of its own confidential information.

In the event that the Services provided herein require access to university data, the parties agree to the Data Access and Exchange terms provided for in **Addendum A**, attached herein.

- 1.4 The Contractor shall at all times perform the Services in a competent, diligent, and workmanlike manner, and in accordance with all of the terms and conditions of this Agreement, as well as all applicable University policies, as notified to Contractor by the University from time to time. The Contractor shall faithfully perform and use best efforts in performing the Services according to the specifications, timetables, milestones and all other performance objectives requirements as set forth in the Scope of Work or otherwise attached and part of such Agreement.

ARTICLE II: SCOPE OF SERVICES

- 2.1 "Services" as used in this Agreement includes the works and any tangible things produced or delivered in the performance of services, whether or not complete. If any of the Services do not conform with contract requirements, the University may require the Contractor to perform the Services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the University may (1) require the Contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the Contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the University in the termination provisions of this Agreement, or remedies otherwise available at law.
- 2.3 Ownership of Work Products. All work product, including any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this contract shall be deemed **Works for Hire** and are the exclusive property of the University unless otherwise agreed to in writing by both parties. All such materials shall be delivered to the University by the Contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, nor cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the University. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works. Contractor agrees that all originals and all copies of any and all material containing, representing, evidencing, recording, or constituting all or part of University intellectual property, however and whenever produced, whether by Contractor or others and whether protected under copyright law or patentable or protected under other intellectual property law, shall be immediately handed over to the University upon its creations and any copies thereof returned to the University upon termination of this Agreement for any reason.
- 2.3 In the event that the Contractor is providing Services virtually through an online platform, Contractor further agrees to the terms provided for in Addendum B.

ARTICLE III: TIME OF PERFORMANCE

- 3.1 The Agreement between the parties shall be commenced on the Effective Date of this Agreement and terminate on the date included on the "Independent Contractor Terms of

Agreement” form, or as otherwise agreed to in writing by the parties (“Term”). The Term may be renewed upon the written agreement of the parties.

ARTICLE IV: COMPENSATION

- 4.1 KSU shall pay Contractor for Services as are described and provided for on the “Independent Contractor Terms of Agreement” form, or as otherwise agreed to the parties in writing. This fee represents the total fee for Services and, unless otherwise specifically provided for in writing in this Agreement or amendment hereto, Contractor shall not be reimbursed for any expenses accrued by Contractor during the performance of the Services.
- 4.2 As the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall not exceed one year.
- 4.3 KSU’s obligation to pay Contractor the fees provided for under this Agreement shall be contingent upon Contractor submitting an invoice with the fee to University’s Accounts Payable Department within thirty (30) days of when the fee is due, as well as registering with the University’s payment portal. Each such invoice shall include the following information: Contractor’s name and address, the specific Services provided and the dates worked. Contractor agrees to complete and return to University any required forms and paperwork (as applicable), including but not limited to Form W-8BEN, as a condition of receiving timely payment.

ARTICLE V: TERMINATION OF CONTRACTOR’S SERVICES

- 5.1 KSU may, at any time prior to the completion of Services by Contractor under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to Contractor no less than 30 days in advance. However, KSU may terminate this Agreement with immediate effect upon material breach of Contractor if such material breach is not cured within 15 days.
- 5.2 Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated Services under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by KSU, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work and student/assignment/academic progress under this Agreement, including, without limitation, results, conclusions resulting there from, and any other matters KSU requires.
- 5.3 Contractor shall be paid for Services rendered up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by KSU for which Contractor has not rendered services shall be refunded.
- 5.4 In the event this Agreement is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to KSU all work products and documents which have been prepared by Contractor in the course of providing services under this Agreement. All such materials shall become and remain the property of KSU, to be used in such manner and for such purpose as KSU may choose.
- 5.5 Contractor agrees to waive any right to, and shall make no claim for, additional compensation against KSU by reason of such suspension or termination.

- 5.6 In the event the Contractor desires to terminate the contract before its completion date, Contractor must give 30 days notice and will not be entitled to any remaining payments after the date of termination. Contractor is responsible for any other debts, fees, or other encumbrances resulting from early termination.

ARTICLE VI: RELATIONSHIP OF PARTIES

- 6.1 KSU and Contractor agree that, during the term of this Agreement, Contractor shall be engaged by KSU solely on an independent contractor basis. Contractor acknowledges and agrees that any and all direct taxes and other returns required by the city, local, state, federal law or regulations of the United States, or anywhere as applicable with respect to the Services provided and the actives of the Contractor and all payments due thereon, and all licenses, registrations, permits, and the like, and all fees or other payments or coverages required or due in connection therewith, including but not limited to, income or other tax withholdings, and other taxes (including but not limited to VAT due by either party as it may apply to the Services), shall be the sole responsibility and obligation of the Contractor, and must be made, filed, paid, and maintained solely by the Contractor. If required by law, the payment will be reduced by any taxes required to be withheld by KSU. Contractor is expected to complete various forms as required by federal, state, or local law so that KSU can determine the required tax withholding and/or reporting to the taxing authorities. Furthermore, Contractor acknowledges and agrees that Contractor shall pay, and be solely responsible for, all of Contractor's operating expenses. Contractor shall have no authority and shall make no representations, warranties or statements on behalf of University, and neither party hereto shall bind or be liable for the debts or obligations of the other.
- 6.2 The Contractor shall be solely responsible for all taxes, expenses and benefits associated with the use and employment of its personnel. The Contractor agrees to release, indemnify and hold harmless the University against all claims, taxes, penalties, interest and costs which may be assessed against the University under any law, rule or regulation now in effect or hereafter enacted, with respect to the Contractor.
- 6.3 Contractor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder.
- 6.4 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent. Contractor acknowledges that no decision making authority is provided to the Contractor in regard to the activities and Services provided by the Contractor as an independent contractor under this Agreement. Contractor is prohibited from accepting service of process or notices on University's behalf..

ARTICLE VII: RECORD KEEPING AND NON-COMPETE AGREEMENT

- 7.1 During performance of this Agreement and for a period of three years after its completion, Contractor shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to KSU as KSU may reasonably require.
- 7.2 The Contractor shall immediately return to the University any and all Confidential or Proprietary Information (and any copies thereof in Contractor's possession or control) which may have been in tangible form, upon termination or expiration of this Agreement, or as the University may from time to time request.

ARTICLE VIII: RELATED AGREEMENTS

- 8.1 The work contemplated in this Agreement is to be performed by Contractor and the Contractor alone. The Contractor's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned, and any attempted assignment shall be void and of no effect. The Contractor shall not subcontract for any part of the Services or obligations hereunder without the prior written consent of the University. Any unauthorized assignment shall be void. University shall have the right, but not the obligation to terminate this contract, without waiver of any other right or remedy, upon notice of Contractor's assignment or subcontract in violation of this section.

ARTICLE IX: LIABILITY

- 9.1 Contractor agrees to release, indemnify and to hold KSU, and its Board of Trustees, its respective entities, administrators, faculty members, employees, agents, and student volunteers harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to, or result from, Contractor's own actions or omissions or those of its trustees, officers, agents, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.
- 9.2 To the extent permitted by Ohio law as a state institution of Ohio, Kent State University agrees only to be responsible for the acts and omissions of its officers and employees engaged in the scope of their employment arising under this Agreement, as determined by a court of competent jurisdiction. The liability of Kent State University shall be subject in all cases to the protections, immunities, and limitations provided for by the laws of the State of Ohio. The parties agree that nothing in this provision shall be construed as an indemnification of the other party or a waiver of the sovereign or qualified immunity of the University, its employees, and/or the State of Ohio.
- 9.3 In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.
- 9.4 **LIMITED LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY BREACH THEREOF. THE UNIVERSITY'S TOTAL LIABILITY TO THE CONTRACTOR, AND THE CONTRACTOR'S TOTAL REMEDY FOR ANY AND ALL OF THE UNIVERSITY'S BREACHES OF THIS AGREEMENT AND/OR ITS OBLIGATIONS HEREUNDER, SHALL BE LIMITED TO THE TOTAL CONSIDERATION TO BE PAID TO CONTRACTOR FOR THE SERVICES.

ARTICLE X: GENERAL PROVISIONS

- 10.1 As a state institution of Ohio, the University is required to abide by Ohio law. The State of Ohio requires that both parties recognize and agree to the following provisions: *All Ohio Revised Code (O.R.C.) provisions are available at codes.ohio.gov/orc*

Contractor warrants that it does not owe any monies or debts to the state of Ohio, its agencies, political subdivisions, boards, commissions or other entities as established under the Ohio Revised Code (codes.ohio.gov)

Conflicts of interest and Ethics compliance. No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this

Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the other party in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the other party shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any action would not be contrary to the public interest.

- 10.2 Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 USCA §§51-58). By agreeing to this binding Agreement, the transacting parties (1) certify that they have not paid kickbacks directly or indirectly to any employee of Kent State University for the purpose of obtaining this or any other agreement, purchase order or contract from Kent State University and; (2) agree to cooperate fully with any Federal Agency investigating a possible violation of the Act. Furthermore, both parties recognize their duties under the Foreign Corrupt Practices Act of 1977 (15 USCA §§78dd-1) which makes it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.
- 10.3 No Agency. Nothing herein shall be construed to create an agency relationship between the University and Contractor, or any employment relationship between Contractor and any staff member provided by KSU to perform the services under this Agreement. Contractor will not represent to be or hold itself out as an agent or affiliate of the University at any time during the term of this Agreement.
- 10.4 Use of KSU's Logos, etc. Contractor may not, and KSU does not grant, use of the University's identifying marks without the express written permission of the University. Use of the University's identifying marks without such permission will be considered a material breach of this Agreement.
- 10.5 Time is of the Essence. All time limits, time periods, milestones and completion dates stated in the contract documents are of the essence of this contract.
- 10.6 Equal Opportunity. Both Contractor and KSU subscribe to a policy of equal opportunity and will not discriminate on the basis of race, gender, religion, national origin, marital status, sexual orientation or physical disability.
- 10.7 Authoritative Version. The English version of this Agreement shall be the authoritative version of the Agreement for all purposes. In the event of a conflict between the English version and any translation of this Agreement, the English version shall control.
- 10.8 Entire Agreement and Amendment. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless such amendment or modification to this Agreement is (i) in writing; (ii) refers to this Agreement; and (iii) executed by an authorized representative of each party. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.

- 10.9 Notice. All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses first set forth above.
- 10.10 Headings. The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- 10.11 Severability. If any section or provision of this Agreement is held illegal, unenforceable or in conflict with any law by a court of competent jurisdiction, such Section or provision of this Agreement shall be deemed severed from this Agreement and the validity of the remainder of this Agreement shall not be affected thereby.
- 10.12 Choice of Law. This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Agreement and/or performance thereunder.
- 10.13 Insurance. Where applicable, Contractor agrees to take all precautions necessary for the safety of and prevention of damage to property on or adjacent to the work site as applicable, and for the safety of and prevention of injury to persons, including KSU's employees, contractor's employees, and third persons, on or adjacent to the work site. All work shall be performed entirely at Contractor's risk. Contractor agrees to carry, for the duration of this contract, public liability insurance in an amount, and with an insurer, acceptable to the University and commensurate with the minimum requirements of good practice and commercially reasonable standards.
- 10.14 Waiver. Failure of either party to insist upon the performance of any provision hereof or to exercise any right or remedy shall not be deemed a waiver of any right or remedy or of any existing or subsequent breach or default.
- 10.15 Pursuant to R.C. 9.76(B) Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

Addendum A Data Access and Exchange

The Parties shall only share data or otherwise permit access as permitted by law and in accordance with the applicable requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, 34 C.F.R. Part 99, and other applicable privacy laws including without limitation, the Health Insurance Portability and Accountability Act of 1996 and the federal regulations adopted to implement that Act (45 C.F.R. Parts 160 & 164 "the HIPAA Privacy and Security Rules"), collectively referred to as "HIPAA," the Gramm-Leach-Bliley Act (GLBA), Public Law No: 106-102, the EU General Data Protection Regulation (GDPR), as well as the individual data privacy laws of certain other states and/or countries as they may apply including, but not limited to, Ohio Revised Code 1349.19 and Ohio Administrative Code 3342-9-03.1. As may be applicable, the University appoints Contractor and third party(ies) assisting Contractor in performing the services, as reasonably determined by Contractor, as a "school official" as that term is used in FERPA and as interpreted by the Family Policy Compliance Office, and determines that Contractor, and such third party(ies), as appropriate, has a "legitimate educational interest," for the purpose of carrying out its responsibilities under this Agreement. Each party shall limit access to the other party's data to the receiving party's employees, agents and subcontractors who have a need to access the data to fulfill their obligations under the Agreement, and shall require that its agents and subcontractors who have access to such data to agree in writing to abide by substantially similar (and no less restrictive) restrictions and conditions that apply to the party receiving the data. All information shall be maintained in accordance with reasonable commercial administrative, physical and technical standards and each party remains responsible for their own respective compliance obligations. If a party experiences or otherwise becomes aware of a security breach of their electronic information systems, or any form of unauthorized disclosure of personally identifiable information and/or data, such party will immediately notify the other party (not more than 72 hours from the discovery of the breach) and take immediate steps to limit and mitigate such security breach to the extent possible. The parties sharing the personally identifiable information and/or data shall be responsible for notification to any affected third parties in accordance with their own policies. All data and media sanitization efforts shall meet the requirements as set forth in NIST.SP.800-88 Rev 1 Guidelines for Media Sanitization. In the event that the exchange of data involves individuals residing within the European Union and subject to GDPR, the parties agree to execute the appropriate agreement as may be required.

Upon termination of contract, to the extent permitted by law, each party shall return and/or destroy all data or information received from the other party upon, and in accordance with, direction from that respective party. Neither party shall retain copies of any data or information received from the other party, unless such retention is required by law. Furthermore, each party shall ensure that they dispose of any and all data or information in a manner that maintains the confidentiality of the contents of such records (e.g. shredding paper records, erasing and reformatting hard drives, erasing and/or physically destroying any portable electronic devices).

Addendum B

Photo and Video Release. In consideration for the fees paid for the Services provided herein, Contractor hereby grants Kent State University the absolute, nonrevocable, worldwide, right and permission to interview the Contractor to use that individual's name and likeness in photograph(s) and video(s), including audio, including any and all photos or videos submitted to the University, in any and all of its publications and in any and all other media or advertising, whether now known or hereafter existing, controlled by Kent State University, in perpetuity, and for other use by the University or by a third party.

In consideration for the fees paid for the Services provided herein, the Contractor also waives any rights of privacy in the images and likeness, including but not limited to any rights that might otherwise be protected applicable privacy laws. In the event that such video is used and audio is captured, Contractor provides Kent State University with an perpetual, unlimited, world-wide, royalty-free license to use such video and/or audio. Contractor understands that Kent State University cannot control unauthorized use of my image by third parties once such image is published. Contractor agrees that any claim the Contractor may have concerning unauthorized publication of the Contractor's image must be pursued by the Contractor against the unauthorized user and that the Contractor cannot pursue such claim against Kent State University. Kent State University disclaims any responsibility for unauthorized use of my published image and Contractor agrees that the Contractor shall not receive, and waiver any rights to, any compensation or royalty for the permissions and rights provided herein.

Contractor understands that the photo(s), video(s) and interview(s) may be published on the Web (Internet) and can be viewed throughout the world, not just in the United States.