

PERFORMANCE CONTRACT

This Performance Contract ("Agreement") made and entered into this _____ day of _____, 20____ by and between Western Kentucky University (the "Sponsor") and _____, hereinafter referred to as "Presenter".

Sponsor and Presenter hereby agree to the following:

I. Presenter agrees to provide the following:

- a. Date: ____/____/____ **OR** Dates: _____
- b. Time: ____:____ ☐ AM ☐ PM
- c. Location: ☐ on campus ☐ off campus ☐ zoom (if zoom, physical location of zoom presenter):

Address: _____
WKU building address, if off campus street address

City, State Zip: _____ - _____, _____

- d. Description of presentation/performance/services being provided by Presenter:

II. In consideration of the above, Sponsor agrees to provide the following:

- a. Payment to Presenter, via ☐ check / ☐ ¹direct deposit (please check one) in the sum of \$_____ which includes all travel and other expenses. Payment shall be made upon completion of this Agreement and Sponsor's receipt of a detailed invoice.

Payment shall be issued to the Presenter whose address is:

Address: _____
City, State, Zip _____, _____

If payment is payable to a person or entity other than presenter², please provide Name & address of payee:

- b. The following equipment or stage arrangements (if none, "N/A"):

III. Special Provisions agreed to by the Parties:

¹ If not already set up for direct deposit, vendor must contact Michele Mastin, Accounts Payable Manager (michele.mastin@wku.edu) prior to payment being issued, otherwise the payment method will default to paper check.

² If the payment is to be issued to a person or entity other than the presenter, a valid W-9* for the person/entity must be provided to WKU (*W-8, or other tax forms, if applicable)

- a. **Indemnification.** PRESENTER agrees to protect, save and keep WESTERN KENTUCKY UNIVERSITY forever harmless from any damage or charges imposed for violations of any law or ordinance whether occasioned by the negligence of the PRESENTER or those holding under the PRESENTER, as well as to strictly comply with the applicable terms and conditions contained in the agreement, and further, PRESENTER shall at all times protect, indemnify, save and keep harmless WESTERN KENTUCKY UNIVERSITY against and from any and all loss, cost damage, liability, or expense arising from or out of or by reason of any accident or other occurrence to anyone, including the PRESENTER, its agents, employees, and business invitees, which arises from or out of or by reason of said PRESENTER'S occupancy and use of the premises or a part thereof as named herein.
- b. **Force Majeure.** If the event described hereinabove is canceled due to construction, partial or total destruction, acts of God, severe inclement weather, war, terrorism, outbreaks of disease, epidemics, government regulation, disaster, fire, strikes, civil disorder, unavailability of water, electricity or other necessary utilities, or any other similar cause beyond the control of the Parties, which would make it inadvisable, illegal, or impossible to perform under the terms and conditions of this Agreement, then this Agreement will terminate and neither party shall have any further rights nor liabilities hereunder.
- c. **Amendments.** No amendment or modification of any provisions of this Agreement will be effective unless it is in writing, prepared as an amendment referring to this Agreement, and signed by duly authorized representatives of both parties.
- d. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Kentucky, without giving effect to principles of conflicts of law.

When signed by both parties, this contract constitutes full agreement as to the terms and conditions agreed upon by both parties.

AGREED AND ACCEPTED BY:

Presenter

Signature**: _____

Date: ____/____/____

**Electronic Signatures and Certified Authentication. This Agreement may be executed by electronic signatures. Each Party agrees that their electronic signature has the same legal force and effect as a handwritten signature. To be valid and binding, each electronic signature must be generated and certified through an industry-standard, commercially recognized electronic signature provider (such as DocuSign or Adobe Sign). The signing process must produce a tamper-evident digital certificate, cryptographic hash, or a verifiable audit trail detailing the identity of the signer, their email or IP address, and the precise date and time of execution. Delivery of an executed counterpart of this Agreement by electronic transmission shall be deemed effective delivery.

WESTERN KENTUCKY UNIVERSITY

Recommended by: Dept,

Name: _____

Signature: _____

Title: _____

Date: ____/____/____

AGREED AND ACCEPTED BY:

Valid if signed by Controller (or authorized agent) for Finance and Administration.

Date: ____/____/____



OFFICE OF THE GENERAL COUNSEL

May 8, 2024

To whom it may concern:

This letter will serve to provide as a Proviso to all contracts/agreements, including quotes and/or on-line agreements with Western Kentucky University.

Western Kentucky University ("WKU" or "University" hereinafter) is a state agency and instrumentality of the Commonwealth of Kentucky and is subject to all terms and conditions of the Kentucky Model Procurement Code as set forth in KRS Chapter 45A, as well as other statutes and constitutional provisions applicable to Kentucky state agencies. Please be advised that WKU cannot make purchases of goods or services that are not in accord with applicable state laws and constitutional requirements, nor can it accept or agree to terms inconsistent with state laws or the state constitution. WKU's acceptance of any agreement is expressly conditioned upon the deletion or amendment of all terms that are not consistent with state laws or constitutional provisions.

Thus, you agree that notwithstanding any other term or condition in the agreement(s), WKU accepts and shall only be bound by terms and conditions permitted by and in accord with the Kentucky constitution and applicable state law. The following is a non-exhaustive list of commonly problematic terms:

Arbitration: Kentucky law does not permit the University to agree to arbitration for any dispute. The University can agree to other alternative non-binding dispute resolution processes.

Disclosure of Contracts: As a public institution and state agency, the University is subject to the Kentucky Open Records Act (KRS 61.870-61.884). This Act establishes a right of access to public records, including contracts entered into with the University, and provides exemptions for certain types of information contained in otherwise public records as set forth in KRS 61.878.

Governing Law: Kentucky law does not permit the University to be bound by the laws of another forum or agree to the jurisdiction of another forum's courts. The University can agree to leave an agreement silent as to governing law/choice of law.

The Spirit Makes the Master

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Immunities: The University shall not waive any of the rights, privileges, or immunities available to Kentucky state agencies.

Indemnification: Kentucky law does not permit the University to indemnify or hold harmless a third party. Negligence claims against the University are subject to the Kentucky Board of Claims. The University may not agree to pay another party's legal/attorneys' fees.

Insurance: The University does not carry general liability insurance.

By providing goods and/or services to WKU, you acknowledge and accept the terms of this Proviso. YOU SHOULD NOT PROVIDE GOODS OR SERVICES TO WESTERN KENTUCKY UNIVERSITY IF YOU DO NOT ACCEPT THE TERMS SET OUT IN THIS PROVISIO.

Sincerely,

A handwritten signature in blue ink that reads "Lindsey A. Carter".

Lindsey A. Carter, J.D.
Assistant General Counsel
Western Kentucky University