



1. DEFINITIONS

- 1.1 “Applied Learning Services” or “Services” shall mean any and all services to be performed by WSU Personnel and shall be deemed to include all services and effort performed and any deliverables provided to Buyer in connection with the SOS, including without limitation, reports, results, materials, products, and information.
- 1.2 “Buyer” means the person, firm, organization, governmental entity, or company identified in the SOS procuring the Applied Learning Services.
- 1.3 “Confidential Information” is, regardless of form, confidential or proprietary information, knowledge, or data received by WSU from Buyer that is clearly designated by Buyer as confidential or proprietary prior to disclosure. Confidential Information includes, but is not limited to, all methods, processes, techniques, practices, product designs, pricing information, research and development information, billing histories, customer requirements, customer lists, employee lists, salary information, personnel matters, financial data, operating results, designs, plans, contractual relationships, projections for new business opportunities for new or developing businesses, and technological innovations in any stage of development.
- 1.4 “SME” means any subject matter expert assigned by WSU to provide Applied Learning Services.
- 1.5 “Statement of Services” or “SOS” means the written description of the Applied Learning Services to be provided to WSU by Buyer, which shall be in substantially the same form as the SOS template available on the Website and must be executed by authorized representatives of both Parties prior to the performance of any Applied Learning Services.
- 1.6 “Student Personnel” means any student worker assigned by WSU to provide the Applied Learning Services.
- 1.7 “Terms” means these WSU Terms and Conditions for Applied Learning Services.
- 1.8 “Website” means the WSU website, available at <https://www.wichita.edu/administration/generalcounsel/contracts.php#standard-terms-conditions>.
- 1.9 “WSU” means Wichita State University and any affiliates, subsidiaries, successors or assigns thereof, as expressly designated in the SOS.
- 1.10 “WSU Personnel” means the employees of WSU that provide the Applied Learning Services, which shall include the Student Personnel and any SMEs.

2. APPLICABILITY OF TERMS

These Terms only apply to the limited provision of Applied Learning Services that are not independently subject to a separate written agreement between

Buyer and WSU (referred to individually as “Party” and collectively as “Parties”). If there is such an agreement, then those terms shall be the terms that govern the transaction between the Parties. In the absence of such a written agreement, then these Terms shall govern. These Terms are available for download on the Website. WSU may change these Terms at any time in its sole discretion. Such changes shall be effective upon posting of such updates on the Website. Buyer is responsible for periodically visiting the Website to review changes to these Terms.

3. SCOPE OF SERVICES.

WSU will provide Applied Learning Services to Buyer in accordance with the terms of the applicable SOS. Buyer will compensate WSU for such Services as set forth in the applicable SOS.

4. COMPENSATION.

Buyer will compensate WSU for the Applied Learning Services provided by WSU Personnel in accordance with the terms of the applicable SOS.

5. PAYMENT FOR SERVICES; INVOICES.

- 5.1 WSU shall issue an invoice to Buyer for all Applied Learning Services. Payment shall be due net thirty (30) days from the date of an acceptable invoice. Buyer must dispute any invoice within seven (7) days of receipt.
- 5.2 The Parties’ primary points of contact for all inquiries related to payment and invoicing will be set forth in the applicable SOS.
- 5.3 If, at any time, Buyer fails to make timely payment of an undisputed invoice amount, WSU may elect to do one or more of the following, at its option:
 - 5.3.1 suspend Applied Learning Services with the right to recover work stoppage costs;
 - 5.3.2 withhold any or all Applied Learning Services or deliverables until payments are brought current; or
 - 5.3.3 assess interest on all past due amounts, which shall accrue starting from the date the payment is due until such time as payment is received, at an annual interest rate of fifteen percent (15%).

6. PLACEMENT AND SCHEDULING.

WSU shall work with Buyer to ensure that its scheduling needs are met under the applicable SOS and are consistent with Buyer’s commercial and industrial requirements. The primary point of contact at WSU for all placement and scheduling issues is set forth in the applicable SOS.

7. RECRUITING STANDARDS AND CONDUCT.

WSU shall perform reasonable and customary due diligence in verifying the experience, training, qualifications and references of any WSU Personnel performing work under an applicable SOS. WSU’s obligation to perform reasonable and customary due diligence will not require the disclosure of any student



records and will not require investigation into any matters which may require student consent. WSU will have no liability for any failure to perform adequate due diligence regarding any candidate. Buyer shall be responsible to perform at its own cost, and WSU shall reasonably assist Buyer in, all background checks or drug testing as may be generally required for security, safety or other legitimate business reasons that are not customarily completed by WSU as part of its new hire process.

8. RELATIONSHIP OF THE PARTIES AND INDEPENDENT CONTRACTOR STATUS.

The Parties agree that WSU undertakes the furnishing of the Applied Learning Services pursuant to these Terms as an independent contractor. The Parties agree that Buyer shall not control or have the right to control what WSU does and how WSU performs the work. Nothing in these Terms shall be construed as creating any type of employment, partnership, or affiliate relationship between the Parties. Neither Party has any responsibility nor liability for the actions of the other Party except as specifically provided in these Terms. Neither Party has any right or authority to bind or obligate the other Party in any manner or make any representation of warranty on behalf of the other Party. WSU shall receive no compensation except for that set forth in an applicable SOS and WSU shall not be entitled to any of the benefits, perquisites or emoluments of employment normally provided to Buyer employees.

9. NO RIGHT TO EMPLOYMENT.

Both Parties desire to provide WSU students with an experience that will aid them in entering the workforce. However, the Parties agree that Student Personnel do not have any guarantee or entitlement to employment by Buyer at the conclusion of Applied Learning Services.

10. HEALTH AND SAFETY.

Buyer will fully comply with all health and safety policies and procedures and applicable laws and regulations as it relates to ensuring the health and safety of WSU Personnel. Buyer shall notify WSU of any and all safety equipment needed by WSU Personnel to work in Buyer's environment. WSU shall ensure WSU Personnel comply with all required safety equipment, within reason, for work in Buyer's environment. WSU may, in its sole discretion, require Buyer to provide any special-order equipment or equipment that is deemed financially excessive.

11. NON-EXCLUSIVITY.

Buyer retains the right to use staffing agencies, recruiting companies and personnel firms, and shall always have the right to recruit and hire candidates on its own, even if the position to or for which such candidate is assigned or hired has already been submitted to WSU. WSU retains the right to submit all candidates to other companies for hire or placement

before, during, or after the period of performance of the applicable SOS.

12. CONFIDENTIALITY.

To the extent the Parties have entered into a separate non-disclosure agreement ("NDA"), the terms of that NDA shall govern the treatment of Confidential Information, to the extent applicable. In the absence of such an agreement, or where the NDA is silent, the following terms shall apply:

12.1 General Terms. WSU may be granted access to Confidential Information in connection with an SOS. WSU shall take all reasonable steps to preserve such Confidential Information and to protect it from unauthorized use or disclosure.

12.2 Exceptions. Confidential Information does not include any information that is in the public domain. Moreover, Confidential Information will lose its status as Confidential Information hereunder if:

12.2.1 it becomes publicly available through no wrongful act of WSU;

12.2.2 is lawfully disclosed to WSU without restriction by a source other than Buyer;

12.2.3 is developed by WSU entirely independently without use of or reference to Buyer's Confidential Information; or

12.2.4 is required to be disclosed pursuant to applicable law, subpoena, or proper governmental or judicial order or process. Where such information is required to be disclosed under this Section 12.2.4, prompt notice of such disclosure shall be provided to Buyer, to the extent permitted by law, in order to provide Buyer with reasonable opportunity to intervene in such process to contest such disclosure.

12.3 WSU Personnel's Obligations and Limitations. If Buyer elects to enter into a separate agreement with WSU Personnel regarding Confidential Information, WSU will not be a party to any such agreement and shall have no responsibility or legal liability with respect to any WSU Personnel's management of, or actions in respect of, any Confidential Information.

13. EXTERNAL FUNDING.

An SOS may be supported in whole or in part by federal, state, city, or third-party funding ("External Funding"). All work completed under any SOS that is subject to External Funding shall be completed by both Parties in a manner consistent with all External Funding requirements and restrictions, and – in the event such External Funding is removed or reduced prior to the termination or expiration of the SOS – the Parties agree to adjust the work scope and funding level of such SOS accordingly.

14. COMPLIANCE WITH LAWS AND REGULATIONS.

Each Party represents and warrants to the other that:



- 14.1 it complies with all federal, state and local laws and ordinances and has obtained any and all permits or licenses required by it to perform its obligations hereunder; and
- 14.2 it does not discriminate in the acceptance or referral of any personnel or candidate on the basis of race, color, religion, sex, age, national origin, disability, sexual orientation, veteran or familial status or other status protected by federal, state, or local law.

15. INSURANCE.

WSU shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to these Terms, nor shall these Terms require WSU 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.*), Buyer shall bear the risk of any loss or damage to any property in which the Buyer holds title.

16. INDEMNIFICATION AND HOLD HARMLESS.

- 16.1 Except as provided in Section 16.2, each Party shall be responsible for its own acts and omissions and the results thereof and shall not be responsible for the acts of the other Party. WSU, its faculty members, students, administrators, employees, agents and authorized volunteers, are subject to the terms and limitations of the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, as amended.
- 16.2 Subject to, and without waiving any defenses, rights, restrictions or immunities arising from the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*) or the state constitution, each Party shall defend and indemnify the other Party and its directors, officers, and employees, and stockholders (collectively, "Indemnified Parties") from and against all third-party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorneys' fees and costs) ("Claims") which arise out of or relate to (1) death or bodily injury or (2) loss of or damage to real property resulting from any negligent act or willful misconduct of the indemnifying Party except to the extent that such Losses result from, in whole or in part, (a) the negligence, unlawful or wrongful acts of the Indemnified Parties or any other person acting in concert with them.

17. SCHEDULING.

If Buyer postpones scheduled Applied Learning Services before project completion, Buyer shall be responsible for any labor costs incurred by WSU as necessary to maintain continuity on the Buyer's project and to ensure a ready workforce at the conclusion of the postponement. WSU may, in its sole discretion, terminate these Terms

effective upon written notice if Applied Learning Services are postponed for more than thirty (30) calendar days.

18. INTELLECTUAL PROPERTY.

18.1 Buyer Intellectual Property. WSU acknowledges that Buyer owns, holds, or may independently develop in the future proprietary information or technology, specifications, documentation, and/or other intellectual property ("Buyer IP"). All rights, title, and interest in Buyer IP shall remain exclusively with Buyer. Buyer grants WSU a limited, royalty-free, non-exclusive, non-transferable license to use, display, reproduce, modify, sublicense, sell, and distribute the Buyer IP only to the extent necessary to complete the Applied Learning Services. Nothing in these Terms shall be construed to transfer ownership of any Buyer IP to WSU.

18.2 WSU Intellectual Property. Buyer acknowledges that WSU owns, holds, or may independently develop in the future proprietary information or technology, specifications, documentation, and/or other intellectual property ("WSU IP"). All rights, title, and interest in WSU IP shall remain exclusively with WSU. To the extent that any WSU IP is contained in the work product provided to Buyer in connection with an SOS, WSU hereby grants Buyer a perpetual, irrevocable, royalty-free, non-exclusive, license to perform, display, use, and reproduce, such WSU IP. Nothing in these Terms shall be construed to transfer ownership of any WSU IP to Buyer.

18.3 Ownership of Foreground Intellectual Property. Unless described otherwise in any applicable SOS, the Applied Learning Services being provided by WSU are not meant to generate or create substantive foreground intellectual property. To the extent that substantive foreground intellectual property is created, ownership shall be as follows:

18.3.1 Workflow Intellectual Property. Any and all processes, methods, workflows, software packages, systems, and/or documentation developed in connection with the Applied Learning Services provided by WSU that specifically relate to the management, staffing, or administration of WSU Personnel shall be owned by WSU.

18.3.2 Work-Made-For-Hire. Any other foreground intellectual property created by WSU in the course of providing the Applied Learning Services and contained within a deliverable to Buyer shall be treated as a work-made-for-hire and shall be owned by Buyer.

19. COMPLIANCE.

19.1 Export Compliance. Parties agree to comply with all U.S. Laws relating to the 22 U.S.C. 2778-2780



of the Arms Export Control Act (AECA), the International Traffic in Arms Regulations (ITAR) (22 Code of Federal Regulations Parts 120-130), and the Export Administration Regulations (EAR) 15 Code of Federal Regulations Parts 730-774. The Party disclosing information shall notify the other Party, in writing, prior to disclosure of any technical data or other items subject to EAR or ITAR. The Parties will reasonably cooperate with and support each other in obtaining the correct Export Control Classification Number (ECCN), the Harmonized Tariff Schedule (HTS) number or classification of a defense article as needed.

19.2 Debarment Certification. Each Party certifies that, to the best of its knowledge, neither it nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.6, or otherwise declared ineligible for the award of contracts by any Federal agency. If at any time a Party learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances, that Party shall provide immediate written notice to the other Party.

19.3 Record Retention. Buyer agrees that WSU may retain one archival copy of all documents related to the Applied Learning Services for the purposes of (a) proving what information it did or did not receive hereunder in the event of a future dispute, or (b) complying with governmental regulatory requirements.

20. NOTICES.

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either Party to the other shall be **IN WRITING** and sent by certified mail or overnight traceable delivery and addressed as follows, unless any other person or address may be designated by notice from one Party to the other:

If to Buyer: at the address identified on the SOS

If to Wichita State University:

Attn: IDP Contracts
Wichita State University
1845 Fairmount Street
Wichita, Kansas 67260-0093
contracts@idp.wichita.edu

With a copy to:

Attn: General Counsel
Wichita State University
1845 Fairmount Street
Wichita, KS 67260-0205
gc.contracts@wichita.edu

21. USE OF MARKS, LOGOS, AND MARKETING.

Buyer shall not use the name, logos, insignias or trademarks of WSU, any affiliates of WSU, or any project member, in any publicity, advertising, promotional materials, news release or websites except as set forth in these Terms, or as authorized by WSU in writing in each instance. Either Party may use the name of the other Party in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements. The Parties acknowledge that the Applied Learning Services will be performed in whole or in part by Student Personnel who are seeking to enhance their education and learning and obtain critical workforce training and experiences, and it is in the Parties' best interest to set forth an accurate statement of the Applied Learning Services and the Student Personnel's experience. Therefore, and notwithstanding any restrictions to the contrary, Buyer hereby authorizes Student Personnel to publish their applied learning experience with Buyer as set forth in the Authorized Public Statement in the SOS. Acknowledgment of funding or sponsorship in a factual statement is not prohibited by this paragraph.

22. LIMITATION OF LIABILITY FOR BREACH OF CONTRACT.

In no event shall either Party's liability for breach of these Terms or any SOS include damages for work stoppage; diminution in value; lost data; or indirect, special or consequential damages of any kind, including lost profit. Except for each Party's obligations under Section 16 (Indemnification and Hold Harmless) and Section 27 (Termination), each Party's liability to the other for breach shall not exceed an amount equal to the monetary consideration paid to WSU under these Terms.

23. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.

THE PARTIES UNDERSTAND AND AGREE THAT THE APPLIED LEARNING SERVICES RENDERED BY WSU SHALL BE PERFORMED IN WHOLE OR PART BY WSU STUDENTS. THEREFORE, WSU MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE RESEARCH OR ANY INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED OR DEVELOPED UNDER THIS AGREEMENT; OR THE NON-INFRINGEMENT, OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT. BUYER IS PROHIBITED FROM MAKING ANY EXPRESS OR IMPLIED WARRANTY TO ANY THIRD PARTY ON BEHALF OF WSU RELATING TO ANY MATTER, INCLUDING THE APPLICABLE OF OR THE RESULTS TO BE OBTAINED FROM THE INFORMATION,



MATERIALS, APPLIED LEARNING SERVICES, INTELLECTUAL PROPERTY OR OTHER PROPERTY OR RIGHTS (INCLUDING THE DELIVERABLES GRANTED AND/OR PROVIDED BY WSU PURSUANT TO THIS AGREEMENT). BUYER ACKNOWLEDGES THAT THE PROJECT IS A SCIENTIFIC UNDERTAKING AND CONSEQUENTLY, WSU WILL NOT GUARANTEE ANY PARTICULAR OUTCOME.

24. CAPTIONS.

The captions and headings in these Terms are for reference only and do not define, describe, extend or limit the scope or intent of these Terms.

25. SEVERABILITY.

If any provision of these Terms is determined by a court of competent jurisdiction to be invalid or unenforceable, to any extent, the remainder of these Terms shall not be affected, and each provision of these Terms shall be enforced to the fullest extent permitted by law.

26. FORCE MAJEURE.

No Party to these Terms shall be responsible for any failure to perform as required by these Terms, to the extent such failure to perform is caused due to circumstances reasonably beyond the Party's control, such as labor disturbances or labor disputes of any kind, accidents, acts of government including but not limited to failure of governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other cause beyond the control of such Party.

27. TERMINATION.

Either Party may terminate any SOS upon sixty (60) days written notice to the other Party. Upon termination under this section, Buyer shall remain responsible for payment to WSU for all Applied Learning Services performed, for any identified Minimum Monthly Commitment identified in the SOS, and all direct costs and non-cancellable commitments incurred through the date of termination.

28. WAIVER.

Any waiver shall be in writing and provided to all other Parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party.

29. ASSIGNMENT.

Neither these Terms nor any SOS may be assigned by either Party without the prior written consent of the other Party, which consent may be withheld or conditioned as necessary to prevent prejudice to the granting Party's interests and entitlements hereunder. These Terms and all rights, privileges and licenses granted hereunder may be assigned by WSU to WSU subsidiaries and WSU supporting organizations.

30. SURVIVAL.

The provisions of Section 11 (Non-Exclusivity), Section 12 (Confidentiality); Section 16 (Indemnification and Hold Harmless; Section 18 (Intellectual Property); Section 19 (Compliance); Section 20 (Notices); Section 21 (Use of Marks, Logos, and Marketing; and Section 23 (Disclaimer of Warranties; Limitation of Liability) shall survive the expiration or earlier termination of these Terms.

31. GOVERNING LAW.

These Terms, and any SOS subject to these Terms, are governed by, subject to and shall be construed, and the performance thereof shall be determined in accordance with, the laws in effect in the State of Kansas. The Parties agree that any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the courts sitting in the state of Kansas and the Parties hereby submit themselves to the jurisdiction thereof.

32. COUNTERPARTS / DELIVERY.

The Parties agree that any SOS subject to these Terms may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be executed via "wet" signature, authorized signature stamp or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.

33. ELECTRONIC SIGNATURES.

The Parties agree that any SOS subject to these Terms may be signed with electronic signatures. If an electronic signature is used, the Parties agree that it is the legally binding equivalent to the signing Party's handwritten signature. Whenever either Party executes an electronic signature on a SOS, it has the same validity and meaning as a handwritten signature. The Parties agree that neither Party will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding.

34. ENTIRE AGREEMENT.

These Terms (including all documents attached or referenced) and any applicable SOS are intended by the Parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. These Terms cancel, supersede, and revoke all prior negotiations, representations, and agreements between the Parties, whether oral or written, relating to the subject matter of these Terms, notwithstanding, any non-disclosure or confidentiality agreements directly relating to any applicable SOS.