



# INDIANA UNIVERSITY

Professional Services Agreement  
Between  
The Trustees of Indiana University  
(On behalf of Athletics)  
and  
*Dittoe Public Relations, Inc.*

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between The Board of Trustees of Indiana University ("University") on behalf of Athletics and Dittoe Public Relations, Inc. ("Consultant") and provides as follows:

University and Consultant may be referred to together as "Parties" or each individually as a "Party".

## 1. Services.

- a. Consultant will provide to University the services described in Section 1c.
- b. Consultant is an independent consultant. This Agreement shall not be deemed to create a relationship of employment, partnership, agency, or joint venture between Consultant and University. Consultant will have no authority to enter into contracts binding upon University.
- c. Services: Provide the following for Indiana University Bloomington Athletics:
  - Strategic Public Relations Plan;
  - Proactive Media Relations and Media Monitoring;
  - Content Creation and promotion;
  - Event Promotion;
  - Activity Reports; and
  - Additional notables.Additional details are provided in Consultant's Statement of Work, which is attached and incorporated by reference into this Agreement as Addendum A. In the event of a conflict among this Agreement and Consultant's Statement of Work, the terms and conditions of this Agreement shall control.
- d. Term: 01/01/2019 – 06/30/2019.
- e. Non-Exclusive: Consultant is free during the term of this Agreement to provide services to other clients.
- f. While acting as a Consultant to University, Consultant must comply with all University policies regarding conduct and academic ethics, including but not limited to non-discrimination and sexual harassment. If Consultant provides any services on the premises of the university, Consultant must comply with all University policies, including but not limited to non-discrimination, sexual harassment, smoking, possession of weapons, illegally possessed controlled substances, and obligations to make notification of suspected child abuse or neglect.
- g. Consultant affirms that this Agreement was not the result of collusion with any employee or agent of University.
- h. Consultant agrees that no right or duty may be delegated or assigned to another party without University's prior approval.
- i. Consultant shall not utilize any subcontractors in performing any obligations hereunder without University's prior express written consent. If University does consent to a subcontractor, Consultant shall at all times remain liable for the actions and omissions of such subcontractor under this Agreement.
- j. Consultant shall be responsible for providing all tools and materials required for performance of the services listed in Section 1.c.
- k. If Consultant provides University with any sort of recommendation regarding the purchase or use of a third-party product or service, Consultant shall disclose to University, before or at the time of making such recommendation, if Consultant has

any sort of personal or financial interest in the third-party Consultant offering the product or service or receives any sort of compensation or incentive for providing such recommendation.

1. This Agreement is not effective until a signed Purchase Order is issued to Consultant by University.

## 2. Fees and Expenses.

- a. Compensation: Consultant shall be paid up to \$39,000.00 (for professional fees). Consultant shall not be paid more than \$39,000.00, for the term of this Agreement, without prior written approval from the Indiana University Purchasing Department.
- b. Invoices should be sent to Indiana University Accounts Payable, 400 E. 7<sup>th</sup> St., Rm 021, Bloomington, Indiana, 47405 (fax: 812.856.4452) or by e-mail to [invoice@indiana.edu](mailto:invoice@indiana.edu). Invoices must include the following:
  - i. The Purchase Order number must be on the invoice(s);
  - ii. Consultant name should be located in the header of the invoice(s);
  - iii. Consultant remit to address, if any, must be clearly indicated on invoice(s);
  - iv. Consultant invoice number and invoice date should be provided on invoice(s);
  - v. Sufficient itemization of goods/services provided; and
  - vi. Billing Amount.
- c. Agreed upon travel expenses and other expenses will be reimbursed upon submission to University of original receipts. Travel must comply with Indiana University Travel Policies; University shall not reimburse first-class or business class travel, alcohol, and miscellaneous charges such as telephone/copying, shipping and excess baggage. For more information, see University travel web site at <http://www.indiana.edu/~travel/>.
- d. Payment terms: List when and how payment will be made.
  - i. Receipt of fully executed agreement and tax forms (if needed);
  - ii. Payments shall be paid after services have been rendered and upon receipt of an invoice referencing the PO Number;
  - iii. Multiple invoices may be submitted; and
  - iv. Payment processing time: Net 30 upon receipt of invoice.
- e. Consultant is a US Entity.

## 3. University Representative.

University's authorized representative for communicating with Consultant are listed below: Consultant shall report to the applicable University representative and shall be entitled to rely upon instructions received from University representative.

- a. Administrative Issues: Dana Berg, Email: [dmaberg@indiana.edu](mailto:dmaberg@indiana.edu), Phone: 812.855.4580.
- b. Contract Amendment: Indiana University Purchasing Dept., Kathi Sipes, Email: [aksipes@iu.edu](mailto:aksipes@iu.edu), Phone: 812.855.5037.

## 4. Applicable Law / Governing Law.

This Agreement shall be construed in accordance with and pursuant to the internal laws of the State of Indiana, without regard to choice of law rules. Further, the Parties:

- a. Agree that litigation initiated by either party concerning the interpretation or implementation of this Agreement shall exclusively be brought and litigated in a federal court of competent jurisdiction in the Southern District of Indiana;
- b. Consent to the personal jurisdiction of such courts; and
- c. Waive any defense to forum non conveniens.

## 5. Headings: Interpretation.

When used in this Agreement, "University" includes all segments of the institution including all, athletic and academic departments, as defined in the legal entity "The Trustees of Indiana University".

**6. Limitation on Damages.**

Neither party shall be liable to the other or to any third party for any consequential or incidental damages, including lost profits, alleged to arise out of the material breach of this Agreement.

**7. Indemnification and Hold Harmless.**

Consultant shall indemnify and save harmless The Trustees of Indiana University, its officers, agents and employees from any and all claims, losses, costs, damages, liability and expenses (including costs of defense, settlement, and reasonable attorney's fees) in connection with claims or suits for damage to property and/or injury to persons, including death, alleged or claimed to have been caused, by or as a result of the services of this Agreement by Consultant, whether through negligence or willful act.

**8. Flowdown Provisions for Federally Funded Grants.**

Consultant agrees to abide by federal contract requirements as appropriate for federally funded projects. Refer to this page for terms and conditions that are incorporated into this agreement by reference: <http://www.indiana.edu/~purchase/resources/flowdown.php>.

**9. Termination.**

This Agreement may be terminated by either party with 30 days' notice. Notice may be made by e-mail; however, if confirmation of termination is not received within 7 days a second notification must be made by certified mail to the signatories listed in this Agreement. Upon termination, all outstanding payments due to Consultant shall be made within 30 days.

**10. Records.**

- a. All work performed, information collected or product created during the project will be the sole property of University. Any use of this information or of the materials that emerge as a result of work on this project by Consultant must receive prior written approval from the Indiana University Purchasing Department.
- b. All work materials, including data, must be returned to University at the completion of the project. If University does not want the work materials, Consultant will destroy all data and materials related to this project.
- c. University-owned materials, data or product may not be given or sold to a third party.

**11. Confidentiality of Data.**

Consultant shall treat any and all data that it receives from IU, is otherwise exposed to within IU data systems, or that is provided by an individual user of Consultant's service under this Agreement (collectively, "IU data") with the highest degree of confidentiality appropriate to the type of IU data and in compliance with all applicable federal and state laws and regulations and IU's reasonable instructions.

Consultant shall employ sufficient administrative, physical, and technical data security measures to meet the requirements under the specific federal and state laws and industry standards applicable to all types of IU data, whether in electronic or physical form, which it receives, interacts with, stores, views, processes, accesses, uses, creates, maintains, transmits, disposes of, or otherwise handles (hereafter "data activities") in the course of Consultant's performance under this Agreement. Consultant's responsibility for ensuring the security of IU data in the course of its data activities extends to its employees and to any subcontractors or other contractors, including but not limited to web hosts or other service providers, who may engage in such data activities with respect to IU data. Any subcontractors used by Consultant to perform data activities under this Agreement must be approved in advance by IU, and their subcontracts must contain substantially the same data protection requirements for IU data as are specified in this Agreement.

Consultant may, in the course of its data activities, receive any of the types of IU data in paragraphs (a) – (h) below. The initials of Consultant's representative next to any of paragraphs (a) – (h) below constitutes Consultant's representation and warranty that Consultant's data activities do not knowingly implicate the type of IU data identified in such paragraph.

- 00 (a) Student Education Records, as governed by the Family Education Rights and Privacy Act (FERPA), 20 USC 1232g et seq., and related regulations at 34 CFR Part 99. Consultant further represents and warrants that any data constituting Student Education Records will be encrypted both in transit and at rest.

- (b) Financial Information, including payment card and financial account numbers, as governed by the Financial Modernization Act of 1999, 15 USC 1681 et seq.; the Safeguards Rule at 16 CFR Part 314; and Indiana Code 4-1-11 and 24-4-9.
- (c) Protected Health Information ("PHI"), as governed by the Health Insurance Portability and Accountability Act ("HIPAA"), 42 USC 1320d-2 (note); implementing privacy and security regulations at 45 CFR Parts 160 and 164, and related agency guidance. If Consultant will access PHI to perform a service on behalf of IU under this Agreement, then Consultant and IU must also enter into a Business Associate Agreement (BAA) in a form approved by IU. In the event of any conflict between the BAA and this Addendum with respect to the security or privacy of data that contains PHI, the terms of the BAA shall control.
- (d) Genetic Information, as governed by the Genetic Information Nondiscrimination Act of 2008 (GINA), 42 USC 2000ff and implementing regulations. Consultant shall not collect any genetic information unless otherwise permitted by GINA.
- (e) Nonpublic Personal and Financial Information, as governed by the Gramm-Leach-Bliley Act (Title 15, USC, Sections 6801(b) and 6805(b)(2)).
- (f) Social Security Numbers, as governed by Indiana Code 4-1-10 and -11, and I.C. 24-4-9.
- (g) Payment Card Numbers, as governed by I.C. 4-1-11 and 24-4-9, as well as the Payment Card Industry Data Security Standards. If receiving payment card numbers, Consultant shall be PCI-DSS compliant as per the requirements indicated according to the PC Security Standards Council, which can be found at <https://www.pcisecuritystandards.org/>, and shall provide to IU annually a certificate of compliance from a PCI-DSS Qualified Security Assessor (QSA).
- (h) As applicable, Consultant shall also have a program in place, documented in writing, to identify, detect, and address warning signs of identity theft, pursuant to the FACT Act, 15 USC 1681 et seq., and corresponding "Red Flag Rules."

Without limiting the foregoing, Consultant represents and warrants that all machines, systems, applications, and networking equipment that perform data activities with respect to IU data shall conform to or exceed the standards identified by the National Institute of Standards and Technology (NIST) applicable to the type of data and activities covered by the Agreement (available at <http://csrc.nist.gov/publications/PubsByLR.html>). Consultant further warrants the accuracy of all documentation that it provides to IU with respect to the physical, technical, and administrative safeguards it uses in the course of its data activities. If IU's University Information Security Office ("UIISO") determines, in good faith and in its sole discretion, that there are changes to the features or functionality of Consultant's product or service that are reasonably needed to ensure the security of IU data, then Consultant shall implement those changes to IU's satisfaction. Consultant will notify UIISO promptly of any nonconformity to applicable standards and requirements of its machines, systems, applications, or networking equipment of which it is or reasonably should be aware, or of which it becomes or reasonably should become aware, during the term of this Agreement.

Consultant represents and warrants that it shall only use IU data for the purpose of fulfilling its duties under this Agreement and shall not further disclose IU data to any third party without the prior written consent of IU or as otherwise required by law. Consultant shall not use IU data provided or made available to Consultant in the course of its data activities under this Agreement for targeted marketing purposes. Consultant may, however, use aggregated and anonymized data that it derives from IU data within the course and scope of its data activities, solely to enhance the quality of its performance under this Agreement or the functionality of the service Consultant provides, but only if such IU data does not constitute PHI.

Consultant acknowledges and agrees that all IU data provided or made available to it by IU or individual users of Consultant's service under this Agreement is and remains the property of IU or the individual user, as determined by law and IU policy.

No later than thirty (30) days after termination or expiration of the contract, Consultant will either return or confirm in writing the secure destruction of all IU data provided or made available to Consultant under this Agreement, at IU's election and in accordance with specifications for return or destruction that IU shall provide on or before the termination or expiration date.

Immediately upon becoming aware of an incident that results in exposure or potential exposure of IU data, Consultant shall notify IU at [it-incident@iu.edu](mailto:it-incident@iu.edu) and shall cooperate fully with IU's investigation of and response to the incident. Except as otherwise required by law, Consultant shall not provide notice of the incident directly to the persons whose IU data were involved without prior written permission from IU.

To facilitate the investigation of security incidents, Consultant will retain and provide to IU, upon request, all authentication and other relevant system logs, including relevant logs from any contractors or subcontractors, for a minimum of sixty (60) days from the creation of such logs.

Consultant understands and acknowledges that IU is subject to Indiana's Access to Public Records Act ("APRA"), I.C. 5-14-3 et seq., and that disclosure of some or all confidential information provided pursuant to this Agreement, or the Agreement itself, may be compelled pursuant to that law. IU agrees that, upon receipt of a request for confidential information made pursuant to APRA, it shall a) promptly notify Consultant of the fact and content of the request, b) consult with Consultant regarding any legitimate basis on which it might resist or narrow its response to the request, and c) disclose only information that IU, in the opinion of its legal counsel, is legally compelled to disclose. If IU is made a party to any proceeding or litigation arising out of the assertion of an exemption to APRA regarding information belonging or pertaining to Consultant, then Consultant shall cooperate with IU in defending such proceeding or litigation and shall indemnify and hold harmless IU from and against any costs or expenses (including attorney fees) incurred by IU in doing so.

Notwithstanding any other provision of this Agreement, Consultant shall reimburse IU in full for all direct costs, expenses, and liabilities incurred by IU as a result of Consultant's failure to comply with the data confidentiality and security requirements set forth in this Agreement. This obligation shall include reimbursing the costs or expenses incurred by IU in providing any notices to parties whose data may have been exposed to unauthorized access as a result of Consultant's failure to comply with the above data confidentiality and security requirements, as well as defending, indemnifying, and holding IU harmless from any third-party claims or causes of action of any kind arising from or relating to the breach of any warranty made by Consultant under this Agreement. These remedies shall be in addition to any other remedies provided within this Agreement or otherwise available under applicable law.

IU reserves the right, but is not obligated, to require the Consultant to provide UISO with the results of:

1. an audit of security policies, practices, and procedures on an annual or biennial basis, to be performed by a third party approved by IU;
2. a vulnerability scan, performed by a scanner approved by IU, of the Consultant's systems that are used in any way, or that interact with systems used in any way, to provide service(s) under this Agreement or perform data activities with respect to IU data; and/or
3. a formal penetration test, performed by a process and qualified personnel approved by UISO, of the Consultant's systems that are used in any way, or that interact with systems used in any way, to provide service(s) under this Agreement or perform data activities with respect to IU data.

#### 12. Ownership of University Data and Materials.

- a. Any data or materials owned by University but provided to Consultant, or otherwise accessed by Consultant, for the purposes of this Agreement, including, without limitation, any University confidential information, shall remain the sole and exclusive property of University and shall be used solely for the purposes of this Agreement. No right, title, or interest to such University data or materials is transferred or assigned by virtue of this Agreement.
- b. In the event any University data or materials are lost, destroyed, or corrupted due to any act or omission of Consultant, including any breach of this Agreement or failure of a Deliverable, Consultant shall be responsible for the prompt regeneration or replacement of such University data or materials. If Consultant is unable to promptly regenerate or replace such University data or materials, University may attempt to do so itself or hire the services of a third party to do so, and Consultant agrees to reimburse University for all expenses incurred by University, including the expenses to hire such third party, in regenerating or replacing such University data or materials.
- c. All University provided work materials, including data, must be returned to the University at the completion of the project. If the University does not want the work materials, Consultant will destroy all data and materials related to this project.
- d. University-owned materials, data, or products may not be given or sold to a third party.

#### 13. Warranty of Rights.

- a. Consultant warrants that Consultant has the right to use any and all copyrightable materials which are reasonably expected to be used in performance of this Agreement. Consultant warrants that Consultant has obtained any and all necessary permissions from third parties to license such copyrightable materials, and that use of such licensed materials in accordance with the terms of this Agreement shall not infringe the rights of any third party, including in the creation of any deliverable.

- b. Consultant shall indemnify and hold University and authorized users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other intellectual property right or other right arising out of the use of the deliverables by University or any authorized user in accordance with the terms of this Agreement. This indemnity shall survive the termination of this Agreement. No limitation of liability set forth elsewhere in this Agreement is applicable to this indemnification.

#### 14. Trademarks.

If it is determined that Contractor will use any IU trademarks, Contractor shall first submit a written request for permission at [iulogo@iu.edu](mailto:iulogo@iu.edu). Contractor agrees that each (if any) time it reproduces and/or republishes IU trademarks; it shall do so in a form identical to that provided by IU, without alteration. Contractor agrees to use trademarks in a careful and prudent manner and agrees that the nature and quality of all activities associated with the Contractor in connection with IU trademarks shall be maintained at a level no less than the nature and quality of services now sold or provided by Contractor. Except as expressly permitted herein, Contractor does not have the right to use IU trademarks, or other intellectual property, in any advertising, publicity, promotion, to express or imply any endorsement by IU, to refer to the existence of the Agreement in media releases, or in any other manner whatsoever without the prior written consent in each instance. Requests shall be emailed to the IU Office of Licensing & Trademarks at [iulogo@iu.edu](mailto:iulogo@iu.edu). Contractor acknowledges that by this Agreement, it acquires no right, title or interest in and to University's trademarks whatsoever other than to use the trademarks, if written permission is granted, in accordance with the terms and conditions hereof. Contractor has not and will not directly or indirectly challenge, dispute, or contest University's ownership of its trademarks. The use of IU trademarks may not be assigned, transferred, shared, or divided in any manner by Contractor without prior written consent of IU. Contractor agrees to and shall indemnify, hold harmless and defend IU, against any threatened or actual claim, including costs and reasonable attorney's fees, arising directly or indirectly out of Contractor's use of IU trademarks.

Each use of IU trademarks by Contractor must be authorized in advance by the Office of Licensing & Trademarks.

#### 15. Branding.

- a. All resulting deliverables / work product must comply with the branding specifications found at <http://brand.iu.edu>, <http://styleguide.iu.edu>, and <http://asset.iu.edu>. These specifications shall be incorporated into Agreement and part of Agreement. Any elements that are not in compliance shall be modified by Consultant to comply at no additional cost to University. Strict attention shall be paid to Colors, Photography, Messaging, Voice & Tone, Editorial Style, Tagline Uses, Websites, Logos & Signatures, and Fonts.
- b. Questions regarding compliance shall be directed to the following contact because Branding is governed by IU Communications:
  - i. Troy Brown, Assistant Vice President, Marketing, Campus & University Branding, University Branding & Marketing, Advancement Center – 340 W. Michigan St, Indianapolis, IN 46202; Phone: 317. 274.2266; Email: [tdbrown@iu.edu](mailto:tdbrown@iu.edu).
  - ii. Rob Zinkan, Associate Vice President, Marketing, University Branding & Marketing, Von Lee – 517 E. Kirkwood Ave., Bloomington, IN 47408; Phone: 812.855.0287; Email: [rzinkan@iu.edu](mailto:rzinkan@iu.edu).

#### 16. Work for Hire.

Consultant acknowledges and agrees that the work itself shall be considered "work for hire" and shall be the sole and exclusive property of University. This work includes all drawings, sketches, specifications, photographs, or code of the work in progress and other documents or works prepared by, or hereafter to be prepared by, Consultant, in whole or in part, in connection with the project ("Project Materials"), including but not limited to all works based upon, derived from, or incorporating Project Materials, which are intended to be the sole property of University, and that all Project Materials shall be delivered to University at the time of the installation or completion of the work. Consultant hereby expressly transfers to University any and all copyright interest or other proprietary rights or interest in and to the work and Project Materials and to any material object in which all or any part of the work or Project Materials is embodied.

**17. Miscellaneous.**

- a. Consultant agrees to carry the following insurance coverage during the term of this Agreement: (i) worker's compensation as required by the laws of the state in which the work is being performed; (ii) professional liability coverage of at least \$1,000,000; (iii) comprehensive general liability and property damage insurance with a combined bodily injury and property damages limit of \$1,000,000 for each occurrence. (iv) automobile liability, (v) excess/umbrella, if utilized per occurrence coverage is required, and (vi) pollution liability (coverage based on total amount of project). Consultant shall provide University with written proof of such insurance policies upon University's request.
- b. Any alteration, deletion or addition to any of the terms of this Agreement shall be effective only if made in a written amendment to this Agreement and executed by the Parties.
- c. Failure to invoke any right, condition, or covenant in this Agreement by either Party shall not be deemed to imply or constitute a waiver of any rights, condition, or covenant and neither Party may rely on such failure.
- d. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement will remain in full force, if the essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.
- e. This Agreement shall be governed by the laws of the State of Indiana without respect to any conflict of law statutes.
- f. The terms and conditions of this Agreement and any mutually executed Amendments constitute the entire agreement between the Parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement.
- g. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

**18. Signatures.**

The Parties have caused this Agreement to be executed by their duly authorized representatives.

University	Consultant
Signature:  <i>Kathi Sipes</i>	Signature:  <i>Chris Dittoe</i>
Printed Name: Kathi Sipes	Printed Name: <i>Chris Dittoe</i>
Title: Purchasing Contract Manager	Title: <i>President</i>
e-Mail: <a href="mailto:aksipes@iu.edu">aksipes@iu.edu</a>	e-Mail: <a href="mailto:megan@dittoepr.com">megan@dittoepr.com</a>   <a href="mailto:chr.id@dittoepr.com">chr.id@dittoepr.com</a>
Phone: 812.855.5037	Phone: 317.202.2280
Date: <b>January 17, 2019</b>	Date: <i>1/16/19</i>

Exhibit follows.





### STATEMENT OF WORK

**Dittoe PR will provide the following services for Indiana University Athletics:**

- **Strategic PR Plan:** Dittoe PR will help to accurately tell the story and sub-stories of Indiana Football as to encourage interest in and attendance at IU Football games which will in turn help with the program's success.
- **Proactive Media Relations and Media Monitoring:** Dittoe PR will help with proactive local, regional and national media campaigns designed to build awareness for IU football. We will also monitor how the IU football brand – and competitors - are being covered in the media.
- **Content Creation and Promotion:** Dittoe PR to produce up to three pieces of content each month for IU's football program. This can be in the form of press releases, bylined articles, op-eds, player, alumni and donor testimonials, award nominations and more.
- **Event promotion:** Dittoe PR can help plan and promote various events for IU football, including the grand opening and VIP tours of the new locker room at Memorial Stadium, media days and media-only events, alumni events and more.
- **Activity Reports:** Dittoe PR will send IU Athletics formal monthly, quarterly and annual PR measurement reports of all media activity and results.
- **Additional notables:** The Dittoe PR account team will keep the IU Athletics team REGULARLY informed of its activities—daily phone calls and emails, if necessary. Dittoe PR wants IU Athletics to share in the excitement as Dittoe PR secures press appointments, interviews, opportunities and coverage.