

## **AGREEMENT FOR DESIGN SERVICES**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_, by and between Long Island University (“University”), an educational institution incorporated under the laws of the State of New York with its principal place of business located at 700 Northern Blvd. Brookville, New York 11548, and \_\_\_\_\_ (“Contractor”), a corporation incorporated under the laws of the State of \_\_\_\_\_ with offices located at \_\_\_\_\_

**WHEREAS**, the University desires to retain the services of Contractor in connection with the Contractor’s expertise and experience in advertising, graphic design, strategy and media placement services, and Contractor wishes to provide such services to University;

**NOW THEREFORE**, in consideration of the mutual covenants, conditions and promises contained herein, University and Contractor agree as follows:

### **1. Services**

- a) Contractor agrees to perform to the University’s satisfaction the professional services set forth in the attached “Specification of Services” (“Services”) with the standard of care and skill customarily provided in the industry for performance of such services, and to devote such amount of its business during the Term as is necessary to fulfill all of its duties and obligations hereunder.
- b) Contractor agrees that should University determine, in its sole discretion, that any of Contractor’s agents or employees has been unable to discharge duties for any cause for a period exceeding one consecutive week, or has failed or refused to perform Services under this Agreement in a manner satisfactory to University, then University shall notify Contractor in writing of such opinion. Contractor shall immediately substitute the agent or employee with a replacement acceptable to University.

### **2. Payment for Services**

- a) In full consideration for the Services, University shall pay Contractor a fee of \$ \_\_\_\_\_ per year in accordance with the rates and guidelines set forth in the attached “Specification of Compensation.”
- b) Contractor shall issue a monthly invoice to the University detailing all work performed during the previous month. University shall pay these monthly invoices within 30 days of receipt.
- c) On notice to Contractor, University may withhold payments for unsatisfactory performance results and/or question any item reflected on Contractor's invoice. Pending settlement or resolution of the issue, University’s nonpayment shall not constitute a default of this Agreement. University shall pay all invoiced amounts not in dispute.
- d) University must consent in writing prior to Contractor’s working in excess of the maximum work values set forth in the attached Specifications.

### **3. Term**

Unless terminated sooner as provided below, this Agreement shall commence on [ \_\_\_\_\_ ] and terminate on [ \_\_\_\_\_ ], or on completion of the Services, whichever shall occur first in time.

### **4. Contractor’s Capacity and Responsibilities**

- a) It is expressly understood that Contractor shall perform the Services as an independent contractor and is not an agent, affiliate, partner, joint venture or employee of University. Contractor agrees that the manner in which it performs its obligations under this Agreement is solely within its direction and control, subject to the terms and conditions of the attached Specifications, and that it is not entitled to tax withholding, worker’s compensation, unemployment compensation or any employee benefits, statutory or otherwise.

- b) Contractor agrees that while providing Services to University, Contractor shall not act in a manner inconsistent with University's interests or benefit. Contractor shall not have the authority to enter into any contract or agreement to bind University and shall not represent to anyone that Contractor has such authority.
- c) Contractor represents and warrants that it has / its personnel have or will obtain and maintain all necessary licenses, permissions, certifications, authorizations, registrations and approvals required for the provision of Services under this Agreement. Contractor specifically represents that in performing the Services, Contractor will not be in breach of any agreement with any third party, and that it will take and perform all acts, conditions and things necessary to enable it to lawfully fulfill the terms and conditions of this Agreement and comply with the obligations assumed hereunder.

## **5. Confidentiality of Information**

- a) Contractor acknowledges and agrees to make best efforts to maintain in a secure fashion the confidentiality of any tangible or intangible information revealed, obtained or developed during the course of or in connection with the performance of the Services, including without limitation any information (in whatever media) in any staff or student health, personnel or education record, or about the operations, programs, finances, marketing, pricing, administration, methods, plans, research, future intentions or policies of University, or any other information or data about which Contractor becomes aware which is or may be a trade secret or of a confidential and proprietary nature ("Confidential Information").
- b) Contractor acknowledges and agrees that it shall treat all Confidential Information with the strictest confidence and secrecy and shall not disclose any Confidential Information to any third party, or use Confidential Information for Contractor's own purposes or other than for the benefit of University in performing the Services under this Agreement, during the term of this Agreement and at all times, without the prior written consent of University. Contractor also agrees that any dissemination of Confidential Information within its own business operation shall be restricted to "a need to know basis" for the purpose of performing the Services hereunder.
- c) This obligation shall survive expiration or termination of this Agreement. All notes, memoranda, records and writings consisting of any Confidential Information or made by Contractor relative to the business of University shall be and remain the property of University, and shall be destroyed or handed over to University on demand and in any event on the termination of this Agreement.

## **6. Property Rights**

- a) University shall own all rights, title and proprietary interests, tangible and intangible, in all of the materials conceived, created or developed by Contractor, its employees or subcontractors, either individually or jointly with others, which arise out of the performance of, are created and paid for under this Agreement, including any designs, drawings, images, layouts, slogans, analyses, reports, studies, specifications, notes, documents, software algorithms, computer based training modules; electronically, magnetically or digitally recorded material whether displayed online or in print form, and other intellectual property work in whatever form ("Materials").
- b) Contractor hereby assigns to University all rights, title and proprietary interest to the Materials, without need for additional writing or compensation with respect to the same. On request, Contractor shall execute such papers and perform all other acts necessary to assist University to obtain and register copyrights, patents or other forms of protection provided by law for the Materials, including the execution of any consents, licenses or other documents requested by University to perfect such assignment. These obligations shall survive expiration or termination of this Agreement.
- c) Materials created under this Agreement by Contractor, its employees or subcontractors, individually or jointly with others, shall be considered "works made for hire" as defined by the United States Copyright Act. To the extent that any deliverable is not deemed "works made for hire", Contractor hereby irrevocably grants, assigns, transfers and sets over unto University all worldwide right, title and interest of any kind, nature or description in and to the deliverable and all intellectual property rights therein, including copyrights. All Materials, whether in paper, electronic or other form, shall be remitted to University by Contractor, its employees and any subcontractors, and Contractor shall not copy, reproduce, allow or cause to have the Materials copied, reproduced

or used for any purpose other than performance of Contractor's obligations under this Agreement without the prior written consent of University.

- d) Contractor represents and warrants that Materials produced or used to perform the Services under this Agreement do not and will not infringe on any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, trade dress or service marks and names. Contractor shall indemnify and defend University at Contractor's expense from any action brought against University based on a claim that all or parts of the Materials infringe on the intellectual property rights of another. Contractor shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to reasonable attorney fees.
- e) If such a claim or action arises, or in Contractor or University's opinion is likely to arise, Contractor shall, at University's discretion, either procure for University the right or license to continue using the Material at issue or replace or modify the allegedly infringing Material. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.
- f) Contractor may only use the University name, logos, trademarks, trade dress, service marks, symbols and other intellectual property material in connection with performance of Services under this Agreement.
- g) This provision shall survive expiration or termination of this Agreement.

## **7. Development and Delivery of Materials**

- a) Contractor acknowledges and agrees on the importance of continuous and close communication during all design, development and implementation phases of the Services. Accordingly, Contractor agrees to cooperate with such consultants, persons or entities as University may designate from time to time in connection with the Services to be performed, and to meet with such persons at such times as the University may require in order to maintain a continuous review process or expedite any determinations or approvals required during the various phases of performance of the Service work.
- b) University may request modifications to the Materials, media schedule or placements at any time during the term of this Agreement. Such requests shall be submitted to Contractor in writing. If such modifications do not require the expenditure of materially more time, effort or money, Contractor shall modify the Materials or media schedule at no additional charge. If any such modification does require the expenditure of materially more time, effort or money, Contractor shall advise University of the impact on costs and schedule. On receipt of University's written approval and agreement as to the terms of payment for any such material expenditure, Contractor shall proceed with implementation of the changes and the schedule shall be updated accordingly.
- c) Delivery of Materials for review must be made to the address specified in paragraph 13 below and in accordance with the terms of any attached specification sheets. Payment shall not be due until the Materials have been received, inspected and accepted by University. Acceptance shall occur within the period specified in this Agreement, or, if none is so specified, within a reasonable time. Mere acknowledgment by University personnel of the delivery or receipt of Materials shall not be deemed or construed as acceptance of the product received. Any delivery of Material that is substandard or does not comply with Agreement terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the University. Either option shall be exercised in writing by the University.
- b) Where Contractor is required to replace or substitute Material or elements or components thereof, the replaced or substituted Material shall be subject to all terms and conditions set forth in this Agreement, including warranties, as set forth in paragraph 6 above.

## **8. Assignment**

Contractor may not assign, transfer, subcontract, delegate or otherwise dispose of its interest or delegate any part of its duties hereunder without the prior written consent of University. No such assignment shall relieve Contractor from liability with respect to any of its obligations or liabilities hereunder. This Agreement shall be binding on any assigns.

## **9. Compliance with Laws**

Contractor agrees that it will comply at its expense with all applicable federal, state, county and local laws, ordinances, regulations and codes in the performance of its obligations under this Agreement, including but not limited to the procurement of permits and certificates where required. Contractor warrants to University that it has full legal right to enter this Agreement and that neither the Services to be performed nor any work product (Material) to be provided will violate any agreement or infringe the rights of any third party, including any contract right, patent, copyright, trade secret or other property right.

## **10. Insurance**

Contractor will secure, purchase and maintain, at its own expense, the following insurance policies in full force and effect during all periods of Service covered by this Agreement:

Statutory workers compensation covering all states in which the Service will be performed, disability benefits, and employer's liability coverage in amounts not less than \$500,000 per accident or disease.

Commercial General Liability Insurance with limits of \$1,000,000 per occurrence, bodily injury and property damage combined; \$1,000,000 per occurrence for personal and advertising injury; \$2,000,000 products/completed operations aggregate; and \$2,000,000 per location aggregate. This policy shall be written on an "occurrence" basis, shall apply on a primary basis irrespective of any other insurance, whether collectible or not, and the deductible shall not exceed \$2000 per occurrence.

**Each insurance policy described above shall be endorsed to name Long Island University as an "Additional Insured" for all activities covered by this Agreement. The definition of Additional Insured shall include all of Long Island University's trustees, officers, employees, agents and representatives. Further, coverage for the Additional Insureds shall apply on a primary basis irrespective of any other insurance, whether collectable or not.**

All policies shall be written with insurance companies licensed to do business in the State of New York and rated not lower than A-IX by A.M. Best. All policies shall provide primary coverage for obligations assumed by Contractor under this Agreement and University shall receive thirty days prior written notice in the event of cancellation, non-renewal or material modification.

Contractor will, at least ten (10) days before the initial period of Services undertaken pursuant to this Agreement, and prior to any expiration or anniversary of the respective policy terms, deposit with the Insurance Coordinator of Long Island University, University Center, 700 Northern Blvd., Brookville, NY 11548-1326, certificates of insurance evidencing compliance with all insurance provisions noted above. Contractor accepts that failure to provide adequate or proper certification of insurance, specifically including Long Island University as "Additional Insured" shall immediately be deemed a breach of contract.

It is further agreed that Contractor will require all subcontractors and others acting under its direction or control in performing the Services to: (a) execute an insurance and indemnification agreement in favor of University with the Indemnifying Parties agreeing to the same terms and conditions as is contained herein, (b) maintain the same insurance coverage set forth herein, and (c) provide certificates of insurance evidencing the required coverage and naming University as "Additional Insured."

## **11. Indemnification**

Contractor shall, at its own expense, defend, indemnify and hold harmless the University, its trustees, officers, employees, representatives and agents, from and against any and all losses, expenses, claims, demands, judgments, liabilities or alleged liabilities (including attorney's fees) of any nature whatsoever resulting from, arising out of or related to any action or cause of action occurring in connection with Contractor's provision of the Services contemplated by this Agreement, including, but not limited to, intellectual property rights claims or any injury or damage sustained by any person or property in consequence of any act, words or images included as part of Contractor's Services under the Agreement, or breach of any obligation, representation or warranty of Contractor set forth herein. University may participate in any such defense or negotiation to protect its interests.

## **12. Termination**

- a) The University may terminate this Agreement at any time, with or without cause, on no less than 30 days' written notice to Contractor. If the Agreement is terminated early, the Contractor will receive a pro-rated fee based upon the work completed as of the termination date. Termination of this Agreement shall not release Contractor from any liability or obligation which, at the time of termination, had already accrued or which thereafter may accrue with respect to any act or omission occurring prior to the termination. If any fees or expenses have been prepaid by University, Contractor shall refund a pro rata portion of such fees or expenses.
- b) On any termination of this Agreement, Contractor shall stop work, terminate all subcontracts and deliver to University all Confidential Information, University property, works for hire and such work in process as the University may request. University shall have no liability to Contractor beyond payment for Services rendered to and accepted by University prior to the effective date of the termination. Contractor may recover actual cancellation costs incurred before the effective date of termination if Contractor submits a claim for such costs, supported by third party invoices, to University within thirty (30) days of receipt of the termination notice. Contractor shall make available to University for inspection all inventory, books and records related to the reimbursement claim. The remedies provided herein with respect to any termination are exclusive and in lieu of any other remedies available at law or equity.

## **13. Notices**

Any notice, approval, request, bill or statement from either party to the other shall be in writing and be deemed given when deposited with the U.S. Postal Service in a postage pre-paid envelope sent regular mail or delivered by hand with an appropriate receipt obtained, addressed as follows:

If to the University, to:

Long Island University  
Attention:  
Director of Marketing & Communications  
720 Northern Boulevard  
Brookville, New York 11548

If to Contractor, to:

## **14. Miscellaneous**

- a) If any term or provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain unimpaired and in full force and effect.
- b) Failure by either party at any time to claim a breach of any Agreement term, exercise any power or enforce any obligation hereunder will not be construed as a waiver of any right, power or obligation under this Agreement, and will not prejudice either party in the context of any subsequent action.
- c) This Agreement shall be construed and enforced in accordance with the laws of the State of New York. It is expressly understood by the parties that any dispute hereunder, unless settled by the parties, shall be resolved by legal action brought in the Supreme Court for the State of New York and each party shall waive their right to a jury trial.

d) This Agreement and attached Specifications constitute the entire agreement between the parties and incorporate all prior understandings in connection with the subject matter hereof. The Agreement and Specifications may not be modified, waived, amended or discharged except by a writing signed by both parties hereto.

**IN WITNESS WHEREOF**, the University and Contractor have executed this Agreement by and through their respective representatives as of the date first above written.

LONG ISLAND UNIVERSITY

[CONTRACTOR]

By: \_\_\_\_\_  
Title:

By: \_\_\_\_\_  
Title:

### **SPECIFICATION OF COMPENSATION**

#### **I. COST ESTIMATE STATEMENT**

Contractor shall prepare and submit to University for approval the Specification of Services statement annexed hereto. The Specification of Services statement shall include:

- (i) a mutually agreed upon description of the overall services to be performed,
- (ii) the specific tasks to be undertaken in performance of the services,
- (iii) start and completion dates for each task,
- (iv) specifications and documentation standards applicable to the services,
- (v) all Deliverables to be supplied by Contractor,
- (vi) the estimated costs of each task, and if applicable,
- (vii) the names and billing rates of the individuals who will undertake each task.

At any time it appears that the initial (or any revised) cost estimate or assignment will be exceeded or any completion date not met, Contractor shall inform University immediately. Subsequently, the Statement is to be updated in conjunction with the reviews described in Section II below.

#### **II. MANAGEMENT AND MONITORING RESPONSIBILITY**

The Contractor and University's Project Manager will review the progress of the work each month, including compliance with the initial Statement, estimated completion dates, costs incurred and estimated future costs.

#### **III. BILLING PROCEDURES**

**A. Establishment of Fees and Disbursements** Contractors are retained because of their expertise. Accordingly, time spent educating staff within or external to Contractor's company shall not be billed to University. Reasonable routine disbursements (out-of-pocket expenses) will be reimbursed direct to the Contractor at the cost paid by the Contractor (i.e. without mark-up), in accordance with University's standard policy, including but not limited to Coach Class travel, unless another class of travel has been specifically authorized, and the use of pre-approved hotels. As a general matter University does not pay for time spent traveling. Cost differentials between pre-approved travel expenses and those incurred will be borne by Contractor.

**B. Invoices** Contractor will present to the University Project Manager an invoice every month for work done during the immediately preceding month period. No invoice will be paid unless the University Project Manager has approved it for payment. Time spent preparing invoices may not be charged.

All invoices shall be rendered on the basis of hourly rates unless a different arrangement is agreed to in advance by the Contractor and University's Project Manager. Contractor shall list on each invoice (i) each activity performed, (ii) the individuals / subcontractors involved, (iii) the amount of time spent, (iv) billing rates and (v) the total cost. If requested, Contractor will provide signed time sheets with each invoice. Disbursements must be itemized separately.

University may decline to pay any invoice received more than 90 days after the end of the month in which the work was performed. All invoices are subject to approval by University's Office of Finance and once approved will be processed for payment within 30 days.

**C. Auditing of Invoices** University has the right to audit all invoices presented, using either University in-house auditors or the services of an independent auditor. Contractor shall make all necessary receipts and records available to University for this purpose. University will give the Contractor at least seven business days' notice of any such audit.

**D. Overruns Over Cost Estimate** Actual billings will be tracked against the cost estimates in the initial and any revised Statements. Contractor must notify the University Project Manager immediately, as soon as an overrun to the initial or any revised Statement is anticipated (Contractor should not wait to report such an overrun in the regularly scheduled monthly review). Project overruns in excess of 5% of the original estimate will not be paid unless the circumstances that caused the overrun are reviewed with University's Project Manager, and approved by the University Office of Finance.

**SPECIFICATION OF SERVICES**

SCOPE OF WORK

(must be completed in entirety; may attach relevant section of Contractor's proposal)

Date: \_\_\_\_\_

Period Covered: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Name of Contractor's Firm \_\_\_\_\_

Project Manager/Telephone Number \_\_\_\_\_

Is there an existing contract for this Contractor? Please circle YES or NO. If YES, do not complete the remainder of this form. If NO, please complete this form. In either situation, attach this form to each invoice forwarded to the University's Office of Finance for payment.

1. Background description (i.e. reason for services):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Specific services / tasks to be performed to complete the project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Tasks to be undertaken, each with time frames for completion and estimated costs:

\_\_\_\_\_  
\_\_\_\_\_

4. Specifications and documents applicable: (attach all relevant standards, specifications and documents required to perform Services)

\_\_\_\_\_

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5. Deliverables (work product):

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6. Anticipated staffing (with billing rates):

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7. Estimated total costs (list a subtotal for fees; a subtotal for disbursements and the estimated total cost):

Subtotal for fees: \_\_\_\_\_  
Subtotal for disbursements: \_\_\_\_\_  
Total cost of Services: \_\_\_\_\_

For similar projects in the past, what % of the total bill has Contractor charged for disbursements? \_\_\_\_\_

LONG ISLAND UNIVERSITY

CONTRACTOR

By: \_\_\_\_\_  
Print Name, Title:

By: \_\_\_\_\_  
Print Name, Title:

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Signature/Date