



Professional Services Agreement
Between
The Trustees of Indiana University
(On behalf of Athletics)
and
IMG College, LLC

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of April 1, 2018 ("Effective Date") and entered into by and between The Board of Trustees of Indiana University ("University" or "IU") on behalf of Athletics and IMG College, LLC ("Contractor" or "IMG") and provides as follows:

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

1. Services.

- a. Contractor will provide to University the services described in Section 1c.
- b. Contractor is an independent Contractor. This Agreement shall not be deemed to create a relationship of employment, partnership, agency, or joint venture between Contractor and University. Contractor will have no authority to enter into contracts binding upon University.
- c. Services: Conduct onsite and in-person educational and social awareness sessions for University.
 - IMG will provide on-site, customized 1-hour presentations to student-athletes and athletic department staff members selected by University.
 - IMG's presentation team will work with University to determine specific dates for presentations during this Agreement's term (whether the Initial Term or an Extension Term, as each is defined hereinafter), which will be mutually agreed upon by IMG and University.
 - IMG's presentations will focus on educating University's students and staff members on appropriate online behavior, using real life examples from University's students.
 - University will be responsible for all travel expenses for IMG personnel related to IMG's presentations.
 - Public Information Audits
During this Agreement's term (whether the Initial Term or an Extension Term), IMG will provide on-demand review and reporting of public information activity. IMG will provide ongoing consultation and advice on public online information/communication with respect to new hires, recruits, and other current personnel/vendors as names are provided by University. Through IMG's proprietary audit process, an auditor will investigate & assess the following areas:
 - Personal public social media handles, or online id's
 - Problematic public online correspondences
 - Problematic publicly available online affiliations
 - Customized Online Certification
 - IMG will develop a customized, web-based certification to assist University in establishing policies and guidelines for University's students and staff regarding appropriate social media communications. The online certification will review documents and/or situations that IMG presented to University's students and staff during IMG's on-site presentations.
- d. Term: This Agreement's term shall (i) be for a period of two (2) Contract Years, beginning on the Effective Date and ending December 31, 2019 ("Initial Term") and (ii) automatically renew for one (1) additional Contract-Year period ("Extension Term") after the Initial Term's expiration, unless either party provides the other party a written termination notice on or before October 31, 2019, in which case this Agreement will terminate and expire at the end of the Initial Term. "Contract Year" shall be defined as each twelve (12) month period during this Agreement's term (whether the Initial Term or Extension Term) beginning January 1 and ending December 31.
- e. Non-Exclusive: Contractor is free during the term of this Agreement (whether the Initial Term or an Extension Term) to provide services to other clients.
- f. While acting as a Contractor to University, Contractor must comply with all University policies regarding conduct

and academic ethics, including but not limited to non-discrimination and sexual harassment. If Contractor provides any services on the premises of the University, Contractor 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. Contractor affirms that this Agreement was not the result of collusion with any employee or agent of University.
- h. Contractor agrees that no right or duty may be delegated or assigned to another party without University's prior approval.
- i. Contractor shall not utilize any subcontractors in performing any obligations hereunder without University's prior express written consent. If University does consent to a subcontractor, Contractor shall at all times remain liable for the actions and omissions of such subcontractor under this Agreement.
- j. If Contractor provides University with any sort of recommendation regarding the purchase or use of a third-party product or service, Contractor shall disclose to University, before or at the time of making such recommendation, if Contractor has any sort of personal or financial interest in the third-party vendor offering the product or service or receives any sort of compensation or incentive for providing such recommendation.
- k. This Agreement is not effective until a signed Purchase Order is issued to Contractor by University.

2. Fees and Expenses.

- a. Compensation: In consideration for the services to be performed by Contractor, each Contract Year University shall pay Contractor Thirty Thousand Dollars (\$30,000.00). Contractor will invoice University in full (i) by upon conclusion of services rendered or April 30 (the latter of the two) of the first Contract Year and (ii) upon conclusion of services rendered in the subsequent Contract Year.
- b. Invoices should be sent to Indiana University Accounts Payable, 400 E. 7th St., Rm 021, Bloomington, Indiana, 47405 (fax: 812.856.4452) or by e-mail to invoice@indiana.edu. Invoices must include the following:
 - i. The Purchase Order number must be on the invoice(s);
 - ii. Contractor name should be located in the header of the invoice(s);
 - iii. Contractor remit to address, if any, must be clearly indicated on invoice(s);
 - iv. Contractor 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 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. Per Diem: Contractor shall receive a per diem. Per diems are determined by zip code of location and are posted at the GSA.gov website.
- e. Payment terms:
 - i. Receipt of fully executed agreement and tax forms (if needed);
 - ii. Payment shall be paid upon receipt of a detailed invoice referencing the PO Number; and
 - iii. Payment processing time: Net 30 upon receipt of invoice.
- f. Contractor is a US Entity.

3. University Representative.

University's authorized representative for communicating with Contractor is listed below: Contractor shall report to this University representative and shall be entitled to rely upon instructions received from this University representative.

- a. Administrative Issues: Scott Joraanstad, Email: sjoraans@indiana.edu, Phone: 812.856.1554.
- b. Contract Amendment: Indiana University Purchasing Dept., Kathi Sipes, Email: 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 state or federal court of competent jurisdiction in 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.

Contractor 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 performed by Contractor under this Agreement, whether through negligence or willful act, except for any such claims or suits that are alleged to have been caused (whether in whole or in part) by the negligence or misconduct of University or its agents, students, contractors or subcontractors.

8. Termination.

If a party materially breaches this Agreement, and such breach goes uncured for a period of thirty (30) days after it receives notice from the non-breaching party related thereto, then the non-breaching party may terminate this Agreement, effective immediately, by written notice to the breaching party. 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 Contractor shall be made within 30 days.

9. Confidentiality of Data.

The current scope of work for this project does not involve any critical or restricted data from University to Contractor, nor will Contractor be exposed to IU data systems. If the scope of work changes, and critical data collection is included, the parties agree to enter into a separate Confidentiality of Data agreement, which shall be attached to this Agreement and be incorporated by reference.

10. Ownership of University Data and Materials.

Any data or materials owned by University but provided to Contractor, or otherwise accessed by Contractor, 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. In the event any University data or materials are lost, destroyed, or corrupted due to any act or omission of Contractor, including any breach of this Agreement or failure of a Deliverable, Contractor shall be responsible for the prompt regeneration or replacement of such University data or materials. If Contractor 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 Contractor 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.

11. Warranty of Rights.

- a. Contractor warrants that Contractor has the right to use any and all copyrightable materials which are reasonably expected to be used in performance of this Agreement. Contractor warrants that Contractor 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. Contractor 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.

12. Miscellaneous.

- a. Contractor 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; and (ii) comprehensive general liability and property damage insurance with a combined bodily injury and property damages limit of \$1,000,000 for each occurrence. Contractor 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. The parties expressly agree that the provisions of the Uniform Computer Information Transaction Act and the United Nations Convention on Contracts for the International Sale of Goods (including any provision of any state law adopting exactly, or in modified form, such laws) shall not apply to this Agreement or any Amendment, Deliverable, or Service and that both Parties waive any and all rights arising from such laws.
- 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.

13. Signatures.

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

| University | Contractor |
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| Signature: | Signature: |
| Printed Name: Kathi Sipes | Printed Name: Tim Perneti |
| Title: Purchasing Contract Manager | Title: President, IMG College |
| e-Mail: aksipes@iu.edu | e-Mail: Tim.Perneti@img.com |
| Phone: 812.855.5037 | Phone: 212-774-6783 |
| Date: May 16, 2018 | Date: May 17, 2018 |