

# BARNARD

## Independent Contractor Agreement

This Agreement, effective this \_\_\_\_ day of \_\_\_\_\_, is made by and between Barnard College, a New York not-for-profit educational corporation ("Barnard" or the "College"), and \_\_\_\_\_ (the "Contractor"). For good and valuable consideration, the parties agree as follows:

1. **GENERAL PURPOSE:** The general purpose of this Agreement is for

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Contractor will perform the work as described in the attached Exhibit A (the "Services"), including scope of work and timetables, incorporated herein.

2. **TERM:** The term of this Agreement shall be from \_\_\_\_/\_\_\_\_/\_\_\_\_ until \_\_\_\_/\_\_\_\_/\_\_\_\_.

3. **PAYMENT AND INVOICES:**

- a. The College agrees to pay a maximum fee of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for the Services rendered by Contractor hereunder, including all amounts already paid.
- b. Upon satisfactory completion of the Services, the College shall compensate Contractor up to maximum amounts listed above. An invoice for payment of fees and expenses, accompanied by proper documentation, including receipts, shall be submitted by Contractor to College upon completion of the work, said invoice to cover and include all fees earned and expenses incurred. Contractor shall be deemed to have waived its right to payment for any fees earned or expenses incurred if not included on the invoice. College reserves the right to require reasonable additional supporting documentation from Contractor. All invoices for payment shall be on forms acceptable to or approved by College.
- c. College shall reimburse the following incidental out-of-pocket expenses, if any:

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4. **ENTIRE AGREEMENT:** This Agreement and any applicable attachments and exhibits shall constitute the complete and exclusive statement of the agreement between College and Contractor with respect to the Works created hereunder. The Agreement may be modified only pursuant to a written instrument signed by authorized representatives of both parties. The invalidity in whole or in part of any provision of the Agreement shall not affect the validity of other provisions. To the extent that Contractor's terms and conditions, if any, shall conflict with the Agreement, this Agreement shall control. Either party's failure to insist upon the performance of any term of the Agreement shall not be construed as a waiver of that party's present or future right to such performance and each party's obligations in respect thereto shall continue in full force and effect. The headings in the Agreement have been inserted solely for convenient reference and shall be ignored in its construction.
  
5. **INDEPENDENT CONTRACTOR:** In performing hereunder, Contractor and its employees, agents, subcontractors and representatives shall be as independent contractors and not as employees or agents of College. All persons furnished or retained by Contractor in connection with this Agreement are so furnished or retained as Contractor's employees or agents. Contractor shall not transact business, enter into agreements, or otherwise make commitments on behalf of College unless expressly authorized in writing by College. Neither Contractor nor its employees, agents, subcontractors or representatives shall be entitled to benefits provided by College to its employees, including but not limited to fringe benefits, worker's compensation, health and unemployment insurance, and pension plans. College shall not pay or withhold federal, state, or local income or other payroll taxes on behalf of Contractor or its employees, agents, subcontractors or representatives. Contractor agrees to report and pay all such applicable taxes. Contractor shall defend, indemnify and hold harmless College from and against any and all liability for the payment of taxes, interest and/or penalties, as well as damages and costs, including attorney's fees, in connection with any claim or finding that Contractor and/or its employees, agents, subcontractors or representatives are employees of College.
  
6. **WARRANTY:** Contractor warrants that all Services shall conform to the specifications of this Agreement and shall be performed in a professional and workmanlike manner.
  
7. **FORCE MAJEURE:** In the event that either party is unable to perform its obligations under this Agreement as a result of *Force Majeure*, neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. "*Force Majeure*" shall mean fires, earthquakes, floods, acts of God, strikes, work stoppages or other labor disturbances, riots or civil commotions, acts of terrorism or other hostilities, litigation, war or other act of any foreign nation, power of government or governmental agency or authority, epidemics, pandemics or any other cause like or unlike any cause above mentioned which is beyond the control of either party.

**8. TERMINATION:**

- a. College may terminate this Agreement at any time, in whole or in part, by written notice to Contractor. If such termination is for College's convenience, College, after deducting any amount(s) previously paid, shall pay for all Services rendered by Contractor, as well as any reasonable costs incurred by Contractor, up to the time of termination but not including Contractor's lost profits. Under no circumstances shall Contractor be entitled to recover more than the price of the Services as stated in the Agreement. Upon receiving notice of College's termination for convenience, Contractor shall use its best efforts to reduce or mitigate any costs incurred in connection with the Services.
- b. Either party may, without prejudice to any other rights or remedies provided at law, inequity or under this Agreement, by written notice to the other party, terminate this Agreement in whole or in part under any of the following circumstances:
  - i. If the non-terminating party applies for bankruptcy, makes an assignment for the benefit of creditors, or is in receivership; or
  - ii. If the non-terminating party fails to perform any of the terms of this Agreement and so fails to cure such failure within thirty (30) days after receiving notice from the terminating party; or
  - iii. If the non-terminating party fails to make progress such that the terminating party has reason to question the non-terminating party's ability to perform and the non-terminating party fails to provide adequate assurance of its ability to perform within a period of thirty (30) days after receiving notice from the terminating party.

In the event College terminates this Agreement pursuant to this subparagraph b, Contractor shall also be obligated to pay any direct damages, including but not limited to all additional costs that College may incur in finding replacement Services, as well as any consequential and incidental damages incurred by College. In the event Contractor terminates this Agreement pursuant to this subparagraph b, College shall not be liable for consequential and incidental damages incurred by Contractor and in no circumstances shall College's liability exceed the price of the Services as stated in this Agreement.

- c. Upon termination of this Agreement, College, in addition to any other rights or remedies available at law, in equity or under this Agreement, may require Contractor to transfer title to and deliver to College, in the manner and to the extent directed by College, any goods, plans, drawings, or other materials that Contractor has specifically produced or acquired for the performance of the Agreement ("Performance Materials"). Payment for such Performance Materials shall be at the price specified in this Agreement or as otherwise agreed upon by the parties.

9. **OWNERSHIP:** College shall own all data, information and other work arising directly from Contractor's performance hereunder. College shall at all times have access to review and request copies of the ongoing work of Contractor for purposes of inspecting same and determining that work is being performed in accordance with the terms of this Agreement. Immediately upon termination of this Agreement for any reason, all such data, information and other work, in whatever form, shall be turned over to College.

Any works of authorship developed in the course of performance under this Agreement shall be deemed works-for-hire under federal copyright law and all ownership rights to such copyrightable works shall be the property of College. Should any works of authorship not constitute works-for-hire under federal copyright law, Contractor hereby grants, transfers, assigns and conveys to College and its successors and assigns, Contractor's entire right, title, and interest in and to such works or any part thereof, including but not limited to the following rights: to reproduce; to prepare derivative works; to distribute by sale, license or other transfer; to perform publicly; to display; and to secure copyrights and renewals, reissues and extensions of any such copyrights in the United States of America or any foreign country.

Any patentable invention conceived or reduced to practice in the course of performance under this Agreement shall be the property of College. All trademark or other intellectual property rights arising directly from Contractor's performance under this Agreement shall be the property of College.

Whether a copyright, patent, trademark or other intellectual property right shall be maintained or registered in the United States of America or any foreign country shall be at the sole discretion of College. Contractor agrees to cooperate fully with College in the preparation and execution of all documents necessary or incidental to the protection and preservation of the rights granted herein to College. Contractor warrants and represents that the Services provided hereunder will not infringe, individually or collectively, any copyright, patent, trademark or other intellectual property right of any third party.

10. **COLLEGE EQUIPMENT:** All materials, tools, equipment and other property either furnished by College to Contractor or individually paid for by College ("College Equipment") shall remain the property of College, but Contractor shall assume all risks of and be entirely responsible for any losses or damages arising from its use of College Equipment. Upon completion or termination of this Agreement, Contractor shall promptly return all College Equipment in the condition in which Contractor received it, taking into account reasonable wear and tear.
11. **TAX EXEMPTION:** The parties acknowledge that the College is a tax exempt entity. Contractor shall take all steps necessary to ensure that these exemptions are utilized to the maximum benefit of College.

**12. CONFIDENTIAL INFORMATION:** Contractor shall treat as confidential all non-public information disclosed by College in connection with this Agreement, including but not limited to written or oral communications, education records (as defined under the Family Educational Rights and Privacy Act of 1974 (FERPA)), personal data, plans, specifications, and other data (collectively, "Confidential Information"). The terms and conditions of this Agreement shall also be deemed Confidential Information. Contractor shall not disclose Confidential Information to any third party except as College authorizes, and shall only disclose it to those within Contractor's organization who need to use it in performance of the Agreement. This provision is not intended to restrict Contractor's right to use or disclose information that is already known to the public or rightfully obtained without restriction from other sources. Contractor shall defend, indemnify and hold harmless College from and against any and all claims, demands, damages, liabilities, expenses, losses of every nature and kind, including but not limited to attorney's fees and costs, sustained or alleged to have been sustained by College as a result of any disclosure or use of any Confidential Information in violation of this Agreement.

Return or Disposal of Confidential Information: Upon written request from Barnard College or upon expiration, completion or termination of this Agreement, Contractor shall return or destroy all such Confidential Information (except for this Agreement), whether in written, electronic or other form or media, or otherwise dispose of it as College may approve. If such Information cannot be returned, Contractor shall securely dispose of all such copies, and certify in writing that such Information has been returned or disposed of securely. Contractor shall comply with all reasonable directions provided by Barnard College with respect to the return or disposal of any Confidential and Personal Information .

**13. USE OF BARNARD COLLEGE NAME OR MARKS:** Contractor shall not use College's name or trademarks in connection with any advertising, marketing or other promotional efforts or materials without the prior written approval of College.

**14. CONFLICTS:** Contractor affirms that, to the best of Contractor's knowledge, there exist no conflicts of interests between Contractor and College, its trustees or employees. In the event of change in Contractor's interests, Contractor shall inform College regarding any conflicts of interest that arise or are likely to arise as a result of such change. Contractor hereby represents that it has neither received nor given gifts or gratuities to any member of the Barnard College community, nor participated in any other unethical conduct in connection with this Agreement. If, at any time, the College determines that Contractor is in violation of any representation under this Paragraph, College may cancel the Agreement upon written notice to Contractor, and College shall have no further obligation to Contractor.

## 15. DATA SECURITY

- a. **Information Security Program:** Contractor shall implement administrative, physical and technical safeguards to protect Barnard's Confidential and Personal Information that are no less rigorous than accepted industry practices and shall ensure that all such safeguards, including the manner in which Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement and are appropriate to the scope of services provided by the Contractor.
- b. **Information Security Compliance:** Contractor shall perform periodic audits and maintain relevant security based certifications and/or independent assessments to demonstrate and substantiate the Contractor's compliance with applicable laws and terms and conditions governing the Contractor services.

Barnard College reserves the right to request evidence of this compliance and Barnard College agrees to maintain any such evidence as Confidential Information of the Contractor and will not disclose such information unless under legal obligation or with the explicit permission of the Contractor to do so.

- c. **Security Incident Response Notice and Support:** Contractor will promptly notify Barnard College as soon as practicable, but no later than twenty-four (24) hours after the Contractor becomes aware of any actual or suspected Security Incident (data breach, unauthorized access, misappropriation, loss, damage or other compromise of the security, confidentiality, integrity or availability that impacts or is more likely than not to impact Barnard data or services). Security related notice should be provided to *servicedesk@barnard.edu* as well as any other notice provisions in the contract terms. Contractor will immediately take action to prevent further loss, disruption, or damage associated with a security incident.

16. **COMPLIANCE WITH LAWS/POLICIES:** In performing its work under the terms of this Agreement, Contractor warrants that it will comply with all federal, state and local laws as well as Barnard policies applicable to its performance hereunder, including but not limited to those relating to nondiscrimination, equal employment opportunity, affirmative action, and privacy of information. Contractor agrees to enter into any and all additional terms necessary to address compliance with privacy laws, including but not limited to, FERPA and the Health Insurance Portability and Accountability Act (HIPAA). To the extent that Contractor is a company regulated or covered by the Sarbanes-Oxley Act, as amended, compliance with Sarbanes-Oxley is a condition of doing business with College and failure to be in compliance shall be considered a material breach of the Agreement. **Contractor is in compliance with state and city law regarding required employee trainings related to the prevention of sexual harassment, as applicable.**

- 17. GOVERNING LAW/VENUE:** All disputes regarding the construction, interpretation and the parties' obligations under this Agreement shall be governed by the laws of the State of New York, notwithstanding any of that state's laws to the contrary. The venue and jurisdiction for the resolution of any such disputes shall be in the State or Federal courts located in the state of New York.
- 18. ASSIGNMENTS:** Neither party shall assign or delegate its rights and obligations under this Agreement without the prior written consent of the non-assigning or non-delegating party.
- 19. MISCELLANEOUS:** The effective date of this Agreement shall be the date of signature by the College's authorized representative. Contractor warrants that it will comply with all federal, state and local laws applicable to its performance hereunder. The parties warrant that they have the authority to enter into this Agreement and that entering into this Agreement is not restricted or prohibited by any existing agreement to which they are parties. No third party is intended to be a third party beneficiary of this Agreement. This Agreement is binding upon the parties and their respective heirs, successors and assigns. A breach of Contractor's obligations under this Agreement by Contractor's employees, advisors or permitted subcontractors will be deemed a breach of this Agreement by Contractor. This Agreement may be executed in multiple counterparts which, when taken together, will be deemed to constitute one instrument.
- 20. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless College, its officers, employees, current and former trustees, agents and representatives from and against any and all claims, demands, damages, liabilities, expenses, losses of every nature and kind, including but not limited to attorney's fees and costs, (collectively, "Claims") sustained or alleged to have been sustained in connection with or arising out of the performance hereunder of Contractor, its agents, employees, subcontractors and consultants, even in the event College is alleged or found to be partially negligent. However, Contractor shall not be obligated to so indemnify College in the event College is proven to be solely negligent.

If any Claims alleging infringement of intellectual property rights, including but not limited to Claims of patent or copyright infringement or misappropriation of trade secrets, are brought against College, its officers, employees, trustees, agents and/or representatives in connection with College's use of any goods or materials that Contractor specifically produces for the performance of this Agreement, Contractor shall not only indemnify College, its officers, employees, trustees, agents and representatives as set forth above but also, upon College's request, shall procure for College the right to continue to use such goods or materials, or replace or modify such goods or materials, such that the alleged infringement is removed; provided, however, that such alleged infringement does not arise solely from College's alteration or modification of the goods or materials.

**21. INSURANCE:** If Contractor shall hereunder provide Services on College’s property, Contractor shall maintain and keep in force at Contractor’s expense the following minimum insurance coverage throughout Contractor’s performance under this Agreement:

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| a. Workers Compensation                               | Statutory   |
| b. Employer’s Liability                               | \$500,000   |
| c. Commercial General Liability:                      |             |
| Combined Single Limit Each Occurrence                 | \$1,000,000 |
| Aggregate   | \$2,000,000 |
| d. Automobile Liability (if applicable)               |             |
| Bodily Injury and Property Damage                     | \$1,000,000 |
| e. Commercial Crime/Fidelity insurance per occurrence | \$1,000,000 |

If Contractor is required to maintain a professional license in order to practice his/her profession, Contractor must maintain professional liability insurance in the amount of \$1 million per occurrence. Professions this applies to, but is not limited to, include architects, engineers, attorneys, physicians, nurses and physical therapists. This sample list of professions is representative only and is not meant to be complete.

The Automobile Liability insurance shall provide coverage for any vehicle used by Contractor.

“Barnard College, including its trustees, officers, employees and agents” shall be named as additional insureds in the General Liability policy specified above. Certificate(s) evidencing the above insurance coverages—with a statement thereon that College is an additional insured and that the insurance afforded is primary insurance as to any other valid and collectible insurance in force—shall be sent to the Vice President of Campus Services, Barnard College, 3009 Broadway, New York, NY 10027, before Contractor’s performance begins, and renewal certificates shall be provided annually until Contractor’s performance has been completed and accepted.

Contractor shall be solely responsible for payment of premiums and deductibles for all of the aforesaid insurance. Should any of the aforesaid insurance policies be cancelled or materially changed, Contractor shall provide thirty (30) days prior written notice to the Vice President of Campus Services, Barnard College, 3009 Broadway, New York, NY 10027. Contractor shall not change the levels of coverage or permit coverage to expire until all the Services have been completed and accepted. Contractor shall not enter upon College property to perform hereunder unless Contractor is and remains insured in accordance with the above requirements. Contractor shall indemnify College for any loss suffered by College for the failure of Contractor to be so insured.



**22. NOTICE:** Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier services or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such addresses as the parties may from time to time direct in writing.

**College:**

Office of the General Counsel  
Barnard College  
3009 Broadway  
New York, NY 10027  
Phone: (646) 745 - 8366

**With a copy to:**

Barnard College  
3009 Broadway  
New York, NY 10027

**Contractor:**

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Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

**23. SURVIVAL:**

To the extent any term, covenant, condition or portion of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law as nearly as possible to reflect the original intentions of the Parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized representatives.

**Barnard College**

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

Name: \_\_\_\_\_

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

**Independent Contractor**

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

Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Social Security (Last Four Digits): \_\_\_\_\_

Tax I.D Number: \_\_\_\_\_

