

## **TERMS OF SERVICES AGREEMENT**

### **Agreement for production of goods and/or The Provision of Services**

#### **SECTION 1 – PURPOSE OF AGREEMENT**

The purpose of this AGREEMENT FOR PRODUCTION OF GOODS AND/OR THE PROVISION OF SERVICES is to state the terms and conditions under which **Lakeshore Printing & Publishing Inc.**; (hereinafter referred to as "LSPP") will provide CUSTOMER with the goods and/or services (hereinafter collectively referred to as the ("SERVICES")) set forth on the Quotation attached to this Agreement (hereinafter referred to as the "Quotation") and in any fully executed addendum to this Agreement. In return for timely payment by CUSTOMER of the Contract Price (as defined in Section 3 of this Agreement), LSPP shall perform in the manner set forth in Section 2 of this Agreement.

#### **SECTION 2 – RESPONSIBILITIES OF LSPP**

Upon execution of this Agreement, LSPP may, in its sole discretion, select one or more designers, service providers, manufacturers, or printers to complete the Work set forth on the Quotation and/or any addendum thereto (each of which is a "Producer" and are collectively the "Producers") CUSTOMER agrees that LSPP is not responsible for the editorial content of CUSTOMER'S project and that LSPP has no obligation whatsoever to perform any proof-reading or editing services for CUSTOMER. CUSTOMER understands that LSPP is not warranting or otherwise guaranteeing any services performed by a Producer. CUSTOMER understands that his/her/its sole remedy for defects in workmanship and/or design is against the Producer(s) involved in such workmanship and/or design and agrees that LSPP shall not be responsible for any additional expense caused thereby and that LSPP shall not be liable for any schedule delays caused in whole or part by one or more Producers. The parties agree that CUSTOMER is responsible for all errors in the design and/or production of the "WORK" (as such term is defined in the Quotation) If: (1) the Work is completed after CUSTOMER'S approval of pre-press proofs. Web Pages, website design layouts, or samples of the Work in the manner provided under Section 7 herein; (2) CUSTOMER failed to order pre-press proofs of the Work; (3) CUSTOMER did not return the pre-press proofs of the Work with any indication of requested changes; or (4) CUSTOMER instructed LSPP to complete the Work without submitting any of pre-press proofs of the Work to CUSTOMER.

#### **SECTION 3 – PAYMENT TERMS AND CONDITIONS**

For the Services to be rendered hereunder, CUSTOMER agrees to pay LSPP, the total amount set forth in the Quotation and/or any fully executed addenda thereto (the "Contract Price"), under the terms and conditions contained therein. CUSTOMER further agrees to pay all or any portion of the Contract Price to one or more Producers designated by LSPP.

Unless otherwise specified in the Quotation, the price quoted for any goods (as defined in § 2-102 of the Uniform Commercial Code) is for a single shipment, without storage, Cost, Insurance, and Freight (CIF) dock at the destination indicated. CUSTOMER hereby agrees that variations in the quantity of ten percent (10%) or less are hereby deemed acceptable and that the total price paid to LSPP will be adjusted pro rata to reflect any such variation. CUSTOMER further agrees that destination charges such as unloading, warehousing, delivery of customs brokerage, as well as any expenses incurred from delays in clearing the consignment from the customs warehouse, will be borne by the CUSTOMER. Upon a breach of the CUSTOMER'S payment obligation, LSPP may declare any unpaid balance(s) immediately due and payable. CUSTOMER hereby agrees that any past due balance shall bear interest at the rate of one and a half percent (1 ½%) per month, eighteen percent (18%) per annum. In the event of any rise in the cost of labor or materials involved in completing the Services, LSPP may make an appropriate increase in the total sum specified on the Quotation and/or addenda thereto.

#### **SECTION 4 – CHANGES REQUESTED BY THE CUSTOMER**

CUSTOMER may make one or more written requests to change the Work's specifications, quantity, or delivery date of the Work to be completed under the Quotation. LSPP shall, in its sole discretion, decide on what terms, conditions, and price any written change request by CUSTOMER may be accepted.

#### **SECTION 5 – PAYMENT OF TAXES**

The price listed on the Quotation for the CUSTOMER'S order is generally exclusive of all taxes without limitation. However, CUSTOMER agrees to pay to LSPP the amount of any tax due and payable as a result of CUSTOMER'S order, whether said tax is included in the total price listed on the Quotation.

#### **SECTION 6 – PRODUCTION MATERIALS**

Any camera copy, artwork, or other materials supplied by CUSTOMER (hereinafter "CUSTOMER – furnished materials") shall be clean, properly ordered, and prepared in full compliance with industry standards. Paper stocks, inks, camera copy, film, color separations, and other CUSTOMER-furnished materials shall be manufactured, packed, and delivered to specifications given by CUSTOMER to LSPP. CUSTOMER shall be responsible for all delivery and handling charges for any CUSTOMER-furnished materials. Neither LSPP nor the Producer shall be responsible for defective books or goods, additional expenses, or schedule delays caused by CUSTOMER-furnished materials. Any work produced by LSPP, such as layouts, artwork, and films, will remain the property of LSPP. Still, any copyright or registered trademark held by CUSTOMER shall be observed and otherwise honored in this regard.

In returning any of CUSTOMER'S property in possession of LSPP, LSPP agrees to follow CUSTOMER'S directions. CUSTOMER agrees that LSPP shall not be liable for any claims whatsoever if said property is lost or damaged in transit, provided that CUSTOMER'S directions to LSPP have been followed. Unless otherwise stated in this Agreement, final plate-making, positives or negatives, become the property of the CUSTOMER upon full payment of the Contract Price. Any cost incurred in returning films to CUSTOMER shall be paid to LSPP by CUSTOMER. All plates made by LSPP are deemed to be the property of LSPP. Unless other arrangements are made, all working films may be destroyed one month after completion.

#### **SECTION 7 – RESPONSIBILITIES REGARDING PRE-PRESS PROOFS AND SAMPLE GOODS**

Pre-Press Proofs, including any blueslines and/or press proofs, shall be submitted to the CUSTOMER without an original copy. The Proof Transmittal Form supplied by LSPP is to be returned to LSPP and marked "OK" or "OK with Corrections" and signed by the CUSTOMER. Corrections are to be indicated on each page in the bluesline or on the press-proof and itemized on the PROOF Transmittal Form, using a separate list only if necessary. If revised proofs are desired, a request must be made by the CUSTOMER at the time the proofs are returned to LSPP. CUSTOMER agrees that any corrections requested after submission of proofs to LSPP, including alterations in style, will be billed to CUSTOMER as an additional cost at the then prevailing rates.

If any samples of goods and/or packaging are submitted to CUSTOMER, the samples shall be accompanied by a Sample Approval Form. Upon CUSTOMER'S receipt of the samples, the Sample Review Form must be marked "OK" or "OK with Corrections," including a detailed description of any corrections requested, and returned to LSPP. If a sample Review Form is not returned to LSPP within ten (10) ten calendar days of CUSTOMER'S receipt of the samples, the samples shall be deemed conforming and accepted in the form given to CUSTOMER.

Website design and completed Webpages may only be rejected by CUSTOMER'S submission of a Website Review Form to LSPP setting forth an itemized list of requested corrections within five (5) calendar days of CUSTOMER'S receipt of the proposed design layout for the site or written notice from LSPP that webpages compromising the site have been posted for review and approval by CUSTOMER. Failure to return a Website Review Form to LSPP within five (5) calendar days shall be deemed acceptance of the website design and the posted webpages.

#### **SECTION 8 – DISCLAIMER OF CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY**

CUSTOMER shall not, in any action or proceeding arising out of, or related to this Agreement, assert any claim for consequential damages against LSPP on account of any loss,

cost, damage, or expense that CUSTOMER may suffer or incur because of any act or omission of **LSPP**, and CUSTOMER expressly waives all claims for consequential damages. THE CUSTOMER AGREES THAT THE LIABILITY OF **LSPP** TO THE CUSTOMER SHALL BE LIMITED TO THE TOTAL COMPENSATION TO BE PAID BY THE CUSTOMER UNDER THIS AGREEMENT< AND SHALL NOT INCLUDE ANY CONTINGENT LIABILITY WHATSOEVER.

#### **SECTION 9 – PRODUCTION SCHEDULES AND DELIVERY**

All schedules are binding on **LSPP** and/or a Producer. Production schedules must be established by a written addendum to this Agreement (said addendum shall hereinafter be referred to as "The Production Schedule") signed by **LSPP** and CUSTOMER. Where the Production Schedule is not adhered to by CUSTOMER, the final delivery date may be altered and re-established by **LSPP**. Neither **LSPP** nor any Producer shall be responsible for any delay, non-delivery, or default in shipment in whole or in part, occasioned by strikes, war, riot, or revolutions or for any delay in transportation due to demands or embargoes of the United States Government, or non-delivery or deliveries through fires, floods, droughts, accidents, insurrections, lockouts, breakdown of machinery, commandeering of vessels carrying goods, or loss or damage in transit directly or indirectly resulting from acts of God, perils of the sea, stoppage of labor, shortage of cars, or by the refusal of any necessary license or government restrictions considered as "force majeure" or by any other unavoidable cause.

#### **SECTION 10 – CLAIMS ON GOODS BY CUSTOMER**

**LSPP** shall not be liable for any claim under this Agreement, whether in tort or in a contract, unless promptly made in writing to **LSPP** within thirty (30) calendar days after receipt of any goods (as defined in § 2 – 102 of the Uniform Commercial Code), produced under this Agreement. Failure to make such a claim within the stated period shall constitute irrevocable acceptance of such goods. In any event, no claim for damages, direct or indirect, shall, in any case, exceed the price of said goods and shall in no event include special or consequential damages, including profits or lost profits. CUSTOMER agrees that liability for goods claimed by CUSTOMER to be defective shall be limited to repair or correction of the damaged or defective books. CUSTOMER agrees that the replacement cost may be no greater than the price charged to CUSTOMER.

#### **SECTION 11 – INDEMNITY**

It is expressly understood and agreed that CUSTOMER shall defend, indemnify and hold harmless **LSPP** from any and all loss, cost, expense, and damages, including but not limited to court costs and incurred attorney's fees, on account of any and all manner of claims, demands, actions, and proceedings that may be instituted against **LSPP** or others by reason of (1) any violation or infringement of any proprietary right or copyright, (2) any libelous,

obscene, unlawful manner contained in the writings that are the subject matter of this Agreement, (3) CUSTOMER'S breach of any term, covenant, representation, or warranty of this Agreement, or (4) any other act done by or within the control of CUSTOMER that might prejudice or prevent **LSPP** or its assigns from receiving the full benefit of the rights herein granted.

#### **SECTION 12 – PAYMENT AND SECURITY**

As security for payment of any sum due or to become due under the terms of this Agreement, **LSPP** shall have the right to retain the possession of and shall have a lien on all of the CUSTOMER'S property in **LSPP'S** possession, custody, or control. CUSTOMER agrees to execute any documents needed to perfect said liens on behalf of **LSPP**. The extension of credit or the 5

#### **SECTION 13 – ARBITRATION OF DISPUTES**

**LSPP** AND CUSTOMER agree to mediate or, if the dispute or claim is not resolved by mediation, arbitrate any dispute or claim between them wherein the amount in controversy exceeds the then applicable limit for an action brought in small claims court in Washington (each a "Claim") whether such claim is in law or equity, arising out of or related in any way to this Agreement. The mediation shall be conducted in accordance with the rules of Judicial Arbitration and Mediation Services, Inc (JAMS) by a single member of the JAMS panel. The parties shall cooperate in good faith in selecting this member. If, however, the parties cannot agree on the selection of the mediator, then an application shall be filed with the King County Superior Court for the selection of the mediator, said application to be filed pursuant to the provisions for the selection of an arbitrator under **WSP §1281.6**. The cost of making this application shall be borne equally by the parties. The decision of the Court regarding the appointment of the mediator shall be binding on all parties, and it may not be appealed. The mediation fee shall be divided equally among the parties. Before the mediation begins, all parties participating in the mediation agree to sign a document limiting the admissibility in legal proceedings of anything said, any admissions made, and any documents prepared in the course of the mediation. The venue of the mediation shall be held in the Seattle, WA, office of JAMS. Should the parties be unable to settle a claim through mediation or binding arbitration, or shall be conducted in accordance with the rules of JAMS, including all applicable limitations on discovery. The venue of the arbitration shall be in Seattle, WA, office of JAMS. This provision shall not prevent any party hereto from seeking provisional or injunctive relief to the extent such a remedy is necessary to preserve the relief sought by either party in the arbitration proceedings.

#### **SECTION 14 – DISCLAIMER OF WARRANTIES**

EXCEPT AS MAY OTHERWISE BE EXPRESSLY SET FORTH IN THIS

AGREEMENT< THE SERVICES AND GOODS HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS, AND **LSPP** EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES< EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **SECTION 15 – CUSTOMER WARRANTY**

CUSTOMER unconditionally guarantees that any element of text, graphics, photos, designs, trademarks, or other artwork furnished to **LSPP** for inclusion in any webpage designed hereunder are owned by the CUSTOMER or that the CUSTOMER has permission from the rightful owner to use each of the elements, and will hold harmless, protect, and defend **LSPP** and the Producers from any claim or suit arising from the use of such elements furnished by the CUSTOMER.

#### **SECTION 16 – LSPP CONTRIBUTIONS**

Provided that CUSTOMER has paid all amounts due **LSPP** for the Services, **LSPP** agrees that any design, layout, editing, or other services performed by **LSPP** in regard to the Work shall be deemed a work made for hire by an independent contractor under the United States Copyright Laws (17 U.S.C. 101, et seq.) and by virtue of this provision, will be the sole property of CUSTOMER free and clear from all claims of any nature relating to **LSPP'S** contributions to the Work and other efforts, including the right to copyright or obtain trade and service marks upon the Work in the name of CUSTOMER as author and proprietor thereof. Provided, however, if CUSTOMER has not paid all amounts due to **LSPP** for the Services, then the parties agree that **LSPP'S** contributions to the Work will remain the sole property of **LSPP** free and clear from all claims of any nature by CUSTOMER.

#### **SECTION 17 – MISCELLANEOUS**

The terms and conditions contained herein are independent and severable. This Agreement contains the entire Agreement of the parties. No course of dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any term or provision of this Agreement. No waiver or any breach of any covenant or provision herein contained shall be deemed a waiver of any other covenant or provision herein contained, and no waiver shall be valid unless in writing and executed by the waiving party. No extension of time for the performance of any obligation or act shall be deemed an extension of time for the performance of any other obligation or act. Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties but rather as if both parties have prepared the same. Any exhibits or attachments referred to in this Agreement, if attached and executed by the parties hereto, are incorporated herein by this reference.

This Agreement may not be modified or amended except pursuant to a written instrument duly executed and acknowledged by the parties hereto or their successors in interest. This Agreement is made and entered into for the sole benefit of the parties hereto, their successors, and assigns, and such parties do not intend to create any rights or benefits for any person who

is not a party to this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable. This Agreement shall be governed

by the laws of the State of Washington, which are in effect on the effective date of this Agreement. The parties agree that any legal action regarding a dispute arising from or related to this Agreement that is not subject to mandatory arbitration under **Section 13** herein shall be held in the county of KING in Washington State.