

UNIVERSITY of HOUSTON



Master Development Agreement on Project Order Basis

This Agreement, dated _____, by and between the University of Houston on behalf of the Graduate College of Social Work (hereafter, "University"), an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, and _____, (hereafter, "Contractor").

WITNESSETH:

Whereas, University has sought the services of Contractor for the purposes of defined professional services on a project order basis (hereinafter called individually or collectively as, "Project");

Whereas, Contractor agrees to perform the professional services as agreed herein.

Now, therefore, University and Contractor, for the consideration hereinafter named, agree as follows:

- 1. SCOPE OF WORK AND TERM: Subject to and only on a project order basis (Exhibit "A"), Contractor agrees to perform professional services defined as the following:
a. Development of a course to be used in an online Continuing Education program. "Course development" includes, but is not limited to, writing the course material and preparing an exam.
b. Annual review and update (if applicable) of course content

The initial term of this Master Development Agreement shall be five (5) years from the date referenced above. The approved scope of work will only be authorized by a fully executed Project Order (Exhibit A).

- 2. COMPENSATION: Contractor's compensation will be a percentage of course attendee's registration fee as agreed and defined by individual written project orders as defined by Exhibit A.
3. OWNERSHIP OF COURSE MATERIAL: The course material and related intellectual property are and shall remain property of Contractor; however, University shall maintain exclusive electronic publishing rights to the course material during the term of the written project order. Should Contractor or any other third party publish course material via electronic media in violation of this agreement, Contractor shall pay to University liquidated damages in the amount of \$10,000.00. University and Contractor agree that this course material will be used solely in connection with the assignment covered by this Agreement and for no other purpose without prior negotiation.
4. INDEMNITY: To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the University of Houston System, Board of Regents, the University of Houston, their agents, employees, officers, administrators, component institutions, successors and assigns from and against all claims, injuries, damages, losses, costs, expenses and liability, including but not limited to reasonable attorneys' fees, whether arising before, during or after completion of Contractor's work, caused by or arising out of or resulting from performance of work, of whatever nature, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission by Contractor, and subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, but only to that extent, proportion or degree that the claims, damages, losses and expenses are attributable to the act or omission of Contractor or its subcontractors.

5. **RELATIONSHIP OF THE PARTIES:** It is agreed and understood that Contractor is an independent contractor and not an agent or employee of University. Nothing in this Contract shall be construed to create a joint venture, partnership, association, or like relationship between the parties.
6. **TERMINATION:** University reserves and has the right and privilege of canceling, suspending, or abandoning the execution of all or any service in connection with this Agreement or any project orders at any time upon ten days (10) written notice to Contractor. Contractor may terminate this Agreement upon ten days (10) written notice to University should University substantially fail to perform their obligations under the terms of this Agreement. University's liability in case of early termination will be limited to paying for the course royalties already accrued as of the date of the termination, less any and all foreseen or unforeseen damages sustained by University as a result of any default or consequence of termination.
7. **SUCCESSORS AND ASSIGNS:** University and Contractor each binds himself, and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Contractor shall not assign, sublet or transfer his interest in this Agreement without written consent of University. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than University and Contractor.
8. **INVALIDATION:** If this Agreement is not executed by Contractor within 10 days, it shall become invalid unless University extends the time in writing.
9. **CORPORATE FRANCHISE TAX:** Contractor (or "Seller" or other designation of contracting party) certifies that, upon the effective date of this agreement, either (1) it is not delinquent in payment of State of Texas corporate franchise taxes, or (2) it is not subject to the payment of such taxes. Contractor (or other designation of contracting party) agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and University shall be entitled to terminate this Agreement upon written notice thereof to Contractor (or other designation).
10. **COMPLIANCE:** Contractor agrees to abide by and perform the work under this Contract in compliance with all applicable City, State of Texas and Federal laws, rules, regulations and policies. While on the premises of University, Contractor agrees to abide by the policies and procedures of University relative to conduct on its premises.
11. **VENUE:** It is mutually agreed by the parties that if litigation should arise concerning all or any part of this contract, venue shall lie in Harris County, Texas.
12. **ALTERNATIVE DISPUTE RESOLUTION:**
 - a. The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of Contract made by Contractor:
 - (1) A Contractor's claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to [for the System, the Chancellor; for component institutions, the President] or his/her designee. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of University and Contractor other wise entitled to notice under the parties' Contract. Compliance by Contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.
 - (2) The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of Contract by University if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

(3) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by University nor any other conduct of any representative of University relating to the Contract shall be considered a waiver of sovereign immunity to suit.

b. The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Attorney General of the State of Texas pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found at 1 T.A.C. Part 3 Chapter 68.

c. Neither the occurrence of an event nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part.

13. **FINANCIAL OBLIGATIONS TO THE STATE OF TEXAS:** Contractor acknowledges that, pursuant to Government Code § 403.055, that if the Texas Comptroller of Public Accounts is currently prohibited from issuing a warrant to Contractor, Contractor agrees that payments under the attached Contract will be applied towards the debt or delinquent taxes owed to the State of Texas until the debt or delinquent taxes are paid in full.

14. **CHILD SUPPORT:** A child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. By executing this Contract, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive payment from the state and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

15. **PROPRIETARY INFORMATION:**

a. Contractor shall maintain the confidentiality of all proprietary information provided to it by University. Information in the public domain or otherwise obtained independently by Contractor is not considered confidential.

b. Any programs, data or other materials furnished by University for use by Contractor concerning the services performed under this Contract remain the sole property of University.

16. **NOTICE:** All notices and communications regarding this Contract must be in writing and directed to the following representatives:

For University:

For Contractor:

17. **MISCELLANEOUS:**

a. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against University. It is agreed by University and Contractor that this Agreement is intended for the benefit of University and Contractor only and not for the benefit of subcontractors, including suppliers or any of their employees or agents, or any other person.

b. This Agreement shall be governed by the laws of the State of Texas.

- c. This instrument contains the entire Agreement between University and Contractor and can be modified only by written instrument signed by authorized representatives of University and Contractor.
- d. At any time during the term of this Agreement and for a period of four (4) years thereafter, University or a duly authorized audit representative of University, or the State of Texas, at its expense and at reasonable time, reserves the right to audit Contractor's records and books relevant to all services provided under this Agreement. In the event such an audit by University reveals any errors or overpayments, Contractor shall refund the full amount of such overpayments within thirty (30) days of such audit findings, or University, at their option; reserve the right to deduct such amounts owing from University to Contractor.

Executed in the year and day referenced first above mentioned.

UNIVERSITY OF HOUSTON

CONTRACTOR

Signature Date
Name: _____
Title: _____

Signature Date
Name: _____
Title: _____

Note: Modification of this Form requires approval of OGC

UNIVERSITY of HOUSTON



Exhibit A
Project Job Order under Master Development Agreement

This Project Job Order is subject to all terms and conditions of the Master Development Agreement. Authorized Project Job Orders become a part of the Master Development Agreement upon execution by University.

Date: _____ Contractor: _____

You are hereby directed to perform the services as described below under the terms and conditions of the Master Development Agreement on Project Order Basis (Contract Number: _____) between University and Contractor dated _____; and at the sole satisfaction and approval of University.

SCOPE OF WORK FOR PROJECT JOB ORDER:

COMPENSATION:

Contractor's compensation shall be \$_____ per approved course development and \$_____ per paid participant of the online Continuing Education course not to exceed an annual aggregate amount of \$_____. University agrees to promptly process payment to Contractor on a monthly basis in accordance with Texas Government Code Chapter 2251.

SCHEDULE:

The work to be performed under this Project Order shall begin on _____ and be completed on or before _____. Contractor agrees that the aforesaid completion date is a material consideration in the award of this Project Order, and in default of completion by the aforesaid date, Contractor shall pay to University liquidated damages in the amount of \$_____ for each day completion is not reached.

Annual review of course material for update and revision shall be completed by _____.

This Project Order shall terminate at midnight on _____.

AUTHORIZED AND ACCEPTED:

UNIVERSITY

CONTRACTOR

Signature _____ Date _____
Name: _____
Title: _____

Signature _____ Date _____
Name: _____
Title: _____

Dr. Elaine Charlson Date
Exec. AVP/AVC for Academic & Faculty Affairs

Address: _____

Note: Modification of this Form requires approval of OGC