



University of Houston - Victoria



Independent Contractor Agreement

This Contract is made and entered into as of the Effective Date in section 2 below. By signing below, the parties agree that Contractor, as an independent contractor and not as an employee, shall timely and competently perform the services described in the scope of work attachment, Exhibit A to this Contract, under the terms and conditions set forth in this Contract.

1. **PARTIES:**

University of Houston-Victoria
(Hereinafter referred to as "University")
Contact Name: _____
Department: _____
Address: _____

Telephone: _____
Fax: _____
Email: _____

(Hereinafter referred to as "Contractor")
Type of Business: _____
Contact Name: _____
Address: _____

Telephone: _____
Fax: _____
Email: _____
State of Business Registration: _____
Federal Tax ID: _____

Whereas, authority exists in law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance remains available for encumbering and subsequent payment of this Contract under Fund No. _____; and

Whereas, Contractor was selected in accordance with State law by which University has determined best value will be received by retaining Contractor's services;

Now, therefore, the Parties above-named, in consideration of the mutual promises contained herein and other good and valuable consideration, hereby agree as follows.

2. **TERMS AND CONDITIONS OF THE CONTRACT:**

- a. **Independent Contractor; Relationship of the Parties.** The parties aver that:
 - (1) Contractor is not subject to University's control as to the means and methods of accomplishing the work to be performed hereunder, but the University may specify and control the result to be accomplished including any specifications, standards, requirements and deliverables;
 - (2) Contractor selects its own customers or clients and is free to contract with others during the term of this Contract;
 - (3) Contractor, if a sole proprietor, represents and warrants that he/she ___ has ___ has not previously been an employee of the State of Texas either as a temporary or permanent employee. **If "has" is checked, a statement setting forth the name of the agency or department in which the Contractor was employed, the last date of employment and the nature of the assigned duties must be provided on a separate sheet;** and
 - (4) This Contract shall not be construed to create any partnership, joint venture, nor other agency relationship between the parties, who are independent of one another. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such

enforcement, shall be strictly reserved to the State and the named Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the parties that any such person or entity, other than the parties hereto, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

- b. **Term.** This Contract shall commence on the Effective Date, which shall be the later of (1) the date it is signed by University representative with delegated authority to sign; or (2) the following date: _____ and shall terminate on _____ unless sooner terminated as provided herein or extended by mutual written agreement of the parties. **Contractor expressly acknowledges and agrees that this Contract is not valid until University has signed it. Contractor is not authorized to begin performance until the Contract is signed and dated by University's authorized representative, below. If performance begins prior to the Effective Date, University shall not be obligated to pay for the goods and/or services provided prior to such date.**
- c. **Payment Terms.** Check one box only:
 - (1) _____ **This is a fixed-price Contract.** Payment for all services under this Contract shall be in the fixed sum of payable upon invoice after satisfactory completion of the work, except insofar as a payment schedule or other terms and conditions are set forth in Exhibit B, which if applicable is attached hereto and incorporated by this reference.
 - (2) _____ **This is not a fixed price Contract.** The price is to be determined according to time and materials or other method of calculation as more fully described in Exhibit B, which is attached and incorporated by this reference. The total amount to be paid to Contractor shall not exceed \$_____ and the basis for all charges shall be clearly identified on Contractors invoice(s). No payment shall be made for services or deliverables except as specified in this Contract unless further agreed and approved in writing.
- d. **Inspection and Acceptance of Services.** University reserves the right to inspect the services provided under this Contract at all reasonable times and places during the term of the Contract. "Services" as used in this clause includes the works and any tangible things produced or delivered in the performance of services, whether or not complete. If any of the services do not conform to Contract requirements, University may require the Contractor to perform the services again in conformity with Contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, University may (1) require Contractor to take necessary action to ensure that the future performance conforms to Contract requirements and (2) equitably reduce the payment due Contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to University in the termination provisions of this Contract, or remedies otherwise available at law.
- e. **Governmental Immunities Preserved:** Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the laws of the State of Texas as now or hereafter amended.
- f. **Ownership of Work Products.** All work product, including any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this Contract shall be deemed works for hire and are the exclusive property of University. All such materials shall be delivered to University by Contractor upon completion, termination, or cancellation of this Contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow,

nor cause to have such materials used for any purpose other than the performance of Contractor's obligations under this Contract without the prior written consent of University. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

- g. **Time is of the Essence.** All time limits, time periods, milestones and completion dates stated in the Contract documents are of the essence of this Contract.
- h. **Default.** A party will be considered in default of its obligations under this Contract if such party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Contract and such failure continues for ten (10) days after the non-defaulting party gives the defaulting party written notice thereof. In the event of default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Contract as of the date specified in the notice, and may seek such other and further relief as may be provided by law.
- i. **Termination for Convenience.** University may terminate this Contract at any time University determines that the purposes of the distribution of State moneys under the Contract would no longer be served by completion of the project. University shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Contract shall, at the option of University, become its property, and Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered.

If the Contract is terminated by University as provided herein, Contractor will be paid an amount which bears the same ratio to the total compensation as the services satisfactorily performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made, provided, however, that if less than sixty percent (60%) of the services covered by this Contract have been performed upon the effective date of such termination, Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. In no event shall reimbursement under this clause exceed the Contract amount. If this Contract is terminated for cause, or due to the fault of Contractor, the Termination for Cause or Default provision shall apply.

- j. **Notices.** All notices required to be given under this Contract shall be deemed given when actually delivered to the designated representative(s) of the party to be given notice by (1) certified mail, return receipt; or (2) by hand delivery or courier service, if a signed receipt is obtained upon delivery; or (3) by facsimile transmission, if confirmation of receipt of the transmission is obtained. A party may change its designated representative(s) or address at any time by written notice in the same manner as for any other notice. The initial representatives of the parties shall be the persons whose names and addresses are set forth in Article 1, Parties, herein above.
- k. **Legal Authority.** Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Contractor to its terms. The person(s) executing this Contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this Contract.
- l. **Non-Assignment.** Contractor shall not assign or subcontract any of its obligations under this Contract without the advance written consent of University. Any unauthorized assignment shall be void. University shall have the right, but not the

obligation to terminate this Contract, without waiver of any other right or remedy, upon notice of Contractor's assignment or sub Contract in violation of this section.

- m. **Binding Effect.** This Contract is binding upon the heirs, personal representatives, successors, and permitted assigns of both parties.
- n. **Entire Agreement.** This Contract including the exhibits incorporated herein by reference constitutes the entire agreement between the parties, and supersedes any previous contracts, understandings, or agreements of the parties, whether verbal or written, concerning the subject matter of this Contract.
- o. **Amendment.** No modification or amendment to this Contract shall be valid unless it is made in a writing signed by the authorized representatives of the parties.
- p. **Waiver.** The waiver by either party of a breach or violation of any provision of this Contract shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.
- q. **Severability.** In the event that any provision of this Contract is held unenforceable for any reason, the remaining provisions of this Contract shall remain in full force and effect.
- r. **Governing Law, Jurisdiction, and Venue.** This Contract shall be interpreted and enforced under the laws of the State of Texas, without regard to its choice of law rules. Any action arising under this Contract shall be filed and tried, if at all, in the courts of Harris County, Texas.
- s. **Exhibits.** If checked, the following exhibits are attached, initialed by the signatories, and hereby made a part of this Contract:

- Exhibit A: Scope of Work
- Exhibit B: Payment Provisions
- Exhibit C: Sate of Texas Contract Provisions
- Other: _____

- t. This Agreement may be executed with any number of counterparts, each of which, when executed and delivered will constitute and original, but all such counterparts will constitute one and the same instrument.

The parties hereto have executed this Contract

UNIVERSITY OF HOUSTON-VICTORIA

CONTRACTOR

 Signature Date
 Name: _____
 Title: _____

 Signature Date
 Name: _____
 Title: _____

 Signature Date
 Name: _____
 Title: _____

CORPORATIONS:
(A corporate seal or attestation is required.)

Attest (Seal)
By: _____
(Corporate Secretary or Equivalent)

Note: Modification of this Form requires approval of OGC



University of Houston - Victoria

Exhibit A to Independent Contractor Agreement Scope of Work



[Enter here or attach a detailed description of the work to be performed, including any milestone dates, standards or guidelines to be met, deliverables, etc.]



University of Houston - Victoria

Exhibit B to Independent Contractor Agreement Payment Schedule

[Enter here or attached a detailed statement of the dates and amounts for payments to be made under the Contract and any service milestones or deliverables attendant to such payments.]

University Initials: _____
Contractor Initials: _____



University of Houston - Victoria



Exhibit C to Independent Contractor Agreement State of Texas Contract Provisions

1. **PAYMENT OF TAXES:** Contractor 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 agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and the University shall be entitled to terminate this agreement upon written notice thereof to Contractor.
2. **CHILD SUPPORT:** A child support obligor who is more than 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 25 percent 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 Agreement, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive payment from the state and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. (Family Code, Section 231.006).
3. **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 the 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 the Contractor, in whole or in part.

University Initials: _____
Contractor Initials: _____