



CONSULTING SERVICES CONTRACT

HCC Information Technology Assessment and Related Services

This Contract ("Contract") is made by and between the Houston Community College ("HCC"), a public community college district organized under Chapter 130 of the Texas Education Code, whose main office address is at 3100 Main Street, Houston, Texas 77002, and [party] (the Contractor), [Identification Number], (Social Security or Federal I.D. No.) whose address is [address] (individually, "Party" and collectively, "Parties"), effective as of [date] ("Effective Date").

RECITALS

WHEREAS, HCC has need of [what is the service] consulting services to complete certain requirements related to our international programs ("Project") that are in-progress and mission critical to HCC; and

WHEREAS, Contractor has demonstrated competence, based on past performance, to perform [summary of services] consulting services and to complete the Project as set forth and required under this Contract; and

WHEREAS, Contractor desires to and has agreed to perform such services; and

WHEREAS, HCC finds that it is within its mission and purpose to procure such services and enter this Contract.

NOW THEREFORE, for the mutual covenants and promises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, HCC and Contractor, agree to the following:

TERMS AND CONDITIONS OF CONTRACT

1. SERVICES AND PROGRESS REPORTS

1.1 The Contractor shall provide Course Comparison and Certification Statements and Faculty Evaluation consulting services for completion of the Project to HCC, in accordance with the deliverables and Scope of Services attached hereto as Exhibit A ("Services"), within the timeline and milestones set forth therein, and under the terms and conditions set forth in this Contract.

1.2 The Contractor shall perform and complete the Services to the satisfaction of HCC on or before the dates set forth in the Timeline. The Contractor shall allocate adequate time, personnel, and resources as necessary to perform the Services. The Contractor shall review or has reviewed HCC's strategic goals to "Focus on Teaching and Learning" furnished by HCC and has discussed with HCC the programs and specific requirements of the Project. The Contractor shall diligently perform all Services under this Contract and shall strive to further the interest of HCC in accordance with HCC's Project requirements and procedures. The Contractor warrants and represents that qualified personnel shall perform the Services and all Services shall be of a professional quality.

1.3 The Contractor shall use its best professional efforts, skill, judgment, and abilities in performing the Services. The Contractor agrees and acknowledges that HCC is relying on its professional advice, opinion, efforts, skill, judgment, and abilities and but for such reliance, which is a material inducement for HCC engaging the Contractor to perform the Services, HCC would not have entered this Contract with the Contractor.

1.4 HCC designates **[who is the HCC rep?]**, as the contact person for HCC ("HCC Representative"). Without limiting the Board's authority in Section 2, the HCC Representative shall have day-to-day authority to make decisions and have oversight and approval of the Services delivered. The HCC Representative also shall have the authority to determine whether the Services rendered by the Contractor are satisfactory in accordance with Sections 2 and 5.

1.5 The Contractor designates **[who is the Contractor's designated rep?]** to serve as Project team leader ("Project Leader") to ensure timely and satisfactory delivery of the Services. The Contractor shall not change the Project Leader without receiving prior written approval from HCC.

1.6 The Project Leader shall provide to the HCC Representative written weekly progress reports outlining the Services performed and completed during the prior week. The progress reports shall include: (a) a description of the Services performed under the Scope of Work from Exhibit A; (b) a description of the task(s) within the Scope of Work that is being worked on; (c) task statuses (Completed, In-progress, On-hold, Not started); (d) task status dates; (e) task status comments; (f) milestone title with milestone status (Completed, In-progress, On-hold, Not started); (g) milestone status dates, (h) milestone comments; (i) project timelines in GANNT chart format; and (j) Project team meeting minutes.

2. EVALUATION OF SERVICES

2.1 HCC shall have the right to determine, in its sole discretion, whether the Services rendered by the Contractor under this Contract are satisfactory and meet the standards expected by HCC. In the event that HCC is not satisfied that the Contractor has performed the Services in an acceptable manner and/or that such Services do not meet the standards required by HCC for the Project and/or that the Work Product (as hereinafter defined) does not meet the expectations of HCC, HCC shall have the right to reject such Services or such Work Product, in which case, either of the following shall occur: (a) the Contractor shall re-perform any unsatisfactory or non-conforming Services or redesign or reconstruct such Work Product at no cost to HCC; or (b) HCC shall terminate the Contract and shall not be obligated to pay any Fees (as hereinafter defined) attributable to the unsatisfactory or non-conforming Services or Work Product.

2.2 The Parties agree that the HCC shall have the right to have access to the area where and equipment on which Contractor is performing Services and to any Work Product resulting from the Services to evaluate Contractor's Services under this Contract, to ensure compliance with all Applicable Law (as hereinafter defined), to review documentation, and/or to obtain other pertinent information.

3. BOARD APPROVAL; CHANGE IN SERVICES

3.1 The Board, by majority vote, is the only representative of HCC, having the authority to approve material changes in the Scope of Services, to authorize any change in this Contract that would result in an increase in the Fee of \$50,000.00 or more in a twelve (12) month period, or to agree to an extension of the date of completion of Services beyond the next fiscal year.

4. **TERM; RENEWAL; TERMINATION**

4.1 **Term.** The term of this Contract shall be from [when] through [when] ("Term") unless renewed or earlier terminated as set forth herein. [note if there are renewal options, "with one one-year renewal option"; if not, then delete this bracket]. Except for any change in the Scope of Services and/or the Fee, the terms and conditions of any renewal shall be as set forth herein.

4.2 **Termination.**

(a) This Contract may be terminated for convenience by either Party with or without cause upon ten (10) days prior written notice to the other Party. In the event of termination without cause, HCC shall pay the Contractor any undisputed amounts not previously paid for Services actually and satisfactorily performed up to the date of termination.

(b) The term of this Contract is contingent upon the availability of appropriated funds. HCC shall have the right to cancel the Contract at the end of the current fiscal year if funds are not allotted for the next fiscal year to continue the Contract. If funds are withdrawn or do not become available, HCC reserves the right to terminate the Contract by giving the selected contractor a ten (10) day written notice of cancellation without penalty. Upon cancellation of the Contract, HCC shall not be responsible for any payment of any service or product received that occurs after the end of the current contract period. The HCC fiscal year begins on September 1 and ends on August 31st.

(c) This Contract may be terminated by either Party in the event of breach of this Contract. A breach occurs when either Party fails to perform its obligations under this Contract or fails to comply with the terms of this Contract. In the event of a breach, the Party claiming such breach shall provide the other Party with written notice of such breach setting forth the basis for such claim of breach. The breaching Party shall have thirty (30) days from the receipt of the notice of breach to cure such breach. If the breaching Party fails to cure the breach within thirty (30) days of receipt of the notice, the aggrieved Party shall have the right to terminate the Contract immediately and pursue any remedies available under law for breach of contract.

5. **COMPENSATION; FEES**

5.1 As consideration for the Services satisfactorily provided and/or performed by the Contractor, HCC will pay the Contractor [amount] (\$ 0.00) per full [hour/month/one time fee] ("Fee") (any two or more month's Fees shall be referred to herein as "Fees") during the Term, which will result in a total compensation not to exceed [total amount] (\$0.00) ("Anticipated Fee"); [and] the Anticipated Fee may otherwise be less than [total amount again, in dollars] in the event of certain conditions as set forth in this Contract such as early termination of this Contract or any other provision of this Contract that affects the Fee.

5.2 **Maximum Contract Value:** The amount contained herein is the maximum contract value. If additional funding is required, it will be processed pursuant to the prior written approval of HCC. The delivery of any goods or services undertaken by the Contractor, prior to receipt of any written approval by HCC, will be at the Contractors sole risk and expense.

5.3 On or before the 10th of each month during the Term, the Contractor shall send an Invoice (as hereinafter defined) for the Fee for the past month's Services to the HCC Representative for review. The invoice shall include (either on the invoice or as an attachment) a detailed description of Services performed and Work Product achieved during that Fee period. The Invoice also shall include a schedule showing progress toward dates set forth in the Timeline; any non-conforming work that needs to be re-performed; any necessary steps to be taken to correct any delays in delivering the Services or Work Product by the dates set forth in the

Timeline; a statement of work/services performed by subcontractors and the amounts paid such subcontractors; any data substantiating the Services performed; and any other information requested by HCC (the invoice showing the Fee owed and all attachments and descriptions and other information to be included with the submittal of the invoice collectively shall be referred herein as "Invoice"). Additionally, to the extent that Contractor has employed any subcontractors in accordance with its obligation to comply with HCC's Small Business Development Program, Contractor shall obtain and submit to HCC waivers from any subcontractors so employed when that portion of the Services or Work Product assigned to that subcontractor has been completed. No final payment of the Fee or any portion thereof shall be paid to the Contractor without submission to HCC of waivers from each subcontractor who performed any work or furnished any equipment or supplies for the Project. The Contractor shall sign each Invoice stating that to Contractor's knowledge, information, and belief, the Services has been completed in accordance with terms and conditions of the Contract.

5.4 Upon receipt of the Invoice, the HCC Representative shall review same and if he/she agrees that the Services have been performed in a satisfactory manner, and the Work Product thereof is acceptable, the Invoice shall be processed for payment. The Fee or applicable an undisputed portion thereof shall be paid within thirty (30) days from receipt of the Invoice. If Services or Work Product has not met the satisfactory approval of the HCC Representative, current and future payments of the Fee shall not be made until both Parties agree that Services have been completed in a satisfactory manner or the Work Product is acceptable. Notwithstanding anything contained herein, no payment of amounts owed hereunder shall be considered past due or not paid when due except in accordance with Section 2251.021 of the Texas Government Code.

5.5 In the event of termination, or if the Term of the Contract ends on a date that is not a full month after the end of the previous Fee period, or for any other reason for which the Services were rendered for only a part of a month, the Fee for that month shall be prorated for the period by dividing the Anticipated Fee by 264 and multiplying the result by the number of days in the month covered by the period for which the Contractor performed Services that month.

5.6 The acceptance of final payment of the Fee shall constitute a waiver of any claim the Contractor may have against HCC that the Contractor has not previously identified in a notice of claim or demand. HCC reserves the right to retain final payment for thirty (30) days pending successful completion of all assigned tasks, and approval from HCC Representative.

6. **APPLICABLE LAW**

6.1 The Contractor agrees to perform the Services in compliance with all applicable federal, state, and local laws, implementing regulations, executive orders, and interpreting authorities including, but not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; the Age Discrimination Act of 1975; the Americans with Disabilities Act; The Family Educational Rights and Privacy Act of 1974; the Texas Government Code; the Texas Local Government Code; and all applicable HCC policies and procedures ("Applicable Laws" or "Applicable Law").

7. **RECORDS AND RECORDKEEPING; STATE AUDITING**

7.1 The Parties shall comply with all Applicable Laws regarding Project records including, but not limited to, the Family Educational and Privacy Rights Act ("FERPA"), the Freedom of Information Act ("FOIA"), the Texas Public Information Act ("TPIA"), and the Texas Records Retention laws ("RR laws").

7.2 All records and reports either generated, prepared, assembled, or maintained by the Contractor in relation to the Project will be available for review, inspection, and audit by the

HCC and its auditors. Copies will be made available upon request and in conformity with FERPA, the FOIA, the TPIA, and the RR laws.

7.3 Contractor understands that acceptance of funds under the Contract constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor") to conduct and audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

8. CONFIDENTIALITY

8.1 As used herein, Confidential Information shall mean all information that is disclosed by either Party ("disclosing Party") to the other Party ("receiving Party"), including without limitation, trade secrets; know how; business and product plans; student information; marketing information and other confidential or proprietary business information, including without limitation all such information relating to either Party's governing board, and their respective clients, customers, and employees. Confidential Information shall not include information which: (a) is information already known by or in the possession of the receiving Party and which was acquired in a lawful manner other than subject to any ongoing obligation of confidentiality already in the recipient Party's possession at the time of disclosure thereof; (b) is information which is now or hereafter becomes a part of the public domain through no wrongful act or omission of the receiving Party or those acting in concert with the receiving Party or later becomes part of the public domain through no fault of the recipient Party; (c) is information lawfully received, without ongoing obligation of confidentiality, from a third party who is free to disclose it received from a third party having no obligations of confidentiality to the disclosing Party; (d) is information which the receiving Party can show predates disclosure thereof by the disclosing Party or had been independently developed entirely without reference to confidential information received from the disclosing Party independently developed by the recipient Party; or (e) is disclosed pursuant to any judicial or governmental order, required by law or regulation to be disclosed, including, but not limited to, the PIA, provided that, to the extent permitted by law, the receiving Party gives the disclosing Party sufficient prior notice to contest such order.

8.2 Each Party will use reasonable efforts to prevent the disclosure of any of the other Party's Confidential Information to third parties, but in no event shall those efforts be less than those employed by that Party to protect its own confidential information of like kind. Except as may be required by law, the recipient Party's obligation shall be for a period of three (3) years from receipt of the Confidential Information.

8.3 The provisions of this Section 8 survive the expiration or earlier termination of this Contract.

9. DISCLOSURE OF CERTAIN INFORMATION

9.1 To the extent that the Contractor comes into possession of student educational records and/or any personally identifiable information of a student incidental to its Services under this Contract, Contractor agrees to comply with all requirements of the FERPA and shall not disclose any such information to a third party.

9.2 In the event that HCC is required to furnish information or records pursuant to the PIA, Contractor shall furnish all such information and records to HCC and HCC shall have the right to disclose such information and records.

9.3 The provisions of this Section 9 survive the expiration or earlier termination of this Contract.

10. **INTELLECTUAL PROPERTY**

10.1 This Contract is a work-for-hire in which Contractor provides Services to HCC. Any documents, data, work product(s), deliverables, designs, implementation, know how, or any other tangibles and intangibles prepared, designed, or produced by the Contractor in performing the Services under this Contract ("Work Product") are HCC's Property. Neither the Contractor nor any subcontractor, consultant, or employee of the Contractor shall own or claim a copyright or any other form of intellectual property right in the Work Product, and HCC will own them and have all common law, statutory, and other reserved rights, in addition to the copyright, upon creation of the Work Product. To this end, Contractor agrees and does hereby assign, grant, transfer, and convey to HCC, its successors and assigns, Contractor's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. Contractor confirms that HCC shall own Contractor's right, title, interest in and to, including the right to use and reproduce, to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "Work Made for Hire" as defined in 17 U.S.C. § 201(b). Contractor shall obtain a similar grant of rights in favor of HCC from any subcontractor performing Services on this Project.

10.2 The provisions of this Section 10 survive the expiration or earlier termination of this Contract.

11. **INDEMNIFICATION**

11.1 General Indemnification. **CONTRACTOR AGREES TO INDEMNIFY, RELEASE, AND HOLD HCC AND HCC'S TRUSTEES, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, AND STUDENTS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, AND LIABILITIES (each as used herein shall be referred to as "Claim") OF ANY TYPE OR ANY NATURE WHATSOEVER (INCLUDING COSTS AND REASONABLE LEGAL AND EXPERT FEES), INCLUDING FOR DAMAGE TO, LOSS OF, OR DESTRUCTION OF ANY PROPERTY OR HARM TO ANY PERSON, ARISING FROM, IN CONNECTION WITH, OR ANY WAY INCIDENT TO THIS CONTRACT, WHETHER BY ANY BREACH OR OTHER FAILURE OR AN ACT OR OMISSION OF CONTRACTOR.**

11.2 Intellectual Property Indemnification. Contractor warrants, represents, and covenants that HCC shall have all rights to the Work Product delivered to HCC and that the Work Product will not infringe upon and is not a misappropriation of the rights of any third party. **IN THE EVENT A CLAIM IS MADE AGAINST HCC FOR INFRINGEMENT OR MISAPPROPRIATION, CONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD HCC HARMLESS FROM SUCH CLAIM.** Additionally, if HCC cannot use the Work Product as a result of the infringement or misappropriation, Contractor, at its sole expense, will either:

- (a) obtain a license for HCC to use the infringing item;
- (b) provide a non-infringing work-around or an original replacement of Work Product, free of any alleged misappropriation; or
- (c) refund to HCC all Fees paid.

11.3 Contractor's liability under this Section 11 shall not be limited by the amount of Contractor's insurance coverage.

11.4 The provisions of this Section 11 survive the expiration or earlier termination of this Contract.

12. **DISPUTES; MEDIATION**

a. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by HCC and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

(1) Contractor's claims for breach of this Contract that the parties cannot resolve pursuant to other provisions of this Contract or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by subchapter B of Chapter 2260, to HCC in accordance with the notice provisions in this Contract. Contractor's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that HCC allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The HCC Office of General Counsel, or such other officer of HCC as may be designated from time to time by HCC by written notice thereof to Contractor, shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims.

(2) If the parties are unable to resolve their disputes under subparagraph (1) of this section, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Contract by HCC.

(3) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Contract by HCC nor any other conduct, action or inaction of any representative of HCC relating to this Contract constitutes or is intended to constitute a waiver of HCC's or the state's sovereign immunity to suit and (ii) HCC has not waived its right to seek redress in the courts.

b. The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

c. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part. HCC and Contractor agree that any periods set forth in this Contract for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.

d. It is agreed that such process is not invoked if HCC initiates the dispute by first bringing a claim against Contractor. If HCC makes a claim against Contractor and Contractor then makes a counterclaim against HCC as a claim under Chapter 2260 and in compliance therewith, the HCC's original claim against Contractor does not become a counterclaim and is not subject to the mandatory counterclaim provisions of Chapter 2260 of the Texas Government Code.

13. **NOTIFICATION OF CRIMINAL HISTORY**

13.1 Contractor must give prior written notice to HCC if the Contractor, or any owner, or operator of Contractor, or any employee who will be performing Services under this Contract

has been convicted of a felony. The notice required hereunder shall include a general description of the criminal offense.

13.2 HCC has the right to terminate this Contract immediately if it determines that Contractor has failed to give the notice required under Section 13.1.

14. **TAXES; INDEBTEDNESS**

14.1 In accordance with Texas Government Code Section 2155.004, Contractor must not be delinquent in any taxes owed i.e. (Franchise Tax, Property Tax, or other indebtedness owed to HCC). Delinquent taxes or other indebtedness shall be considered a breach of this Contract.

15. **CHILD SUPPORT**

15.1 In accordance with Texas Family Code Section 231.006 , 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, material, 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 business or entity named in this Contract is not ineligible to receive payment from the state and acknowledges that this Contract may be terminated any payment may be withheld if this certification is inaccurate.

16. **INSURANCE REQUIREMENTS**

16.1 Contractor shall provide insurance in the types and amounts and in accordance with the requirements set forth on the attached Exhibit B.

16.2 Contractor's failure to comply with the requirements of this Section 16 shall be considered a breach of this Contract.

17. **RELATIONSHIP OF THE PARTIES**

17.1 Nothing herein will be construed to create a partnership or joint venture by or between HCC and the Contractor. Neither party will be the agent of another except to the extent otherwise specifically provided by this Contract. The Contractor does not have either the express or implied authority, will in any case represent to third parties, and will whenever needed disclaim to such parties, any ability to bind the HCC to any duty imposed by contract, unless the Board has specifically authorized such action at a Board meeting held in accordance with the Texas Open Meetings Act (appearing in minutes of such meeting).

17.2 The Contractor shall be solely responsible for the benefits and entire compensation of its personnel, including the withholding and payment employment taxes (income tax and social security), worker's compensation, disability, and any similar taxes, benefits, and expenses associated with employment. The Contractor agrees to indemnify HCC against any Claim asserted against or incurred by HCC in defending the Claim made against HCC for the benefits, compensation, taxes, or any other costs of or related to Contractor's personnel.

17.3 The provisions of this Section 17 shall survive expiration or earlier termination of this Contract.

18. **CONFLICTS OF INTEREST**

18.1 The Contractor warrants, represents, and covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the Project, which would conflict in any manner or degree with the performance of its Services hereunder. The Contractor further warrants, represents, and covenants that, in performing this Contract, it will employ no person who has any such interest.

18.2 The Contractor shall comply with the obligations of Texas Local Government Code Chapter 176.

19. **DEBARMENT**

19.1 The Contractor warrants, represents, and covenants that it is not listed on the General Services Administration's List of Parties Excluded from Federal Procurement and is not otherwise debarred, suspended, or excluded by state or federal agencies or declared ineligible for government contracting under statutory or regulatory authority.

20. **SMALL BUSINESS DEVELOPMENT PROGRAM**

20.1 To the extent applicable, Contractor shall comply with HCC's Small Business Development Program and will utilize small businesses (as that term is defined in the attached Exhibit C) for Services comprising [what is the goal? If there is no small business component, strike this clause entirely, and delete all references to Exhibit C, Appendix 1, 2, and 3 and delete their pages] (%) of the total of all Fees.

20.2 Contractor shall take affirmative steps to assure that small businesses are used when possible as sources of services under this Contract. Additionally, the Contractor will document all affirmative steps taken to solicit small businesses and will forward this documentation along with the names of such subcontractors to the HCC Representative.

21. **NOTICE**

21.1 All notices and other communications required by the terms of this Contract will be in writing and sent to the Parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees in the manner as set forth herein). Unless otherwise agreed in writing by the receiving party, notice may be given by: (i) certified or registered mail, postage prepaid, return receipt requested; (ii) reputable overnight carrier, postage prepaid; (iii) facsimile (with confirmation of transmission by sender's facsimile machine); or (iv) personal delivery (with written receipt confirming such delivery). Notice will be deemed to have been given (i) two business or school days (any date on which HCC is officially open for business) after mailing; (ii) on the date of personal delivery; or (iii) on the date of transmission of a facsimile if on a business or school day during normal business hours (or, if not, the next succeeding business day). Unless otherwise agreed in writing by the receiving party, electronic mail does not constitute official notice under this Contract. The addresses of the Parties for such notices shall be:

To: **CONTRACTOR**

Attn.:
Address:

To: **Houston Community College**

Procurement Operations Department
Attn.: Executive Director of Procurement Operations
3100 Main Street
Houston, Texas 77002

With a copy to:

Houston Community College
ATTN: HCC Project Manager
3100 Main Street
Houston, Texas 77002

22. **NO ASSIGNMENT**

22.1 Neither this Contract nor any duties or obligations hereunder shall be assignable by either Party without the prior written consent of the other Party.

23. **NO WAIVER OF IMMUNITY**

23.1 Nothing contained in this Contract nor the execution of this Contract, or the performance of any obligation hereunder shall operate to or be deemed to waive any immunity or defense HCC trustee, officer, employee, volunteer, representative, or agent may be entitled under law.

24. **NO WAIVER OF BREACH**

24.1 No waiver of a breach of any provision of this Contract shall be construed to be a waiver of any breach of any other provision or be deemed to constitute a continuing waiver of same. No delay in acting with regard to any breach and any provision shall be construed to be a waiver of such breach or requirement that such obligation be performed.

25. **SEVERABILITY OF PROVISIONS**

25.1 If any term or provision of this Contract is deemed invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

26. **GOVERNING LAW**

26.1 This Contract and the rights and obligations arising hereunder shall be governed by, construed and enforced in accordance with the laws of the State of Texas without regard to the conflicts or choice of law principles thereof.

27. **JURISDICTION; VENUE**

27.1 The Parties irrevocably and unconditionally consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction located in Houston, Harris County, Texas, shall be an appropriate and convenient place of venue, and shall be the sole and exclusive place of venue, to resolve any dispute with respect to this Contract.

28. **AUTHORIZATION**

28.1 Each Party represents and warrants to the other that the execution of this Contract has been duly authorized, and that this Contract constitutes a valid and enforceable obligation of such Party according to its terms.

29. **NO THIRD-PARTY RIGHTS**

29.1 This Contract is made for the sole benefit of HCC and Contractor and their respective successors and permitted assigns. Nothing in this Contract shall create or be deemed to create a relationship between the Parties to this Contract and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

30. **HEADINGS AND CAPTIONS**

30.1 The headings and captions appearing in this Contract have been included only for convenience and shall not affect or be taken into account in the interpretation of this Contract.

31. **COUNTERPARTS**

31.1 It is understood and agreed that this Contract may be executed in identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one document

32. **AMENDMENTS**

32.1 Any amendment to the Contract must be in writing and signed by both Parties. No waiver, alteration or modification of any of the provisions of this Contract shall be binding on any Party unless in writing and signed by the Party against whom enforcement of such waiver, alteration, or modification is sought.

33. **EXHIBITS**

33.1 The attached exhibits are incorporated herein for all purposes:

- | | |
|-----------|--|
| Exhibit A | Scope of Services |
| Exhibit B | Insurance Requirements |
| Exhibit C | HCC's Small Business Development Program |

[the balance of this page is left intentionally blank]

34. **ENTIRE AGREEMENT**

34.1 This Contract supercedes all prior contracts, agreements, and discussions, whether verbal or written, relating to the subject matter contemplated under this Contract and constitutes the entire agreement between the HCC and the Contractor with regard to these matters.

IN WITNESS WHEREOF, the Parties have executed this Contract effective as of the Effective Date:

HOUSTON COMMUNITY COLLEGE

By: _____ Date _____
Chancellor

CONTRACTOR-CONSULTANT

By: _____ Date _____
Name:
Title:

DRAFT

Exhibit A

Scope of Services

DRAFT

Exhibit B

Insurance Requirements

1. Insurance; Bonds.

1.1. Contractor shall maintain, for the full term of the Contract:

1.1.1. Errors and omissions insurance to be carried by technology professionals and consultants for the project with limits of at least one million dollars (\$1,000,000) single occurrence, with a deductible in an amount not to exceed the sum of twenty-five thousand Dollars (\$25,000). The project-specific insurance shall be maintained for a period of not less than one (1) year after the completion of the Services to be performed under the Contract.

1.1.2. Comprehensive or commercial general liability insurance, with limits not less than \$2,000,000 per each occurrence, combined single limit, for bodily injury and property damage. Such policy/ies shall include within its scope coverage for claims including, but not limited to:

1.1.2.1. damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Contractor's employees, or

1.1.2.2. damages arising from personal or advertising injury

applicable to the Contractor's obligations under the Contract, including liability assumed by and the indemnity and defense obligations of the Contractor and subcontractors.

1.1.3. Comprehensive or business automobile liability insurance, with limits not less than \$1,000,000 per each occurrence, combined single limit, for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles.

1.1.4. Workers' Compensation, including employers' liability insurance, with limits not less than \$1,000,000 each accident, occurrence or disease. Notwithstanding the foregoing, Contractor shall carry Worker's Compensation in the amounts and as required under Texas law.

1.2. General liability insurance shall be on an occurrence basis. The coverage afforded thereby shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

1.3. Insurance companies shall be legally licensed and admitted through the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas. All insurance companies shall have an "A-VIII" in Bests Rating Guide and shall be satisfactory to HCC.

- 1.4. Before commencement of the Services under this Contract, certificates of insurance shall be furnished to HCC, with complete copies of policies to be furnished to HCC promptly upon request.
- 1.5. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices. Certificates and insurance policies shall include the following clause: "This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to HCC. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice." Each policy except worker's compensation and professional liability shall add HCC, HCC's employees, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them as additional insured's.
- 1.6. Should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such annual general aggregate limit shall apply separately to the Project (with the insurer's endorsement provided to HCC) or shall be two times the occurrence limits stipulated.
- 1.7. If Contractor fails to maintain any required insurance, HCC, at its sole option and without incurring any further obligation to provide insurance, may take out insurance in such type and amount and to deduct the amount of the premium for such insurance from any Fees due the Contractor.

Exhibit C

Small Business Development Program

Overview

HCC has adopted a Small Business Development Program for small businesses attempting to provide goods and/or services as prime contractors or as subcontractors to other prime contractors to HCC. The program is designed to prevent discrimination in contracting and to ensure that small, underutilized, and disadvantaged businesses are informed and prepared to compete for HCC procurements. HCC will neither discriminate nor select vendors on the basis of race, color, national origin, religion, gender, age, or disability in its procurement selection process. The subcontracting goal applies to all vendors regardless of their status.

If not otherwise defined in this Exhibit C, any capitalized terms used herein shall have the same meaning as set forth in the Contract with an effective date of _____ ("Contract").

Small Business Compliance

The Contractor hereby agrees to attain small business participation in the amount of 35% of the total Contract amount. The Contractor agrees to enter into agreements for the Services and with the mutually agreed upon Milestones established in Exhibit A. To ensure compliance with any stated small business participation goal, the Contractor shall be required to provide reports as may be required by the Contract and meet with the HCC Representative at the 50% and 75% completion phases/dates of the Project, to verify small business participation activity and to ensure compliance with the stated small business goal. Additionally, the Contractor agrees to enter into subcontractor agreements for the Services that are identified on the form entitled Contractor and Subcontractor/Supplier Participation. The Contractor's failure to comply with the aforementioned small business participation requirements may result in:

- Withholding of payment until such compliance is achieved or a waiver of the provisions is provided by HCC; and/or.
- Revocation of any benefits and incentives under the program or suspension or termination of the Contract in whole or in part.

Prime Contractor/Contracts for Services

The Contractor must perform a minimum of 30% of any contract for services with its labor force and or demonstrate management of the Contract for services to the satisfaction of HCC.

Internship Program

The Contractor is encouraged to make a commitment to utilize certain HCC student(s) in an internship capacity for the provision of Services under the Contract. The Contractor shall be expected to pay the student(s) at least the minimum wage required by law. HCC shall provide the Contractor with the name(s) of student(s) eligible to participate in the internship program. For additional information regarding the internship program, please contact Dr. Freddie Wade, Director of Workforce Program Initiatives at (713) 718-7596.

Attached to this Exhibit C are the following forms, which shall be used for reporting purposes:

Appendix 1	Contractor and Sub-Contractor/Supplier Participation Form
Appendix 2	Progress Assessment Report for Work Sub-Contracted Form
Appendix 3	Subcontractor Payment Certification Form

**APPENDIX #1
HOUSTON COMMUNITY COLLEGE**

CONTRACTOR AND SUBCONTRACTOR PARTICIPATION FORM

Bidder/offeror presents the following participants in this solicitation and any resulting Contract. All bidders / offerors, including small businesses bidding as prime contractors, are required to demonstrate good faith efforts to include eligible small businesses in their bid/proposal submissions.

CONTRACTOR	Specify in Detail Type of Work to be Performed	Indicate below, the following: Small Business (SB) and Certification Status, if any (i.e. SB – COH, METRO, etc.)	Percentage of Contract Effort	Price
Business Name:				
Business Address:				
Telephone No.				
Contact Person Name/E-mail:				
SMALL BUSINESS SUBCONTRACTOR(S) (Attach separate sheet if more space is needed.)				
Business Name:				
Business Address:				
Telephone No. :				
Contact Person:				
NON-SMALL BUSINESS SUBCONTRACTOR(S) (Attach separate sheet if more space is needed.)				
Business Name:				
Business Address:				
Telephone No.:				
Contact Person				
NON-SMALL BUSINESS SUBCONTRACTOR(S) (Attach separate sheet if more space is needed.)				
Business Name:				
Business Address:				
Telephone No. :				
Contact Person:				
NON-SMALL BUSINESS SUBCONTRACTOR(S) (Attach separate sheet if more space is needed.)				

Business Name: _____ Submitted By (Name): _____

Contractor 's Price/Total: \$ _____
 Small Business
 Subcontractor (s)
 Price/Total: \$ _____
 Non-Small Business
 Subcontractors Price/Total: \$ _____
 Grand Total: \$ _____

Rev. 4.2014
 Addressee: Office of General Counsel
 Professional/Consulting Services Agreement
 Telephone/Fax: _____ Date: _____

**APPENDIX #2
HOUSTON COMMUNITY COLLEGE
SUBCONTRACTOR PROGRESS ASSESSMENT FORM**

Project No./Title: _____

Reporting Period: From _____ **To** _____

Prime Contractor: _____

Total Contract Amount (Prime Contractor): \$ _____

Instructions: This form shall be completed and signed by an officer of the prime contractor's company and shall be attached to each invoice for payment submitted to HCC's Accounting Dept.

List Subcontractor(s) name below	Total Subcontract Amount	Amount Paid This Period	Total Paid to Date
	\$	\$	\$

I hereby certify that _____ has made timely payments from proceeds of prior payments, and will
(Prime Contractor)

make payments within five (5) calendar days of receipt of funds now due from HCC to our subcontractor(s) in accordance with the contractual arrangements with them.

Signature: _____

Name (Print or Type): _____

Title: _____

Date: _____

Telephone: _____

APPENDIX #3

**HOUSTON COMMUNITY COLLEGE
SUBCONSULTANTS/SUBCONTRACTORS/SUPPLIERS PAYMENT CERTIFICATION FORM**

- Instructions:** 1. This form shall be completed and signed by an officer of the subcontractor's company for each payment received from the prime contractor and shall be returned to the prime contractor for its submission to HCC.
2. The prime contractor shall attach this completed form to each invoice for payment submitted to HCC's Accounting Dept.

PROJECT NO./TITLE: _____

NAME OF SUBCONTRACTOR: _____

ADDRESS: _____

I hereby certify that the above firm has received payment on _____ from _____
(Date) (Prime Contractor)

In the amount of \$ _____ as full payment of our Invoice No. _____ dated _____

for work performed during _____ under Contract/Project No. _____
(Enter Time Period)

Signature: _____

Name (Print or Type) : _____

Title: _____

Date: _____

Telephone: _____