

Professional Services Contracts with an Individual or Sole Proprietor

Date: September 30, 2009

From: Christine A. Jackson

To: Vice Chancellors, Deans, Directors and Department Heads

UNL has developed a standard contract for professional services contracts with an individual or sole proprietor. This contract is attached below. It may be adapted to address the particular needs of your college/department.

In the past, UNL has used external consultants and/or students to develop software, multimedia projects and other copyrightable works. Recently, there have been several instances where external consultants or students have been hired without a written, signed agreement to govern the terms of the work that was produced. This is a letter to you to note that it is strongly advisable that work of this type be done under the terms of a proper agreement.

The failure of the University to obtain a written agreement dealing with issues such as ownership and use of works has been detrimental in several cases. For example, a University department recently hired a computer software developer to design some software for an educational tool the department was working on. The work was done without a written, signed agreement. When the University sought to use the software, the developer threatened to sue the University. Since no written agreement was in place, all title remained with the developer and the developer had never granted the University permission to use the work.

Some of this confusion is likely due to a misunderstanding of copyright law and the ownership of copyrightable works. Ownership of copyrightable works is usually retained by the individual or individuals who create the work unless they are contractually bound to transfer rights of use or ownership to another individual or entity. Works created by University employees in the course and performance of their job duties are addressed in Regents Policy 4.4.1, Ownership of Intellectual Property. Works created by individuals who are not employees of the University do not fall within this policy. In the absence of a written agreement that provides for the transfer of rights or ownership to the University, all rights to works created by individuals who are not University employees will probably be retained by those individuals, and the University will probably not have right to use these works in any manner even though the university may have paid for their creation.

Therefore, it is advisable that any proposed arrangement for the use of individuals external to the University to create materials for the University should proceed with a proper written and signed agreement that addresses the issue of rights and ownership. To assist in resolving this problem, Turan Odabasi, Special Associate General Counsel for Intellectual Property (472-0259), is available to provide all necessary services, including providing standard agreements for your use, to help facilitate and expedite the process of securing written, signed agreements in these situations.

Thank you.

UNIVERSITY OF NEBRASKA – LINCOLN

CONSULTANT AGREEMENT

This Agreement sets forth the terms between The Board of Regents of the University of Nebraska for and on behalf of the University of Nebraska-Lincoln and its _____, having an address at 3835 Holdrege Street, Lincoln, NE 68583 (the “University”) and _____, having an address at _____ (the “Consultant”) with regard to the performance by Consultant of the services contemplated herein.

RECITALS

WHEREAS, the University desires to obtain the services of the Consultant; and

WHEREAS, the Consultant claims to have expertise and experience to provide such services for the University;

THEREFORE, the University and the Consultant hereby agree to the following terms, obligations and conditions:

- 1. Description of Services.** The Consultant agrees to perform such professional services, with the standard of professional care and skill customarily provided in the performance of such services, and shall use its best efforts to render the services and provide the deliverables identified in Section 1 of Exhibit A to this Agreement (the “Services”), attached hereto and incorporated by reference herein, to the University. The Consultant agrees to perform the Services to the satisfaction of the University from time to time during the term of this Agreement.
- 2. Payment.** In full consideration for the Services performed by the Consultant under this Agreement, the University shall pay or cause to be paid to the Consultant a fee of _____ dollars (\$_____). The total fee and any incidentals shall be payable pursuant to the schedule identified in Section 2 of Exhibit A to this Agreement, attached hereto and incorporated by reference herein, and upon submission of an invoice to University by Consultant. Along with its invoice, the Consultant shall submit adequate receipts and documentation as requested by the University to support reimbursement of all previously agreed upon incidental or reimbursable expenses. All payments due Consultant shall be made on a net 30 day basis. The Consultant agrees that it is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and that the University will not deduct such taxes from any payments to the Consultant hereunder.
- 3. Term.** The Services to be performed by the Consultant under this Agreement shall start no later than _____ and shall be completed no later than _____. Time is of the essence in this Agreement. This term may be extended by written agreement of the University.
- 4. Confidentiality.** "Confidential Information" shall mean any materials, written information, and data marked "Confidential" by the University or non-written information and data disclosed by the University that is identified at the time of disclosure to the Consultant as confidential and is reduced to writing and transmitted to the Consultant within thirty (30) days of such non-written disclosure. The Consultant agrees to use the same degree of care it uses to protect its own confidential information and, to the extent permitted by law, to maintain the Confidential Information in strict confidence for a period

of three (3) years from the date of termination of this Agreement. The obligations of this paragraph do not apply to information in the public domain or information that is independently known, obtained or discovered by the Consultant, or that is hereafter supplied to the Consultant by a third party without restriction.

5. Ownership of Work Product and Intellectual Property Rights. The Consultant shall have no interest in the deliverables provided under this Agreement, and the University shall be the sole owner of all such deliverables, including all works authored, produced, developed or reduced to practice by the Consultant during its' performance of the Services (the "Work Product"). Furthermore, the University shall be the sole owner of any and all intellectual property rights, including without limitation, all patent, copyright, trademark and trade secrets rights in and to the Work Product. The University shall have the right to secure appropriate registration and protection for any and all intellectual property rights in and to the Work Product. Accordingly, the Consultant hereby expressly assigns all right, title and interest in and to the Work Product, including any and all patent, copyright, trademark and/or trade secret rights thereto, to the University, and agrees to execute all documents required to evidence such assignment. Without limiting the foregoing, the Consultant hereby grants to the University the sole and exclusive right throughout the world, in all languages, and in perpetuity, to use the Work Product pursuant to this Agreement. The Consultant also hereby waives any and all claims it may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of "droit moral" with respect to the use, results and/or proceeds of the Consultant's services and Work Product. This provision shall survive the termination of this Agreement.

6. Termination. Either party may terminate this Agreement for material breach on thirty (30) days written notice, during which period the breaching party may cure. Additionally, either party may terminate this Agreement for its convenience upon sixty (60) days prior written notice to the other party. Upon termination, the University shall promptly pay CONSULTANT for all services rendered and costs incurred up to and including the effective date of termination.

7. Representations and Warranties. The Consultant represents and warrants that in performing the Services it will not be in breach of any agreement with a third party. The Consultant also represents and warrants that no third party has any rights in, to, or arising out of, the Work Product rendered pursuant to the performance of the Services. Author agrees to hold University and its respective assigns and licensees harmless from any loss, damage or expense, including court costs and reasonable attorneys' fees, that University and its assigns and licensees may suffer as a result of a breach or alleged breach of the foregoing warranties or as a result of claims or actions of any kind or nature resulting from the use in any way of the Work.

8. Independent Contractor. The Consultant is an independent contractor and is solely responsible for maintenance and payment of any and all taxes and insurances and the like that may be required by federal, state or local law with respect to any sums paid hereunder. The Consultant is not the University's agent or representative and has no authority to bind or commit the University to any agreements or other obligations.

9. Mutual Indemnification. Each party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Each party therefore agrees that it will assume all risk and liability to itself, its agents or employees for any injury to persons or property resulting in any manner from the conduct of its own operations and the operations of its agents or employees under this Agreement, and for any loss, cost, or damage caused thereby during the performance of this Agreement.

10. Insurance. The Consultant shall at its own expense obtain and maintain general commercial liability insurance against claims for bodily injury, death and property damage with limits of not less than one million dollars (\$1,000,000) per occurrence, and three million dollars (\$3,000,000) general aggregate, to cover such liability caused by, or arising out of, activities of the Consultant and its agents and/or employees while engaged in or preparing for the provision of the Services. The Consultant shall furnish to the University certificates of insurance evidencing that such insurance has been procured prior to commencement of such work.

11. Notice. Any notice to either party hereunder shall be in writing and shall be served either personally or by registered or certified mail addressed to the following individuals:

To the Consultant:

<Name>

<Address>

<City, State, Zip>

To the University:

<Name>

<Address>

<City, State, Zip>

12. Assignment. This Agreement is non-assignable and non-transferrable. Any attempt by either party to assign its obligations hereunder shall be void.

13. Amendment. This Agreement constitutes the entire understanding between the Consultant and the University with respect to the subject matter hereof and may not be amended except by an agreement signed by the Consultant and an authorized representative of the University.

14. Governing Law and Forum. This Agreement shall be governed by the laws of the State of Nebraska. Any legal actions brought by either party hereunder shall be in the District Court of Lancaster County, Nebraska.

15. Consultant Attestation. Effective October 1, 2009, the State of Nebraska requires that every contract between a public employer and individual or sole proprietor shall contain a provision requiring the public contractor and its subcontractors to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska (Exhibit B). If the attestation indicates that the individual or sole proprietor is a qualified alien, then the University will verify through the U.S. Department of Homeland Security's Systematic Alien Verification for Entitlements Program (SAVE@), or an equivalent Homeland Security program, prior to any contract approval or signature. No professional services contract will be executed by the University without an attestation form and a SAVE confirmation, if required.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement as of this _____ day of _____, 200__.

The Board of Regents of the University of Nebraska (the University)

Signature: _____

Printed Name: Christine A. Jackson

Title: Vice Chancellor, Business and Finance

Date: _____

<Full Legal Name of Consultant> (the Consultant)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

Section 1 – Description of Services

Section 2 – Payment

Date _____
Campus Department _____
Campus Address _____
Dept Contact _____
Email Address _____
Campus Phone _____

Sole Provider
Name _____
Street Address _____
City, State, Zip _____
Email Address _____
Phone Number _____
Fax Number _____

United States Citizenship Attestation Form

For the purpose of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

- I am a citizen of the United States.
- I am a qualified alien under the federal Immigration and Nationality Act, my immigration status and alien number are as follows:
_____, and I agree to provide a copy of my USCIS documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete, and accurate and I understand that this information may be used to verify my lawful presence in the United State

Print Name _____
(first, middle, last)

Signature _____

Date _____