

# [A-2] CONTRACT

## UUOOI CONTENT PROVIDER AGREEMENT & STANDARD CONTRACT

**THIS CONTENT PROVIDER AGREEMENT** (hereinafter "Agreement") made this \_\_\_ day of \_\_\_\_\_ ("Effective Date") by and between:

**Handong Global University**, an institution registered in the Republic of Korea ("South Korea") by the Ministry of Education, Science and Technology, and having its principal address in, Pohang, Gyeongbuk, South Korea, 791-708 (hereinafter "The University"),

and

**Professor** \_\_\_\_\_, an employee of \_\_\_\_\_ [University or College], in the \_\_\_\_\_ [Department], and having his/her business address at \_\_\_\_\_  
(hereinafter "Professor," "Instructor," or "Content Provider," interchangeably)

### RECITALS

**WHEREAS**, The University desires to engage the Services of the Content Provider to provide educational course material to The University as specified below,

**WHEREAS**, Content Provider desires to contract with The University to perform such Services,

NOW, THEREFORE, in consideration of the mutual covenants herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### DEFINITIONS

1. **"Content"** refers to the educational course material to be provided by the Content Provider under this Agreement.
2. **"Content Provider"** is the instructor providing the educational Content under this Agreement.
3. **"Creative Commons"** is a Massachusetts, (U.S.A.) Corporation, with a headquarters in California (USA), and is the company whose various licenses of copyrighted materials govern the sharing and use of educational Content between all Content Providers and The University. The Creative Commons license, as selected by the Content Provider herein, is an integral part of the understanding of the Parties for the Content Provider's furnishing of educational Content under this Agreement, and is hereby incorporated by reference into this Agreement.
4. **"Parties"** refers to those person(s), entities named above in the introductory section of this Agreement. "The University" as used herein includes any of its Departments or initiatives, such as UUOOI, and any affiliated institutions of Handong Global University.

5. **“UUOOI” (“UNESCO-UNITWIN OCW/OER INITIATIVE”)** refers to the specifically designated body within The University having specific oversight for this educational program, in all its aspects. **UUOOI** is also the specific initiative at Handong Global University for implementing this educational Content sharing program, conducted under the recognition of the United Nations Educational, Scientific, and Cultural Organization (“UNESCO”), and UNESCO’s “University Twinning and Networking Programme” (“UNITWIN”). Information on UNESCO and UNITWIN is available on the internet. “OCW” stands for Open CourseWare and “OER” stand for Open Educational Resources .

6. **“UUOOI Review Committee”** refers to that part of the UUOOI specifically assigned to the task of reviewing the Content Provider’s proposal for providing Content under this Agreement.

7. **“Writing” or “Written”** in this Agreement refers to written material either in print (hard copy), or electronic form, and includes any written material or text stored in an electronic record or inscribed in any tangible medium.

## **TERMS AND CONDITIONS**

### **1. Term/Termination**

1.1 The term of this Agreement shall be one academic semester or as otherwise agreed, with a maximum allowable extension, based on The University’s approval, up to a total period of six months. This Agreement may be renewed after that time by mutual agreement of the Parties, in writing.

1.2 The University shall have the right to terminate this Agreement for cause shown, upon thirty days advance notice given to the Content Provider. Such cause shall be determined solely by The University and may include, without limitation, Content which The University deems as violating its ideals, aspirations, vision, mission, or its quality standards as an institution, as well as for any conduct of the Content Provider which The University deems inappropriate or unethical, and for any material breach of this Agreement.

### **2. Scope of Work**

The Content Provider shall perform the Services set forth in Exhibit A attached hereto (“Schedule of Services”). In addition, Content Provider shall furnish such Services specifically in accordance with any UUOOI manuals, information guides, instructions, procedural requirements and schedules (“information”) made available to the Content Provider as of the signing of this Agreement, or subsequently and as modifying same in accordance with Clause 12.2 below.

### **3. Compensation**

3.1 The University agrees to pay Content Provider for his/her Services under this Agreement in an amount determined according to an agreed schedule indicated in the Content Provider’s application and in the General Information previously furnished to the Content Provider. Such compensation is agreed to by The University upon its approval and acceptance of the Content Provider’s application, and not before.

Content Provider agrees and acknowledges that the maximum amount available under the agreed schedule may not exceed US \$1,500 (ONE-THOUSAND AND FIVE-HUNDRED US DOLLARS).

#### **4. Content Ownership Rights, Copyright, and License**

4.1 All Content made available through this UUOOI Content sharing initiative shall be licensed by the Content Provider through a Creative Commons license, which is a non-exclusive license. Content Provider shall retain the rights, title and interest in and to the Content worldwide (including, but not limited to, ownership of all copyrights and other intellectual property rights, such as any trademarks and patents associated with the Content), subject however to the specific restrictions contained in the Creative Commons license selected by the Content Provider. Such selection is made by the Content Provider in his/her application/proposal form submitted to The University for this Content sharing initiative. It is the Content Provider's duty to understand the licensing arrangement he/she selects. The University may assist the Content Provider with selection of a suitable license for his/her creative work, in advance, but it shall do so without incurring any liability whatsoever for its advice, which is given only as a professional courtesy. The licensing arrangement selected by the Content Provider in this initiative is hereby incorporated by reference and expressly made a part of this Agreement.

4.2 Content Provider warrants that his/her submission does not violate any intellectual property rights of third parties, including that of any original creative content providers whose work the Content Provider has incorporated in to his/her own, in accordance with Clause 5 below.

4.3 In addition to the above, The University shall retain, throughout the world, all right, title and interest in and to its own trademarks, service marks, trade names, and its other intellectual property, including any original content it has created, and including any goodwill associated with any of its interests herein. The Content Provider may not use any of the forgoing intellectual property, good will, or other interests of The University without a separate written authorization from The University (i.e., a limited license), in advance.

#### **5. Content Provider Warranties**

5.1 Content Provider warrants that he/she is authorized by his/her employing University, College, or Institute to enter into this Agreement, and shall furnish verification of his/her employment status and authorization to enter into this Agreement by completing the information and by signing the attached [A-3]Course Certificate.

5.2 Content Provider warrants that his/her Content furnished under this Agreement, and the Creative Commons license selected, does not and will not infringe upon any patent, copyright, trade secret, or other intellectual property interest of any third party. Content Provider also warrants that he/she will take all due and reasonable care to avoid infringing any intellectual property rights of any third party.

5.3 Content Provider agrees that it shall seek as much as possible to use and convey his/her original Content. In addition, Content Provider agrees and warrants that when incorporating any content of third parties in his/her Content, Content Provider shall not infringe any individual's intellectual property rights and shall give proper attribution to those sources and individuals in accordance with the law.

5.4 Content Provider warrants that any use whatsoever of this Content by The University, including UUOOI and its affiliates, will not violate or infringe any intellectual property rights of any other person.

5.5 Content Provider agrees he/she will have sole liability for any infringement contrary to this set or warranties in Clause 5 and in this Agreement. In the event of any breach of his/her warranties herein, the Content Provider agrees to indemnify and hold harmless The University in accordance with Clause 6. The University also reserves the right to delete any course materials and Content which is verified as infringing on the intellectual property rights of others, or violating the Content Provider's warranties and covenants in this Clause 5, or which is otherwise in violation of this Agreement.

5.6 THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED IN THIS AGREEMENT APART FROM THOSE IN CLAUSE 7.1, AND THE UNIVERSITY HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE THAT MAY HAVE BEEN ASSOCIATED WITH ITS INITIATIVE IN THIS AGREEMENT.

#### **6. Indemnity**

Content Provider shall defend, indemnify, and hold The University harmless from and against any liability, suits, claims, losses, damages and judgments, and shall pay all costs (including reasonable attorney's fees) and damages arising from a claim that the Content furnished by Content Provider infringes any third party's patent, copyright, trademark, trade secrets, or other intellectual property interest.

#### **7. Independent Contractor Status**

Content Provider is an independent contractor. No agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Content Provider has no authority or ability to bind or contract on behalf of The University, and shall not make any representations or warranties to third parties on behalf of The University.

#### **8. Limitation on Liability**

IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES OR DATA, OR ANY SPECIAL, PUNITIVE OR EXEMPLARY DAMAGE. THE UNIVERSITY'S LIABILITY, IF ANY, INCLUDING UUOOI AND ITS AFFILIATED INSTITUTIONS, SHALL, IN ALL CASES, BE LIMITED TO THE COMPENSATION IN CLAUSE 3 ABOVE TO BE PAID TO THE CONTENT PROVIDER. THE UNIVERSITY, SHALL NOT BE LIABLE TO THIRD PARTIES, AND IN ANY CASE SHALL BE ENTITLED TO INDMENITY BY THE CONTENT PROVIDER, IF FOUND SO LIABLE, PURUSANT TO CLAUSE 6 ABOVE.

## **9. Selection and Approval of Content, Applications**

The University maintains complete and sole discretion to accept or reject Content and applications submitted by the Content Provider. It has the right to reject any such Content and applications, if in its sole judgment, such Content or proposals are contrary to the vision, mission, educational goals, initiatives, and standards (including as to quality), of The University. It shall have this right without any recourse against UOOI, The University and its affiliate institutions and enterprises by either the Content Provider or any third party.

## **ADDITIONAL GENERAL TERMS AND CONDITIONS**

### **10. Assignment and Successors in Interest**

The Parties each agree that neither will attempt to assign this Agreement or any of its/his/her rights herein, or delegate any of its/his/her duties hereunder without the express written permission of the other. Subject to the forgoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the successors in interest of each of the Parties.

### **11. Confidential Information**

For information and materials not intended to be disseminated and shared as Content under this Agreement, the following confidentiality provisions apply. In connection with the provision of Services and related undertakings under this Agreement, it is understood that the Parties may exchange Confidential Information with each other, intentionally or unintentionally. Confidential Information is any information which is so intended by either of the parties, and indicated as such to the other party by proper Notice, in advance. Each of the Parties agrees to keep such Confidential Information secret and strictly confidential and not to disclose or reveal any Confidential Information to any third party for any reason. Such Confidential Information may include, without limitation, trade secrets and know-how, marketing strategies, branding, financial information, promotional and advertising information, and other proprietary information not intended as Content. It is understood by the Parties that Confidential Information shall only be exchanged among themselves in connection with their respective obligations and duties under this Agreement.

### **12. Entire Agreement; Modification**

12.1 This Agreement, including any Exhibits and schedules attached hereto or incorporated herein by reference, sets forth the entire understanding and agreement of the parties, and supersedes any and all other, prior or contemporaneous oral or written agreements or understandings between the Parties as to the subject matter of this Agreement. In the event of any conflict between a provision in this Agreement and the Exhibit or schedules, the terms of the Exhibit or schedule shall control.

12.2.1 Any modification to this Agreement (excluding any of its unattached materials incorporated only by reference), and any modifications of the Services and information previously agreed, and contained specifically in the Content Provider's initial submission of his/her application, (i.e., specifically regarding the Content Provider's intended course, teaching load, or compensation), must be made in writing (either electronically or in print) and signed by both Parties (including electronic signatures as valid).

12.2.2 Notwithstanding anything to the contrary in paragraph 12.2.1, changes or supplements in the general information, guidelines, instructions and similar procedures (collectively "information") contained in the pre-printed materials provided to the Content Provider in the initial, unsigned application and General Information, and which are incorporated into this Agreement (See Exhibit A), may be subsequently introduced by The University, on its own initiative, if in its view such changes and supplements assist in facilitating the performance of obligations under this Agreement. Such changes and supplements in this information shall be made available to the Content Provider either in writing, as hard copy if specifically requested, or by posting same on the internet at [www.uuooi.org](http://www.uuooi.org), with separate notice given to the Content Provider for internet postings. Such changes and supplements to the information shall be incorporated into this Agreement immediately upon notification or furnishing in writing to the Content Provider, but shall include prior consultation with the Content Provider if necessary. After incorporation into this Agreement, such changes and supplements to the information shall supersede any prior inconsistent information.

### **13. Severability**

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way.

### **14. Waiver**

Failure or delay on the part of any Party to exercise any right, remedy, power or privilege hereunder will not operate as a waiver. Any waiver must be in writing and signed by the Party granting such waiver in order to be effective, and may be retracted by the waiving Party in the manner permitted by applicable law, subject to any reliance by the non-waiving Party.

### **15. Notice; Communications; Signatures**

Any notices required or permitted hereunder shall be given to the appropriate party at the address specified above or at such other address as the party shall specify in writing. Unless otherwise specified, such notice shall be deemed given upon its receipt by the other party. All notices and written communications may be supplied in either print or electronic form, in English. The validity of all such electronic notices, communications and signatures shall be determined by the American 'E-Sign' law (Electronic Signatures in Global and National Commerce Act), unless superseded by any other mandatory e-commerce law. In this Agreement, an electronic notice or written communication is deemed received when it reaches the server of the receiving party. An electronic record in the English language shall satisfy any writing requirement, and any electronic signature or authentication shall satisfy any signature requirement.

### **16. Governing Law**

This Agreement shall be governed by the laws of South Korea in its interpretation and performance, except where another law is specified for a particular purpose in this Agreement. The choice of South Korea's law is without regard to its conflicts of law rules, and also does not preclude the application of U.S. law, or

international law, (i) if same is otherwise applicable herein, or (ii) if the U.S. or international law is consistent with South Korean law, or (iii) if same is viewed as mandatorily applicable according to a competent South Korean authority.

**17. Dispute Resolution**

17.1 All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Seat of Arbitration will be Seoul, South Korea, and shall be conducted in the English Language. The IBA (International Bar Association) Rules on Taking of Evidence in International Commercial Arbitration, and IBA Guidelines on Conflicts of Interest shall be applicable to the Parties' Arbitration hereunder.

17.2 The Arbitration Agreement in Clause 17.1 above shall not preclude mediation or conciliation in a mutually agreed manner by the Parties, as an alternative form of initial dispute resolution. However, failure to resolve any disputes between the Parties by mediation or conciliation shall invoke the provisions of the Arbitration Agreement in Clause 17.1.

**18. Survival of Obligations**

All covenants and obligations of this Agreement shall survive the termination of this Agreement.

SHOWING their assent to this Agreement, the Parties above, by and through their authorized representative(s), and with full authority to enter into this Agreement, have signed below:

HANDONG GLOBAL UNIVERSITY,  
UUOOI Office  
Pohang, Gyeongbuk,

Republic of South Korea 791-708

By: /s/ \_\_\_\_\_

Name: Youngsup Kim  
Title: Vice President, UUOOI Director

Date: \_\_\_\_\_

Professor \_\_\_\_\_  
Address: \_\_\_\_\_

University/School: \_\_\_\_\_

/s/ \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### Schedule of Services

1. Services to be provided by the Content Provider, including additional terms and conditions relating thereto, are contained in the Handong Global University ("HGU") General Information also entitled, "UNESCO-UNITWIN OCW/OER INITIATIVE" (last revised on March 19, 2012), and in the Content Provider's application submission, if accepted. The University's General Information and Content Provider's accepted application submission are hereby fully incorporated into this Exhibit A, and into this Agreement.
2. In addition, Services include any specifications in the Content Provider's provision of Services, as contained in any UUOOI manuals, information guides, instructions, or additional informational sheets (collectively herein, "information") given to Content Provider as of the signing of this Agreement, or subsequently as modifications of same (see Clause 12.2). Any such information and specifications are or shall be incorporated into this Exhibit A and this Agreement, and are binding.
3. Any changes or supplements to such information shall be made in accordance with paragraph 12.2.2. In addition, such changes and supplements in information shall be made available to the Content Provider via the internet, at [www.uuooi.org](http://www.uuooi.org). The University shall seek to appropriately notify Content Provider of any such changes and supplements to its information on the internet. Upon specific request, The University may send Content Provider a written, hard copy of such changes and supplements to its information.