A CONTRACT FOR INFORMATION TECHNOLOGY (IT) TRAINING SERVICES

BETWEEN

THE COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
Commonwealth Office of Technology

AND

Learn Quest

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This Master Agreement ("Contract") is entered into, by and between the Commonwealth of Kentucky, Finance and Administration Cabinet and Commonwealth Office of Technology ("the Commonwealth") and Learn Quest ("Contractor") as the Prime Contractor.

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

This Contract is being issued to establish pricing schedules to provide a wide curriculum of Information Technology and related Training courses/classes for the Commonwealth of Kentucky.

II. Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer in response to Solicitation RFP-758-1000000189, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation RFP-758-1000000189;
3. The Solicitation and all attachments thereto, including Section 40--Terms and Conditions of a Contract with the Commonwealth of Kentucky;
4. General Conditions contained in 200 KAR 5:021 and Office of Procurement Services' FAP110-10-00;
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation RFP-758-1000000189;
7. The Contractor's proposal in response to the Solicitation RFP-758-1000000189.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

III. Negotiated Items

A. Promotion of Distance Learning and Self Paced Classes

The Contractor shall provide the Commonwealth with the following promotional class offerings during the first twelve (12) calendar months following contract signing:

1. Distance Learning – Instructor Led
    a. Two (2) complimentary student enrollments for each of the twelve (12) Executive Branch Cabinets.
    b. These complimentary enrollments shall be provided in order to specifically support the adoption of distance learning within the Commonwealth.
2. Classes shall be those developed for the Commonwealth or listed on an open enrollment schedule by the Contractor.
3. Self- Paced Learning
    a. Two (2) complimentary thirty-day (30 Day) evaluation (free access to training content) licenses shall be offered to each Executive Branch Cabinet to introduce self-paced learning and to provide a demonstration of the breadth and quality of the self paced learning option.
    b. These evaluation licenses shall be offered to promote self paced learning in the Commonwealth.

The Commonwealth shall support the adoption of self-paced and distance learning during the sixty (60) day Contract roll-out period and for a minimum of six (6) months following the roll-out by providing the following support:

1. Identification of technical and management leadership within each Executive Branch Cabinet, K-12 and Higher Education entities.
2. Communications to each Executive Branch Cabinet and various educational entities regarding the Information Technology (IT) Training contracts availability.
3. Assist the Contractor's marketing team in identification of opportunities for the promotion of distance and self-paced learning through various face-to-face and electronic marketing means.

B. Self-Paced Training Portability

If the Contractor's subscription pricing is used to procure a self- paced class or series of classes and the trainee resigns or moves to another project, the remaining access time for the self-paced course/class shall be portable to the person assigned to replace this person at no additional cost to the Commonwealth.

C. Courseware Ownership

The Contractor shall agree that all original written work related to the business of the Commonwealth developed by the Contractor and paid for by the Commonwealth,

including but not limited to, course materials, books, labs, etc., shall be deemed "work-for-hire" and shall be the sole and complete property of the Commonwealth. Any and all copyrights protecting such works and the rights to obtain copyright registration shall be the responsibility of the Commonwealth. The Contractor shall retain all ownership rights to curricula developed by the Contractor or third party Vendors independent of "work-for-hire" activities.

D. Course Catalog
The Contractor shall submit their IT Training course catalog in the approved OPS Microsoft Excel catalog template upon contract signing. The course catalog shall include those courses/classes outlined in Exhibit A and all others approved by the Commonwealth.

E. Microsoft Assurance Vouchers
During the life of the Contract, various Cabinets may continue to receive Microsoft Software Assurance Vouchers as a component of the various Enterprise Licensing Agreements with Microsoft. The Contractor shall agree to accept Microsoft Assurance Vouchers as a form of payment for Microsoft training.

IV. Terms and Conditions

Section 40.000—Beginning of Work

The Contractor shall not commence any billable work until a valid Contract has been executed.

Section 40.015—Final Agreement

The Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

Section 40.016—Agencies to Be Served

This contract shall be for use by the following agencies of the Commonwealth of Kentucky:

All State Agencies

No shipments shall be made except upon receipt by Vendor of an official Delivery Order from a using agency.

Section 40.017—Political Subdivisions

Under Kentucky Statutes, political subdivisions of the State including cities, counties and school districts may participate in All State Agency Master Agreements to the same extent as agencies of the Commonwealth.

Section 40.019- Quantity Basis of Contract – Estimated Quantities

Any and all quantities mentioned in this Contract are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of the contract. Requirements may exceed the quantities shown and the contractor will be required to furnish all requirements shown on Delivery Orders dated during the life of the Contract.

Section 40.020—Contract Provisions

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

Section 40.025—Type of Contract

The Contract shall be on the basis of a **firm fixed unit price.**

Section 40.030—Term of Contract and Renewal Options

The initial term of the Contract shall be for a period of **two (2) years** from the effective date of the Award of Contract.

This Contract may be renewed at the completion of the initial Contract period for **four (4) additional one (1) year** periods upon the mutual agreement of the Parties. Such mutual agreement shall take the form of an addendum to the Contract under Section 40.050—Changes and Modifications to the Contract.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

The Commonwealth reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. Learn Quest will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without

prejudice from either exercising the option or continuing the contract in an extended period.

Section 40.035—Basis of Price Revisions

PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by the Contract resulting from this Solicitation shall remain firm for the contract period subject to the following:

A: Price Increases: A price increase will not be allowed during the first twelve (12) months of the contract. Only one (1) price increase will be allowed during the Contract period. The price increase must be based on industry wide price changes. The Contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The Office of Procurement Services may request additional information or justification. If the price increase is denied, the Contract holder may withdraw from the Contract without prejudice upon written notice and approval by the Office of Procurement Services. Provided, however, that Learn Quest must continue service, at the Contract prices, until a new Contract can be established (usually within sixty (60) days).

B: Price Decreases: The Contract price shall be reduced to reflect any industry wide price decreases. The Contract holder is required to furnish the Office of Procurement Services with notice of any price decreases as soon as such decreases are available.

C: Extended Contract Periods: If the Contract provides for an optional renewal period, a price adjustment may be granted at the time the Contract is renewed, subject to price increase justification as required in Paragraph A "Price Increases" as stated above.

Section 40.040—Multiyear Contracts

If this Contract is for a term that extends beyond the end of the biennium in which the Contract was made, payment and performance obligations for succeeding fiscal years are subject to the availability of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance of the Contract beyond the biennium, the Contract for such subsequent year(s) may be canceled and the Contractor shall be reimbursed in accordance with Section 40.150—Provisions for Termination of the Contract.

Section 40.045— Contract Usage

The contractual agreement with Learn Quest will in no way obligate the Commonwealth of Kentucky to purchase any services or equipment under this Contract. The Commonwealth agrees, in entering into any contract, to purchase only such services in such quantities as necessary to meet the actual requirements as determined by the Commonwealth.

Section 40.048—Addition or Deletion of Items or Services

The Office of Procurement Services reserves the right to add new and similar items, with the consent of the Contractor. The Office of Procurement Services to effect this change will issue a Contract Modification. Until such time as the Contractor receives a Modification, the Learn Quest shall not accept Delivery Orders from any agency referencing such items or services.

Section 40.050—Changes and Modifications to the Contract

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

Section 40.055—Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in Section 40.050—Changes and Modifications to the Contract.

Section 40.060—Contract Conformance

If the Commonwealth Buyer determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

Section 40.065—Assignment

The Contractor shall not assign the Contract in whole or in part or any payment arising therefrom without the prior written consent of the Commonwealth Buyer. Any purported assignment is void.

Section 40.070—Notices

After the Award of Contract, all programmatic communications with regard to day-to-day performance under the contract are to be made to the Agency technical contact(s) identified below:

Theresa Rakes
Commonwealth Office of Technology
101 Cold Harbor Drive
Frankfort, Kentucky 40601
(502) 564-4756
Theresa.Rakes@ky.gov

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Commonwealth Buyer identified below:

Sherita Miller, MPA
Strategic Procurement Specialist
FINANCE AND ADMINISTRATION CABINET
Office of Procurement Services
New Capitol Annex
702 CAPITOL AVE RM 096
FRANKFORT KY 40601
(502) 564-6522
Sherita.Miller@ky.gov

Section 40.075—Payment

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person or his representative.

Section 40.080—Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

Section 40.085—Subcontractors

The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be **solely responsible** for performance of the entire Contract whether or not subcontractors are used. The

Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

Section 40.090—Contractor Affiliation

"Affiliate" shall mean a branch, division or subsidiary that is effectively controlled by another party. If any affiliate of the Contractor shall take any action that, if done by the Contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

Section 40.100—Commonwealth Property

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this Contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

Section 40.105—Insurance

The Contractor shall provide professional liability insurance for its professional employees, public liability, property damage, and workers' compensation insurance, insuring as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the Contractor's operations under the terms of this Contract. In the event any carrier of such insurance exercises cancellation, notice of such cancellation shall be made immediately to the Commonwealth Buyer.

Section 40.110—Confidentiality of Contract Terms

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of the Contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of the Contract by all Parties, terms of the Contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

Section 40.115—Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

-Information which the Commonwealth has released in writing from being maintained in confidence;
-Information which at the time of disclosure is in the public domain by having been printed an published and available to the public in libraries or other public places where such data is usually collected; or
-Information, which, after disclosure, becomes part of the public domain as defined above, thorough no act of the Contractor.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

Section 40.120—Advertising Award

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

Section 40.125— Patent or Copyright Infringement

The Contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

The Commonwealth agrees to notify the Contractor promptly, in writing, of any such claim, suit or proceeding, and at the Contractor's expense give the Contractor proper and full information needed to settle and/or defend any such claim, suit or proceeding.

If, in the Contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Commonwealth's written consent, substitute other equally suitable equipment, materials, and information, or at the

Contractor's options and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

The Commonwealth agrees that the Contractor has the right to defend, or at its option, to settle and the Contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the Contractor to the Commonwealth under this agreement. The Contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the Contractor.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the Contractor's written consent.
The Contractor shall have no liability for any infringement based upon:

-the combination of such product or part with any other product or part not furnished to the Commonwealth by the Contractor
-the modification of such product or part unless such modification was made by the Contractor
-the use of such product or part in a manner for which it was not designed

Section 40.130—Permits, Licenses, Taxes and Commonwealth Registration

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

Section 40.135—Contract Claims

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

Section 40.140—Rights and Remedies

The rights and remedies of the Commonwealth provided shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

Section 40.145—EEO Requirements

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding $500,000. The Contractor shall comply with all terms and conditions of the Act. A copy of the EEO forms may be obtained by downloading them from the E-Procurement website at https://eprocurement.ky.gov. Select **STANDARD ATTACHMENTS AND GENERAL TERMS and scroll down the page to Attachment #4.**

Section 40.150—Provisions for Termination of the Contract

Any Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

Section 40.160—Bankruptcy

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

Section 40.170—Conformance with Commonwealth & Federal Laws/Regulations

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state or federal court in **Franklin County, Kentucky.**

Section 40.190—Recycling

The Contractor is required to comply with the recycling requirements of 200 KAR 5:330.

Section 40.200—Funding Limitations

If this Contract exceeds the amount of funding available, then the Finance and Administration Cabinet, Office of Procurement Services, reserves the right to cancel this Contract.

Section 40.210—Accessibility

Learn Quest hereby warrants that the products or services to be provided under this Contract comply with the accessibility requirements of section 508 of the Rehabilitation

Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Learn Quest further warrants that the products or services to be provided under this Contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the Learn Quest's products or services may be covered by that act. Learn Quest's agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

Section 40.220—Disclosure of Contractor's Financial Records and Information To Certain Governmental Entities (200 KAR 5:314.)

The Contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the Contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

Section 40.240—State Vendor Eligibility Request Form

Revenue Form 10A105, "State Vendor Eligibility Request Form", effective July 2008, is a form to be completed by any person or entity wishing to contract with the Commonwealth to provide goods or services subject to sales and use tax pursuant to KRS 139.200. The form is located at this web-link as Attachment 5:

http://eprocurement.ky.gov/attachments.htm

In accordance with administrative regulation 200 KAR 5:390, this form has to be completed and submitted, before a contract can be awarded. Section 2 of the regulation also notes: "Failure to submit the required documentation or to remain registered and in compliance with the sales and use tax filing and remittance requirements of KRS 139.540 and KRS 139.550 throughout the duration of the contract shall constitute a material breach of the contract and the contract may be terminated."

Section 40.250—Funding-Out Provision

Learn Quest agrees that if funds are not appropriated to the agency or are not otherwise available for the purpose of making payments, the agency shall be authorized, upon sixty (60) days written notice to the Learn Quest, to terminate this Contract. The

termination shall be without any other obligation or liability of any cancellation or termination charges, which may be fixed by the Contract.

V. Pricing

Instructor Led Distance Learning
Cost Bid (U. S. Dollars)

Percentage Off by Purchasing Entity – Vendor's On-line Pricing (entire catalog)	**% Off**
Executive Branch and Local Governments	22%
Higher Education	25%
K-12	30%

Self- Paced Learning Licensing
Cost Bid (U. S. Dollars)

Percentage Off by Purchasing Entity – Vendor's On-line Pricing (entire catalog)	**% Off**
Executive Branch and Local Governments	22%
Higher Education	23%
K-12	25%

Additional Volume Purchase Discounts Available
Volume Purchase Discounts- Single Transaction/Library

Single Transaction Purchase	**% Off**
0-100 Licenses of the same library	0%
100-200 Licenses of the same library	2%
200-500 Licenses of the same library	3%
500-1000 Licenses of the same library	4%
1000+ Licenses of the same library	5%

Term and Payment Discounts - in addition to the initial and volume discounts

Conditions for Discount	% Off
Two Year License Paid Annually	10%
Two Year License Paid Up-Front	15%
Three Year License Paid Annually	20%
Three Year License Paid Up-Front	30%

VI. Approvals

This Contract is subject to the terms and conditions as stated. By affixing their signatures below, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of this agreement.

1st Party: Learn Quest as Contracting Agent

Yuri Schneiberg — Executive Director
Printed name — Title

Signature — Date 8-26-10

2nd Party: Commonwealth Office of Technology (COT)

Robin Morley — Deputy Commissioner
Printed name — Title

Signature — Date 9/14/10

Approved by the Finance and Administration Cabinet
Office of Procurement Services

Donald R. Speer — Executive Director
Printed name — Title

Signature — Date 9/14/10

Exhibit A

1. Installing and Configuring Vista
2. Installing and Configuring Windows 7
3. Microsoft Word 2007
4. Microsoft Excel 2007
5. Microsoft Access 2007
6. Microsoft PowerPoint 2007
7. Microsoft Outlook 2007
8. HTML, XHTML and CSS
9. SQL Server 2008 – Implementing and Maintaining
10. SQL Server – Developer
11. Programming with the MS .NET Framework
12. Introduction to Crystal Reports
13. Implementing MS SharePoint Server 2007
14. DB2 Application Programming and Design
15. Network Security Fundamentals
16. Developing Secure Web Applications
17. VMware Server Installation and Configuration
18. Oracle 11g Administration
19. Oracle 11g for Developers
20. Administering WebSphere Application Server