

FUOC [...]

## COMMISSIONING OF WORKS AND TRANSFER OF RIGHTS AGREEMENT

Barcelona, [...] [...] [...]

### BY AND BETWEEN

On the one hand, Mr Josep A. Planell, President of the Universitat Oberta de Catalunya, legally as a foundation (Fundació per a la Universitat Oberta de Catalunya), acting on behalf of this institution, with Tax ID number G-60667813 and registered office in Barcelona, Avinguda del Tibidabo, 39-43, in accordance with the powers granted by public deed with protocol number 1067, of 16 April 2013, before the public notary of Barcelona Francisco Armas Omedes (hereinafter, UOC).

And, on the other hand, [...] of legal age, with email address [...] and with personal identification number [...], acting in their own name (hereinafter, the contractor).

Both parties mutually recognize their sufficient legal capacity to enter into binding agreements.

### RECITALS

I. That the UOC is an institution whose purpose is the creation and dissemination of knowledge, acting as a promoter of various distance learning, publishing and communication initiatives, which are managed directly by the Fundació per a la Universitat Oberta de Catalunya and by a group of companies in which it participates (hereinafter, the UOC Group) and which are imparted through its website and the Virtual Campus, a space that can be accessed with no physical barriers from anywhere and at any time.

II. That the UOC is interested in commissioning the services and content (hereinafter, the work) described in Appendix I of this agreement (hereinafter, the commission) for its inclusion as a priority but not exclusively to the programme/course indicated in the Annex.

II. That the contractor is interested in fulfilling the commission, in accordance with the structure, methodology, design and instructions provided by the UOC and following the characteristics indicated in Appendix I of this agreement.

Now, therefore, both parties have agreed to enter into this Agreement, according to the following,

### CLAUSES

#### 1. Definitions

- **Commission:** content and services to be developed by the contractor as instructed by the UOC.
- **Work:** content or services resulting from the fulfilment of the commission, the exploitation rights of which are assigned to the UOC.
- **Exploitation rights:** ownership rights over the work which are assigned to the UOC: rights of public reproduction, distribution, communication (including making it available online) and transformation.
- **Image rights:** right to one's own image (image or voice) which consists of the exclusive right of any natural person to authorize or oppose the recording, reproduction or publication of their image by any third party for whatever purpose.

- **UOC, S.L. Group:** companies whose sole shareholder is the UOC, S.L. Group, a company which, in turn, has the Fundació per a la Universitat Oberta de Catalunya as its sole shareholder.

## **2. Purpose: commissioning of work and assignment of exploitation rights**

The UOC entrusts the contractor, who agrees to fulfil the commission described in Appendix I and to assign the exploitation rights of the work resulting from it.

The contractor undertakes to fulfil the commission in accordance with the instructions and guidelines they receive from the UOC, in particular with regard to the subject, teaching methodology, approach and other issues that are considered fundamental, as stated in Appendix I. The contractor accepts any modification to the work that is necessary to adapt it to the UOC's teaching methodology for distance learning and, in general, to the requirements of the UOC, as long as their authorship is respected.

## **3. Assignment of rights**

Notwithstanding those cases in which, due to the existence of certain requirements and/or circumstances, the legal status of producer and, consequently, the ownership of the protected rights over the work that derive from the commission is conferred to the UOC by the regulations in force, the contractor assigns the exclusive rights to the UOC for the exploitation of the work, including the right of use, reproduction, distribution, transformation and public communication (including making it available online), for its exploitation and commercialization, in any language, with no geographical restriction, on any medium and in any format, for any purpose and for the maximum period of protection allowed by law for the work (until it enters the public domain).

## **4. Scope of the assignment**

The assignment of rights over the work resulting from the fulfilment of the commission is granted to the UOC with the maximum scope authorized by the applicable legal provisions.

The contractor authorizes the UOC to reproduce part or all of the work to promote its own activities.

The contractor expressly accepts that the exploitation rights assigned to the UOC under this contract may be assigned by the UOC, for any purpose, to third-party natural or legal persons, jointly or severally, on an exclusive or non-exclusive basis, whether for free or for a fee, in part or in full, directly or indirectly, through assignments, authorizations or licences of use that it deems pertinent with respect to any of the rights and/or modes of exploitation that are the subject of the assignment, establishing the terms and conditions that it deems most appropriate for their exploitation.

The rights acquired by the UOC may be exercised by it or by any company that forms part of its group of companies, the UOC, S.L. Group, always with the prior and mandatory authorization of the UOC.

In addition, the UOC is expressly authorized by the contractor to grant Creative Commons licences for the work, including the Attribution-NonCommercial-NoDerivative (BY-NC-ND) 4.0 International (international jurisdiction) licence, which allows it to be copied, distributed and transmitted publicly, always citing the authorship and the source, without using it for commercial purposes and without modifying it, and the Attribution-ShareAlike (BY-SA) 4.0 International (international jurisdiction) licence, which allows it to be copied, distributed, communicated publicly and modified, always citing the authorship and source, for both commercial and non-commercial uses. If this Work is transformed, the resulting work will be subject to a Creative Commons licence similar to or compatible with the aforementioned licence.

## 5. Modes of exploitation

The UOC may carry out the following activities and modes of exploiting the work, or any works derived from it that may be created, including but not limited to:

### 5.1 Exploitation through digital media

- Through the Virtual Campus ([www.uoc.edu](http://www.uoc.edu)) or through other, first or third-party platforms authorized by the UOC and/or other digital resources.
- In any digital format such as: e-book, audiobook, PDF, EPUB, HTML, XML, etc.
- On any medium, receivers, computers and electronic readers (e-readers), dedicated devices, PDAs, mobile phones, smartphones, tablets or televisions.
- Adding recitation or text-to-speech functions, or recording by artists, performers or executors.
- Through downloading or streaming services or providing public access.
- Through broadcasting networks or internet or TCP/IP, or point-to-point or point-to-multipoint lines or UMTS or GPRS or CDMA or HSDPA (+) or 3G or 4G.
- Via any marketing system or exploitation channel or online store or stores embedded in software and/or hardware, iTunes App Store, Mac App Store, Google Play Store (formerly Android Market), App World or other broadcasting platforms or on-demand or subscription streaming platforms.
- Through publication via a URL, on-screen display, printing and downloading.
- Digitalization, conversion, encryption, incorporation of monitoring and control systems or watermarks or DRM, etc.
- Total or partial inclusion in a database.

### 5.2 Exploitation through audiovisual media

- Audiovisual works and recordings, irrespective of their length.
- Broadcasting and transmission by wired or wireless radio and television, free or pay television, mobile device integrators or by any technical system and means.
- Animations or animated images, multimedia works or computer programs, apps or webapps, interactive books, video games or pills.

### 5.3 Exploitation through distribution

- The reproduction and publication of the work in graphic media, including but not limited to any form adopted by magazines, books, brochures, printed or written documents, in any type of format or display, on audiovisual devices and formats and in digital media (offline) including, CD-ROM, CD-RW, MD, Laser-disc, DVD, HD-DVD, Blue Ray Disc, memory cards and pen drives, dedicated devices, external hard disks, multimedia hard drives, electronic readers (e-readers) and tablets.
- The distribution by assignment, sale, rental and loan or any other legal transaction of the content and services published and reproduced in any of the media referred to in the previous section, including the mode known as print on demand.
- The total or partial sale may be carried out through any commercial channel, including club channel, kiosk channel, direct sales, teleshopping, supermarkets and any other commercialization system that the UOC deems appropriate, either separately or in conjunction with other content in graphic form or in any other format.

### 5.4 Transformational and instrumental acts

The UOC, as the assignee of the right to transform the work, or any works derived from it that may be created, may carry out textual, graphical, phonographic, radio, musical, audiovisual and multimedia transformations on it, depending on its nature, including, but not limited to, the following:

- Transcription, translation, dubbing and subtitling in any language, sequels, prequels, remakes, versions, spin-offs or serializations.
- Adaptations, scripts, storyboards, illustrations, concept art, designs, models, images, two-dimensional or three-dimensional image sequences, animations, interactivity maps or iconography.
- Auxiliary elements or graphical user interfaces (GUIs), selection menus, navigation systems, usability mechanisms, floating elements, touch screen layers, sound effects, screen designs, graphically represented controls.
- Promotion, trailer or making-of, clips, teasers, spoofs, sequences, fragments, frames, photographs, sound and/or performance elements.

## **6. Duration**

The duration of this agreement, which enters into force from the date of the last signature by the parties and which will take effect from the date of the agreement stated in the heading, will be for the maximum legal period of protection of the exploitation rights of the work which is the subject of the assignment rights agreed by the parties in this agreement, in accordance with the provisions of the applicable intellectual property regulations.

## **7. Right of first refusal**

Under this agreement, the contractor grants the UOC the right of first refusal over the exploitation rights with respect to any mode of use or dissemination of the work that may exist in the future. To this end, the contractor undertakes to duly notify the UOC of any offer from a third party, allowing the UOC a period of thirty [30] days, starting from the notification, to communicate whether it wishes to acquire the rights in question.

## **8. Application of this Agreement to derivative works**

If in the future, the UOC is interested in reviewing, updating, annotating, or in any way transforming the work resulting from the commission, it will inform the contractor of the terms of the new commission. If the latter is not interested or no agreement is reached, the UOC may assign the new commission to a third party, with the contractor, under this agreement, granting the necessary consent for this purpose.

## **9. Remuneration**

For the fulfilment of the commission and the assignment of rights over the work under this agreement, the UOC will pay the contractor the amount stated in Appendix I.

## **10. Guarantee of indemnity**

The contractor is liable to the UOC for the authorship and originality of the work resulting from the fulfilment of the commission and the peaceful exercise of the rights that are the subject of the assignment, and states that they have not undertaken nor will they undertake any obligation contrary to the rights corresponding to the UOC, by virtue of the assignment agreed between the parties. Likewise, the contractor undertakes not to carry out any act of disclosure or use of the work resulting from the commission, and is liable to the UOC for any claims from third parties arising from any breach of what is stated in this agreement.

The contractor is also liable to the UOC regarding their obligation to ensure they have the necessary rights for the exploitation of the works owned by third parties which, where applicable, they have incorporated into the work resulting from the commission, in accordance with the assignment of rights agreed with the UOC.

Therefore, the contractor will be liable to the UOC and to third parties for any financial liability that may arise as a result of actions, claims or conflicts arising from the breach of the obligations, representations and warranties assumed under this agreement.

### **11. Prohibition of the assignment and/or subcontracting of the commission**

The contractor declares that they understand and accept that they have been specifically entrusted with the commission and, consequently, the assignment of the agreement and/or the subcontracting of the fulfilment of the commission hereunder is prohibited.

### **12. Image rights**

The contractor, by virtue of this agreement, expressly authorizes the UOC, where necessary, to include, in the UOC learning resource in which the work is incorporated, their name and surname, their photograph and, where appropriate, a brief summary of their details.

Depending on the work resulting from the commission, the contractor, by virtue of this agreement, expressly authorizes the UOC to record, process and disseminate their image and voice carried out while fulfilling the commission, as well as the subsequent dissemination by the UOC of the UOC learning resource that includes their image and voice.

This non-exclusive authorization is granted to the UOC with no geographical restrictions and for the maximum period of protection of the work that comprises the UOC learning resource (audiovisual work) established in the current Law on intellectual property and in compliance with the conditions established in this agreement.

### **13. Data protection**

Both parties acknowledge compliance with all the obligations arising from Organic Law 3/2018 on the protection of personal data and guarantee of digital rights, the General Data Protection Regulation 2016/679 and the applicable complementary legislation in force.

The performance of the purpose of this agreement involves the processing by the UOC of the contractor's personal data, in accordance with the following:

The processing of personal data collected through this agreement will be the responsibility of the UOC. If the contractor has any questions about the processing of their personal information, they may contact the UOC's data protection officer by email [dpd@uoc.edu](mailto:dpd@uoc.edu) or at the postal address Avinguda del Tibidabo, 39-43, (08039) Barcelona.

The personal data collected by the UOC during the performance of this agreement will be processed for its duration in order to manage the obligations assumed by virtue of the commission that is the subject of the agreement, any possible extensions and for as long as necessary for the management of the rights assigned by the contractor.

At the end of the indicated period, the UOC will keep the personal data blocked for the period during which any liabilities may arise. When these liabilities expire, the personal data will be deleted permanently.

The legal basis for the processing of personal data is the performance of this agreement.

The UOC shall process all personal data with absolute confidentiality. In addition, it has implemented appropriate technical and organizational measures to guarantee their security and prevent their destruction, loss, illicit access or illicit tampering. In deciding these measures, criteria such as the scope, context and purpose of the processing, the current state of the art and the existing risks have been taken into account.

The UOC will disclose personal data to third parties if it is necessary to comply with the legal obligations that may be applicable in each case. It also works with a number of service providers that assist it in performing different tasks related to the processing of personal data within the framework of the agreement.

The contractor may exercise the following data protection rights:

Right of access: see what personal data we hold.

Right to rectification: modify the personal data we have when they are inaccurate.

Right of objection: ask that we do not process personal data for certain specific purposes.

Right to erasure: ask that we erase personal data.

Right of restriction: ask that we restrict processing of the personal data.

Right of portability: ask that we give you the information we have in a digital format.

Right to lodge a complaint with the supervisory authority: lodge a complaint with the supervisory authority in order to defend their rights, through the website [www.aepd.es](http://www.aepd.es) or [www.apdcat.gencat.cat](http://www.apdcat.gencat.cat).

To exercise these rights, the contractor may send an email to [fuoc\\_pd@uoc.edu](mailto:fuoc_pd@uoc.edu) or notify by post at the address in the heading, with the subject "Data protection". The request must include a copy of their National ID card or other equivalent identification and the minimum content set forth in applicable legislation. If the request does not meet the specified requirements, we may ask you to make the necessary corrections. There is no charge for exercising these rights, although a fee may be charged in the case of requests that are groundless, excessive or repetitive.

#### **14. Credits**

The UOC undertakes to highlight the name, surnames and/or pseudonym of the contractor as the author in the credits of the UOC learning resource in which the work resulting from the commission is included, in all editions and in the different media or uses made of it, together with the year of publication, the international mention of the UOC's reserved intellectual property rights and, where applicable, the type of Creative Commons licence under which the UOC publishes the learning resource.

#### **15. Entire agreement**

The parties acknowledge that the entire agreement reached between them is contained in this contract and that it cancels and supersedes any previous written or verbal agreement that may exist in relation to the subject of this agreement.

#### **16. Notices**

For any notification regarding the agreement, the parties provide the details indicated in the heading, although changes may be made as long as they are duly notified to the other party.

#### **17. Applicable legislation**

This agreement and its appendices will be governed by and interpreted in accordance with the provisions of the revised text of the Law on Intellectual Property, approved by Royal Legislative Decree 1/1996, of 12 April, and in general, by the applicable legal provisions.

#### **18. Jurisdiction**

For the settlement of any dispute arising from the interpretation or application of this Agreement, the parties submit to the courts of law of Barcelona, waiving any other jurisdiction they may be entitled to.



The parties, expressing their agreement with the content of this document, sign it, in a single document, on the date indicated in the corresponding electronic signatures.

**The Universitat Oberta de Catalunya**

**The contractor**

Josep A. Planell  
President

[...]

## Appendix I. COMMISSION

**COURSE OR PROGRAMME:**

**PROJECT TITLE:**

**PROJECT CONTENT:**

**CRITERIA CONCERNING CONTENT:**

**DESCRIPTION OF THE SPECIFIC SERVICES TO BE RENDERED:**

### DELIVERY OF THE COMMISSION

The contractor undertakes to deliver to the UOC the final version of the work carried out in fulfilment of the commission that is the subject of this agreement no later than [...] [...] [...], in the format agreed with the UOC, fully completed and ready to be reproduced. Once delivered, the UOC will have 90 days to give its final approval. Delays in delivery, lack of quality or compliance of the work with the requirements and conditions established by the UOC will entitle the UOC to terminate the agreement, after notifying the contractor in writing.

In any case, the contractor undertakes to deliver to the UOC a preliminary draft of the work based on which the UOC may make any suggestions it deems appropriate, if necessary, after which the contractor will send the UOC a new amended draft with the aim of successfully fulfilling the commission.

If the second draft still requires a significant number of improvements, or the contractor has not amended the draft in accordance with the instructions of the UOC or there are irreconcilable differences between the parties, the UOC may agree to the termination of the agreement without either party entitled to any compensation.

### REMUNERATION FOR THE COMMISSION

For the fulfilment of the commission and the assignment of rights over the work under this agreement, the UOC will pay the contractor [...] euros. This quantity will be subject to income tax withholding at the applicable rate stated in current legislation.

The payment date will take effect 30 days from the date of validation by the UOC of the delivery of the final version of the work, in accordance with the conditions set out in this agreement and with the prior formalization of the signature of this agreement by the parties.

**OTHER**