



TEXAS TECH UNIVERSITY
College of Human Sciences

Texas Wine Marketing Research Institute

MEMORANDUM OF AGREEMENT
between
Texas Wine Marketing Research Institute at Texas Tech University
and
The Texas Wine School

The purpose of this agreement is to formalize the relationship between Texas Wine Marketing Research Institute at Texas Tech University and The Texas Wine School for offering Wine & Spirit Education Trust (WSET®) courses at the Lubbock and Fredericksburg campuses. Courses currently contemplated occur in two formats: WSET® Level 1 'Award in Wines' embedded as part of PSS/RHIM 4311 'Wines of the World' course, and as standalone courses WSET® Level 1 'Award in Wines' and WSET® Level 2 'Award in Wines and Spirits' offered to the wider local community.

Responsibilities of the Texas Wine Marketing Research Institute:

- Determine the schedule of course offerings
- Develop marketing material and submit to The Texas Wine School for approval
- Market the classes
- Register Texas Tech University students with The Texas Wine School
- Print WSET® Level 1 'Award in Wines' books or request books for other levels through The Texas Wine School (requests for books can be submitted to the International Wine Center in New York, but should include (cc) The Texas Wine School in the email request)
- Purchase wine
- Teach the courses in accordance with WSET® standards
- Coordinate communication with students
- Submit exam order forms and candidate registration forms to WSET® (cc The Texas Wine School)
- Proctor exams in accordance with WSET® standards
- Return exams to WSET® in a timely fashion, as specified in the WSET® requirements
- Distribute exam results, certificates and pins to students
- Remit payment to The Texas Wine School

Responsibilities of The Texas Wine School

- Maintain valid APP status, relevant satellites registrations and print licenses
- Maintain records for students
- Coordinate communication with WSET®
- Notify the Texas Wine Marketing Research Institute of any changes to WSET® procedures and standards

- Maintain course registration for community students
- Market courses to community students as appropriate
- Send grade reports, certificates and pins to the Texas Wine Marketing Research Institute in a timely fashion
- Invoice the Texas Wine Marketing Research Institute for administration of the WSET® program

Both parties will work together to resolve any complaints or concerns brought to our attention.

This agreement reflects the commitment and acceptance of all parties to the terms and conditions set forth herein.

Endorsement by Parties

The Texas Wine School

Signature: 
Liz Palm (Jul 4, 2018)

Email: liz@thetexaswineschool.com

Title: Owner

Jul 4, 2018

Texas Wine Marketing Research Institute

Signature: 
Tim Dodd (Jul 3, 2018)

Email: tim.dodd@ttu.edu

Title: Director

Jul 3, 2018

Texas Tech University

Signature: 

Email: jennifer.adling@ttu.edu

Title: Chief Procurement Officer

Jul 3, 2018

ADDENDUM
To Memorandum of Agreement
between
TTU and Texas Wine School

This Addendum dated 5-10-18 is incorporated into and forms a part of the attached Texas Wine School's Memorandum of Agreement ("Contractor Terms"). Together these documents form the "Contract". "TTU" means Texas Tech University and "Contractor" means Texas Wine School. In addition, and to the extent they do not conflict with the terms in this Addendum, the TTU purchase order terms and conditions will apply to all purchases of goods and services by TTU and are incorporated by reference into this Addendum. They are found at <https://www.depts.ttu.edu/procurement/FormRepository/Purchase-Order-terms-and-conditions.pdf>. **Notwithstanding any express provision stating that the terms of the Contractor Terms will control in the event of conflict, Contractor's signature to this Addendum acknowledges that the Addendum is controlling in the event of a conflict of terms in the Contract.**

1. **Representations and Warranties by Contractor.** Contractor represents and warrants it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary approvals to execute the Contract, and the individual executing the Contract on behalf of Contractor has been duly authorized to act for and bind Contractor.
2. **Additional fees.** Any reference to payment or reimbursement of additional, future, or undefined Contractor fees in the Contract (e.g. travel expenses) is agreed to only if pre-approved by TTU in writing prior to invoicing.
3. **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code* ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
4. **Tax exempt.** TTU, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with § 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("TAC") § 3.322.
5. **Payments.** So long as Contractor has provided TTU with its current and accurate Federal Tax Identification Number in writing and an authorized New Vendor Registration, Direct Deposit and W9 form, TTU will pay Contractor for goods and services in accordance with Chapter 2251, *Texas Government Code*.
6. **Loss of Funding.** Performance by TTU under the Contract may be dependent upon the appropriation of funds by the Texas State Legislature ("Legislature") and/or allocation of funds by the Board of Regents of the Texas Tech University System ("TTU Regents"). If the Legislature fails to appropriate the necessary funds, or the TTU Regents fails to allocate the necessary funds, then TTU will issue written notice to Contractor and TTU may terminate this Contract without further duty or obligation hereunder, other than payment for goods and services already delivered or provided to TTU. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TTU.
7. **Payment of Debt or Delinquency to the State.** Pursuant to §§ 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Contract may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
8. **Texas Family Code Child Support Certification.** Pursuant to §231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of the Contract or payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
9. **Early Termination.** TTU may terminate the Contract for any reason by providing Contractor with ten (10) days prior notice. Despite anything in the Contractor Terms to the contrary, in no event will termination give

rise to any liability on TTU's part including, but not limited to, Contractor's claims for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. TTU's sole obligation hereunder is to pay Contractor for goods or services received prior to the date of termination.

- 10. Texas Public Information Act.** All information, documentation, and other material submitted by Contractor for and under this Contract are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552). Contractor is hereby notified that TTU strictly adheres to this statute and the interpretations thereof rendered by the Courts and the Texas Attorney General. TTU will use its best efforts to maintain the confidentiality of all Contractor submitted information except where TTU is required to disclose it under the Act. The Texas Attorney General will ultimately decide whether Contractor proprietary information is released to the public, however TTU will give Contractor notice of all requests for its proprietary information in accordance with the Act. TTU cannot represent Contractor interests to the Texas Attorney General and Contractor seeking to protect their proprietary information will be required to submit a letter, brief, or memorandum to the Attorney General with reasons in support of withholding their information.
- 11. Publicity and Marks.** Contractor agrees that it will not publicize this Contract or disclose, confirm, or deny any details of this Contract to third parties, or use TTU's name or protected marks without TTU's prior express written approval.
- 12. Notices.** All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Contract to TTU will be in writing and will be sent via registered or certified mail, overnight courier, or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one (1) business day after delivery to the courier, and (iii) if sent by email, when received:

Contracting
Procurement Services
Texas Tech University
Texas Tech Plaza
1901 University Avenue
Suite 408
Lubbock, Texas 79411
contracting@ttu.edu

or such other person or address as may be given in writing by TTU to Contractor.

Notwithstanding any other requirements for notices given by a party under the Contract, if Contractor intends to deliver written notice to TTU pursuant to § 2251.054, *Texas Government Code*, then Contractor will send that notice to TTU as follows:

Contracting
Procurement Services
Texas Tech University
PO Box 41094
Lubbock, Texas 79409

- 13. Venue; Governing Law.** Lubbock County, Texas, will be the proper place of venue for any legal action or proceeding arising out of this Contract or enforcement of any provision in this Contract. This Contract and all of the rights and obligations of the parties hereto and any claims arising from this Contract will be construed, interpreted, and governed by the laws of the State of Texas.
- 14. Limitation on TTU's Liability.** It is understood and agreed that TTU will not be liable for any negligent or wrongful acts, either of commission or omission, chargeable to it unless such liability is imposed by Texas law and that this Contract shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by TTU to Contractor or to any third party.
- 15. Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless TTU, Texas Tech University System, and its respective affiliated enterprises, regents, officers, directors, attorneys, employees,

representatives, and agents, against any and all liability, claims, suits, losses, costs, and legal fees caused by, arising out of, or resulting from any negligent act or omission of the Contractor in the performance or failure to perform within the Contract including the negligent acts or omission of any subcontractor or any direct or indirect employees of the Contractor or its subcontractors. The indemnification obligations set forth in the Contract shall survive termination or expiration of the Contract.

- 16. Force Majeure.** "Event of Force Majeure" means an event beyond the control of Contractor or TTU (each a "Party") which prevents a Party from complying with any of its obligations under this Contract, including but not limited to: act of God (such as, but not limited to fire, explosion, earthquake, or tornado); war, invasion, act of foreign enemies, or embargo; rebellion, revolution, or insurrection; contamination or destruction from any nuclear event; or acts or threats of terrorism. Neither Party will be considered in breach of this Contract to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises during the term. The Party (the "Affected Party") prevented from carrying out its obligations hereunder will give notice to the other Party of an Event of Force Majeure upon it being foreseen by, or becoming known to, the affected Party. If and to the extent that a Party is prevented from executing its obligations by the Event of Force Majeure, the Party will endeavor to continue to perform its obligations under the Contract only so far as reasonably practicable.
- 17. Insurance.** Contractor agrees that TTU, as an agency of the state of Texas, may self fund against general liability risk and that any Contractor requirements for TTU to carry insurance are waived. The Texas Tort Claims Act governs relief with respect to property damage, personal injury, and death proximately caused by the wrongful act or omission of a TTU employee acting within the scope of employment.
- 18. Breach of Contract Claims.** The dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260 will be used by TTU and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of TTU will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Contract by TTU nor any other conduct, action or inaction of any representative of TTU relating to the Contract constitutes or is intended to constitute a waiver of TTU's or the state's sovereign immunity to suit; and (ii) TTU has not waived its right to seek redress in the courts. Any term or provision in the Contractor Terms indicating agreement to arbitration, other alternative dispute resolution, or litigation options in the event of a dispute between the parties is expressly rejected and is null and void.
- 19. Assignment.** Neither this Contract, nor any rights or obligations of monies due hereunder are assignable or transferable (as security for advances or otherwise) unless TTU agrees in writing. Contractor will not assign or sub award any portion of services encompassed by a Contract without TTU's prior written approval, which will not be unreasonably withheld. TTU will not recognize any assignment or sub agreement made without TTU's prior written approval, and any such assignment by Contractor will be wholly void and ineffective for all purposes unless made in conformity with this section.
- 20. Entire Contract; Modifications.** The Contract supersedes all prior agreements, written or oral, between Contractor and TTU and will constitute the entire Contract and understanding between the parties with respect to the subject matter hereof. The Contract and each of its provisions will be binding upon the parties and may not be waived, modified, amended, or altered except in writing signed by TTU and Contractor.
- 21. FERPA.** If given access to the personally identifiable information about any student during performance of the services, Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from student records as set forth in The Family Educational Rights and Privacy Act ("FERPA") 34 CFR, §99.3. Contractor agrees that it may create, receive from or on behalf of TTU, or have access to, records or record systems that are subject to FERPA (collectively, the "FERPA Records"). To the extent that Contractor has access to "education records" under the Contract, it is deemed a "school official," as each of these terms are defined under FERPA. Contractor represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Contract, (b) required by law, or (c) otherwise authorized by Institution in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; and (3) continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Contract. At the request of TTU, Contractor agrees to provide TTU with a written summary of the procedures Contractor uses to safeguard the FERPA Records. Contractor will indemnify and hold harmless TTU from and against all claims, actions, and

proceedings resulting from Contractor's or its subcontractor's or affiliate's breach of any obligations under this paragraph.

22. **Required Posting.** Contractor acknowledges and agrees that TTU is required to post certain contracts and documents relating to contract solicitations under Texas Government Code §§2054.067 and 2261.253.
23. **Audit.** 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, TTU, or any of its components (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to § 51.9335(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Further, TTU has the right, at TTU's sole cost, to audit Contractor's financial records pertaining to the Contract for the preceding twelve (12) month period either using TTU's personnel or an independent third party. TTU will complete such audit at Contractor's office, on reasonable advance notice, and on dates and times mutually agreed to by the parties. If the audit reveals Contractor owes TTU money, Contractor will pay the amount due within thirty (30) days of the date TTU notifies Contractor of the audit results. If the audit reveals TTU owes Contractor money, TTU will pay Contractor within thirty (30) days of the date the audit is complete.
24. **Independent Contractor.** Contractor agrees that it is an independent contractor and that this Contract does not form a joint venture or partnership. TTU will not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will TTU furnish any medical or retirement benefits or any paid vacation or sick leave. Contractor is responsible for conduct of business operation, including employee salaries, travel, etc.
25. **Not Exclusive.** Contractor acknowledges and agrees that the Contract with TTU is non-exclusive and TTU has the right to engage with other contractors for similar or identical scopes of work, and to purchase similar or identical products or services from other contractors. Any term or provision in the Contractor Terms indicating the Contract is exclusive is expressly rejected and is null and void.
26. **Contract Amendments.** No modification or amendment to this Contract will become valid unless agreed to by TTU in writing and signed by both parties. All correspondence regarding modifications or amendments to the Contract must be forwarded to the TTU Office of Procurement Services for prior review and approval. Only the Chief Procurement Officer or his/her designee will be authorized to process changes or amendments. All amendments must be signed by the same person who signed this original Contract or their successor(s).
27. **Limitations.** **THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TTU (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON TTU'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF TTU'S LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; ANY PROVISION THAT CREATES AN UNKNOWN OR UNFUNDED LIABILITY; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON TTU EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.**
28. **Contractor Certification.** Contractor certifies this Contract is not prohibited under Tex. Gov't Code §2261.252(b) and agrees that if Contractor's certification is or becomes untrue, this Contract is void, and Contractor will not seek and waives its right to seek any legal or equitable remedy for past or future performance under this Contract, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance, and injunctive relief.
29. **No Boycott.** Pursuant to Texas Gov't Code §2270.002, Contractor affirmatively states that it does not boycott Israel. Additionally, Contractor shall not engage in a boycott of Israel during the term of the

Contract.

- 30. American Steel.** To the extent the Contract awarded relates to a project as defined Tex. Gov't Code §2252.201(5) (a project to construct, remodel, or alter a building, structure, or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project), and no exemption in Tex. Gov't Code §2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of the Contract must be produced in the United States (as defined in Tex. Gov't Code §2252.201(4)).
- 31. Applicable Laws & Regulations.** Contractor agrees that it will comply with all federal, state, or local laws or regulations applicable to Contractor's performance under the Contract. Contractor also agrees that pursuant to Texas Education Code §51.9335(h), in any Contract for the acquisition of goods or services to which TTU is a party, any provision required by applicable law to be included in the Contract is considered to be part of the Contract whether or not the provision appears on the face of the Contract or if the Contract contains any provision to the contrary.

Contractor:

By: 

Name: Liz Palmer

Title: Owner

Date: _____

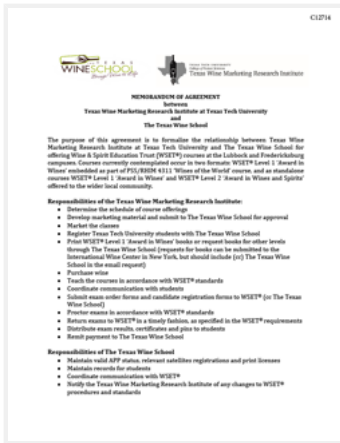
TTU:

Signature: 

Email: jennifer.adling@ttu.edu

Title: Chief Procurement Officer

Date: Jul 3, 2018













Texas Wine School #C12714

Adobe Sign Document History

07/04/2018

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By:	Leticia Cobos (leticia.cobos@ttu.edu)
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-  Document created by Leticia Cobos (leticia.cobos@ttu.edu)
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✔ Signed document emailed to Leticia Cobos (leticia.cobos@ttu.edu), Liz Palmer (liz@thetexaswineschool.com), Tim Dodd (tim.dodd@ttu.edu), and Jennifer Adling (jennifer.adling@ttu.edu)

07/04/2018 - 2:38:32 AM CDT

