



Article I. Definitions & Preamble

- (a) "Company" means Opgrade LLC, a Texas Limited Liability Company whose mailing address is 24165 W. Interstate Hwy. 10, #217-296, TX 78257.
- (b) "Client" means the contracting party with whom the Statement of Work is executed.
- (c) "Agreement" means these Standard Terms & Conditions, including any Company Statement of Work.
- (d) "Effective Date" means the date the first Statement of Work is executed between Company and Client.
- (e) "Termination Date" means one calendar year from the most recent Effective Date.

WHEREAS Client desires to obtain the benefit of the Company's knowledge, experience, skills, expertise and/or training source Materials (the "Materials") by retaining Company, and Company desires to accept such engagement, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the adequacy and sufficiency of which are hereby acknowledged, Company and Client hereby agree as follows:

Article II. Period of Service

Client hereby agrees to retain Company as a consultant, and Company hereby agrees to be retained by Client, upon the terms and subject to the conditions hereof for the period commencing on the Effective Date and ending on the Termination Date unless earlier terminated pursuant to Article IX hereof, which period shall be referred hereinafter to as the "Period of Service". No services will be provided by Company after the Period of Service unless this Agreement is extended in writing by Client and Company.

Any fully executed Statement of Work shall be considered sufficient agreement to extend the Period of Service, even if such Statement of Work is executed after the termination of any prior Period of Service.

Article III. Independent Contractor Status

Company, together with its employees, agents, and contractors, shall perform its consulting services as an independent contractor. Company shall not, by virtue of being an independent contractor hereunder, be eligible to receive any employee benefits for which officers or other employees of Client are eligible at any time, nor shall Company have any power to bind Client.

Article IV. Statements of Work

Company shall provide, or cause to be provided to Client and/or its affiliates, the services set forth in this Agreement according to separately executed Statements of Work included by reference herein (the "Services"). Client shall pay Company for its services as set forth in the Statements of Work. If authorized by Client, or if required because of changes in the Services, Company shall amend or append Statements of Work to reflect these changes in scope. Company shall not proceed with any change in Services without an executed Statement of Work or other written instructions from Client authorizing Company to proceed with any change. Statements of Work may also be used to document amendments to this agreement and any such amendment shall not be effective unless and until the Statement of Work is signed by all parties hereto.

Article V. Compensation

Company shall invoice Client, and Client shall pay and reimburse Company according to the rates, payment basis and expense reimbursement basis set forth in Exhibit A attached hereto and made part of this agreement for Company's fees, Materials costs, other direct costs and reasonable out of pocket expenses, such as travel, mileage, accommodations, leased vehicle costs and per diems for Meals & Incidental Expenses (M&IE).

Article VI. Invoicing

Company shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Client on a milestone basis as defined in the Statements of Work. Invoices are due and payable within thirty (30) calendar days of receipt. If Client fails to make any payment due Company for services and expenses within thirty (30) days after receipt of Company's invoice, then the amounts due Company will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, after invoices are past due Company may, after giving another seven (7) calendar days written notice to Client, suspend services under this Agreement until Company has been paid in full all amounts due for services, expenses, and other related charges. Client waives any and all claims against Company for any such suspension. Payments will be credited first to interest and then to principal.

Article VII. **Permission to Use**

(a) Client shall have the right and authority, as granted herein by Company, to copy, use and distribute within its specific organizational structure Company's Materials ("Permission to Use"). Upon final payment any compensation owed, the Permission to Use license shall be perpetual.

(b) This Permission to Use shall not be used by Client for resale or external use. If Client is a division within a parent corporation, then this Permission to Use is limited to internal use within that division only, not within the entire corporation nor any other divisions, except if Company shall agree to amend this Agreement to permit such corporate use. If Client is a corporation, then this Permission to Use is limited to internal use within the organizational structure of such corporation. Client may not share this information with its suppliers or customers, except by separate written agreement with Company should Client determine that such sharing would benefit Client. In such event, Company reserves the right to decide whether to grant permission to Client for sharing Company Materials with said suppliers or customers and what fee, if any, should be charged by Company for granting such permission. Client covenants and agrees not to sell Company's Materials to any other entity.

(c) Company, during the period of this Agreement, may develop certain custom modifications to its materials and develop other customized materials in accordance with functional and technical aspects particular to Client. Such custom modifications of Company Materials shall be owned Company and shall not in any way or for any purpose whatsoever be considered works for hire. Customized Company Materials shall be covered by Permission to Use license granted to all Company Material.

Article VIII. **Event Specifics**

(a) Event Size. The maximum ratio of Client personnel to designated instructors, whether Client's or Company's personnel, shall be 12:1.

(b) Structure of Events. Company shall design the event materials to fit the unique requirements and characteristics of Client's event.

(c) Schedule of Events. Client and Company shall mutually agree upon the dates for the events at least thirty (30) days (the "Frozen Schedule") before each session. If any event date changes within this Frozen Schedule, Company shall be entitled to submit an invoice for fees and incurred expenses on the date the event was originally to conclude. Any fees invoiced in this manner shall act as a retainer for the future event.

(d) Location of Events. Client and Company shall agree upon a mutually acceptable location for each event (the "Event Site") at least thirty (30) days prior to each scheduled event. All Event Sites shall be in cities with regularly scheduled airline service located no more than 90 minutes from the Event Site. Client, at its sole expense, shall assume responsibility for arranging and providing adequate facilities at the Event Sites in which the event may be effectively conducted, and shall arrange for travel and hotel accommodations for its employees as may be required. Client shall be solely responsible for all costs associated with the provision of all necessary and adequate materials, equipment, supplies, food, beverages, refreshments, and other expenses associated with the delivery of all instruction programs, presentations, courses, and other meetings associated with this Agreement.

(e) Events shall be conducted in English. The parties recognize that all course instruction, as well as the Materials, shall be in English unless otherwise agreed in writing. If Client wishes to translate any instructional material into a language other than English, it shall be solely responsible for doing so and shall bear the entire cost of such translation. Company shall bear no responsibility for the accuracy of any such translation.

Article IX. **Termination**

The obligation to continue performance under this Agreement may be terminated according to sub-paragraphs (a) and (b) below. The terminating party under this Article may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow Company to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble materials for Services in orderly files. In the event of any termination under this Article, Company is entitled to invoice Client and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

(a) This Agreement may be terminated for cause,

(1) By either party, upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Company for its services is a substantial failure to perform and a basis for termination.

(2) By Company, where Company shall have no liability to Client on account of a termination by Company under this paragraph

(i) Upon seven (7) days written notice if Client demands that Company furnish or perform services contrary to Company's responsibilities as a licensed professional; or

(ii) Upon seven (7) days written notice if the Company's services for the Services are delayed for more than thirty (30) days for reasons beyond Company's control.

(3) Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Article IX(a) if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (30) day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, sixty (60) days after the date of receipt of the notice.

(b) This Agreement may be terminated for convenience, by Client, effective upon Company's receipt of written notice from Client.

Article X. Successors, Assigns, and Beneficiaries

(a) Client and Company are hereby bound and the successors, executors, administrators, and legal representatives of Client and Company (and to the extent permitted by Article X(b) the assigns of Client and Company) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

(b) Neither Client nor Company may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

(c) Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Company to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Company and not for the benefit of any other party.

Article XI. Confidentiality

(a) Company acknowledges that in the course of performing its obligations under this Agreement, it may receive certain confidential information including, but not limited to, all features of the compounds, compositions, formulations, apparatus, processes, and application methods developed by Client in the nature of trade secrets, as well as records and copies of records relating to Client's operations, investigations, and business (collectively the "Confidential Information"). Company covenants and agrees that it shall not disclose to any third party, or use for its own benefit or for the benefit of a third party, any such Confidential Information during and after the Term of this Agreement, except to its employees or contractors as may be necessary in the regular course of Company's duties hereunder, or as otherwise authorized by Client. Any contractor with whom Company contracts shall sign appropriate similar covenants of confidentiality regarding Client's Confidential Information. Company further covenants and agrees that it will at all times keep in its custody and control all such Confidential Information and protect it, whether in storage or in use, with the same degree of care as it uses to protect its own Confidential Information against public disclosure and will surrender or destroy all copies in its possession at the end of the Term of the Agreement. Company acknowledges that any violation of this covenant of confidentiality will irreparably harm Client and, in the event of any such violation, Client shall be entitled to seek both legal and equitable relief including, but not limited to, injunctive relief, for any damages that it may sustain as a result thereof.

(b) Client acknowledges that the presentation and integration of any Company Materials which Client receives under the Permission to Use are proprietary and highly confidential (the "Proprietary Information" herein). Except as otherwise set forth herein, Client agrees and covenants not to disclose (and shall use its best efforts to ensure that its employees will not disclose) such Proprietary Information to any third party without Company's express written permission. Client acknowledges that any violation of this covenant of confidentiality will irreparably harm Company and, in the event of any such violation, Company shall be entitled to seek both legal and equitable relief including, but not limited to, injunctive relief, for any damages which it may sustain as a result thereof.

Article XII. General Considerations

(a) The standard of care for all consulting and related services performed or furnished by Company under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Subject to the foregoing standard of care, Company makes no warranties, express or implied, under this Agreement or otherwise, in connection with Company's services. Subject to the foregoing standard of care, Company and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

(b) Company shall not at any time supervise, direct, control, or have authority over any of Client's or Client's contractors' work, nor shall Company have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any of Client's contractors, or the safety precautions and programs incident thereto, for security or safety at the Services site, nor for any failure of any Client contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

(c) This Agreement is to be governed by the laws of the State of Texas, County of Bexar.

(d) To the fullest extent permitted by law, Client and Company

(1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the services, and

(2) agree that Company's total professional liability to Client under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Company, whichever is greater.

(e) The following indemnity shall apply if and to the extent Company's personnel enter or perform work at a premises owned or controlled by Client: Company shall indemnify and hold harmless, Client and its officers, directors, affiliates, subsidiaries, and employees (collectively "Client Parties") against any and all cause of action, liabilities, claims, suits, judgments, liens, awards, and damages of any kind and nature whatsoever for property damage, personal injury or death (including without limitation injury or death of employees of Company or Company's subcontractors) and expenses, costs of litigation, and reasonable counsel fees related thereto arising out of or in any way related to the services performed by Company, the performance of Company or other third parties within the control or acting at the direction of Company, or any of their respective employees (collectively "Company Parties"), including without limitation, the provision of services, personnel, facilities, equipment, support, supervision, or review. The foregoing indemnity shall apply only to the extent of the negligence or willful misconduct of the Company Parties that occurs while on premises owned or controlled by Client and to the extent to which the Company Parties are negligent or act with willful misconduct. In no event shall Company's obligations hereunder be limited to the extent of any insurance available or provided by Company or any subcontractor thereof.

(f) Company will indemnify and hold harmless the Client Parties against any and all third party claims liabilities, costs and expenses which any such Client Party may incur or be subject to as a result of infringement of the intellectual property rights of a third party by Company's Materials, except to the extent any such claims result from (i) Client's use of the Materials in a manner inconsistent with the terms of this Agreement or (ii) Client's inclusion in the Materials any materials provided by Client.

(g) The parties acknowledge that Company's Statements of Work do not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Company or any other party encounters a Hazardous Environmental Condition, Company may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Services affected thereby until Client: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(h) Client and Company agree to negotiate each dispute between them in good faith during the thirty (30) days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

Article XIII. Notices

All notices and other communications required or permitted hereunder shall be in writing and shall be deemed given when (i) delivered personally or by overnight courier to the following address of the other party hereto (or such other address for such party as shall be specified by notice given pursuant to this Article) or (ii) sent by email to the email address of the other party hereto (or such other email address for such party as shall be specified by notice given pursuant to this Article).

(i) If to Company:

Opgrade LLC
Attn: Contract Administrator
24165 W. Interstate Hwy. 10 #217-296
San Antonio, TX 78257

Phone (210) 399-3997
Fax (210) 390-0302
Email contracts@opgrade.com

(ii) If to Client:

As specified in the Statement of Work

Article XIV. Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements, or representations by or between the parties, written or oral, which may have related in any manner to the subject matter hereof. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Article XV. **Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision of this Agreement or the validity, legality or enforceability of such provision in any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein. If any conflicts in language arise between this Agreement and any Statement of Work, the Statement of Work language shall govern.

Article XVI. **Force Majeure**

A Force Majeure event refers to any event that cannot be foreseen prior to the execution of this Agreement and its occurrence and consequences cannot be avoided or overcome by a party to this Agreement and which prevents either or both of the parties from implementing all or any part of the responsibilities associated with the provisions of this Agreement. Such a Force Majeure event may include, but not be limited to, war, terrorism, rebellion, civil commotion, strikes, lockouts and industrial disputes, fire, theft, explosion, earthquake, acts of God, flood, drought or bad weather, the unavailability of commercial transportation, deliveries, supplies, products, disks, or other media or the requisitioning or other act or order by any Government. Neither party shall be under any liability to the other in any way whatsoever for destruction, damage, delay, or failure to complete an obligation of this Agreement arising out of circumstances beyond its reasonable control caused by a Force Majeure event.

Article XVII. **Survival**

Article VII, Article X, Article XI, Article XII, Article XIII, Article XIV, Article XV, Article XVII and Article XVIII of this Agreement shall survive and continue in full force and effect in accordance with their respective terms, notwithstanding any termination of this Agreement.

Article XVIII. **Counterparts**

This Agreement and any Statement(s) of Work may be executed in two counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument.

A.1 Standard Rates

Standard Rates are as set forth in this Exhibit A and include salaries and wages paid to personnel plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit. Daily Rates only apply to work scoped as entire days in the corresponding Statement of Work. Hourly Rates shall apply to all work not specified in advance as entire days in the Statement of Work. Standard Rates do not include Materials costs, other direct costs and out of pocket expenses, such as travel, accommodation, leased vehicles, meals, and incidental expenses. See A.3 below for the Basis of Expense Reimbursement.

The Standard Daily Rates are subject to annual review and adjustment.

Exhibit Table 1 –Standard Rates

Position	Daily Rates	Hourly Rates
Consultant	\$3,000.00	\$425.00
Junior Consultant	\$2,000.00	\$275.00

A.2 Basis of Payment

Using the invoicing procedures set forth in Article V, Client shall pay Company as follows:

An amount equal to the cumulative days charged to the Statement of Work by each of Company’s consultants times the above Daily Rate for all services performed per the Statement of Work, plus reimbursable expenses, and Company’s consultants’ charges, if any. Every on-site consulting week or event, whichever is shorter, shall include one-half (0.5) day billed for travel.

A.3 Basis of Expense Reimbursement

All Client approved, reasonable reimbursable expenses shall be invoiced in excess of Company fees according to the following basis.

Airfare costs shall be for premium economy class or equivalent, within a reasonable travel schedule. Lodging costs shall be reasonably priced accommodations. Leased vehicles costs shall be for a full-size sedan or equivalent automobile plus fuel costs. Company shall be reimbursed for mileage using the current IRS standard mileage rate when using consultant-owned vehicles.

To reduce administrative work for both Client and Company to process invoices, and to promote budget-minded travel, meals, and incidental expenses (M&IE) shall be billed using US Government defined M&IE rates for every day spent travelling. For domestic travel, Company shall use the current US Government General Services Administration (GSA) defined M&IE per diem rate (<https://www.gsa.gov/perdiem>) for the city nearest the Event Site. For international travel, Company shall use the current US Department of State Office of Allowances M&IE Foreign Per Diem Rates in U.S. Dollars (https://aoprals.state.gov/web920/per_diem_action.asp?CountryCode=0000) for the city nearest the Event Site.

Exhibit Table 2 – Expense Reimbursement Basis

Type	Reimbursement Basis
Travel	At cost
Accommodation	At cost
Leased Vehicles & Fuel	At cost
Materials Costs	At cost
Direct Costs	At cost
Meals & Incidental Expenses	M&IE Per Diem Rate (by city)