

**CUYAHOGA COUNTY DIVISION OF SENIOR & ADULT SERVICES  
CONTRACTUAL AGREEMENT BETWEEN**

**COUNTY OF CUYAHOGA, OHIO  
AND  
CARESTAR LEARNING, LLC.**

THIS AGREEMENT (the "Contract"), dated as of 4/12 2013 is made and entered into by and between County of Cuyahoga, Ohio, hereinafter referred to as the ("County") on behalf of the Division of Senior and Adult Services, 13815 Kinsman Rd., Cleveland, Ohio 44120, hereinafter referred to as ("DSAS") and CareStar Learning, LLC., a company, with principal offices at 5566 Cheviot Road, Cincinnati, Ohio 45247, ( the "Vendor").

**WITNESSETH:**

**WHEREAS**, The County has a present need for online educational training services;

**WHEREAS**, The Vendor provides online educational solutions for state and local governments, organizations and individuals responsible for the care of consumers requiring home and community-based services; and DSAS desires to avail itself of such services of the Vendor, and the Vendor is willing to provide such services to DSAS all upon the terms and conditions set forth in the contract, as further supplemented herein.

**WHEREAS**, The Vendor has unique training and/or experience in the field of providing on-line training, which would fulfill the County's need for yearly in-service requirements for non- licensed employees with minimal expense; and

**WHEREAS**, the County desires to avail itself of the resources and data recording/reporting technology and customized communication tools of the Vendor, and the Vendor is willing to provide such solutions to the County all upon the terms;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendor and the County on behalf of DSAS agree as follows:

**ARTICLE I – AGREEMENT AND TERM**

1.1 **Scope of Agreement.** During the term of this contract, the Vendor shall provide the County with all the services necessary to provide on-going educational solutions for our employees. Said services shall include providing online access to the Vendor's internet website portal and all relevant up-to-date information on which DSAS relies for accessing required course work.

1.2 Term. The initial term of this Contract shall commence as of May 1, 2013; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of (2) two years from the commencement date.

## ARTICLE II - SCOPE OF WORK

2.1 Rendering of Services. The Vendor hereby agrees to provide online educational training through coursework, quizzes, certification and technical support services for the duration of this contract at a total price which shall in no event exceed the amount of One Thousand, Six Hundred dollars (\$1,600.00).

2.2 Maintenance. The Vendor will make available to DSAS all new course work releases, along with any and all modifications, enhancements and/or changes.

## ARTICLE III - PAYMENT AND INVOICING

3.1 Payment. Payment for all services provided in accordance with the provisions of this contract is contingent upon the availability and appropriation of local funding and allocation of federal funds annually. During the term of this Contract, the County shall pay the Vendor a one-time amount of \$1,600.00 for access to the online education system, course documents, quizzes, certificates and technical support services rendered hereunder to Cuyahoga County on a course bundle pricing tier.

CEU PRICING	Rate
HHA In-Service Package (51-100 Employees)	\$1,600

3.2 Invoicing. The Vendor shall invoice the County for online education systems cost. Upon receipt, the Financial Services Unit will review the invoice for completeness and accuracy before making payment (within thirty (30) days of receipt). Payment made will not be subject to late fees or interest payment penalties. **UNDER NO CIRCUMSTANCES SHALL DSAS REIMBURSE THE VENDOR MORE THAN ONE THOUSAND SIX HUNDRED DOLLARS WHICH IS THE TOTAL OF THIS CONTRACT.** The Vendor shall submit original invoice with contract number to the following address:

Division of Senior & Adult Services  
Attn: Financial Services Unit  
13815 Kinsman Rd.  
Cleveland, Ohio 44120

#### ARTICLE IV - INDEMNITIES AND LIABILITIES

4.1 Indemnification. The Vendor agrees that it will, at all times during the existence of this agreement indemnify and save the County of Cuyahoga, all of its departments, agents and employees harmless from suits or actions of every nature and description, brought against the County, any and all of its officers, agents, servants or employees, thereof, for or on account of any injuries or damages received or sustained by a party or parties from any act of the Vendor, its servants or agents that arise out of the injuries or damages sustained during performance of services against this contract.

4.2 Warranties.

If any of the Vendor's online educational system resources do not meet this warranty, the Vendor will do everything necessary to bring its services to the specified level. In order to obtain warranty service, the problem must be reported to the Vendor within 24 hours of the system failure in question.

- (a) The Vendor warrants that the web-based online educational system provided shall function substantially as described in the applicable website, as modified from time to time. During such period the above warranty shall apply to enhancements, updates, and other items provided. The Vendor will use all reasonable commercial efforts to protect all DSAS users from computer viruses or other contaminants.
- (b) The Vendor's sole obligation under this agreement shall be to remedy or repair, as soon as reasonably practicable, all substantial and demonstrable errors and malfunctions in the online educational system. The Vendor, may, in its sole discretion, provide either an update of the affected item, or an alternative method which has substantially the same functionality. For purposes of the Agreement, errors and malfunctions shall be considered to be "substantial" when they result in the impairment of one or more essential functions, features, or capabilities of the online system (i.e. utilizing the data recording/reporting technology, accessing course documents and quizzes, and downloading of completed certifications).

#### ARTICLE V - CHANGE ORDERS AND APPROVAL PROCESS

5.1 Change Order. Any change order or amendment requiring, or necessitating, an increase beyond the price identified in section 2.1 of this contract, or the per CEU charges shall require the approval of the Cuyahoga County Executive.

#### ARTICLE VI - TERMINATION

6.1 Contract Termination. DSAS reserves the right to terminate this agreement for any reason as a result of the Vendor's failure to perform all agreement deliverables as specified within this agreement. Either party shall have the right to terminate this contract upon a thirty (30) day advance written notice to the other party if either party does not meet the terms and conditions specified in this agreement. Under no circumstances shall DSAS be responsible for, or subject to any type of penalty.

ARTICLE VII.- MISCELLANEOUS

7.1 Relationship of Parties. The Vendor is performing pursuant to this Contract only as an independent contractor. The Vendor has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Contract, except as otherwise agreed upon by the parties. Nothing set forth in this Contract shall be construed to create the relationship of principal and agent between the Vendor and the County. Neither party shall act or attempt to act or represent itself, directly or by implication, as an agent of the other party or its affiliates or in any manner assume or create any obligation on behalf of, or in the name of the other party or its affiliates.

7.2 Force Majeure. Neither party will be liable to the other party hereunder or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, acts of the government, the other party hereto, or third parties (excluding subcontractors or agents), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

7.3 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:	Cuyahoga County Division of Senior & Adult Services Attn: Procurement & Contractual Services 13815 Kinsman Road Cleveland, Ohio 44120
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In the case of Vendor:	CareStar Learning, LLC <b>Attn: Tony Burkhart</b> 5566 Cheviot Road Cincinnati, OH 45247
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Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

7.4 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

7.5 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

7.6 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

7.7 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

7.8 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

7.9 Assignment. The Vendor shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the Cuyahoga County Executive by resolution; provided, however, that the Vendor may subcontract any work or obligations to be performed by it pursuant to this Contract.

7.10 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the Cuyahoga County Executive before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by the Vendor prior to the execution of this agreement by the Cuyahoga County Executive, the same will be provided at the Vendor's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the Cuyahoga County Executive. Upon approval by the Cuyahoga County Executive of this contract, however, any and all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

7.11 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

7.12 Electronic Transactions. By entering into this contract , I agree on behalf of the contracting or submitting business entity, its officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the county to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

**IN WITNESS WHEREOF**, the County and the Vendor have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written above.

CARESTAR LEARNING, LLC.

By: 

CUYAHOGA COUNTY, OHIO

Edward Fitzgerald, County Executive

By: 

Edward Fitzgerald, County Executive  
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