

**Amendment
City of Corpus Christi
Purchasing Department**

Date: May 16, 2017

Amendment No. 1

The **CITY OF CORPUS CHRISTI, TEXAS**, and OpenSesame, Inc., Portland, Oregon do hereby make and enter into this Amendment which, together with the OpenSesame Sales Order No. Q-00785-1 and all other duly executed Agreements, constitutes the entire agreement under the above-referenced OpenSesame Sales Order between the City of Corpus Christi and the OpenSesame, Inc.

1. This Amendment establishes the Agreement performance dates under OpenSesame Sales Order No. Q-00785-1 as follows;

Agreement Performance Dates - 05/30/2017-05/29/2020

2. This Amendment deletes the autorenewal clause under the above-referenced OpenSesame Sales Order. This Agreement does not auto-renew and is revised to read as follows:

If you are purchasing an annual or multi-year OpenSesame Plus subscription, the initial term of this Sales Order shall be coextensive with the purchased license term, starting from the date of delivery of course files to Customer, ~~and shall automatically renew for subsequent 12-month terms. Customer may terminate any subsequent term by providing 30-day's written notice before commencement thereof.~~

3. This Amendment adds a non-appropriation clause to OpenSesame Sales Order No. Q-00785-1 to read as follows:

NON-APPROPRIATION

The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30 annually, is subject to appropriations and budget approval covering this Agreement as an expenditure in said budget; however, it's within the sole discretion of the City Council of the City to determine whether to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

OpenSesame, Inc and the City of Corpus Christi agree to and shall abide by all terms and conditions of the OpenSesame Sales Order No. Q-00785-1, to the extent they are not in conflict with the terms of this Amendment. In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

- A. this Amendment
- B. OpenSesame Sales Order No. Q-00785-1
- C. Exhibit
- D. OpenSesame Order No. CC021215

Tom Turnbull

Tom Turnbull (May 24, 2017)

Tom Turnbull
OpenSesame, Inc.

Date

May 24, 2017

Maria Pedraza
Procurement Manager
City of Corpus Christi, Texas

Date

APPROVED AS TO LEGAL FORM:

Buck Brice
Assistant City Attorney
For City Attorney

(Date)



Sales Order No. Q-00785-1
Date: 2/8/2017
Expires on: 3/5/2017

Sales Order

Customer / Billing Contact: **City of Corpus Christi / Liza Wisner**

Billing Address: **Liza Wisner**
1201 Leopard Street #2130

City: **Corpus Christi** State: **TX** Zip: **78401**

Phone: **(361) 826-3336** Email: **lizaw@cctexas.com**

Start Date: Sooner of course delivery or 90 days from signature

Billing Date: Upon signature

ITEM	DESCRIPTION	QTY	UNIT PRICE	TERM	ANNUAL PRICE	TOTAL PRICE
OpenSesame Plus	Curated subscription to 3,500+ courses.	3,000	\$22.60	3 yrs	\$67,800.00	\$203,400.00
						\$203,400.00

Payment Due: \$67,800.00

Notes:

Three annual payments of \$67,800.00 to be made. The initial payment will be invoiced upon execution. The second and third payments will be invoiced at the one and two year anniversaries of this Sales Order.

Terms & Conditions

PAYMENT TERMS NET 10 FROM DATE OF INVOICE. INVOICE SENT UPON EXECUTION HEREOF.

If you are purchasing a Standard License, the term of this Sales Order shall be 12 months from the date of delivery of course files to Customer and shall not auto-renew.

If you are purchasing a monthly OpenSesame Plus subscription, the term of this Sales Order shall be monthly and shall automatically renew for subsequent monthly terms. Customer may terminate by providing 30 days' written notice.

If you are purchasing an annual or multi-year OpenSesame Plus subscription, the initial term of this Sales Order shall be coextensive with the purchased license term, starting from the date of delivery of course files to Customer, and shall automatically renew for subsequent 12 month terms. Customer may terminate any subsequent term by providing 30 day's written notice before commencement thereof.

If you are purchasing a Site License, Pay Per Use program, or OpenSesame Books, then the term of this Sales Order shall be 12 months from the date of delivery of course files to Customer and shall automatically renew for subsequent 12 month terms. Customer may terminate any subsequent term by providing 30 day's written notice before commencement thereof.

OpenSesame reserves the right to disable courses and terminate this Sales Order in the event of late payment.

This Sales Order is subject to the terms and conditions in Exhibit A.

Signature: Tom Turnbull
Tom Turnbull (Feb 8, 2017)

Email: tom.turnbull@opensesame.com

VP, Business and Legal Affairs

EXHIBIT A

Buyer Terms

If you purchase courses via OpenSesame from any Seller in the marketplace, you will be responsible to pay the fee associated with such courses and any applicable taxes. You agree to pay for all courses purchased through the OpenSesame system.

What You Are Buying

When you purchase a course, you are purchasing a non-exclusive license to use that course consistent with the purchased license type. Ownership of all intellectual property rights, including all copyright, trademarks, designs and patents whether registered or unregistered, and all other intellectual property, software and goodwill relating to the course will remain with the Seller. All course seats are sold for single person usage only and not to be broadcast, or otherwise shared.

If you choose to load course files in a third party delivery platform, such as a learning management system, it is your duty to load, categorize, and assign courses. OpenSesame's implementation obligations end once such course files are made available for download.

You agree not to copy, record, edit or alter or otherwise interfere with the courses provided by the Seller. This shall include without limitation: a) not using recording equipment to record during playback of the courses; b) not overlaying the courses with other audio, video or images or distorting the quality of the training programs; and c) not removing, editing or otherwise interfering with (or attempting to remove, edit or otherwise interfere with) any names, marks, logos or branding on the courses.

You agree not to (or attempt to) interfere with or disrupt the proper operation of the Seller's or OpenSesame's software, hardware, systems or networks or courses, including (but not limited to) not knowingly or negligently transmitting files that may interrupt, damage, destroy or limit the functionality of any computer software, hardware, systems or networks, including (without limitation) corrupted files or files that contain viruses, trojans, worms, spyware or other malicious content.

You may not use the courses for any purpose other than for the purpose for which it has been provided and you agree not to use the courses for illegal or inappropriate purposes. In particular, you agree that you will not use the courses to do any of the following: a) convey any false, unlawful, harassing, defamatory, abusive, hateful, racial, threatening, harmful, vulgar, obscene, seditious or otherwise objectionable or offensive material of any kind or nature; b) carry out any commercial business, send any unsolicited commercial emails, advertise or offer to sell any goods or services or conduct or forward surveys, contests or chain letters; or c) falsify the origin or source of any content or other material.

Your right to access and use the courses may not be assigned, transferred or sublicensed by you.

Any courses provided at no cost as part of a promotional program or the sales process may be removed or substituted at will.

Individual Course Purchase Licenses

When you purchase individual courses, or course bundles, users will have twelve (12) months from the date of purchase to access any individual course. Users will thereafter have twelve (12) additional months of access for such course(s).

Site License Purchases

When you purchase a site license an unlimited number of users, from an individual company (limited to a single Internet domain) may access the course for twelve (12) months from purchase (when the order is completed).

Pay Per Use Licenses

Courses purchased via a Pay Per User license (available via OpenSesame sales representative only) pay for courses that are accessed by users. Courses are deemed accessed when the greater of more than two (2) minutes or 50% of a course is taken.

OpenSesame Plus (Plus) Subscription Licenses

Single Plus purchasers may access an unlimited number of courses made available via the Plus subscription while the subscription fee, whether it be monthly or annual, is current. The Plus library is a specific subset of OpenSesame courses and is subject to change from time to time at OpenSesame's discretion.

OpenSesame Basics Subscription Licenses

OpenSesame Basics is sold on an annual basis, and OpenSesame Basics purchasers may access all OpenSesame Basics courses on an unlimited basis during the annual term. The OpenSesame Basics library is a specific subset of OpenSesame courses and is subject to change from time to time at OpenSesame's discretion.

No Liability

OpenSesame, and its Sellers, are not liable for, nor do OpenSesame and its Sellers warrant the courses provided by any Seller via the OpenSesame marketplace.

OpenSesame and its Sellers disclaim any and all responsibility or liability for the content, completeness, accuracy, legality, non-infringement, reliability, or availability of information or materials displayed on, or delivered via OpenSesame. You are responsible for conducting your own research before choosing a course. This is the case even in the event that you request assistance from OpenSesame in selecting courses. OpenSesame's cumulative liability for any claim will be limited to the fees received via the sale of courses over the preceding 12 months.

Course Substitutions and Refunds

OpenSesame retains the right to substitute substantially similar courses for those initially selected as necessary. OpenSesame also reserves the right to remove courses from the OpenSesame marketplace. In the event that a purchased course is removed, OpenSesame shall issue a pro rata refund of the purchase price for such course. OpenSesame generally reserves the right to cancel an order and refund your money for any reason, including the case where course pricing was published in error.

Publicity

You agree, if requested, to supply your logo for inclusion on the OpenSesame website and printed marketing materials; to provide a customer testimonial for use on the OpenSesame website and printed marketing materials; and to provide such other marketing measures as separately agreed between the parties in writing.




INDEXED

EXECUTED by the PARTIES, both of which hereby represent that the signatures to this AGREEMENT, below, are of those persons with the capacity and authority to legally bind the PARTIES.

CUSTOMER
CITY OF CORPUS CHRISTI

OPENSESAME INC

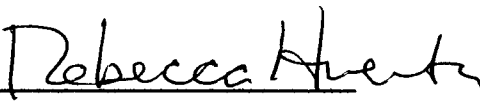
for 
Ronald Olson
City Manager

Thomas Turnbull
Thomas Turnbull (Feb 25, 2015)
Tom Turnbull
Vice President


4/2/15
Date

Feb 25, 2015
Date

ATTEST:


Rebecca Huerta
City Secretary

4/3/15
Date

M2015-028 AUTHORIZED
BY COUNCIL 3/24/15
SECRETARY 

APPROVED AS TO FORM:

Buck Brice 4-1-15
Buck Brice (Date)
Assistant City Attorney
For City Attorney

Exhibit A

Terms and Conditions

General Terms

Before getting started, please review the following terms. Please note that as a Buyer or Seller of content via the OpenSesame marketplace you must review and agree to separate terms. You will be presented with such terms at the time you either purchase courses or go through the process of adding content for sale via OpenSesame.

Assuming you agree to all terms, please acknowledge by accepting below. By agreeing to these terms, you are also agreeing to the [OpenSesame Privacy Policy](#) found in exhibit B.

The general terms of service, separate Buyer and Seller terms, and/or the privacy policy can be changed where both parties agree in writing when such terms do not substantially modify the terms of the agreement.

Registration

You understand and agree to the following:

1. You must use a valid e-mail address and create a username during the registration process.
2. You are responsible for all uses of your account. You must keep your password confidential. We may refuse, at our sole discretion, to allow you to register a username that is trademarked, inappropriate, or impersonates another individual.
3. You agree to let OpenSesame immediately know of any unauthorized use of your account.
4. If you are less than 13 years old, you may not use OpenSesame. If you are between 13 and 17 years old, then you must have parental consent to use this service. By registering for OpenSesame, you are indicating that you have the capacity to understand these Terms of Service. OpenSesame will not be held liable for any loss or damage for non-compliance.
5. You understand and agree that OpenSesame does not control, verify or endorse Courses unless explicitly stated.
6. When registering with OpenSesame, you must provide, and maintain, accurate, current, and complete information about yourself.
7. OpenSesame reserves the right to refuse the service to any user.

Deactivation

You can deactivate, or terminate, your account at any time and for any reason. OpenSesame can also deactivate, or terminate, your account at any time and for any reason. We also reserve the right to use any

Exhibit A

means (legal, operational, or technological) available to enforce these terms. Once deactivation occurs, your rights to access the OpenSesame marketplace will cease to exist.

Your Warranties

You warrant and represent to OpenSesame that you are: 1. Not a minor and you have the legal right and ability to agree to and abide by these terms, or; 2. If you are between the ages of 13 and 17 that you have parental consent and agreement to use the OpenSesame marketplace; 3. You hold and will continue to hold all the ownership, license, proprietary, and other rights necessary to enter into, authorize, grant rights, and perform your obligations under these terms.

Other Terms

These terms shall be governed in all respects by the laws of the State of Texas, USA, and any disputes arising hereunder shall be submitted to state and federal courts in Nueces County, Texas and you agree to and consent to the exclusive jurisdiction of such courts. If any of these terms are deemed invalid, then the remaining terms shall still be enforced. OpenSesame is not responsible for any delay or failure in performance resulting directly or indirectly from causes beyond OpenSesame's reasonable control. Official correspondence must be sent via email to: info@opensesame.com. If you are not a resident of the United States of America, then you agree to follow all applicable laws and local rules regarding the transmission of data from the United States and the country in which you live.

These terms, including Buyer and Seller terms that you may separately agree to as part of registering to do business with OpenSesame, represent the complete, entire, and exclusive understanding and agreement between you and OpenSesame. These terms supersedes all prior, written or oral, understandings or agreements.

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software and goodwill relating to the course will remain with the Seller. All course seats are sold for single person usage only and not to be broadcast, or otherwise shared.

You agree not to copy, record, edit or alter or otherwise interfere with the courses provided by the Seller. This shall include without limitation: a) not using recording equipment to record during playback of the courses; b) not overlaying the courses with other audio, video or images or distorting the quality of the training programmes; and c) not removing, editing or otherwise interfering with (or attempting to remove, edit or otherwise interfere with) any names, marks, logos or branding on the courses.

You agree not to (or attempt to) interfere with or disrupt the proper operation of the Seller's or OpenSesame's software, hardware, systems or networks or courses, including (but not limited to) not knowingly or negligently transmitting files that may interrupt, damage, destroy or limit the functionality of any computer software, hardware, systems or networks, including (without limitation) corrupted files or files that contain viruses, trojans, worms, spyware or other malicious content.

You may not use the courses for any purpose other than for the purpose for which it has been provided and you agree not to use the courses for illegal or inappropriate purposes. In particular, you agree that you will not use the courses to do any of the following: a) convey any false, unlawful, harassing, defamatory, abusive, hateful, racial, threatening, harmful, vulgar, obscene, seditious or otherwise objectionable or offensive material of any kind or nature; b) carry out any commercial business, send any unsolicited commercial emails, advertise or offer to sell any goods or services or conduct or forward surveys, contests or chain letters; or c) falsify the origin or source of any content or other material.

Your right to access and use the courses may not be assigned, transferred or sublicensed by you.

Individual Course Purchase Licenses

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Exhibit B

Privacy Policy

OpenSesame Values Your Privacy

This Privacy Policy (this "Policy") describes how OpenSesame Inc. ("OpenSesame"), treats information collected from you at the OpenSesame web site (<http://www.opensesame.com>) (the "Site") and how it uses and discloses such information. By accessing the Site, you consent to the collection, use and disclosure of your information in accordance with the terms of this Policy. If you do not wish your information to be collected, used or disclosed in the manners described in this Policy, please do not access the Site or make use of OpenSesame's training services and related goods.

OpenSesame may collect two types of information

1. **Aggregate Information.** For purposes of this Policy, information that is anonymous, aggregate information (such as pages visited on the Site, browser type, referring URL, IP address) will be referred to as "Aggregate Information." Aggregate Information is not connected to you or to any other personally-identifiable information relating to you.
2. **Personal Information.** For purposes of this Policy, personally-identifiable information that is connected to you or other personally-identifiable information relating to you, including, but not limited to your name, billing address, payment information, home address, electrical license information, telephone number, e-mail address, birth date, or gender, will be referred to as "Personal Information."

Children under 13

OpenSesame complies with requirements of the Children's Online Privacy Protection Act (COPPA) and the FTC's Rule interpreting COPPA (16 CFR § 512). The Site is not directed to children of any age and OpenSesame does not knowingly collect any Personal Information from children under 13 years in any manner.

Use of Information

1. **Aggregate Information.** OpenSesame uses Aggregate Information only to generate statistical reports, such as reports about the use of the Site. Such reports are used to make the Site better meet your needs or to allow OpenSesame to better conduct its business.

Exhibit B

2. **Personal Information.** OpenSesame uses Personal Information to fulfill your requests for certain products and services; to customize the content you see; and to contact you about specials and new products. OpenSesame reserves the right to use third party providers to assist in providing services such as shipping, credit card processing, and communication regarding OpenSesame's services. When OpenSesame uses third parties such as these, OpenSesame requires that the third parties comply with this Policy and any other appropriate confidentiality and security measures. OpenSesame may also share Personal Information with third parties in limited circumstances, including when complying with legal process, preventing fraud or imminent harm, and ensuring the security of OpenSesame's network and services.

Disclosures of Information

1. **Personal Information.** OpenSesame does not sell, rent or share personally-identifiable information to or with any third party not affiliated with or owned by OpenSesame, except that OpenSesame may disclose such information to service providers who may assist OpenSesame in providing services to you or in such areas reporting the completion of certain types of training. OpenSesame will disclose your personal information to third parties when you give us permission to do so. If you create a public profile on OpenSesame, any information you include in that profile will be disclosed publicly.
2. **Aggregate Information.** Aggregate information is used solely for internal purposes to help OpenSesame improve its users' experience at the Site and to better provide its services to you.
3. **Cookies.** OpenSesame may use "cookies" to recognize and count new visitors and to acquire Aggregate Information that lets OpenSesame analyze traffic patterns and tune the performance and functionality of the Site. A cookie is a file that is placed on your hard drive when you visit a web site. It contains specific information that allows the Site to "recognize" your computer the next time you visit. The most important use for cookies is to eliminate the need for you to re-enter your information every time you visit the Site. Most browsers accept cookies by default, but you can turn off cookies using your browser settings. To learn how, see: for Microsoft Internet Explorer users, www.microsoft.com/info/cookies.htm; for Firefox users, http://mozilla.gunnars.net/firefox_help_firefox_cookie_tutorial.html. If you turn off cookies, certain Site features may no longer work or may work differently. Please note that when you accept a cookie from the Site, OpenSesame does not gain access to your hard drive or personal information other than the information you have provided to us. OpenSesame does not provide cookie information to any third party.

Exhibit B

4. **Disclosure as Required by Law.** OpenSesame will disclose user Personal Information when required by law or if OpenSesame has a good-faith belief that such action is necessary to comply with a current judicial proceeding, a court order or legal process served on OpenSesame.
5. **Business Transition.** In the event OpenSesame goes through a business transition, such as a merger, acquisition by another company or a sale of a portion of OpenSesame's assets, our customers' Personal Information may be part of the assets transferred. Disclosure of users' Personal Information in such a situation, or in contemplation of such a situation, shall be deemed consistent with this Policy. However, such a transfer may result in a change in this Policy, and you are advised and strongly encouraged to review this Policy frequently.

Links

The Site contains or may contain links to other web sites. OpenSesame is not responsible for the privacy practices or content of these other web sites. This Policy applies solely to information collected by the Site. OpenSesame encourages you to be aware when you leave the Site and to read the privacy statements of each and every web site that collects Personally Information.

Security

OpenSesame takes commercially-reasonable precautions to protect your information. However, given the nature of the Internet and the fact that network security measures are not infallible, OpenSesame cannot guarantee the security of Personal Information submitted through the Site. OpenSesame also makes an off-line effort to protect your Personal Information. OpenSesame makes commercially-reasonable efforts to restrict access to Personal Information to employees who need the information to perform a specific job. OpenSesame maintains commercially-reasonable physical, electronic and managerial procedures to safeguard the Personal Information OpenSesame collects.

Contacting, Updating and Opting Out

You may use the contact information provided below to request a change in your Personal Information (such as address correction) or to have your Personal Information removed from OpenSesame's database. OpenSesame will correct, update, or remove your Personal Information according to your request. You may also use the contact information below if you have any questions, comments or complaints about this Policy or your dealings with the Site. OpenSesame info@OpenSesame.com 2828 SW Corbett Ave., Suite 135, Portland, OR 97201 United States of America (503) 808-1268

U.S. - EU Safe Harbor Privacy Statement

Exhibit B

OpenSesame complies with the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information from European Union member countries and Switzerland. OpenSesame has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To learn more about the Safe Harbor program, and to view OpenSesame's certification, please visit <http://www.export.gov/safeharbor/>

In compliance with the US-EU and US-Swiss Safe Harbor Principles, OpenSesame commits to resolve complaints about your privacy and our collection or use of your personal information. European Union or Swiss citizens with inquiries or complaints regarding this privacy policy should first contact OpenSesame at info@OpenSesame.com 2828 SW Corbett Ave., Suite 135, Portland, OR 97201 United States of America (503) 808-1268.

OpenSesame has further committed to refer unresolved privacy complaints under the US-EU and US-Swiss Safe Harbor Principles to an independent dispute resolution mechanism, the BBB EU SAFE HARBOR, operated by the Council of Better Business Bureaus. If you do not receive timely acknowledgment of your complaint, or if your complaint is not satisfactorily addressed by OpenSesame, please visit the BBB EU SAFE HARBOR web site at www.bbb.org/us/safe-harbor-complaints for more information and to file a complaint.

Policy Changes

OpenSesame reserves the right to make, at its sole discretion, any changes, modifications, additions or deletions to all or portions of this Policy at any time. OpenSesame recommends that you review this Policy frequently. If OpenSesame makes a material change to this Policy, OpenSesame will notify you by standard mail or e-mail, or by clear notice on OpenSesame's home page. The changes will not be effective against you until the notice has been provided and you have assented to the change through continued use of the Site.

Traveling Beyond the OpenSesame Internet Portal

As a trade-specific portal, this Site provides you with a doorway to the Internet. When you travel beyond this Site, OpenSesame advises you to browse carefully. This Policy does not apply to the practices of companies that OpenSesame does not own or control, or to people that OpenSesame does not employ or manage. OpenSesame recommends that you read the Federal Trade Commission reports and discussions regarding privacy and security located at: <http://www.ftc.gov/bcp/menus/consumer/tech/privacy.shtm>