



INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is between (hereinafter referred to as CONTRACTOR) and California State University San Marcos (hereinafter referred to as CSU) which is the Trustees of the California State University and is one of 23 campuses in the California State University system, located in San Marcos, California. Collectively, CONTRACTOR and CSU are referred to hereinafter as the Parties.

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

RIDER A Terms and Conditions are attached here to and made part of this agreement.

Contractor Contact Information

Address:
City, State, Zip:
Email:
Phone:

Terms of Contract

This Agreement covers services rendered from through

Scope of Services

The summary description of services to be performed by CONTRACTOR consist of the following:

☐ If checked, CONTRACTORS Proposal is attached and contains a detailed scope of service description incorporated into Agreement by reference.

Compensation

CONTRACTOR shall be paid lump sum (or multiple payments) for all services and expenses, including travel, not to exceed amount of: \$

Qualification

☐ CONTRACTOR certifies: I am a Sole Proprietor, individual or single member LLC with no employees.

Insurance Requirements

The University reserves the right to request a Certificate of Insurance or proof of rental car insurance at anytime.
Automobile Insurance: CONTRACTOR to check the applicable box.

- ☐ CONTRACTOR will drive their personal automobile onto Campus and has automobile insurance.
- ☐ CONTRACTOR will drive a rental automobile onto Campus and their personal insurance listed above, will provide coverage.
- ☐ CONTRACTOR will drive a rental automobile onto Campus and will not use their personal insurance for coverage rental car agencies insurance coverage will be purchased.
- ☐ CONTRACTOR will not drive onto campus.

Extended Learning Only

☐ If Checked, this Agreement is for UNIVERSITY Extended Learning and the following section 38 applies in addition to all other terms.

By their signatures below, each of the following represent that they have the authority to execute this Agreement and to bind the Party on whose behalf their execution is made.

UNIVERSITY		CONTRACTOR	
By (AUTHORIZED SIGNATURE)	Date	By (AUTHORIZED SIGNATURE)	Date
PRINTED NAME AND TITLE OF PERSON SIGNING David Taylor Director, Procurement & Support Services		PRINTED NAME AND TITLE OF PERSON SIGNING Name Title	

RIDER A

Terms and Conditions

1. **Notices** Notices required under this Agreement shall be sent to the Parties at the addresses set forth below and may be by facsimile, e-mail, courier or USPS:

TO UNIVERSITY PROCUREMENT OFFICE:

Procurement, Contracts and Support Services
California State University San Marcos
333 S. Twin Oaks Valley Road
San Marcos, CA 92096-0001
procurementservices@csusm.edu
760-750-4555

TO UNIVERSITY ACCOUNTS PAYABLE:

Accounts Payable
California State University San Marcos
Procurement, Contracts, and Support Services
333 S. Twin Oaks Valley Road
San Marcos, CA 92096-0001
accountspayable@csusm.edu
760-750-4475

TO CONTRACTOR

Per Agreement Face Sheet

2. **Background Checks**

Background Checks must be completed when applicable in accordance with CSU's Background Check Policy:
<http://www.calstate.edu/HRAdm/pdf2015/HR2015-08.pdf>

3. **Tax Withholding**

Payment to Non-California Resident or Non US citizen or non-alien resident CONTRACTOR performing services in California may be reduced by any required State Tax Withholding (7% for individuals) or Federal Tax Withholding (up to 30%), or both from the value listed in Compensation.

4. **Invoices**

Invoices shall be submitted, in arrears, to the Accounts Payable address provided above. Each invoice must contain the Purchase Order Number. Final invoice shall be marked as such. CONTRACTOR shall submit invoices to UNIVERSITY ACCOUNTS PAYABLE for payment of services rendered. Unless otherwise specified, UNIVERSITY shall pay properly submitted invoices not more than 45 days after (i) the performance completion date of services; or (ii) receipt of an undisputed invoice, whichever is later. Late payment penalties shall not apply to this Agreement. The consideration to be paid CONTRACTOR, as described within the Contract, shall be in full compensation for all of CONTRACTOR's expenses incurred in the performance of this Contract, including travel and per diem, unless otherwise expressly provided.

CONTRACTOR may elect to receive payment via Direct Deposit/Electronic Fund Transfer (ACH), by completing and attaching the form, Independent **CONTRACTOR Direct Deposit Authorization**, found here:
https://www.csusm.edu/procurement/documents/apdocs/eft_form_universal.pdf CONTRACTOR shall be responsible for any bank wire or transfer fees, if applicable. ***Missing or incorrect forms will delay payment.***

5. **Commencement of Work**

Contractor shall not commence work under the Contract until Contractor has received a fully executed Contract and been given written approval to proceed. Any work performed by Contractor prior to the date of approval shall be considered as having been performed at Contractor's own risk and as a volunteer.

6. **Contract Alterations & Integration**

No alteration or variation of the Contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated in writing in the Contract shall be binding on any of the parties hereto.

7. **Severability**
Contractor and CSU agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of its presumed non-applicability of such provision. Should the illegal or unenforceable provision be a material or essential term of the Contract, [the Contract shall be terminated in a manner commensurate with the interests of both parties, to the maximum extent reasonable.
8. **Independent Status**
Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers, employees or agents of CSU or the State of California. In no event shall Contractor and its employees and agents be entitled to unemployment or workers' compensation benefits from CSU.
9. **Governing Law**
To the extent not inconsistent with applicable federal law, this Contract shall be construed in accordance with and governed by the laws of the State of California.
10. **Contractor's Power and Authority**
Contractor warrants it has full power and authority to enter into this Contract and will hold CSU harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor shall not enter into any arrangement, agreement or contract with any third party that might abridge any rights of the CSU under this Contract.
11. **Assignments**
Contractor shall not assign this Contract, either in whole or in part, without CSU's written consent, which will not be unreasonably withheld.
12. **Waiver of Rights**
Any action or inaction by CSU or the failure of CSU on any occasion to enforce any right or provision of this Contract shall not be a waiver by CSU of its rights hereunder and shall not prevent CSU from enforcing such provision or right on any future occasion. CSU's rights and remedies provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.
13. **Entire Contract**
This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of each party.
14. **Appropriation of Funds**
a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved such continuation of the Contract is subject to the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any commodities furnished under the Contract and not yet paid for by CSU, terminate any future services and commodities to be supplied to the CSU under the Contract, and relieve the CSU of any further obligation therefore.
b) CSU agrees that if provision (a) above is involved, commodities shall be returned to Contractor in substantially the same condition in which they were delivered, subject to normal wear and tear. CSU further agrees to pay for packing, crating, transportation to Contractor's nearest facility and for reimbursement to Contractor for expenses incurred for its assistance in such packing and crating.
15. **Cancellation**
CSU has the right to cancel this Contract at any time and without future financial obligation upon thirty (30) days written notice to Contractor.
16. **Termination for Default**
CSU may terminate the Contract and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the CSU may proceed with the work in any manner deemed proper by the CSU. The cost to the CSU shall be deducted from any sum due the Contractor under the Contract, and the balance, if any, shall be paid the Contractor upon demand.

17. **Rights and Remedies of CSU for Default**

- a) In the event any Deliverables furnished or services provided by Contractor in the performance of this Contract should fail to conform to the requirements herein, or to the sample submitted by Contractor, CSU may reject the same, and it shall thereupon become Contractor's duty to forthwith reclaim and remove all nonconforming deliverables and correct the performance of services, without expense to the CSU, and to immediately replace all such rejected items with others conforming to the specifications or samples. Should Contractor fail, neglect, or refuse to do so, CSU shall thereupon have the right, but not the obligation, to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct the cost of such cover from any moneys due or that may thereafter become due to Contractor.
- b) In the event Contractor fails to make prompt delivery of any item as specified in the Contract, the same conditions as to CSU's right, but not obligation, to purchase in the open market and receive reimbursement from Contractor, as set forth in (a), above shall apply.
- c) In the event CSU terminates this Contract, either in whole or in part, for Contractor's default or breach, Contractor shall compensate CSU, in addition to any other remedy CSU may have available to it, for any loss or damage sustained and cost incurred by the CSU in procuring any items that Contractor agreed to supply.
- d) CSU's rights and remedies provided above shall not be exclusive and shall be in addition to any other rights and remedies provided by law, equity or this Contract.

18. **Warranty**

Contractor warrants that deliverables and services furnished hereunder will conform to the requirements of this Contract (including, without limitation, all descriptions, specifications, and drawings identified in the Statement of Work, if any), and the deliverables will be free from defects in materials and workmanship. Where the parties have agreed to design specifications in the Statement of Work directly or by reference, Contractor warrants the deliverables shall provide all functionality required thereby.

19. **Safety and Accident Prevention**

In performing work under this Contract on CSU premises, Contractor shall conform to all specific safety requirements contained in this Contract or as required by law or regulation. Contractor shall take all additional precautions as the CSU may reasonably require for safety and accident prevention purposes. Contractor's violation of such rules and requirements, unless promptly corrected, shall constitute a material breach of this Contract.

20. **Indemnification**

CONTRACTOR shall indemnify, defend, and hold harmless the State of California, Board of Trustees of the California State University, CSUSM, University Auxiliary & Research Services Corporation (UARSC), the California State University San Marcos Foundation (CSUSMF), the San Marcos University Corporation (SMCOR) the Associated Students, Inc. (ASI) and their respective officers, agents and employees from any and all claims and losses accruing or resulting to any other person, firm or corporation furnishing or supplying work, service, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation related to, arising out of or resulting from CONTRACTOR's performance of this Contract.

21. **Document Referencing**

All correspondence, invoices, bills of lading, shipping memos, packages, etc., must show the Purchase Order number. If factory shipment, the factory must be advised to comply. Invoices not properly identified with the Purchase Order number may be returned to Contractor and may cause delay in payment.

22. **Use of Data**

Contractor shall not utilize any non-public CSU information it may receive by reason of this Contract, for pecuniary gain not contemplated by this Contract, regardless whether Contractor is or is not under contract at the time such gain is realized. CSU specific information contained in the report, survey, or other product developed by Contractor pursuant to this Contract is the property of CSU, and shall not be used in any manner by Contractor unless authorized in writing by CSU.

23. **Confidentiality of Data**

- a) Contractor acknowledges the privacy rights of individuals to their personal information that are expressed in the Information Practices Act (California Civil Code Section 1798 et seq.) and in California Constitution Article 1, Section 1. Contractor shall maintain the privacy of personal information and protected data as confidential information. Contractor shall not use, disclose, or release confidential information contained in CSU records without full compliance with applicable state and federal privacy laws, and this Contract. Contractor further acknowledges and agrees to comply with Federal privacy laws, such as the Gramm-Leach-Bliley Act (Title 15, United States Code, Sections 6801(b) and 6805(b)(2)) applicable to financial transactions, and the Family Educational Rights and Privacy Act (Title 20, United States Code, Section 1232g) applicable to student education records and information from student education records.

Contractor shall maintain the privacy of confidential information and shall be financially responsible for any notifications to affected persons (after prompt consultation with CSU) whose personal information is disclosed by any security breach relating to confidential information resulting from Contractor's or its personnel's acts or omissions. Further, If so requested by CSU, Contractor shall be administratively responsible for providing such notification in the most expedient time possible consistent with the methods prescribed in California Civil Code 1798.29g and 1798.82g.

- b) Contractor further agrees that all financial, statistical, personal, technical and other data and information relating to CSU's operation designated "confidential" by CSU, and not otherwise subject to disclosure under the California Public Records Act, and made available to Contractor to perform this Contract or which become available to Contractor while performing this Contract, shall be protected by Contractor using the same level of care it takes to protect its own information of a similar nature, but in no event less than reasonable care. If required by a court of competent jurisdiction or an appropriate administrative body with legal authority to order the disclosure of confidential information or protected data, Contractor will notify CSU in writing prior to any such disclosure to give CSU an opportunity to oppose any such disclosure. Prior to any disclosure of confidential information as required by legal process, Contractor shall: (1) Notify CSU of any actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure, immediately upon becoming so obligated; and
- c) Contractor shall cooperate with any litigation or investigation proceedings concerning protected data loss or other breach of Contractor's obligations under this Contract. Any access, transmission, or storage of protected data outside the United States must be approved in writing by CSU in advance. Contractor's failure to comply with any provision of this Section shall constitute a material breach of the Contract.

24. **Patent, Copyright, and Trade Secret Indemnity**

- a) Contractor shall indemnify, defend, and hold harmless the State of California, Board of Trustees of the California State University, CSU, and their respective officers, agents, and employees (collectively referred to as CSU), from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any Intellectual Property Right, domestic or foreign, by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to CSU, in addition to the foregoing provision, such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide CSU with indemnity protection.
 - i. CSU will notify Contractor of such claim in writing and tender its defense within a reasonable time; and
 - ii. Contractor will control the defense of any action on such claim and all negotiations for its settlement or compromise, except when substantial principles of government or public law are involved, when litigation might create precedent affecting future CSU operations or liability, or when involvement of the CSU is otherwise mandated by law. In such case no settlement shall be entered into on behalf of CSU without CSU's written approval.
- b) Contractor may be required to furnish CSU a bond against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a Intellectual Property Right, whether domestic or foreign, CSU shall permit Contractor at its option and expense either to procure for CSU the right to continue using the Deliverables or Software or to replace or modify the same so they become non-infringing, provided they comply with Contract and performance requirements and/or expectations. If neither option can reasonably be practicable or if the use of such Deliverables or Software by CSU shall be prevented by injunction, Contractor agrees to take back such Deliverables or Software and use its best effort to assist CSU in procuring substitute Deliverables or Software at Contractor's cost and expense. If, in the sole opinion of CSU, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from Contractor under this Contract impracticable, CSU shall then have the option of terminating this Contract, or applicable portions thereof, without penalty or termination charge. Contractor agrees to take back such Deliverables or Software and refund any sums CSU paid Contractor less any reasonable amount for use or damage.
- d) Contractor certifies it has appropriate systems and controls in place to ensure State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

25. **Rights in Work Product**

All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Contract, including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this section may be revised in a Statement of Work. The provisions of this sub-section a) may be revised in a Statement of Work. However, all finished product or deliverables required under this contract shall be the exclusive property of the CSU and may be used at CSU's discretion.

26. **Examination and Audit**

For contracts in excess of \$10,000, Contractor shall be subject to the examination and audit by

- a) the Office of the University Auditor, and
- b) the Bureau of State Audits, for a period of three (3) years after final payment under the Contract. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the Contract. Note: Authority Cited: Government Code Section 8546.7; Education Code Section 89045(c&d), respectively.

27. **Dispute**

Any dispute arising under or resulting from this Contract that is not resolved within 60 days of time by authorized representatives of Contractor and CSU shall be brought to the attention of Contractor's Chief Executive Officer (or designee) and CSU's Chief Business Officer (or designee) for resolution. Either Contractor or CSU may request that the CSU Vice Chancellor, Business and Finance (or designee) participate in the dispute resolution process to provide advice regarding CSU contracting policies and procedures. If this informal dispute resolution process is unsuccessful, the parties may pursue all remedies not inconsistent with this Contract. Despite an unresolved dispute, Contractor shall continue without delay in performing its responsibilities under this Contract. Contractor shall accurately and adequately document all service it has performed under this Contract.

28. **Conflict of Interest**

CSU requires a Statement of Economic Interests (California Form 700) to be filed by any Consultant (or Contractor) who is involved in the making or participation in the making of decisions which may foreseeably have a material effect on any CSU financial interest.

29. **Follow-On Contracts**

No person, firm, or subsidiary thereof who has been awarded a contract for consulting services or providing direction (as provided below) may submit be awarded a contract for the provision of services, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

- a) If Contractor or its affiliates provides Consulting and direction, Contractor and its affiliates:
 - i. shall not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for, or in connection with, any subject of such Consulting and Direction; and
 - ii. shall not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Consulting and Direction, whichever is later.
- b) "Consulting and Direction" means services for which Contractor received compensation from CSU and includes:
 - i. development of, or assistance in the development, of work statements, specifications, solicitations, or feasibility studies;
 - ii. development or design of test requirements;
 - iii. evaluation of test data;
 - iv. direction of or evaluation of another Contractor;
 - v. provision of formal recommendations regarding the acquisition of products or services; or
 - vi. provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) Except as prohibited by law, the restrictions of this Section will not apply:
 - i. to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - ii. where CSU has entered into a Contract for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

30. **Endorsement**

Nothing contained in this Contract shall be construed as conferring on any party, any right to use the other party's name as an endorsement of product/service or to advertise, promote or otherwise market any product or service without the prior written consent of the other party. Furthermore nothing in this Contract shall be construed as endorsement of any commercial product or service by the CSU, its officers or employees.

31. **Covenant Against Gratuities**
Contractor shall warrant that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of CSU with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, CSU shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by CSU in procuring on the open market any items that Contractor agreed to supply shall be borne and paid for solely by Contractor. CSU's rights and remedies provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under the Contract .
32. **Recycled Content Certification**
To the extent that services involve the supply of post-consumer materials (see below) Contractor shall certify in writing the minimum, if not exact, percentage of post-consumer material, as defined in Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to CSU regardless whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).
33. **Americans With Disabilities Act (ADA)**
Contractor warrants that it complies with California and federal disabilities laws and regulations. (Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq). Contractor hereby warrants the products or services it will provide under this Contract comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor further agrees to indemnify and hold harmless CSU from any claims arising out of Contractor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of this Contract.
34. **Debarment and Suspension**
By accepting a contract with the CSU, Contractor certifies neither it nor its principals or its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency ([2 Code Federal Regulations\[CFR\] 180.220](#) in accordance with the Office of Management and Budget guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p.189) and 12689 (3 CFR Part 1989 Comp., p. 235)).
35. **Expatriate Corporations**
Contractor declares and certifies that it is not an expatriate corporation, and is not precluded from contracting with CSU by The California Taxpayer and Shareholder Protection Act of 2003, Public Contract Code Section 10286, et seq.
36. **Citizenship and Public Benefits**
If Contractor is a natural person, Contractor certifies he or she is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT.2105, 2268-69).
37. **Loss Leader**
Contractor certifies and declares it is not engaged in business within this State of California to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.
Note: Authority Cite: (PCC 12104.5(b))
38. **Extended Learning Requirements**
a) CONTRACTOR will:
i. Provide work and deliverables as described in project description and expectations.
ii. Provide on-site attendance as requested for the project, and in case of illness or emergency, advise appropriate EL staff.
iii. Obtain approval in advance from the program director for any situation that would alter the commitment as set forth in this Agreement, including change of venue or time.
iv. Understand that no commitment is made beyond this Agreement and no commitment of future employment is implied.

- b) CONTRACTOR will not:
 - i. Utilize any materials, (including, but not limited to, PowerPoint presentations, handouts, instructor guides, program information/data, or syllabi) that are provided by UNIVERSITY for any other program, presentation or consultation that is not associated with the above mentioned course.
 - ii. Incur any financial obligation or expenditures on behalf of Extended Learning for any purposes without the prior written approval of the program director.
 - iii. Solicit class or program participants for private business, solicitation or consultations that would result in personal financial gain unless agreed upon by the program director in advance.
 - iv. Sell books, materials, or goods to participants. All course-related materials must be part of the registration fee or collected as a separate "materials fee" by the University/EL – not by the instructor.
 - v. Duplicate or offer classes or services that would directly compete with the above course without approval of the program director.
- c) Extended Learning will:
 - i. Reserve the right to cancel this Agreement prior to scheduled start date if insufficient enrollment is received.
 - ii. Retain the right to courses, materials and information developed for and paid by EL.
 - iii. Process payment to the instructor upon completion of the course or work segments as directed by EL.