

**UNIVERSITY OF CALIFORNIA
TERMS AND CONDITIONS FOR CONSULTANT AGREEMENTS**

1. COMPENSATION AND REIMBURSEMENT OF EXPENSES

1.1 TRAVEL AND RELATED EXPENSES

In the event that, in addition to fees for professional services, Consultant will also be reimbursed for travel and related expenses, such reimbursement shall be made in accordance with the following:

1.1.1 Meals and Incidental Expenses

University shall reimburse vendor for actual lodging, meals and incidental expenses incurred which are ordinary and necessary to accomplish the business purposes this agreement, provided that requests for such reimbursement include original and an itemized receipt for lodging, as backup to document actual expenses incurred.

1.1.2 Mileage and Transportation Expenses

University shall reimburse vendor for transportation costs provided that requests for such reimbursement include original receipts for transportation, other than for local transportation less than \$75. University shall reimburse vendor for fares, car rental (compact), private car mileage (48.5 cents per mile), parking fees, tolls, etc., providing the most economical mode of transportation and the most usually traveled route are utilized. University shall reimburse vendor for air travel, providing it is by commercial airline coach class, or intermediate, one class or similar reduced fare accommodations, and is accompanied by a ticket or copy thereof, specifically identifying the traveler, date of travel, class of travel, and price. The use of first class, premium, or higher cost services is not authorized under this agreement, unless approved in advance by University. Any such authorization for the use of higher cost services as identified above must be obtained prior to the incident of travel.

1.1.3 Lodging Expenses

University will pay the cost of single-occupancy lodging in conveniently located moderate range hotel for the actual nights occupied during the course of business travel, provided that requests for such reimbursement include original itemized receipts for lodging, as backup to document actual expenses incurred.

2. ASSIGNMENT OR SUBCONTRACTING

The Consultant may not assign or transfer rights or any interest, claim, or subcontract any portion of the work, without the prior written approval of the University. If the University consents to such assignment or transfer, the terms and conditions shall be binding upon any assignee or transferee.

3. PATENTS

Whenever any invention or discovery is made or conceived by the Consultant, the Consultant shall promptly furnish the University complete information with respect thereto and the University shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. The Consultant will, at University expense, execute all documents and do all things necessary or proper with respect to such patent applications. The Consultant is specifically subject to an obligation to assign all right, title and interest in any such patent rights to the University as well as all right, title and interest in tangible research products embodying such inventions whether the inventions are patentable or not.

4. COPYRIGHT

The University shall own, solely and exclusively, the copyright and all copyright rights to any written or otherwise copyrightable material delivered. The Consultant warrants that all creators of copyrightable material delivered to the University are, at the time of the material's creation, bona fide employees or subcontractors of the Consultant, and that such creation is within the course and scope of the creator's employment.

5. CONSULTANT'S LIABILITY AND INSURANCE REQUIREMENTS

5.1 INDEMNIFICATION

The Consultant shall defend, indemnify, and hold the University, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages that are caused by or result from the negligent or intentional acts or omissions of the Consultant, its officers, agents, or employees.

5.2 INSURANCE COVERAGE

The Consultant, at its sole cost and expense, shall insure its activities in connection with the work and obtain, keep in force, and maintain insurance as required.

5.3 CERTIFICATES OF INSURANCE

The Consultant shall furnish the University with certificates of insurance evidencing compliance with all requirements prior to commencing work. Such certificates shall:

- Provide for thirty (30)-days advance written notice to the University of any modification, change, or cancellation of any of the above insurance coverage.
- Indicate that The Regents of the University of California has been endorsed as an additional insured under the coverage.
- Include a provision that the coverage will be primary and will not participate with nor be excess over any valid and collectible insurance or program of self-insurance carried or maintained by the University.

6. RECORDS ABOUT INDIVIDUALS

The Consultant shall not use recording devices in discussions with University employees unless the University and said employees provide advance written authorization for use of recording devices . The State of California Information Practices Act of 1977, as well as University policy, sets forth certain requirements and safeguards regarding records pertaining to individuals, including the rights of access by the subject individual and by third parties. If the Consultant creates records about an individual of a confidential or personal type, including notes or tape recordings, the information shall be collected to the greatest extent practicable directly from the individual who is the subject of the information. When collecting the information, the Consultant shall inform the individual that the record is being made and the purpose of the record.

7. OWNERSHIP AND ACCESS TO RECORDS

Confidential or personal information about individuals will become the property of the University of California and subject to state law and University policies governing privacy and access to files.

8. EXAMINATION OF RECORDS

The University, and if the applicable contract or grant so provides, the other contracting party or grantor (and if that be the United States, or an agency or instrumentality thereof, then the Controller General of the United States) shall have access to and the right to examine any pertinent books, documents, papers, and records of the Consultant involving transactions and work until the expiration of five years after final payment hereunder. The Consultant shall retain project records for a period of five years from the date of final payment.

9. CONFLICT OF INTEREST

9.1 NO UC EMPLOYEES

The Consultant shall not hire any officer or employee of the University to perform any service. If the work is to be performed in connection with a Federal contract or grant, the Consultant shall not hire any employee of the United States government to perform any service.

9.2 NO CONFLICT

The Consultant affirms that to the best of his/her knowledge there exists no actual or potential conflict between the Consultant's family, business, or financial interests and the services provided, and in the event of change in either private interests or service, any question regarding possible conflict of interest which may rise as a result of such change will be raised with the University.

9.3 NO REPORTING RELATIONSHIP

The Consultant shall not be in a reporting relationship to a University employee who is a near relative, nor shall the near relative be in a decision-making position with respect to the Consultant.

10. AFFIRMATIVE ACTION

The Consultant recognizes that as a federal and state government contractor or subcontractor, the University of California is obligated to comply with certain laws and regulations of the federal and state government regarding equal opportunity and affirmative action. When applicable, the Consultant agrees that, as a government subcontractor, the following are incorporated herein as though set forth in full: the non-discrimination and affirmative action clauses contained in Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations contained in Title 41, part 60 of the Code of Federal Regulations, as amended; the non-discrimination and affirmative action clause contained in the Rehabilitation Act of 1973, as amended, as well as the Americans With Disabilities Act relative to the employment and advancement in employment of qualified individuals with disabilities, and the implementing rules and regulations in Title 41, part 60-741 and 742 of the Code of Federal Regulations; the non-discrimination and affirmative action clause of the Vietnam Era Veterans Readjustment Assistance Act of 1974 relative to the employment and advancement in employment of qualified special disabled veterans and Vietnam era veterans without discrimination, and the implementing rules and regulations in Title 41, part 60-250 of the Code of Federal Regulations; and the non-discrimination clause required by California Government Code Section 12900 relative to equal employment opportunity for all persons without regard to race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex, and the implementing rules and regulations of Title 2, Division 4, Chapter 5 of the California Code of Regulations. The Consultant, as a government subcontractor, further agrees that when applicable it shall provide the certification of non-segregated facilities required by Title 41, part 60-1.8(b) of the Code of Federal Regulations.

11. CONFIDENTIALITY

The Consultant shall use his or her best efforts to keep confidential any information provided by the University and marked "Confidential Information," or any oral information conveyed to the Consultant by the University and followed by a written communication within thirty (30) days that said information shall be considered Confidential Information. This non-disclosure provision shall not apply to any of the following:

- Information which the Consultant can demonstrate by written records was known to him or her prior to the effective date;
- Is currently in, or in the future enters, the public domain other than through a breach or through other acts or omissions of Consultant; or
- Is obtained lawfully from a third party.

12. NON-WAIVER

Waiver or non-enforcement by either party of a term or condition shall not constitute a waiver or a non-enforcement of any other term or condition or of any subsequent breach of the same or similar term or condition.

13. NO THIRD-PARTY RIGHTS

Nothing herein is intended to make any person or entity who is not signatory to the agreement a third-party beneficiary of any right created.

14. TIME IS OF THE ESSENCE

Time is of the essence.

15. STANDARD FOR PERFORMANCE

The University, in selecting the Consultant to perform the services hereunder, is relying upon the Consultant's reputation for excellence in the performance of the services required hereunder. The Consultant shall perform the services in the manner of one who is a recognized specialist in the types of services to be performed. All deadlines set forth are binding and may be modified only by subsequent written agreement of the parties. The Consultant shall devote such time to performance of its, her, or his duties as is reasonably necessary for the satisfactory performance of such duties within the deadlines set forth herein. Nothing in the foregoing shall be construed to alter the requirement that time is of the essence.

16. DISPUTE RESOLUTION

Any dispute arising regarding the interpretation or implementation, including any claims for breach, shall be resolved by submitting the claim for arbitration to the American Arbitration Association in accordance with its rules and procedures applicable to commercial disputes. The location of any arbitration hearing shall be in San Diego, California, and any enforcement of the arbitrator's decision shall be brought in the Superior Court of San Diego County, California.

17. ATTORNEY'S FEES

In any action brought by a party to enforce the terms, the prevailing party shall be entitled to reasonable attorney's fees and costs. The prevailing party shall be entitled to the reasonable value of any services provided to it by in-house counsel. The reasonable value of services provided by in-house counsel shall be calculated by applying an hourly rate commensurate with prevailing market rates charged by attorneys in private practice for such services.

18. APPLICABLE LAW

The laws of the State of California shall apply.

19. PRIVACY NOTICE

If the Employer Identification Number is not used, the Social Security Number must be shown. Pursuant to Federal Privacy Act of 1974, you are hereby notified that disclosure of your Social Security number is required pursuant to Sections 6011 and 6051 of Subtitle F of the Internal Revenue Code and Regulation 4, Section 404, 1256, Code of Federal Regulations, under Section 218, Title II of the Social Security Act, as amended. The Social Security Number is to verify your identity. The principal use of the number shall be to report payments you have received to Federal and State governments.