

UNIVERSITY OF CALIFORNIA, SANTA CRUZ

Additional Terms and Conditions – Educator on Loan

The following terms and conditions shall be incorporated in their entirety where applicable.

The Following Provisions Apply:

ARTICLE 1 – CHARACTER OF SERVICES

The school district specified in that certain related University of California, Santa Cruz purchase order (“Contractor”) hereby enters into agreement with the Regents of the University of California on behalf of its Santa Cruz campus (“University”) to release its employee (“Educator”) specified in that certain related University purchase order, inclusive of these additional terms and conditions and all other attached schedules (“Agreement”), to work one hundred percent (100%) time for the University during the term of agreement described in the Purchase Order (“Term”). The Educator will provide certain services (“Services”) to the University during the Term as specified in the Agreement.

ARTICLE 2 – COMPENSATION TO CONTRACTOR

Educator will remain an employee of Contractor and Contractor will continue to pay her/his full salary and benefits during the Term. University will reimburse Contractor for one hundred percent (100%) of the actual salary and benefits, as well as any district administration fees as specified in the Agreement.

ARTICLE 3 – TRAVEL AND OTHER EXPENSES

Any travel or other expenses incurred by Educator, as directed and approved by the University, will be reimbursed to Educator and will not result in any additional expense to Contractor.

ARTICLE 4 – INVOICES

During the Term, Contractor will invoice University periodically in arrears for actual costs incurred during the previous billing period. University shall pay such invoices within thirty days of receipt.

ARTICLE 5 – CONTRACTOR STATUS

Educator will not be considered an employee of University and will not acquire any of the rights, privileges, powers, or advantages of an employee including, without limitation, Workers’ Compensation, disability insurance, health plans, vacation or sick leave pay, or any other benefit available to University employees.

ARTICLE 6 – CONTRACTOR POLICIES

Contractor represents that it has appropriate policies and procedures or agreements with its employees sufficient to enable it to comply with the terms of the Agreement.

ARTICLE 7 - PATENTS

Whenever any invention or discovery is made or conceived by the Contractor in the course of or in connection with this Agreement, the Contractor 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 Contractor will, at University expense, execute all documents and do all things necessary or proper with respect to such patent applications. The Contractor 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.

ARTICLE 8 - COPYRIGHT

The University shall own, solely and exclusively, the copyright and all copyright rights to any written or otherwise copyrightable material delivered under this Agreement. The Contractor is specifically subject to an obligation to assign all right, title and interest in any such copyright rights to the University. In order to effectuate the foregoing, it is expressly understood that the material shall be deemed specially ordered by University and shall be deemed a work made for hire under U.S. copyright laws. In the event that the material is determined by a court of competent jurisdiction not to be a work made for hire under U.S. copyright laws, the Agreement shall operate as an irrevocable assignment to the University of the copyright and ownership of the material.

ARTICLE 9 - OWNERSHIP AND ACCESS TO RECORDS

Records containing confidential or personal information about individuals shall become the property of the University and subject to state law and University policies governing privacy and access to files.

ARTICLE 10 - 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 Contractor involving transactions and work related to the Agreement until the expiration of five years after final payment hereunder. The Contractor shall retain project records for a period of five years from the date of final payment.

ARTICLE 11 - CONFLICT OF INTEREST

The Contractor shall not hire any officer or employee of the University to perform the Services. If the work is to be performed in connection with a Federal contract or grant, the Contractor shall not hire any employee of the United States government to perform the Services. The Contractor affirms that to the best of his/her knowledge there exists no actual or potential conflict between the Contractor's family, business, or financial interests and the Services, and in the event of change in either private interests or the Services, any question regarding possible conflict of interest which may rise as a result of such change will be raised with the University. The Contractor 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 Contractor.

ARTICLE 12 - CONFIDENTIALITY

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

ARTICLE 13 – INDEMNIFICATION

Contractor shall defend, indemnify, and hold 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 arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Contractor, its officers, agents, or employees.

University shall defend, indemnify, and hold Contractor, 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 arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, agents, or employees.

ARTICLE 14 – CONTRACTOR INSURANCE

Contractor, at its sole cost and expense, shall insure its activities in connection with the work under the Agreement and obtain, keep in force, and maintain insurance as follows:

- a. General Liability Insurance, including Government Codes and Errors and Omissions coverage, with a combined single limit of one million dollars (\$1,000,000) each occurrence.

If the above insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

- b. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit not less than one million dollars (\$1,000,000) per occurrence.
- c. Workers' Compensation as required by California State law.

It is expressly understood, however, that the coverage and limits referred to under a., b., and c. above shall not in any way limit the liability of Contractor.

The coverage required under a. and b. of this Article shall include the University as an additional insured. Such provision shall apply only in proportion to and to the extent of the negligent acts or omissions of Contractor, its officers, employees, and agents. Contractor shall furnish the University with certificates of insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days' (ten days for non-payment of premium) advance written notice to the University of any material modification, change or cancellation of the above insurance coverage.

ARTICLE 15 – TERMINATION

Either party may terminate the Agreement if, for any reason, Educator becomes unable to perform services for the University, if sufficient funds are not available to continue the projects on which she/he is working, or if University, in its reasonable discretion, determines that Educator's performance under the Agreement is less than satisfactory. In the event of such termination, the party requesting such termination shall provide thirty (30) days' advance written notice to the other party. Furthermore, if either party breaches a material provision of the Agreement and, having been notified in writing of the nature of the breach, fails to cure said breach within a thirty-day period, the non-breaching party shall have the right to terminate the Agreement without further notice. University shall reimburse Contractor for the portion of Educator's salary and benefits cost incurred for services actually provided to the University through the effective date of termination.

ARTICLE 16 - NO THIRD-PARTY RIGHTS

Nothing in the Agreement is intended to make any person or entity who is not signatory to the agreement a third-party beneficiary of any right created by the Agreement or by operation of law.

ARTICLE 17 - TIME IS OF THE ESSENCE

Time is of the essence in the Agreement.

ARTICLE 18 - DISPUTE RESOLUTION

Any dispute arising regarding the interpretation or implementation of the Agreement, including any claims for breach of the Agreement, 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 Santa Cruz, California, and any enforcement of the arbitrator's decision shall be brought in the Superior Court of Santa Cruz County, California.

