

GENERAL PROVISIONS FOR SERVICES OF INDEPENDENT CONTRACTORS

- 1) **AGREEMENT OF INDEPENDENT CONTRACTOR RELATIONSHIP:** It is the express intention of both the Research Foundation and the Contractor that the Contractor is an Independent Contractor and not an employee, agent, joint venturer, or partner of the Research Foundation. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of Employer and Employee between the Research Foundation and Contractor or any employee or agent of Contractor. The parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement. The Contractor, along with its agents and employees, shall act and perform in an independent capacity and not as agents of the Research Foundation. Contractor shall determine the method, manner, details, and means of performing the above-described services. The Research Foundation shall have no right to control the manner or to determine the method of accomplishing Contractor's services, and shall not attempt to do so. The Research Foundation reserves the right to specify the results to be achieved under this agreement. No work, act, commission, or omission by Contractor, Contractor's employees or agents, or by the Research Foundation shall be construed to make Contractor, or Contractor's employees or agents, employees of the Research Foundation.
- 2) **STANDARD:** Contractor shall expend his or her best effort to provide the highest quality services pursuant to this agreement. Contractor agrees to maintain in good order Contractor's professional and/or business licenses, permits, certifications and insurance coverages, and to abide by all legal and ethical requirements applicable to Contractor's profession and/or business. Contractor agrees that all services provided under this agreement shall be in accordance with currently approved methods and practices of Contractor's profession and/or business.
- 3) **TOOLS:** Contractor shall furnish and be solely responsible for all equipment and supplies that may be necessary to perform Contractor's services under this agreement. Contractor shall be solely responsible for the proper maintenance and care of Contractor's equipment and Contractor shall immediately remedy and repair any defects in such equipment. Contractor agrees to indemnify the Research Foundation against any losses or liability that may be attributable to Contractor's equipment.
- 4) **FEE:** The fee to be paid Contractor, as set forth in this agreement, shall be full compensation for all services provided by Contractor or Contractor's employees or agents pursuant to this agreement, CONTRACTOR SHALL NOT BE ENTITLED TO PAYMENT UNTIL CONTRACTOR HAS SUBMITTED AN ORIGINAL ITEMIZED INVOICE THAT REFERENCES THE ASSIGNED P.O. NUMBER TO THE RESEARCH FOUNDATION CERTIFYING THAT ALL SERVICES DESCRIBED IN THE INVOICE HAVE BEEN COMPLETED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. The Research Foundation shall not be liable to Contractor for any expense incurred by Contractor in conducting Contractor's own business, or in providing services to the Research Foundation under this agreement including travel and per diem, except. Invoices shall be submitted, in arrears, to the address stipulated in the Contract. The P.O. number must be included on the invoice. Final invoice shall be marked as such.
 - (a) In the event that additional services are required, the Contractor shall submit invoices in accordance with provisions herein.
 - (b) For work of a continuing nature, the Contractor shall submit invoices in arrears, upon completion of each phase.
 - (c) Unless otherwise specified, the Research Foundation 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.
- 5) **EMPLOYMENT OF PERSONNEL:** Contractor may, at Contractor's own expense, employ assistants as Contractor, if Contractor, in his or her sole judgment, deems necessary to perform the services required of Contractor by this Agreement. The Research Foundation shall not have any authority to control, direct, or supervise Contractor's assistants or employees. However, the Contractor shall ensure that all persons employed by the Contractor to perform services under this Agreement for the Research Foundation signs and agrees to adhere to and be bound by, all provisions, terms, and conditions listed in the *Independent Contractor Non-Disclosure Agreement and Proprietary Rights Agreement*. Any person employed by Contractor to assist Contractor's rendition of services to the Research Foundation shall be the employee of Contractor only, and shall be so advised by Contractor upon hire. Contractor agrees to indemnify the Research Foundation and hold it harmless for any and all claims against the Research Foundation arising out of Contractor's employment of employees or others. Contractor assumes full and sole responsibility for the payment of all compensation and

expenses of such assistants as well as for all state and federal income tax, unemployment insurance, social security, workers' compensation insurance, disability insurance, or other applicable tax payments and withholdings, if any. Contractor agrees to provide Workers' Compensation Insurance for him/herself, as well as for all employees(s), assistant(s) or agent(s) that Contractor may employ. **Contractor agrees to hold harmless and indemnify** the Research Foundation for any and all claims arising out of any injury, disability, or death of either Contractor or Contractor's employee(s), assistant (s) or agent (s). Proof of insurance coverage will be furnished by Contractor to the Research Foundation upon request. Contractor warrants that his or her staff assigned to performing work under this Contract are legally entitled to perform such duties in the country where the work is being performed.

- 6) **TAXES:** Except for federal and California income tax that the Research Foundation may be required to withhold, Contractor agrees that he or she is responsible for paying all taxes including, but not limited to, federal and state income taxes, social security taxes, unemployment insurance contributions, state disability insurance contributions, workers' compensation insurance contributions, and/or, if desired, health insurance for Contractor and/or Contractor's employees. Contractor warrants that, as of the date of this Independent Contractor agreement, he or she is in compliance and hereby promises to continue to comply with all tax withholdings, filing and payment obligations imposed on Contractor as an independent contractor and/or an employer. Neither Contractor nor Contractor's employees shall be eligible for any benefits provided by the Research Foundation to its employees.
- 7) **RELEASE AND HOLD HARMLESS:** Contractor shall release and hold harmless, defend and indemnify the SJSU Research Foundation, the State of California, the California State University, the Trustees of the California State University, San Jose State University, and its current and former officers, officials, employees, volunteers and agents from and against any and all liability, loss, damage, expense, costs, including without limitation costs and fees of litigation, of every nature arising out of or in connection with contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any or anyone of them whose acts may incur liability.
- 8) **NON-ASSIGNABILITY:** Neither this Agreement, nor any duties or obligations under this Agreement, may be assigned by Contractor without the specific prior and written consent of the Project Director and the Research Foundation.
- 9) **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 Research Foundation, its officers or employees.
- 10) **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 the Research Foundation 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, the Research Foundation shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the Research Foundation in procuring on the open market any items that Contractor agreed to supply shall be borne and paid for solely by Contractor. The Research Foundation'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.
- 11) **DEBARMENT AND SUSPENSION:** By accepting a contract with the the Research Foundation, 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)).
- 12) **TERMINATION OF INDEPENDENT CONTRACTOR AGREEMENT:** The terms and conditions of this Independent Contractor Agreement dictate the automatic end of the Independent Contractor agreement. No further notification by either party is deemed necessary. The Research Foundation may, at its own option and judgment, terminate this Agreement by giving written notification to the Contractor no earlier than three (3) calendar days and no later than five (5) calendar days from date notification of termination of services is

mailed or sent. The Independent Contractor Agreement may be terminated earlier than the noted end date upon the occurrence of any of the following events: Loss of funding by the Research Foundation for the program or project; State or status of the business of either party; Bankruptcy or insolvency of the Independent Contractor; Default by the Independent Contractor in the performance of this Agreement; Conduct by the IC in violation of the Research Foundation's rules and protocols as listed in Section 5.6 of this Policy; Material breach by the Independent Contractor of the IC Agreement. "Material breach" of this Agreement shall include, but not be limited to, the following: not providing contracting services as agreed; inability or unwillingness to properly communicate with affected party (i.e.); any reason (s) falling under Section 5.6 of this Policy; and death of the Independent Contractor.

- 13) NON-DISCLOSURE AGREEMENT:** Contractor agrees to adhere to, and be bound by, all provisions, terms and conditions listed in the Independent Contractor Non-Disclosure Agreement and Proprietary Rights Assignment.
- 14) ENTIRE CONTRACT:** This document constitutes the entire agreement of the parties with respect to the subject matter herein and supersedes any other express or implied oral and written agreements between the parties. Other than as expressly set forth herein, the parties hereto expressly acknowledge that there are no other verbal or written promises, terms, conditions, or representations regarding any matter relevant hereto including, by way of example, the scope of Contractor's duties, the amount of Contractor's compensation or the duration of this agreement. This Agreement shall not be modified, extended or supplemented in any manner, except by a subsequent amendment signed by both Contractor and the Research Foundation.
- 15)** In executing this agreement, Contractor certifies that Contractor is not an employee of the Federal Government or an employee of any other project sponsored by a federal agency, and that Contractor shall not receive dual compensation for the services provided under this agreement.

PLEASE DIRECT ALL QUESTIONS TO:

SJSU Research Foundation Human Resources
210 North 4th Street, 4th Floor
San Jose, CA 95112
408) 924-1400

**INDEPENDENT CONTRACTOR
NON-DISCLOSURE AGREEMENT AND
PROPRIETARY RIGHTS ASSIGNMENT**

In return for the contracting fee paid or to be paid by SAN JOSE STATE UNIVERSITY RESEARCH FOUNDATION ("Research Foundation"), I acknowledge and agree that:

1. All previous, current and future work done by me for the Research Foundation relating in any way to the conception, design, development or support of products for the Research Foundation is the property of the Research Foundation and not of any third party.

2. I will maintain in confidence and will neither disclose nor use, either during or after the term of my contracting relationship without the prior express written consent of the Research Foundation, any proprietary of confidential information or know-how belonging to the Research Foundation ("PROPRIETARY INFORMATION"), whether or not it is in written or permanent form, except to the extent required to perform duties on behalf of the Research Foundation in my capacity as a consultant. Such PROPRIETARY INFORMATION includes, but is not limited to, technical and business information relating to the Research Foundation's inventions or products, research and development, production processes, manufacturing and engineering processes, machines and equipment, finances, customers, investors, marketing, and production and business plans. Upon termination of my contracting relationship or at the request of the Research Foundation before termination, I will deliver to the Research Foundation all written and tangible material in my possession incorporating the PROPRIETARY INFORMATION or otherwise relating to the Research Foundation's business. These obligations with respect to the PROPRIETARY INFORMATION extend to information belonging to partners, customers and suppliers of the Research Foundation who may have disclosed such information to me as the result of my status as a consultant of the Research Foundation.

3. I will promptly disclose and describe to the Research Foundation all inventions, improvements, discoveries, technical developments, and copyrighted works, whether or not patentable, which I conceive or reduce to practice, solely or jointly with others, relating in any way or useful to the Research Foundation's business or research, as presently conducted or as conducted at any future time during the term of my contracting relationship (the "INVENTIONS"). The INVENTIONS are and will become the sole and exclusive property of the Research Foundation and will not be made available to others during or following the term of my contracting relationship without the advance written permission of the Research Foundation. Upon request of the Research Foundation, I agree to execute a signed transfer of copyright or patent to the Research Foundation when any copyrighted or patentable work is created. Except for any written agreement between me and the Research Foundation, I shall not be entitled to any royalty, commission or other payment or license or right with respect to the INVENTIONS. I agree to disclose promptly to an officer of the Research Foundation designated by the Research Foundation all matters which come to my attention during the term of this AGREEMENT pertaining to the business now or then being conducted or contemplated by the Research Foundation, and any and all INVENTIONS. I hereby assign to the Research Foundation my entire right to all these INVENTIONS. I further agree to cooperate with the Research Foundation or its designee(s), both during and after the term of my contracting relationship, in the procurement and maintenance of the Research Foundation's rights in the results of my work for the Research Foundation, and to sign all papers which the Research Foundation may deem necessary and desirable for vesting the Research Foundation or its designee(s) with such rights. If I am asked to assist or cooperate after the term of my INDEPENDENT CONTRACTOR AGREEMENT, I will be compensated for such services at the rate set forth in the INDEPENDENT CONTRACTOR AGREEMENT or as expressly agreed. I will keep and maintain adequate and current written records of all INVENTIONS in the form of notes, sketches, drawings or reports related to said INVENTIONS, which records shall be and remain the property of the Research Foundation and be available to the Research Foundation at all times.

4. There is no other contract or duty on my part now in existence (a) to assign INVENTIONS or (b) that is inconsistent with this AGREEMENT, unless a copy or description thereof is attached hereto. I will not disclose or induce the Research Foundation to use or bring onto the Research Foundation's premises any confidential information or material that I am now or shall become aware of which belongs to anyone other than the Research Foundation. During my contracting relationship with the Research Foundation, I will not accept or engage in any employment, consulting or other activity (a) inconsistent or incompatible with my obligations to the Research Foundation, including without limitation, the terms of this AGREEMENT or (b) in any business competitive with the Research Foundation's business as presently conducted or as conducted at any future time during my contracting relationship.

5. All records, reports, notes, compilations, or other recorded matter, and copies or reproductions thereof, relating to the Research Foundation's research, operations, activities or business, made or received by me during the

term of my contracting relationship are and shall be the Research Foundation's exclusive property, and I will keep the same at all times in the Research Foundation's custody and subject to its control, and will surrender the same at the termination of my contracting relationship if not before.

6. I have attached hereto a complete list of all inventions owned by me or by others, conceived or made by me prior to the commencement of my contracting relationship with the Research Foundation which are or could be in any way related to the Research Foundation's research and development or business. These are the only inventions, which are not subject to this AGREEMENT. If no such list is attached hereto I represent that I have not made, conceived or reduced to practice any such inventions at the time of signing this AGREEMENT. (List ____ is, ____ is not attached).

7. I acknowledge that my obligations and promises under this AGREEMENT are of a UNIQUE and INTELLECTUAL character, which gives them particular value. A breach of any of the promises of agreements contained herein will result in irreparable and continuing damage to the Research Foundation for which there will be no adequate remedy at law, and the Research Foundation shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).