

**CALIFORNIA STATE UNIVERSITY SAN MARCOS CORPORATION (CSUSM
CORPORATION) GENERAL PROVISIONS**
for
SERVICE ACQUISITIONS
Revision 3/1/2019

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1. Commencement of Work

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

2. Invoices

Invoices shall be submitted, in arrears, to the address provided in the Contract. Each invoice must contain the Contract number and Contractor's Identification number. Final invoice shall be marked as such. Contractor shall submit invoices to CSUSM Corporation for payment of goods and services rendered. Unless otherwise specified, CSUSM Corporation shall pay properly submitted invoices not more than 30 days after (i) CSUSM Corporation's acceptance of goods; (ii) the performance completion date of services; or (iii) receipt of an undisputed invoice, whichever is later. Late payment penalties shall not apply to this Contract. 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 so provided.

3. Cancellation

CSUSM Corporation reserves the right to cancel this Contract at any time upon thirty (30) days written notice to the Contractor.

4. Independent Status

The Contractor, and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of CSUSM Corporation. While Contractor may (or may not) be required under the terms of this Contract to carry Worker's Compensation Insurance, Contractor is not entitled to unemployment or workers' compensation benefits from CSUSM Corporation.

5. 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.

6. Assignments

Without written consent of CSUSM Corporation, the Contract is not assignable by Contractor either in whole or in part.

7. Time

Time is of the essence of the Contract.

8. Contract Alterations & Integration

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

9. General Indemnity

The Contractor agrees to indemnify, defend and hold harmless the California State University San Marcos Corporation (CSUSM Corporation), the California State University San Marcos Foundation (CSUSMF), the Associated Students, Inc. of California State University San Marcos (ASI), California State University San Marcos (CSUSM) (which is the Trustees of the California State University and is one of 23 campuses in the California State University System), its 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 which may be injured or damaged by the Contractor in the performance of this Contract.

10. Use of Data

The Contractor shall not utilize any information, not a matter of public record, which is received by reason of this Contract, for pecuniary gain not contemplated by the terms of this Contract, regardless of whether the Contractor is or is not under Contract at the time such gain is realized. CSUSM Corporation specific information contained in the report, survey, or other product developed by the Contractor pursuant to this Contract is the property of CSUSM Corporation, and shall not be used in any manner by the Contractor unless authorized by CSUSM Corporation.

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11. Termination for Default

CSUSM Corporation 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, CSUSM Corporation may proceed with the work in any manner deemed proper by CSUSM Corporation. The cost to CSUSM Corporation shall be deducted from any sum due the Contractor under the Contract, and the balance, if any, shall be paid the Contractor upon demand.

12. Personnel

The Contractor shall make every effort consistent with sound business practices to honor the specific requests of CSUSM Corporation with regard to assignment of its employees; however, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor shall make every reasonable effort to provide suitable substitute personnel.

13. Nondiscrimination

During the performance of this Contract, Contractor and its subcontractors shall not deny the Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

14. Drug-Free Workplace Certification

By accepting a Contract or purchase order, the Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8355 et. seq.) and will provide a drug-free workplace by doing all of that which Section 8355 et seq. require.

15. Severability

It is expressly agreed and understood by the Parties hereto 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 the 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.

16. Dispute Resolution

Any dispute arising under the terms of this Contract which is not resolved within a reasonable period of time by authorized representatives of the Contractor and CSUSM Corporation shall be brought to the attention of the Chief Executive Officer (or designated representative) of the Contractor and the Chief Business Officer (or designee) of CSUSM Corporation for joint resolution. At the request of either party, CSUSM Corporation shall provide a forum for discussion of the disputed item(s), at which time the designated representative of CSUSM Corporation shall be available to assist in the resolution by providing advice to both Parties regarding CSUSM Corporation Contracting policies and procedures. If resolution of the dispute through these means is pursued without success, either party may seek resolution employing whatever remedies exist in law or equity beyond this Contract. Despite an unresolved dispute, the Contractor shall continue without delay to perform its responsibilities under this Contract. The Contractor shall keep accurate records of its services in order to adequately document the extent of its services under this Contract.

17. Privacy of Personal Information

Contractor expressly acknowledges and agrees to maintain the privacy rights of individuals to their personal information and shall be financially responsible, if and to the extent that any security breach relating to protected personal information results from acts or omissions of Contractor, or its personnel, for any notifications to affected persons (after prompt consultation with CSUSM Corporation), and to the extent requested by CSUSM Corporation, administratively responsible for such notifications. Contractor must comply with all regulations that are expressed in the State's

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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. Contractor shall not release personal information contained in CSUSM Corporation records without full compliance with applicable state and federal privacy laws.

18. Waiver of Rights

Any action or inaction by CSUSM Corporation or the failure of CSUSM Corporation on any occasion to enforce any right or provision of the Contract shall not be construed to be a waiver by CSUSM Corporation of its rights hereunder and shall not prevent CSUSM Corporation from enforcing such provision or right on any future occasion. The rights and remedies of CSUSM Corporation provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law.

19. Endorsement

Nothing contained in this Contract shall be construed as conferring on any party hereto, 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. This section shall include the name California State University San Marcos Corporation, California State University San Marcos, and California State University. Furthermore nothing in this Contract shall be construed as endorsement of any commercial product or service by CSUSM Corporation, its officers or employees.

20. Patent, Copyright, and Trade Secret Indemnity

A Contractor may be required to furnish a bond to CSUSM Corporation against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement. In addition:

- (a) The Contractor, at its own expense, shall defend any action brought against CSUSM Corporation to the extent that such action is based upon a claim that the product supplied by the Contractor or the operation of such product infringes a United States patent or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against CSUSM Corporation in any such action. Such defense and payment shall be conditioned on the following:
 - (i) That the Contractor shall be notified within a reasonable time in writing by CSUSM Corporation of any notice of such claim; and,
 - (ii) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, CSUSM Corporation has the option to participate in such action at its own expense.
- (b) Should the product, or the operation thereof, become, or in the Contractor's opinion is likely to become, the subject of a claim of infringement of a United States or foreign patent or copyright or a trade secret, CSUSM Corporation shall permit the Contractor at its option and expense either to procure for CSUSM Corporation the right to continue using the product, or to replace or modify the same so that they become non-infringing provided such replacement or modified product satisfies the performance requirements specified in the Contract. If none of these options can reasonably be taken, or if the use of such product by CSUSM Corporation shall be prevented by injunction, the Contractor agrees to take back such product and make every reasonable effort to assist CSUSM Corporation in procuring a substitute product. If, in the sole opinion of CSUSM Corporation, the return of such infringing product makes the retention of other products acquired from the Contractor under this Contract impractical, CSUSM Corporation shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such product and refund any sums CSUSM Corporation has paid Contractor less any reasonable amount for use or damage.

21. Compliance with NLRB Orders

Contractor declares under penalty of perjury under the laws of the State of California that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

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22. Examination and Audit

CSUSM Corporation reserves the right to examine and audit, either independently or by a third party Contractors financial records. 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.

23. Citizenship and Public Benefits

If Contractor is a natural person, Contractor certifies in accepting this Contract that s/he 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).

24. Americans With Disabilities Act (ADA)

Contractor warrants that it complies with California and federal disabilities laws and regulations.

25. Document Referencing

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

26. Forced, Convict, Indentured and Child Labor

By accepting a Contract or purchase order, the Contractor certifies that no equipment, materials, or supplies furnished to CSUSM Corporation pursuant to this Contract have been laundered or produced in whole or in part by sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, or abusive forms of child labor or exploitation of children in sweatshop labor. Contractor shall cooperate fully in providing reasonable access to the Contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of CSUSM Corporation, the Department of Industrial Relations, or the Department of Justice determine the Contractor's compliance with the requirements above. (Public Contract Code Section 6108)

27. Covenant Against Gratuities

The Contractor shall warrant that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of CSUSM Corporation 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, CSUSM Corporation shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by CSUSM Corporation in procuring on the open market any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of CSUSM Corporation provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

28. Rights and Remedies of CSUSM Corporation for Default

- (a) In the event any Deliverables furnished or services provided by the Contractor in the performance of this Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, CSUSM Corporation may reject the same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same forthwith or to correct the performance of services, without expense to CSUSM Corporation, and immediately to replace all such rejected items with others conforming to such specifications or samples; provided that should the Contractor fail, neglect, or refuse to do so, CSUSM Corporation shall thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any moneys due or that may thereafter become due to the Contractor the difference between the price named in the Contract and the actual cost thereof to CSUSM Corporation.
- (b) In the event the Contractor shall fail to make prompt delivery as specified of any item, the same conditions as to the right of CSUSM Corporation to purchase in the open market and to reimbursement set forth above shall apply, except for force majeure. Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts (known as "force majeure") shall include but shall not be limited to fire, strike, freight embargo or acts of God and of the Government. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault

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or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

- (c) In the event of the termination of the Contract, either in whole or in part, by reason of the default or breach thereof by the Contractor, any loss or damage sustained by CSUSM Corporation in procuring any items which the Contractor therein agreed to supply shall be borne and paid for by the Contractor.
- (d) The rights and remedies of CSUSM Corporation provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

29. Contractor's Power and Authority

The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold CSUSM Corporation hereunder harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of CSUSM Corporation under this Contract.

30. Recycled Content Certification

Contractor agrees to certify in writing, under penalty of perjury, the minimum, if not the exact, percentage of recycled content material, as defined in Sections 12161 and 12200 of the Public Contract Code, in materials, goods, or supplies used in the performance of this Contract.

31. 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 the Parties.

32. Safety and Accident Prevention

In performing work under this Contract on CSUSM Corporation premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as CSUSM Corporation may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with default provisions hereof.

33. Insurance Requirements

Contractor shall furnish to CSUSM Corporation prior to the commencement of work an underwriter's endorsement with a certificate of insurance. The Contractor shall obtain and maintain the following policies and coverage:

- (a) General Liability insurance presently in effect for the Contractor with a combined single limit of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate. Covering work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and Contractual liability.
- (b) Vehicle insurance is in effect with a minimum coverage of \$1,000,000 per occurrence.
- (c) The certificate of insurance shall provide:
 - (i) That the insurer will not cancel the insured's coverage without thirty (30) days prior notice to CSUSM Corporation;
 - (ii) That the State of California, the Trustees of the California State University, the California State University San Marcos Corporation (CSUSM Corporation), the California State University San Marcos Foundation (CSUSMF), the Associated Students, Inc. of California State University San Marcos (ASI), California State University San Marcos (which is the Trustees of the California State University and is one of 23 campuses in the California State University System), and the employees, volunteers, officers, and agents of each of them, are included as additional insureds, but only insofar as the operations under this Contract are concerned;
 - (iii) That CSUSM Corporation, California State University San Marcos (which is the Trustees of the California State University and is one of 23 campuses in the California State University System) and the employees, officers, and agents of each of them will not be responsible for any premiums or assessments on the policy;
 - (iv) That the insurer has an AM Best rating of A: VII or equivalent.
- (d) Contractor agrees that the bodily injury liability insurance herein provided shall be in effect at all times during the term of this Contract. In the event said insurance coverage expires at any time or times during the term of this Contract, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for not less than the remainder of the term of the

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Contract, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of CSUSM Corporation, and the Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, CSUSM Corporation may in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event.

- (e) Workers' Compensation insurance coverage as required by the State of California.
- (f) For any claims related to this Agreement, the Contractor's insurance coverage shall be primary with respect to those named as additional insured above in Section 35.(a) ii. Insurance maintained by the additional insured shall be in excess of the Contractor's insurance and shall not contribute.
- (g) Contractors providing IT Professional Services will furnish a certificate of insurance stating that there is Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- (h) Contractors providing IT Vendor Services will furnish a certificate of insurance stating that there is Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

34. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to CSUSM Corporation's operation which are designated confidential by CSUSM Corporation and not otherwise subject to disclosure under the McKee Transparency Act, California Education Code §89913, and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor using the same level of care in preventing unauthorized disclosure or use of the confidential information that it takes to protect its own information of a similar nature, but in no event less than reasonable care. The Contractor shall not be required under the provisions of this clause to keep confidential any data or information that is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third Parties.

35. Debarment and Suspension

By accepting a Contract with the CSUSM Corporation, 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)).

36. Rights in Work Product

All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Agreement, including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including administrative communications and records relating to this Agreement (collectively, the "Work Product"), shall be CSUSM Corporation's exclusive property. All finished product or deliverables required under this Contract shall be the exclusive property of CSUSM Corporation and may be used at CSUSM Corporation's discretion.