

UC Business and Finance Bulletin BUS-34, Securing the Services of Independent Consultants

Revised August 15, 1998

I. REFERENCES

- A. University of California Academic Personnel Manual, Section 664.
- B. Business and Finance Bulletin RMP-8, Legal Requirements on Privacy of and Access to Information.
- C. Business and Finance Bulletin BUS-43, Materiel Management.
- D. Business and Finance Bulletin BUS-63, Insurance Requirements/Certificates of Insurance.
- E. Business and Finance Bulletin BUS-76, Engagements with The Regents' Audit Firm.
- F. Business and Finance Bulletin BUS-77, Independent Contractor Guidelines.
- G. Memorandum, Vice President Kleingartner to Chancellors, Laboratory Directors, Vice President Kendrick, Executive Assistant Wilson, Recording of Discussions with Employees, March 20, 1981.
- H. Policy to Ensure Equal Opportunity in University Business Contracting, January 1, 1996.
- I. University of California Interim Administrative Guidelines to Ensure Equal Opportunity in University Business Contracting, January 1, 1996.

II. DEFINITIONS

Certain terms appear frequently throughout this and other University purchasing policy issuances and have the following meanings:

- A. Employee - any individual who is presently employed by the University.
- B. Employer-Employee Relationship - Generally, under common law if an employer has the right to direct and control the work of an individual who performs the services, not only as to the results to be accomplished but also as to the methods and means by which the results are accomplished, an employer-employee relationship exists. In this respect, even if the employer does not exercise the right to direct or control the manner in which the worker performs the services, the fact that the employer retains the right to do so is sufficient.

On the other hand, if the individual is subject to the direction or control of another person only as to the end result, not as to the methods and means used to accomplish that result, the individual is not an employee. If the employer does not control either the manner of performance or the result of the service, an independent consultant relationship exists.

Because there are no explicit statutory standards for determining a worker's status under the employment tax laws, the IRS has identified twenty classification factors, based on common law standards, that can be used to determine whether the employer has the right to direct and control the detail and means of a workers duties. The fact that more than half of the factors may point to one result does not necessarily mean that this is the correct determination; rather, all of the facts must be analyzed to determine whether certain factors may be more important than others under the particular circumstances. In addition, the fact that an individual's relationship with a business is temporary should be given little weight in making an employee/independent consultant determination. Although an independent consultant will typically have a temporary relationship with a business, so too will employees engaged on a seasonal, project, or an "as needed" basis.

See Appendix 3, Independent Contractor Pre-Hire Worksheet, and Business and Finance Bulletin BUS 77 for information on the application of the twenty IRS factors and a more extensive discussion of employer/employee relationships.

C. Employee-Vendor Relationship - a relationship in which:

1. An employee, acting alone, proposes for a consideration to provide services to a University department, or an employee owns or controls more than 10% interest in any business which proposes for a consideration to provide services to a University department; or
2. A near relative of an employee, acting alone, proposes for a consideration to provide services to a University department, or a near relative of an employee owns or controls more than 10% interest in any business which proposes for a consideration to provide services to a University department, and the employee has, in any connection with his or her University employment, any responsibility for, or will be involved in any manner in, the departmental decision to accomplish or approve the agreement.

D. Executing Officials - officials who are designated as Program Review Officials and Responsible Administrative Officials.

E. Independent Consultant - An independent consultant is an individual not employed by the University of proven professional or technical competence who provides primarily professional or technical **advice** to the University and the University does not control either the manner of performance or the result of the service.

The University document used to secure the services of an independent consultant is an Independent Consultant Agreement form. A purchase order or employment type document may not be used.

F. Independent Consultant Agreement - a contract for services which are of an advisory nature, provide a recommended course of action or personal expertise, have an end product which is basically a transmittal of information either written or verbal, and which is related to University administration and management.

G. Independent Contractor

An independent contractor relationship exists when the University has the right to control only the result of the service, not the manner of performance. Independent consultants are a special

type of independent contractor and for University purposes are treated somewhat differently than non-consultant independent contractors.

As related to independent contractors, service is useful labor performed for another that may or may not produce a tangible commodity. Service includes, but is not limited to: bookstore operation; use of security guards; transportation; computer programming; clothing rental and cleaning; laundry; tests and analysis; film processing; janitorial work; window washing; rubbish and waste removal; and service and repairs to office equipment, transportation equipment, laboratory and medical equipment, and musical instruments.

In general, such service is covered by the University's standard purchase order form and terms and conditions of purchase in accordance with the procedures described in Business and Finance Bulletin BUS 43.

The University document used to execute this type of relationship is a purchase requisition/contract/order form. Neither the Independent Consultant Agreement form nor an employment type form shall be used.

- H. Near Relative - a spouse, child, parent, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, and step-relatives in the same relationship.
- I. Program Review Official - a Chancellor, Vice President, or person or persons designated by each to approve the purpose and contents of an independent consultant agreement; one of two executing officials.
- J. Reasonable Payment - a payment that does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. Reasonable payment can be established by market test, price or cost analysis, or the experience and judgment of the Responsible Administrative Official. Such judgment considers total value to the University. There is value to the University in agreements which meet the University's needs, such as those involving qualifications, experience, resources, quality, and service. A reasonable payment need not be the lowest price available, but is one which offers the highest total value to the University.
- K. Responsible Administrative Official - an official designated by a Chancellor or a Vice President to be responsible for overall administration of independent consultant procedures and agreements; one of two executing officials.

III. RESPONSIBILITIES

- A. Chancellors and Vice Presidents are responsible for assuring that the services of independent consultants are secured in accordance with the requirements of this Bulletin.
- B. The Chancellors and Vice Presidents or their designees may act as Program Review Officials in approving the purpose and contents of the independent consulting agreements by signing the agreements and any amendments.
- C. Chancellors and Vice Presidents shall appoint a Responsible Administrative Official to have administrative responsibility for establishing and implementing procedures necessary to fulfill the requirements of this Bulletin in securing the services of independent consultants. This

appointment and its related delegation shall be in writing. This Responsible Administrative Official specifically shall assure that:

- (1) all requisite documents have been fully approved and received;
 - (2) sole source justification is documented if the agreement is \$15,000 or more and competitive proposals have not been solicited;
 - (3) he or she has signed all agreements, including amendments;
 - (4) adequate records are retained to document the transaction including, but not limited to:
 - (a) the Independent Consultant Agreement and all amendments;
 - (b) solicited proposals or sole source justification for all agreements in excess of \$15,000;
 - (c) documentation that the price to be paid is reasonable; and
 - (d) a completed and signed Independent Contractor Pre-Hire Worksheet (Appendix 3).
 - (5) the annual report and statement (see IX., below) are prepared and submitted to the Senior Vice President--Business and Finance.
- D. The appropriate accounting officer shall insure that no payment to an independent consultant is made prior to the signing of an agreement, unless expressly approved in writing by the Responsible Administrative Official and Program Review Official.

IV. SCOPE

- A. The requirements and procedures set forth in this Bulletin apply to securing the services of independent consultants for:
 1. Campus activities for which administrative responsibility is vested in the Chancellor; and
 2. University activities for which administrative responsibility is vested in the Vice Presidents or as designated by the President.
- B. The administration and implementation of this Bulletin rest with the Chancellors and Vice Presidents.
- C. The requirements and procedures set forth in this Bulletin do not apply to:
 1. Appointment of consultants under the Standing Orders of The Regents, Section 100.4(y), covering the appointments of architects and engineers for approved projects;
 2. Appointment of consultants for the Ernest Orlando Lawrence Berkeley National Laboratory, the Lawrence Livermore National Laboratory, or the Los Alamos National Laboratory;

3. University faculty members who serve internally as consultants, as covered in the Academic Personnel Manual, Section 664;
4. Engagements with The Regents' external audit firm, as covered in Business and Finance Bulletin BUS-76;
5. Independent contractor relationships, as covered in Business and Finance Bulletin BUS-43; or
6. Employer/employee relationships, as covered in the applicable personnel policies.

V. GENERAL REQUIREMENTS

- A. Arrangements to secure the services of an independent consultant may be entered into only when a determination has been made that the services are so urgent, special, temporary, or highly technical that they cannot be performed economically or satisfactorily by existing University staff during the course of their normal University responsibilities or duties.
- B. Generally, services of a specific professional or technical nature to be performed by an independent consultant would encompass activities other than those services provided by independent contractors as defined in II., above.
- C. The use of an independent consultant is expected to be infrequent and is primarily used to solve clearly-delineated problems.
- D. An independent consultant shall not be used to direct or carry out a major portion of a program.
- E. In general, the determination regarding employee versus independent consultant status is made by the Responsible Administrative Official. However, in cases where it is difficult to determine the correct status using the criteria provided in this bulletin and Business and Finance Bulletin BUS 77, the Human Resources Department or the Office of the President Payroll Coordination and Tax Services Office, in coordination with the General Counsel's Office and the University's outside tax counsel, can provide assistance in determining whether an employer-employee relationship exists. Only upon determination that no employer-employee relationship would be established may the proposed agreement be executed.
- F. If it is determined that an employer-employee relationship would be established, the University location shall follow the normal employment process.
- G. If it is determined that an employee-vendor relationship would be established, the requirements of this section G. shall be followed:
 1. Basic Policies
 - a. Separation of Interests - It is the policy of the University to separate an employee's University and private interests, and to safeguard the University and its employees against charges of favoritism in the acquisition of goods, materials, and services.
 - b. Conflict of interest - The State of California Political Reform Act prohibits an employee from making or participating in the making of a decision if there exists a

financial conflict of interest. Requirements governing such decision making are set forth in the University's Conflict of Interest Code and shall be observed by the University in contracting for consulting services.

- c. Exceptions/Approvals - No contract for consulting services shall be made with any employee-vendor as defined in II.C. above unless there has been a specific determination by the Responsible Administrative Official that the goods or services are not available either from commercial sources or from the University's own facilities. The Responsible Administrative Official is delegated authority, within constraints imposed by the Political Reform Act, for approving an employee-vendor contract only in exceptional cases when there are unusual or extenuating circumstances.
- d. Inspection - The Responsible Administrative Official, whenever necessary to ensure an understanding of facts presented, shall inspect the business premises and records of an employee-vendor from whom the University is considering acquiring consulting services.

2. Required Reports

- a. Circumstances Requiring a Report - A University employee or near relative shall submit a report conforming to the requirements of V.F.2.b. and c., below, when making a proposal, or upon being informed that an employee-vendor relationship exists.
- b. Content and Certification - The employee or near relative submitting the required report shall:
 - (1) Indicate the University department(s) and position(s) of the employee involved in the employee-vendor relationship.
 - (2) Disclose the interest of the employee or near relative in the proposal.
 - (3) Specify the employee's and/or near relative's relationship to, or interest in, any business organization making the proposal.
 - (4) Indicate whether the employee has any responsibility for or will be involved in any manner in the departmental decision to accomplish or approve the agreement.
 - (5) Certify that no University time, material, equipment, or facilities, other than those specified in the Independent Consultant Agreement, have been or will be used in connection with any resulting consulting agreement.
- c. Submission - The required report shall be submitted to the Responsible Administrative Official.

H. The copyright and copyright rights to any published report or other materials produced by an independent consultant shall belong to the University, as set forth in the Independent Consultant Agreement Terms and Conditions, Article X.; however, the independent consultant may be listed as a "consultant" in any published report or other materials.

- I. An independent consultant shall not hire any employee of the University to perform any service covered by the agreement. If the work is to be performed in connection with a Federal contract or grant, an independent consultant shall not hire any employee of the U.S. Government to perform any service covered by the agreement.
- J. 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.
- K. The consultant shall affirm that, to the best of his or her knowledge, there exists no actual or potential conflict between the consultant's family, business, or financial interests and the services provided. Any question regarding possible conflict of interest shall be raised with the University.
- L. The laws and regulations affecting the University of California Retirement Plan (UCRP) and the Public Employees' Retirement System (PERS) do not prohibit a retired member of UCRP or PERS from providing services to the University as an independent consultant except that a person who retired under the Voluntary Early Retirement Incentive Program (VERIP) is subject to specified limitations. The Responsible Administrative Official should determine a retiree's status and limitations, if any, prior to executing the Consulting Agreement.

VI. REQUESTS AND APPROVAL

- A. Prior to preparation of proposals, a requesting unit shall make a written presentation of its requirement for the services of an independent consultant and submit it to the Program Review Official. The request for consultant service shall be in a form which will clarify and define the problem for the benefit of the Responsible Administrative Official and the Program Review Official, and which will enable prospective independent consultants to prepare proposals. The Program Review Official shall approve the request to proceed with the preparation of proposals.
- B. The request for consultant service shall include, but not necessarily be limited to, the following:
 - 1. A description of the problem;
 - 2. The objectives of the study or a general statement of what is expected to be accomplished;
 - 3. An explanation of why the service cannot be performed by University employees;
 - 4. The scope of the work, including any desired approach to the problem, specific limitations, questions requiring answers, format for the completed report, and the extent to which assistance, resources and cooperation from the University will be available to the consultant;
 - 5. If the services are to be performed in connection with a contract or grant, pertinent extracts of such contract or grant shall be attached and the conditions set forth therein shall be considered a part of the request for consultant service;

6. A firm or estimated time schedule including dates for commencement of performance, submission of progress reports, and for completion of the service;
 7. The terms under which progress payments will be allowed;
 8. Account(s) and fund(s) and subaccount(s) to be charged; and
 9. A completed Independent Contractor Pre-Hire Worksheet (Appendix 3).
- C. Proposals from independent consultants shall be in writing and shall include, but not necessarily be limited to, the following:
1. A description of the consultant's qualifications, with a brief list of similar types of consulting contracts successfully concluded, a sample of such work when appropriate, and a description of the lead personnel and anticipated supporting personnel to be employed on the study;
 2. An overall description of the techniques by which the consultant intends to approach the problem, consultant resources to be expended, the anticipated beginning and ending dates for the services, equipment and facilities to be utilized and, if subcontractors are contemplated, a description of these persons or firms and the portions and monetary percentages of the work to be done by them;
 3. A description of the type of information, if any, to be collected about an individual, the method of collection, the physical type of the resulting record, i.e., typed or written notes, tape recording, photograph, and the proposed ownership of such records. The department proposing to engage a consultant shall be guided by Business and Finance Bulletin RMP-8 (Legal Requirements of Privacy of and Access to Information). Tape recorders shall not be used during discussions with University staff, or their agents, pertaining to employment matters except as specified by the document referenced in I.G. of this bulletin; any such use shall be specified in Article I.H. of the Independent Consultant Agreement (see Appendix 1). The consultant's attention shall be directed especially to Articles XII and XIII of the Independent Consultant Agreement (see Appendix 1);
 4. The total cost of the study and a breakdown of how this cost was computed, including any travel expenses, and desired method of payment;
 5. The total dollar amount of consultant work contracted with the University of California in the last 12 months;
 6. The name and University of California position of any officer, faculty member, or other employee of the University who holds a position of director, officer, partner, trustee, manager, or employee in the consultant organization, as well as the names of any near relatives who are employed by the University; and
 7. If the consultant is not a citizen of the United States, an explanation of the person's alien status in the United States.
- D. If the total amount of the contract of the independent consultant agreement is or will be \$15,000 or more, the Responsible Administrative Official shall assure that, if possible,

proposals are solicited from three or more qualified independent consultants. When competitive proposals are not solicited, the reason for not seeking competition shall be documented and retained in the agreement file and the Responsible Administrative Official shall determine the payment is reasonable for the services to be performed. Reasonable payment is defined in II.H., above. The scope of the agreement shall not be artificially divided so as to avoid the solicitation of competitive proposals.

- E. If the amount is less than \$15,000, the Responsible Administrative Official shall determine that the payment is reasonable for the services to be performed.
- F. Selection of the independent consultant shall be made on the basis of qualifications, resources, experience, needs of the University, and cost to the University. In the selection process, any University officer or employee participating in the decision must keep in mind the disqualification requirements for financial conflict of interest of the State of California Political Reform Act of 1974. Officers and employees shall not make or participate in the making of a University decision if there exists a financial conflict of interest. Questions concerning conflicts of interest and the University's disqualification requirements should be raised with the local Conflict of Interest Coordinator.

VI. AGREEMENT COVERING SERVICES

- A. The agreement between the University and an independent consultant shall be executed on the standard University of California Independent Consultant Agreement, Appendix 1 of this Bulletin. Any modification of the standard agreement form or material modification of the approved scope of services shall be reviewed and approved by the Responsible Administrative Official, who shall consult with the General Counsel or Senior Vice President--Business and Finance as appropriate.
- B. The insurance requirements to be provided under Article XI.2. of the Independent Consultant Agreement shall be those set forth in Business and Finance Bulletin BUS-63, Section IV.B.2.c., IV.D., and V.A.2. Exceptions to the insurance limit requirements outlined in this section may be developed by Campus Risk Managers, in conjunction with responsible campus administrators, following risk identification and evaluation. In such situations, it may be determined that little or no risk is involved, in which case the limits may be lowered or the requirement eliminated. Conversely, it may be determined that additional risk is involved, in which case the limits may be raised.
- C. The agreement between the University and an independent consultant shall be signed by the consultant, by the Responsible Administrative Official, and by the Program Review Official prior to the beginning of any service. Exception after the fact may only be granted by written approval of the Program Review Official.
- D. There shall be no extension of the termination date or expansion of the scope of the original agreement or payment thereof without prior written approval by the Responsible Administrative Official and Program Review Official (see Appendix 2 for sample format for amendment). Amendments may not be issued for work unrelated to the scope of the original agreement.

VIII. PAYMENT FOR SERVICES OF INDEPENDENT CONSULTANT

- A. A consultant normally shall submit an invoice setting forth the appropriate charges and indicating the agreement number and taxpayer reporting number. An invoice need not be submitted if exempted by terms of the agreement.
- B. Authorization for consultant payments shall be a copy of the properly executed standard agreement form.
- C. Payment shall not be made for services rendered prior to the contract period, except as expressly approved by the Responsible Administrative Official and Program Review Official, nor shall payment be made for services rendered after expiration of the agreement.
- D. Payment shall be made in accordance with the schedule set forth in Section III. of the agreement. In case of termination prior to completion of the work to be performed under the agreement, a determination shall be made of an equitable compensation to be paid for the work completed based on its value to the University, provided that such compensation shall in no event exceed the total agreement price.
- E. If a consultant is not a citizen of the United States, University procedures regarding payments to aliens shall be followed.

IX. REPORTING

The Responsible Administrative Official shall submit an annual report to the Senior Vice President--Business and Finance. The report shall include a statement indicating compliance with the provisions of this Bulletin and a list of all agreements and amendments executed in the reporting period. The report shall include, as a minimum, the following information for each executed agreement or amendment:

A listing of each agreement and amendment executed in the reporting period;

The name of the consultant;

The purpose of the consulting services;

The total dollar amount of the agreements and amendments executed during the reporting period (not expenditures made in the reporting period);

The total dollar amount and percentage of consulting services placed with small (SBE), disadvantaged (DBE), women-owned (WBE), or disabled veteran (DVBE) business enterprises.

Appendix 1

Independent Consultant Agreement (Required Form)

Appendix 2

Amendment to Independent Consultant Agreement (Sample Form)

Appendix 3

Independent Contractor Pre-Hire Worksheet and IRS Classification Factors

FOR ACCOUNTING PURPOSES ONLY	
Agreement Number:	_____
Location(s)/Account(s)/Fund(s)/Subaccount(s)	
	(%)
	(%)

UNIVERSITY OF CALIFORNIA

INDEPENDENT CONSULTANT AGREEMENT

This Agreement to furnish certain consulting services is made as of _____
 by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public
 corporation (hereinafter called "the University") and _____
 hereinafter called (the "Consultant")
 located at [insert address of consultant]

I. NATURE AND PLACES(S) OF SERVICE

- A. The Consultant shall furnish to the University the following described services:
- B. In addition to the services described in subparagraph A. above, the Consultant's proposal to the University shall be incorporated herein by reference and made part of this Agreement.
- C. If the Consultant is an entity other than an individual, the University requires that [insert individual's name within the company] be assigned to perform the work set forth herein. No reassignment of work to any other individual shall be made without the written approval of the University
- D. Reports:
 - _____ The Consultant shall provide reports as described below (include number of copies and due date).
 - _____ No report required.
- E. Places(s) of performance will be:
- F. The University will provide working space, equipment, furniture, utilities, and services, as follows:

G. If applicable, the services of the Consultant will assist the University in the performance of contract/grant no. _____ sponsored by

_____ (agency name)

dated _____

Applicable portions of contracts are attached.

H. The Consultant shall use recording devices in discussions with University employees only when the University and said employees so authorize; this authorization shall be in writing. If applicable, the Consultant's use of recording devices in such discussion is proposed as follows:

II. TERM OF AGREEMENT

A. The period of performance for this Agreement shall be from _____ through _____.

B. Either the University or the Consultant may terminate this Agreement for convenience at any time by giving the other 30 calendar days' written notice of such action.

C. If one party gives [insert number of days] days' notice to the other of a breach of this Agreement and the breaching party fails to cure said breach within said [insert number of days]-day period, this Agreement may be terminated by the non-breaching party.

III. COMPENSATION AND REIMBURSEMENT OF EXPENSES

A. The University will pay the following to the Consultant for services performed:

1. Professional Fees:

_____ See attached fee schedule
_____ \$ _____ per _____ x _____
_____ \$ _____ (flat rate)
Subtotal \$ _____

2. Other Expenses:

_____ See attached fee schedule
_____ Per Diem at \$ _____ for _____ days
_____ Travel expenses (specify)
_____ Other expenses (specify)
Subtotal \$ _____

MAXIMUM TO BE PAID UNDER THIS AGREEMENT:

TOTAL \$ _____

B. Payments.

_____ Payment will be made upon submission of an invoice by the Consultant indicating the Agreement Number and setting forth charges in accordance with rates detailed in paragraph A above and the performance schedule in Article IV. below. The invoice must include the Consultant's taxpayer identification number. Consultants shall submit invoices to person named in V., below.

_____ Payments will be made on a monthly or periodic basis without invoice provided a schedule of specific payment has been made a part of this Agreement and is in accordance with the performance schedule set out in Article IV. below.

No payments shall be made in advance of work performed, except as specified in the Agreement.

IV. PERFORMANCE SCHEDULE

[Insert time schedule by which the Consultant is to produce or provide specified material or perform certain consulting services.]

V. REPORTING

In performing consulting services hereunder, the Consultant shall report to [insert the name and address of the appropriate University employee].

VI. NOTIFICATION

Any written notification required hereunder shall be personally served or mailed by certified mail, return receipt requested, to the following:

For the University: [insert appropriate name and address of the University employee]

For the Consultant: [insert name and address of the Consultant]

VII. TAXES

The compensation stated in Article III. of this Agreement includes all applicable taxes and will not be changed hereafter as the result of Consultant's failure to include any applicable tax, or as the result of any changes in the Consultant's tax liabilities.

VIII. ASSIGNMENT OR SUBCONTRACTING

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

IX. PATENTS

Whenever any invention or discovery is made or conceived by the Consultant in the course of or in connection with this Agreement, 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.

X. 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 Consultant warrants that all creators of copyrightable material delivered under this Agreement 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.

XI. CONSULTANT'S LIABILITY AND INSURANCE REQUIREMENTS

1. 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.

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

a. Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with limits as follows:

(1)	Each Occurrence	\$ _____
(2)	Products/Completed Operations Aggregate	\$ _____
(3)	Personal and Advertising Injury	\$ _____
(4)	General Aggregate (Not applicable to the Comprehensive Form)	\$ _____

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 _____ dollars (\$_____) per occurrence. (REQUIRED ONLY IF THE CONSULTANT DRIVES ON UNIVERSITY PREMISES IN THE COURSE OF PERFORMING WORK FOR UNIVERSITY.)

- c. Professional Liability Insurance with a limit of _____ dollars (\$ _____) per occurrence with an aggregate of not less than _____ dollars (\$ _____).

If this 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.

- d. Workers' Compensation as required by California State law.

It is understood that the coverage and limits referred to under a., b., and c. above shall not in any way limit the liability of the Consultant. The Consultant shall furnish the University with certificates of insurance evidencing compliance with all requirements prior to commencing work under this Agreement. Such certificates shall:

- (1) Provide for thirty (30)-days advance written notice to the University of any modification, change, or cancellation of any of the above insurance coverage.
- (2) Indicate that The Regents of the University of California has been endorsed as an additional insured under the coverage referred to under a. and b.
- (3) 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.

It should be further understood that the provisions under (2) and (3) above shall only apply in proportion to and to the extent of the negligent acts or omissions of the Consultant, its officers, agents, or employees.

XII. RECORDS ABOUT INDIVIDUALS

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. Use of recording devices in discussions with employees is permitted only as specified in this Agreement.

XIII. OWNERSHIP AND ACCESS TO RECORDS

While ownership of confidential or personal information about individuals shall be subject to negotiated agreement between the University and the Consultant, records will normally become the property of the University of California and subject to state law and University policies governing privacy and access to files.

XIV. 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 related to this Agreement 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.

XV. CONFLICT OF INTEREST

1. The Consultant shall not hire any officer or employee of the University to perform any service covered by this Agreement. 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 covered by this agreement.
2. 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 under this Agreement, and in the event of change in either private interests or service under this agreement, any question regarding possible conflict of interest which may rise as a result of such change will be raised with the University.
3. 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.

XVI. 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.

XVII. 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:

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

XVII. 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.

XIX. NO THIRD-PARTY RIGHTS

Nothing in this 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 this Agreement or by operation of law.

XX. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement.

XXI. STANDARD FOR PERFORMANCE

The parties acknowledge that 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 in the Agreement 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 under this Agreement 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 in this Agreement.

XXII. DISPUTE RESOLUTION

Any dispute arising regarding the interpretation or implementation of this Agreement, including any claims for breach of this 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 [insert location most convenient to campus], California, and any enforcement of the arbitrator's decision shall be brought in the Superior Court of [insert county that campus is located in], California.

XXIII. ATTORNEY'S FEES

In any action brought by a party to enforce the terms of this Agreement, 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.

XXIV. REPRESENTATIVES

Any changes to this Agreement may be made only by the following representatives of the University, or their successors as designated in writing:

[insert Responsible Administrative Official's and Program Review Official's name and address]

XXV. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral agreements with respect to the subject matter herein. Any modification to this Agreement must be on Amendment forms (Appendix 2).

XXVI. APPLICABLE LAW

This agreement shall be governed by the laws of the State of California.

CONSULTANT

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

(Signature) (Date)

(Signature) (Date)

Social Security or Employer
Identification Number*

Title

Responsible Administrative
Official

(Signature) (Date)

Title

Retention Period: Office of Record, Accounting, Executing Office, 5 years following termination, subject to Federal contract and grant requirements. Other Copies, 0-5 years.

***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.

AMENDMENT TO
INDEPENDENT CONSULTANT AGREEMENT

FOR ACCOUNTING PURPOSES ONLY	
Agreement Number:	_____
Location(s)/Account(s)/Fund(s)/Subaccount(s)	
	(%)
	(%)

AMENDMENT NUMBER _____

Account Name _____ Account Number _____

Consultant, Name, Address _____

THIS INDEPENDENT CONSULTANT AGREEMENT IS AMENDED AS FOLLOWS (specify by paragraph number):

CONSULTANT

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

(Signature) (Date)

(Signature) (Date)

Social Security or Employer
Identification Number**

Title

Responsible Administrative
Official

(Signature) (Date)

Title

Program Review Official

Retention Period: Office of Record, Accounting, Executing Office, 5 years following termination, subject to Federal contract and grant requirements. Other Copies, 0-5 years.

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INDEPENDENT CONTRACTOR PRE-HIRE WORKSHEET

INFORMATION ABOUT INDIVIDUAL

Individual _____ Sole Proprietor _____ Corporation _____

Social Security Number _____

Federal ID Number _____

Name _____

Name of Company _____

Campus _____ Department _____

If Foreign National - Country _____ Visa Type _____

MULTIPLE RELATIONSHIPS WITH THE UNIVERSITY

1. Is this individual on record as a current employee? Yes ___ No ___

If no, is it expected that the University will hire this individual as an employee following the termination of this service? Yes ___ No ___

2. Was the individual a University employee any time during the last year and did he or she provide the same or similar services while an employee? Yes ___ No ___

IRS CLASSIFICATION FACTORS

Before a worker is hired as an independent contractor, the following checklist *must* be completed to help determine whether an employer/employee relationship exists.

IRS Classification Factors

Yes = **No =**
Employee **Contractor**

Behavioral Control: Right to direct and control details and means by which worker performs services.

- | | | |
|---|--------------------------|--------------------------|
| 1. Instructions. Will the University have the right to give the worker instructions about when, where, and how he or she is to do the job? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Training. Will the worker receive training from the University? | <input type="checkbox"/> | <input type="checkbox"/> |

Financial Control: Right to direct and control economic aspects of the worker's activities.

- | | | |
|---|--------------------------|--------------------------|
| 3. Significant Investment. Has the worker failed to invest in facilities (such as an office) used to perform services? | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

- 4. **Payment of Expenses.** Will the University pay the worker's business or travel expenses?
- 5. **Services Available.** Does the worker not make his or her services available to other employers?
- 6. **Payment by Hour, Week, Month.** Will the University pay the worker by the hour, week, or month rather than by commission or by the job?
- 7. **Realization of Profit or Loss.** Will the arrangement prevent the worker from realizing a profit or suffering a loss?

Relationship of Parties: Intent of parties concerning status and control of worker.

- 8. **Right to Terminate.** Could the University terminate the worker at any time without incurring liability?
- 9. **Regular Business Activity.** Is the work to be performed part of the regular business of the University, such as teaching or research?
- 10. **Written Contract.** Will a written contract not be executed describing the worker as an independent contractor?
- 11. **Employee Benefits.** Will the worker receive any employee benefits?

EVALUATION OF CLASSIFICATION FACTORS

Areas That Support Employee Status

Areas That Support Contractor Status

(Use separate sheet, if necessary.)

DETERMINATION

Hire worker as an employee

Hire worker as an independent contractor

Department Authorization

Prepared By _____ Date _____

See Business & Finance Bulletin BUS 77, Independent Contractor Guidelines, for more information on applying the classification factors.