

SANTA CLARA UNIVERSITY
INDEPENDENT CONTRACTOR AGREEMENT

INSTRUCTIONS

FOR EDITING PURPOSES, DO NOT EMAIL A SCANNED VERSION OR SEND A HARDCOPY OF THE IC AGREEMENT TO ACCOUNTS PAYABLE.

Step 1: Using Adobe Reader, please fill out the following required fields and save the form.

Step 2: Email it to your Department Representative to electronically sign (instructions for electronic signatures are below).

Step 3: Email the signed form to the Independent Contractor to also electronically sign, and save the form. The form should now have both electronic signatures (the order in which you obtain the signatures does not matter).

Step 4: Lastly, email the signed form to Khanh Chau (kchau@scu.edu).

INSTRUCTIONS FOR ELECTRONIC SIGNATURES

Step 1: When you are ready to sign the document, scroll down to the area of the document where the signatures are (page 7 of 8) and click the highlighted box next to the appropriate signature; i.e., click the box under Department Representative if you are the Department Representative:


Signature

Step 2: Adobe Reader will prompt you to set up a new electronic signature if this is your first time. Make sure you select: **A new digital ID I want to create now** and click “Next.”

Step 3: On the next screen, simply click “Next,” *New PKCS#12 digital ID file* should already be selected.

Step 4: Fill out the fields with your personal information and click “Next” which will take you to the final panel.

Step 5: Enter a password. You will not be able to change the password or recover a forgotten password, so please make sure you remember your password. Click Finish.

**SANTA CLARA UNIVERSITY
INDEPENDENT CONTRACTOR AGREEMENT**

This Independent Contractor Agreement (“Agreement”) is made this _____ day of _____ 20__ by and between Santa Clara University (“SCU”), whose address is 500 El Camino Real, Santa Clara, California, 95053, and _____ whose address is _____ (“Contractor”).

In consideration of the normal promises set forth in this Agreement, SCU and Contractor hereby agree as follows:

1. **Services:** Subject to the terms and conditions of this Agreement and on a non-exclusive basis, Contractor agrees to perform the following services to SCU (“Services”):

(Check applicable box.)

- The Services are described in Attachment A attached hereto.
- The project and scope of Services are described as follows:

Contractor will determine the method, details and means of performing the Services. Contractor agrees that he/she shall at all times exercise a commercially reasonable degree of diligence, skill, and integrity in performing the Services hereunder. Contractor shall have no right to purchase goods or services in the name of SCU, execute or make contracts in the name of SCU, or obligate SCU in any way.

2. **Term:** This Agreement will become effective on the date set forth above or as stipulated in Attachment A and will continue until the _____ day of _____, _____, unless earlier terminated as set forth in Paragraph 9 below.

3. **SCU Representative:** _____, telephone _____, shall act as SCU’s representative throughout the term of this Agreement. SCU may change the designated representative from time to time upon reasonable notice to Contractor.

4. **Payment:**
(Check applicable box.)
 - SCU shall pay Contractor _____ dollars (\$) for Services to be performed in accordance with this Agreement at the conclusion of the Services, if such Services are performed to SCU’s reasonable satisfaction; or
 - SCU shall pay Contractor as described in Attachment A and any subsequent attachment that is attached pursuant to Paragraph 5 below.

Contractor shall be responsible for all expenses necessary to carry out the Services, and shall not be reimbursed by SCU for any such expenses, except as may be noted in Attachment A.

Contractor shall submit a written invoice detailing services provided and payment due, together with such other documentation of work performed as SCU may reasonably request.

Provided that Contractor satisfactorily performs the Services, as determined by the University's sole and reasonable discretion, payment shall be in accordance with the payment schedule provided in Attachment A. If there is no Attachment A or no payment schedule is provided in Attachment A the University shall provide Contractor with payment in full at the completion of Services, as determined by the University's sole and reasonable discretion. Invoices shall be submitted to the following SCU address:

5. **Modifications of Work:** SCU reserves the right, without liability, to make changes in the Services to be provided hereunder, including alterations, reductions, or additions. Upon receipt by Contractor of SCU's notification of a contemplated change, Contractor shall (1) if requested by SCU, provide an estimate for the increase or decrease in cost due to the contemplated change, and (2) notify SCU of any estimated change in the completion date.

6. **Independent Contractor Status:** The parties intend, and Contractor acknowledges, that Contractor enters into this Agreement, and will remain throughout the term of this Agreement, as an independent contractor. Contractor agrees that he/she is not and will not become an employee, partner, agent, servant or principal of SCU while this Agreement is in effect. Accordingly, contractor acknowledges that he/she is not entitled to earn or accrue any rights, benefits, or salary under any benefit or compensation plan or program sponsored by the University, including, but not limited to, medical, dental, vision, retirement, or other employee welfare benefits. Contractor agrees that he/she will not hold himself/herself out as an authorized agent to bind SCU in any manner. Nothing in this Agreement shall be construed or interpreted as creating an employment relationship between the University and the Contractor.

Contractor shall be solely responsible for any taxes due as a result of the payment pursuant to Section 4 of this Agreement. Contractor will defend and indemnify the University from and against any and all losses or liabilities arising out of Consultants failure to pay taxes due with respect to any such payments. Contractor further agrees that SCU may withhold from payment to Contractor any amount which SCU determines, in its sole discretion, is required to be withheld by applicable law.

Unless there is a need to perform services on the University premises, all work is to be completed at Contractor's place of business or other appropriate location. Contractor is responsible for supplying all tools, equipment, and materials necessary for the successful completion of the Services. Contractor shall take all necessary precautions to store all materials and equipment in a safe and appropriate manner.

Contractor agrees and acknowledges that he/she is solely responsible for determining the method and means by which Contractor will perform the Services and otherwise fulfill Contractor's obligations in accordance with this Agreement. Contractor further agrees that he/she will be solely responsible for the professional performance of the Services except as may be specifically set forth in this Agreement. Contractor represents that he/she has the necessary qualifications, skills, licenses, and ability to perform the Services hereunder in a competent, professional manner without the advice or direction of SCU. Failure to perform all of the Services required under this Agreement constitutes a material breach of this Agreement.

Contractor is free to hire, supervise, and pay assistants to aide in the performance of the Services. All persons engaged in any of the work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to Contractor's sole direction, supervision, and control. Contractor shall exercise control over the means and manner in which it and its employees perform the Services, and in all respects the Contractor's relationship and the relationship of its employees to SCU shall be that of an independent contractor and not as employees or agents of SCU. Contractor warrants and represents that all of his/her employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age, or nationality.

Contractor represents and warrants he/she is eligible to work in the United States as required by the provisions of the Federal Immigration Reform and Control Act of 1986, and that any individual employed by Contractor to assist in this project is eligible to work in the United States.

7. **Non-Exclusive:** SCU does not agree to utilize the Services of Contractor exclusively; nor does SCU agree to provide any minimum amount of work. Nothing in this Agreement prohibits the University from working and contracting with other Contractors. Likewise, Contractor is free to contract for similar services to be performed for others during the term of this Agreement. Contractor agrees that such other services shall not impair, impede, or conflict in any way with the Services Contractor agrees to provide under this Agreement. Contractor may not subcontract in SCU's name for Services Contractor agrees to provide under this Agreement or for any other purpose.
8. **Indemnification and Insurance:** Contractor shall indemnify, defend, and hold harmless, SCU and its officers, trustees, employees, and/or agents, from and against any and all claims, demands, suits, loss, damage, injury, and liability, including costs, expenses, and reasonable attorney's fees arising from a breach of, or in any way connected with, any of Contractor's representations and warranties herein, or resulting from the acts or omissions of Contractor, Contractor's agents, or subcontractors during Contractor's performance under this Agreement, or from the death or injury of any person or persons, including employees of SCU, or from the damage or destruction of any work or properties attributable to or resulting from Contractor's performance of the Services.

Contractor shall procure and maintain for the entire Term of Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. Contractor shall maintain insurance coverage with limits no less than: General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If general aggregate limit is used, the limit shall be twice the required occurrence limit. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. Workers' Compensation: With statutory limits as required by State of California. Employer's Liability: \$1,000,000 per accident for bodily injury or disease. If appropriate for the work as described in Attachment A, Professional Liability (Errors and Omissions): \$1,000,000 per claim.

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- A. Santa Clara University, its Trustees, officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of automobiles

owned, leased, hired or borrowed by or on behalf of the contractor. Santa Clara University, its Trustees, officers, officials, employees, agents and volunteers are to be covered as additional insured under General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

- B. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects Santa Clara University, its Trustees, officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by Santa Clara University, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Contractor shall furnish SCU with original certificates and endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by SCU before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. SCU reserves the right to require complete, certified copies of all required insurance policies, including any endorsements, at any time.

9. **Termination:** Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving ten (10) days' written notice to the other party or as agreed in any attachments hereto. If either party defaults in the performance of this Agreement or breaches any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five (5) days after the mailing of notice, whichever occurs first.
10. **Confidentiality:** Contractor acknowledges that, in the course of performing the Services under this Agreement, Contractor may come into the possession of business information or other confidential or proprietary information of SCU ("Confidential Information"). Contractor agrees that Confidential Information is the sole property of SCU and further agrees to treat, protect, and safeguard all such Confidential Information as confidential and will not disclose such information to third parties during and/or after the term of this Agreement except with SCU's written approval, and only to the extent necessary to perform the Services under this Agreement. Contractor warrants that he/she will obligate any and all of Contractor's employees, agents, and subcontractors to abide by this Section 10. At the termination of this Agreement, Contractor shall promptly return to SCU all copies of Confidential Information furnished by SCU and all material prepared for, or in connection with, the Services for SCU in his/her possession, custody, or control. The confidentiality obligations under this Section 10 continue indefinitely and shall survive the termination of this Agreement.
11. **Ownership of Work Product:** Contractor agrees, without limitation, reservation, or condition, that all Services and any elements thereof created, performed, contributed, or prepared by Contractor pursuant to this Agreement and/or while performing the Services under this Agreement, including without limitation all copyrights, patents, rights of reproduction, and rights of ownership to any physical works of art embodied therein, are hereby assigned to SCU as the sole and exclusive property of SCU and SCU's assigns, nominees and successors. On request and at SCU's expense, Contractor shall assist SCU in obtaining patents and copyrights for any new developments. This includes providing data, plans, specifications, descriptions, documentation, and other information, as well as assisting SCU in completing any required application or registration.

12. **Warranties:** Contractor represents and warrants that all Services performed under this Agreement shall be in a professional and competent manner and suitable for the purpose intended. Contractor represents and warrants that its work shall not infringe any patent, trademark, copyright, or other proprietary right. Contractor further warrants that its work will not contain any technical limiting devices. Should any claim of infringements be brought against SCU, Contractor shall indemnify, defend and hold SCU harmless from and against any and all claims, actions, liabilities, expenses, costs and demands together with attorney fees relating to or arising from any such claim or any patent, design, copyright, trademark, proprietary right, right of privacy, or similar action, suit or proceeding.

13. **Arbitration:** Any and all disputes, claims or controversies arising out of or relating in any way to this Agreement, its performance or breach, including, without limitation, the validity, scope and enforceability of this Agreement to arbitrate, shall be resolved exclusively by final and binding arbitration. Both Contractor and the University expressly waive any right he/she and it may have to seek redress in any other forum. Any arbitration shall be conducted in accordance with the Rules of JAMS then in effect, notwithstanding anything to the contrary in the Rules of JAMS (or if said rules are not in effect, then in accordance with the rules set forth in Title 9 of the California Code of Civil Procedure, beginning with section 1280 et seq.), the arbitration shall at least provide (i) for written discovery and depositions adequate to give the parties access to documents and witnesses that are essential to the dispute, and (ii) for a written decision by the arbitrator that includes essential findings and conclusions upon which the decision is based. A copy of the JAMS Comprehensive Arbitration Rules and Procedures is available online at http://www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS_comprehensive_arbitration_rules-2010.pdf.

Contractor acknowledges that he/she has reviewed the JAMS Comprehensive Arbitration Rules and Procedures prior to execution of this Agreement. The arbitrator selected shall have full authority to grant the parties all remedies available under this Agreement, as well as all statutorily available remedies. Absent agreement by the parties on an arbitrator, the arbitrator will be selected by JAMS. If for any reason JAMS is unable to select an arbitrator, then the Presiding Judge of the Superior Court of California, Santa Clara County shall select an arbitrator. Any award rendered shall be final, binding, and conclusive upon the parties and may be entered in any state or federal court having jurisdiction, subject to the judicial review required by California law. This agreement to arbitrate disputes, claims, and controversies does not prohibit or limit either party's right to seek equitable relief from a court, including but not limited to injunctive relief, pending the resolution of the dispute by arbitration. This agreement to arbitrate is freely negotiated between Contractor and the University and is mutually entered into between the parties. In consideration of each party's agreement to submit to arbitration all disputes with regard to this Agreement as provided in this Section 13, each party agrees that the arbitration provisions hereof shall provide the exclusive remedy (save and except with respect to the equitable relief referenced herein) and EACH PARTY FULLY UNDERSTANDS AND AGREES THAT THEY ARE GIVING UP CERTAIN RIGHTS OTHERWISE AFFORDED TO THEM BY CIVIL COURT ACTIONS, INCLUDING BUT NOT LIMITED TO THE RIGHT TO A JURY TRIAL.

14. **Assignment:** This Agreement shall be binding upon and enforceable by, and shall inure to the benefit of the University. This Agreement may not be assigned or transferred by either party

for any reason without the express written consent of the other party.

15. **Survival of Terms:** The terms, provisions, representations and warranties in this Agreement shall survive the delivery of Services, payment therefore, and the termination or expiration of this Agreement.
16. **Non-Waiver:** No terms or provisions of this Agreement shall be deemed waived and no breach excused, unless such a waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied by operation of law, shall not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach.
17. **Invalid Provision:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.
18. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the state of California without regard to its conflict of laws provisions.
19. **Jurisdiction and Venue:** Both parties submit to arbitration as the exclusive remedy pursuant to Paragraph 13 above, or, should such arbitration clause be found unenforceable by a court of competent jurisdiction, the parties agree to the exclusive jurisdiction and venue of the Superior Court of California, County of Santa Clara or, for claims for which federal jurisdiction is required, the United States District Court, San Jose Branch, for the Northern District of California.
20. **References:** Contractor hereby authorizes SCU or SCU's agent(s) to investigate Contractor's references, to communicate with Contractor's former or current clients, and to make an independent investigation of Contractor's character, conduct, and employment record and to keep and preserve records of such investigations. In compliance with the Fair Credit and Reporting Act (15 U.S.C.S. Section 1681), Contractor is advised that a routine investigative consumer report may be conducted relative to the Contractor's character, general reputation, personal characteristics and credit history. Contractor has the right to request the source of this information and the nature and scope of the investigation, if one is conducted.
21. **Notices:** Service of any notice required or permitted under this Agreement shall be sufficient if by personal delivery in writing to Contractor or if sent certified or overnight mail, postage prepaid to either party at the respective addresses set forth above. Such notice shall be effective upon delivery or the date delivery is attempted and refused. Each party may change the address above by giving written notice in accordance with this paragraph.
22. **Counterparts:** This Agreement may be executed in counterparts, including by facsimile, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.
23. **Entire Agreement:** This Agreement and any Attachments now or hereafter attached, if executed by both parties, supersedes any and all agreement, either oral or written, between the parties with respect to the rendering of Services by Contractor for SCU and contains all of the representations, covenants, and agreements between the parties with respect to the rendering of

those Services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding. This Agreement shall not be modified by Contractor except by a writing signed by SCU.

24. **Signatory Authority:** This Agreement will only be considered executed by and binding on Santa Clara University when signed by 1) a University department representative who is an authorized signatory of the University and 2) General Counsel, Assistant General Counsel, or HR Employment Counsel.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

Independent Contractor

Signature

Printed Name

Title

Date

SANTA CLARA UNIVERSITY

Department Authorized Signatory

Legal

Signature

Signature

Printed name

Printed Name

Title

Title

Date

Date

Attachment A
SCOPE OF SERVICES