

CALIFORNIA STATE UNIVERSITY

TERMS AND CONDITIONS OF PURCHASE

Contract Number:

1. Contract

These California State University Terms and Conditions of Purchase ("Terms and Conditions") are made part of that certain Contract for Purchase of Goods, Software, or Services with the contract number written above ("Contract"), made by and between the contractor named in such Contract ("Contractor") and The Trustees of the California State University ("CSU" or "University"). CSU and Contractor are individually referred to herein as a "Party", and together referred to as the "Parties". Terms that are Capitalized in these Terms and Conditions shall have the same meaning as those terms are defined in the Contract. If no contract number is written above, the equipment, material, or supplies ("Goods"), software, software as a service, platform as a service, or online subscriptions ("Software") or services ("Services") furnished by Contractor, and covered by a CSU Purchase Order or other agreement, are governed by these Terms and Conditions, which shall take precedence over any other terms and conditions. The term "Contracted Work" refers to the Goods, Services, and Software supplied by Contractor under the terms of this Contract.

Written acceptance or shipment of all or any portion of the Goods or Software, or the performance of all or any portion of the Services, will constitute Contractor's unqualified acceptance of the Terms and Conditions. Unless otherwise agreed in writing, the terms of any proposal referred to in the Contract are included and made a part of the Contract only to the extent the proposal specifies the Goods, Software, or Services ordered, the price, and the terms of delivery, and then only to the extent that those terms are consistent with the terms and conditions of the Contract.

2. General

2.1 Commencement of Work

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

2.2 Entire Contract

This Contract, together with its riders, attachments, and exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall govern the respective rights and obligations of each Party. All prior agreements, representations, inducements, and negotiations, and any and all existing contracts previously executed between the parties with respect to this subject matter, are superseded hereby. This Contract also supersedes all click-through, click-wrap, shrink-wrap, Terms of Use, Terms of Service, or other End User License Agreements, all of which are null and void. CSU rejects any different or additional terms without prior written consent from an authorized CSU officer or employee.

2.3 No Oral Modifications or Understandings

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

2.4 Severability

Contractor and CSU agree that the terms of this Contract are severable. If any provision of this Contract is found to be illegal or unenforceable, such provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Any Party having knowledge of such provision shall promptly inform the other of the presumed non-enforceability of such provision. Should such 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 the Parties, to the maximum extent reasonable.

2.5 Governing Law and Choice of Venue

This Contract shall be construed in accordance with and governed by the laws of the State of California. Any action brought by any Party hereto shall be brought in a court of competent jurisdiction within the State of California.

2.6 Independent Status

Contractor and its employees, agents, and subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of CSU or the State of California. While Contractor may be required by this Contract to carry Workers Compensation Insurance, in no event shall Contractor or its employees, agents, or subcontractors be entitled to unemployment or workers' compensation benefits from CSU.

2.7 Personnel

Contractor maintains the sole right to determine the assignment of its employees to keep all phases of work under its control. If an employee of Contractor is unable to perform due to illness, resignation, or other factors beyond Contractor's control, Contractor shall use its best effort to provide suitable substitute personnel. If services are provided under this Contract, Contractor warrants that its staff, which is assigned to performing work under this Contract, is legally able to perform such duties in the country where the work is being performed.

2.8 Assignments

Neither Party shall assign this Contract, in whole or in part, without the other Party's written consent, which shall not be unreasonably withheld.

2.9 No Waiver of Rights

Any action or inaction by a Party or the failure of a Party on any occasion to enforce any right or provision of this Contract shall not be deemed a waiver by such Party of its rights hereunder, and shall not prevent such Party from enforcing such provision or right on any future occasion. A Party's rights and remedies provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

2.10 Time

Time is of the essence in the performance of this Contract.

2.11 Material Change of Circumstances

The terms of this Contract are based on conditions in existence on the date that Contractor commences performance. In the event of a material change in the conditions that adversely affects the ability of Contractor to perform its obligations, Contractor shall reasonably cooperate with CSU to minimize the impact from such change in conditions on Contractor's performance and shall, if requested by CSU, negotiate in good faith to adjust the terms of this Contract on a mutually agreeable basis to address the impact of such material change in conditions. This provision shall not limit CSU's ability to avail itself of any rights or remedies provided to CSU by law, equity, or any other term of this Contract.

2.12 Prevailing Wage

In the event that prevailing wage requirements apply to the Contracted Work, Contractor shall pay employees the current prevailing rate wages for any work performed under this Contract in accordance with California Labor Code section 1720.

2.13 Contractor's Power and Authority

Contractor represents and warrants it has full power and authority to enter into this Contract and will hold CSU harmless from and against any and all loss, cost, liability, or expense (including reasonable attorney fees) arising out of any breach of this representation and warranty. Further, Contractor shall not enter into any arrangement, agreement, or contract with any third party that might abridge any rights of CSU under this Contract.

2.14 Sovereign Immunity

Notwithstanding anything herein to the contrary, nothing in this Contract shall be deemed a waiver of sovereign immunity of the State of California or of CSU.

2.15 Headings

Headings in this document are for convenience of reference only, and shall not be used in the interpretation of this Contract.

3. Termination and Remedies

3.1 Termination for Convenience

CSU may terminate this Contract at any time for any or no reason and without future financial obligation upon thirty (30) days written notice to Contractor. Upon notice of termination pursuant to this section, if directed by CSU Contractor shall immediately stop all work and cause its suppliers and/or subcontractors to immediately cease their work related to this Contract. Contractor shall be paid for Contracted Work performed in accordance with the Contract, prior to the notice of termination or such date that CSU has directed to stop work. In no event shall Contractor be paid for costs incurred or Services performed after receipt of notice of termination, or, if later, the date Contractor is directed to stop work.

3.2 Termination for Default

CSU may terminate the Contract and be relieved of the payment of any consideration to Contractor if Contractor fails to comply with any material term or condition of the Contract. Late performance, or delivery of Contracted Work that is defective or does not conform to the requirements of the Contract, shall, without limitation, be causes allowing CSU to terminate for default. In the event of such termination, CSU may proceed with the Contracted Work in any manner deemed proper by CSU. The cost to CSU of procuring substitute goods, services, or software shall be deducted from any sum due to the Contractor under the Contract for Contractor's prior satisfactory performance.

3.3 CSU's Rights and Remedies for Contractor's Default

- (a) **Defective Contracted Work.** In the event any Contracted Work provided by Contractor in the performance of this Contract fails to conform to the requirements herein, CSU may reject the same. It shall thereupon become Contractor's duty forthwith to reclaim and remove all nonconforming deliverables and correct the performance of Services at no expense to CSU, and to immediately replace all such rejected items and/or work with others conforming to the requirements of this Contract. Should Contractor fail, neglect, or refuse to do so, CSU shall thereupon have the right, but not the obligation, to purchase in the open market, in lieu thereof, a corresponding quantity of any such items or services, and to deduct the cost of such cover from any moneys due or that may thereafter become due to Contractor; or, if applicable, CSU shall have the right to complete all or any part of the Statement of Work, and charge its expense of completing the service/work to Contractor and to deduct from any moneys due or that may thereafter become due to Contractor the difference between the price named in the Contract and the actual cost to CSU.
- (b) **Late Delivery.** In the event Contractor fails to make prompt delivery of any Good, Software, or Service as specified in this Contract, CSU shall have the same rights, but not obligations, as set forth in subsection (a) above to purchase replacement items or services in the open market and to deduct the cost of such cover

from any moneys due or that may thereafter become due to Contractor.

- (c) **Termination for Default.** In the event that CSU terminates this Contract, either in whole or in part, for Contractor's default or breach, Contractor shall compensate CSU, in addition to any other remedy that CSU may have available to it, for any loss or damage sustained and cost incurred by CSU in procuring any items or services that Contractor agreed to supply.
- (d) **Rights and Remedies Not Exclusive.** CSU's rights and remedies provided in this section shall not be exclusive and shall be in addition to any other rights and remedies provided by law, equity, or this Contract.

3.4 Dispute

Any dispute arising under or resulting from this Contract that is not resolved within sixty (60) days by authorized representatives of Contractor and CSU shall be brought to the attention of Contractor's Chief Executive Officer (or designee) and CSU's Chief Business Officer (or designee) for resolution. Either Contractor or CSU may request that the CSU Vice Chancellor, Business and Finance (or designee) participate in the dispute resolution process to provide advice regarding CSU contracting policies and procedures. If this informal dispute resolution process is unsuccessful, the Parties may pursue all remedies not inconsistent with this Contract. Despite an unresolved dispute, Contractor shall continue without delay in performing its responsibilities under this Contract. Contractor shall accurately and adequately document all service it has performed under this Contract.

3.5 Force Majeure

- (a) **Liability.** Neither Party shall be liable for any failure to perform its obligations under this Contract for the period of time that it is prevented, hindered, or delayed in performing those obligations by circumstances beyond its control, including, but not limited to, fire, strike, war, riots, acts of terrorism, disaster, acts of God, acts of any governmental authority, communicable disease outbreak, epidemic or pandemic, quarantines, unavailability or shortages of labor, materials, or equipment, disruption of transportation, or any other comparable event beyond the control of the Party whose performance is affected (each, a "Force Majeure Event."). For the avoidance of doubt, Force Majeure shall not include (a) financial distress or the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.
- (b) **Notice.** The Party claiming Force Majeure shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event, provide written notice to the other Party of the nature, extent, and expected duration of the Force Majeure Event and use its diligent efforts to mitigate the effects of the Force Majeure Event upon such Party's performance under this Contract, it being understood that upon completion of the Force Majeure Event, the Party whose performance was affected must, as soon as reasonably practicable, recommence the performance of its obligations under this Contract.
- (c) **Force Majeure Remedies.** Notwithstanding any other term in this Contract, including, but not limited to, the foregoing subsections of this term, during the period of a Force Majeure Event affecting performance by Contractor, in addition to any other remedies permitted by law or this Contract, CSU may elect to do all or any of the following:
 - (1) suspend the Contract between CSU and Contractor for the duration of the Force Majeure Event and be relieved of any payment obligation for Contracted Work not delivered or accepted due to the Force Majeure Event;
 - (2) obtain elsewhere the Contracted Work not delivered or accepted due to the Force Majeure Event;
 - (3) extend the time for Contractor's performance by a period equal to the duration of the Force Majeure Event; or
 - (4) terminate the Contract between CSU and Contractor as to any Contracted Work not already received with no further financial obligation if the Force Majeure Event continues to exist for more than thirty (30) days.

4. Indemnity

4.1 General Indemnity

Contractor shall indemnify, defend, and hold harmless the State of California, CSU, and their respective 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 related to, arising out of or resulting from Contractor's performance of this Contract.

4.2 Patent, Copyright, and Trade Secret Indemnity

- (a) **Indemnification.** Contractor shall indemnify, defend, and hold harmless the State of California, CSU, and their respective officers, agents, and employees (collectively referred to as Indemnitees), from any and all third-party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any intellectual property right, domestic or foreign, by any product or service provided hereunder. With respect to claims arising from computer hardware or software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to Indemnitees, in addition to the foregoing provision, such indemnity rights as it receives from such third party ("Third-Party Obligation") and will cooperate in enforcing them; provided that if the third-party manufacturer fails to honor the Third-Party Obligation, Contractor will provide Indemnitees with indemnity protection.
- (b) **Notice and Defense.** Indemnitees will notify Contractor of such claim in writing and tender their defense within a reasonable time. Contractor will control the defense of any action on such claim and all negotiations for its settlement or compromise, except when substantial principles of government or public law are involved, when litigation might create precedent affecting future Indemnitees' operations or liability, or when involvement of the Indemnitees is otherwise mandated by law. In such case, no settlement shall be entered into on behalf of Indemnitees without Indemnitees' written approval.
- (c) **Bond.** Contractor may be required to furnish Indemnitees a bond against any and all loss, damage, costs, expenses, claims and liability for patent, copyright, and trade secret infringement.
- (d) **Substitution.** Should the Contracted Work, or the operation of the Contracted Work, become, or in Contractor's opinion be likely to become, the subject of a claim of infringement or violation of an intellectual property right, whether domestic or foreign, Indemnitees shall permit Contractor at its option and expense either to procure for Indemnitees the right to continue using the Contracted Work or to replace or modify the same so they become non-infringing, provided they comply with Contract and performance requirements and expectations. If neither option is reasonably practicable or if the use of such Contracted Work by Indemnitees shall be prevented by injunction, Contractor agrees to take back such Contracted Work and use its best effort to assist Indemnitees in procuring substitute Contracted Work at Contractor's cost and expense. If, in the sole opinion of Indemnitees, the return of such infringing Contracted Work makes the retention of other deliverables or software acquired from Contractor under this Contract impracticable, Indemnitees shall then have the option of terminating this Contract, or applicable portions thereof, without penalty or termination charge. Contractor agrees to take back such Contracted Work and refund any sums Indemnitees paid Contractor less any reasonable amount for use or damage.
- (e) **Controls.** Contractor certifies it has appropriate systems and controls in place to ensure State funds will not be used in the performance of this Contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

5. Warranty

5.1 Free from Defect

Contractor warrants that (i) the Contracted Work furnished hereunder will conform to the requirements of this Contract (including, without limitation, all descriptions, specifications, and drawings identified in any specific Statement of Work between Contractor and CSU), and (ii) the Contracted Work will be free from fault and defects in design, materials, and workmanship. Where the Parties have agreed to design specifications in a Statement of Work, if any, directly or by reference, Contractor warrants the Contracted Work shall provide all functionality required thereby, and Contracted Work shall be new and of industry standard quality in the trade and in accordance with the approved and agreed-to design and specifications. CSU's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.

5.2 Permits

Contractor warrants that it will procure all permits, licenses, and authorizations necessary to properly perform its obligations under this Contract in accordance with all applicable laws, regulations and ordinances.

5.3 Software

In addition to the other warranties set forth herein, where the Contract calls for delivery of commercial software, Contractor warrants that such software shall perform in accordance with its license and accompanying documentation. Contractor further warrants that, at the time of delivery, any deliverables consisting of software (i) shall be free of harmful code (i.e., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or software); and (ii) shall not infringe or violate any third-party's intellectual property right. Without limiting the generality of the foregoing, if CSU believes harmful code may be present in any commercial software delivered by Contractor, Contractor shall, upon CSU's request, provide a master copy of the software for comparison and correction.

5.4 Warranty Pass-Through

Unless otherwise specified in the Statement of Work, where Contractor resells hardware or software it purchased from a third party and such third party offers additional or more advantageous warranties than those set forth herein, Contractor shall pass through any such warranties to CSU and shall cooperate in enforcing them. Such warranty pass-through shall be supplemental to, and shall not relieve Contractor from, Contractor's warranty obligations set forth above.

5.5 Inure to CSU

All warranties, including special warranties specified elsewhere herein, shall inure to CSU, its successors, assigns, CSU agencies, and other governmental users of the deliverables or services.

6. Operational

6.1 Safety and Accident Prevention

In the event this Contract requires Contractor to perform work on premises owned or controlled by CSU ("CSU Premises"), Contractor shall conform to all specific safety requirements contained in this Contract and/or as required by law, regulation, or CSU policies, plans, and procedures, including, but not limited to, the campus Workplace Violence Prevention Plan applicable to the CSU Premises at which work is performed. Contractor shall take all additional precautions as CSU may reasonably require for safety and accident prevention purposes. Contractor's violation of such rules and requirements, unless promptly corrected, shall constitute a material breach of this Contract.

6.2 Protection/Restoration of Facilities

If the Contract involves performing work on CSU's Premises, Contractor shall properly and adequately protect from damage all of CSU's property, including, but not limited to, land, structures, equipment, and utilities while providing goods or services on CSU's premises. Contractor shall comply with all facility, safety and security rules and regulations, and other instructions of CSU, when performing work at CSU's Premises, and shall conduct its work at CSU's Premises in such a manner as to avoid endangering the safety, or interfering with the convenience of, CSU employees, students, or members of the public. If any of CSU's property is damaged, altered or disturbed in any way during the performance of this Contract, whether by Contractor, sub-Contractor, or anyone acting on behalf of Contractor, Contractor shall promptly restore CSU's property to the condition it was in immediately before the damage or alteration at Contractor's sole cost and expense. If Contractor is unable or unwilling to restore CSU's property, CSU may restore such property at Contractor's sole cost and expense, and CSU shall be entitled to promptly recover from Contractor the cost and expense of such restoration.

6.3 Cleaning and Removal of Debris/Salvage

If the Contract involves performing work on CSU's Premises, Contractor shall remove at the end of each workday all dirt, debris, waste, rubbish, equipment, and obstacles to CSU pedestrian or vehicular traffic, as directed by CSU. Contractor shall thoroughly clean (vacuum, wet mop, etc.) any dust, soot or similar construction generated materials and contaminants at the end of each workday. Contractor shall not allow debris, waste, or unused construction material to accumulate under, in, or about the work site, nor shall such materials be used in backfilling. Contractor shall not ask any employee, volunteer, or CSU student for assistance in work or use of equipment, tools, or supplies. Upon completion of work, Contractor shall thoroughly clean the work area, including all fixtures, equipment, floors, and hardware, and shall remove all plaster spots, stains, paint spots, and accumulated dust and dirt. This shall include thorough cleaning of all roofs, sidewalks, or other surfaces where debris may have collected. Additionally, Contractor shall remove all scaffolding, planking, surplus materials, temporary structures, waste materials and rubbish around the equipment or upon the site and dispose of any such items in safe and legal fashion. Absolutely no materials shall be left on CSU's Premises. All salvage items removed in connection with any work remain the property of CSU and shall be deliverable to the location designated by the authorized representative of CSU.

6.4 Invoices

- (a) **Submission.** Contractor shall submit invoices to CSU for payment of goods and/or services rendered under this Contract. Such invoices shall be submitted in arrears to the address provided in the Contract. In the event that the Contracted Work is of a continuing nature, such invoices shall be submitted in arrears upon completion of each phase. Each invoice must contain the Contract number and Contractor's Identification number. The final invoice shall be marked as such.
- (b) **Payment.** Unless otherwise specified, CSU shall pay properly submitted invoices not more than 45 days after the latest of:
 - (1) CSU's acceptance of goods conforming to the Contract;
 - (2) Contractor's satisfactory completion of services conforming to the Contract; or
 - (3) CSU's receipt of an undisputed invoice.
- (c) **Late Payment.** Late payment penalties shall not apply to this Contract.
- (d) **Full Compensation.** 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 travel-related expenses, unless otherwise expressly so provided. Any of Contractor's travel or travel-related expenses that CSU agrees to reimburse shall be reimbursed only in accordance with CSU policy.

6.5 Document Referencing

All correspondence, invoices, bills of lading, shipping memos, packages, and other documentation exchanged pursuant to the Contract shall contain the Contract number. If factory shipment, the factory must be advised by Contractor 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.

6.6 Packing and Shipment of Goods

- (a) **Containers.** Should Goods be provided under this Contract, all Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - (1) Show the number of the container and the total number of containers in the shipment; and
 - (2) The number of the container in which the packing sheet has been enclosed.
- (b) **Packing Sheets.** All shipments of Goods by Contractor or its subcontractors must include packing sheets identifying: the contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.

6.7 Delivery

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, CSU shall not be required to make any payment for the excess deliverables and may return them to Contractor at Contractor's expense or utilize any other rights available to CSU at law or in equity.

6.8 Substitutions

Contractor may not tender substitute items for any Goods or Software to be provided under this Contract without advance written consent of CSU. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of CSU.

6.9 Inspection, Acceptance and Rejection

Unless otherwise specified in a Statement of Work, all Contracted Work may be subject to inspection and test by CSU. CSU shall not be deemed to have accepted Contracted Work until it has had a reasonable period to inspect it following delivery or completion of performance. Contractor shall be liable to correct all deficiencies at its own expense. Notwithstanding any prior payment or inspection, CSU will also have the right to reject Contracted Work as though it had not been accepted after any latent defect has become apparent.

6.10 Taxes, Delivery, and Permits

- (a) **Taxes.** Contractor certifies that it shall comply with all California Sale and Use Tax requirements. Articles sold to CSU may be exempt from certain Federal Excise Taxes. CSU will furnish an exemption certificate on request.
- (b) **FOB.** Unless otherwise specified, FOB shall be destination.
- (c) **Charges.** Prices quoted shall include all required and applicable taxes, and applicable delivery or freight charges, insurance, license fees, permits, and costs of bonds. If Contract includes a charge for freight, Contractor shall provide supporting documentation for any charge over \$50. If Contract includes a charge for handling, it must be itemized separately from any charge for shipping.
- (d) **Prohibited Charges.** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other related purpose will be paid by CSU unless expressly included and itemized in the Contract.
- (e) **Permits.** Contractor certifies that it will immediately advise CSU of any change in its retail seller's permit or

certification of registration or applicable affiliate's seller's permit or certificate of registration.

6.11 Electronic Software Tax Liability

If Software is provided under the terms of this Contract, Contractor agrees to deliver Software solely in an intangible form and via electronic means. Contractor shall be responsible for ensuring that the Software is not delivered to CSU in tangible form and shall defend and indemnify CSU for any and all tax liability resulting from Contractor's failure to deliver Software as required by this Contract.

6.12 Rights in Contracted Work

- (a) **Work Made for Hire.** Unless CSU indicates that the Contracted Work does not involve work made for hire, Contractor acknowledges and agrees that all inventions, discoveries, intellectual property, technical communications, and records originated or prepared by Contractor pursuant to this Contract, including papers, reports, charts, computer programs, and other documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be the exclusive property of CSU. The Work Product shall be considered "work made for hire" under U.S. copyright law and all right, title, and interest to and in such Work Product including, but not limited to, any and all copyrights or trademarks, will be owned by CSU. In the event that it is determined that CSU is not the owner of such Work Product under the "work made for hire" doctrine of U.S. copyright law, Contractor hereby irrevocably assigns to CSU all right, title, and interest to and in such Work Product and any copyrights or trademarks thereto.
- (b) **Noninfringement.** Contractor warrants that it has the complete right and title to sell, license, or convey all parts of the Contracted Work, and has obtained any and all necessary permissions from third parties to sell, license, or convey the Contracted Work, and that use of the Contracted Work shall not infringe the intellectual property or any other property rights of any third party. Contractor shall indemnify and hold CSU and authorized users of the Contracted Work harmless for any losses, claims, damages, awards, penalties, or injuries incurred which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Contracted Work by CSU or any authorized user in accordance with the terms of this Contract.

6.13 Use of Name or Marks, and Endorsement

Neither Party shall use the other Party's name, trade names, trademarks, service marks, logos, or domain names without the prior written agreement of the other Party. Nothing contained in this Contract shall be construed as conferring on any Party any right to use the other Party's name or mark as an endorsement of any product or service or to advertise, promote or otherwise market any product or service without the prior written consent of the other Party. Furthermore, nothing in this Contract shall be construed as the endorsement of any commercial product or service by CSU.

7. Insurance

Contractor shall not commence the Contracted Work until it has obtained all the insurance required by this Contract, and such insurance has been approved by CSU.

7.1 Policies and Coverage

- (a) **Required.** Contractor shall obtain and maintain the following policies and coverage:
 - (1) Comprehensive or Commercial General Liability Insurance, on an occurrence basis, covering Contracted 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. CSU may require the aggregate limit to apply specifically to the Contracted Work in certain circumstances, and will notify Contractor of this requirement.

- (2) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
 - (3) Worker's Compensation, including Employers Liability Insurance as required by law.
- (b) **Additional.** Contractor shall also be required to obtain and maintain the following policies and coverage to the extent indicated below:
- (1) Environmental Impairment Liability or Pollution Liability Insurance in the event that the Contracted Work involves hazardous materials which could result in any loss, cost or expense arising out of any requirement to clean up, remove, contain, treat, detoxify or in any way respond to pollutants or injury or damage resulting therefrom. This includes, but is not limited to, Contracted Work involving asbestos, lead, fuel storage or pipes, sewage, industrial waste, and hazardous chemicals (such as pesticides, carcinogens, trichloroethylene (TCE), or polychlorinated biphenyls (PCBs).
 - (2) Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability Insurance in the event that the Contracted Work involves access to or storage of Protected Data. For purposes of this Contract, "Protected Data" has the same meaning as defined in the [CSU Information Security Policy and Standards, section VI](#) (which, for clarification, includes both "Level 1 - Confidential" data and "[Level 2 - Internal Use](#)" data). Such insurance shall cover liabilities for financial loss, damages, and/or costs incurred as a result of any confirmed or suspected data security breach or loss of Protected Data (including personally identifiable information) due to the acts, omissions, and/or intentional misconduct of Contractor, its officers, employees, agents, sub-contractors, or anyone acting on behalf of Contractor in connection with the performance of this Contract. Such coverage shall include without limitation, all of the following:
 - (A) Costs to notify persons whose data were lost or compromised
 - (B) Costs to provide credit monitoring and credit restoration services to persons whose data were lost or compromised
 - (C) Costs associated with third party claims arising from a confirmed or suspected data security breach or loss of CSU confidential data, including litigation costs and settlement costs
 - (D) Any investigation, enforcement, fines and penalties, or similar miscellaneous costs arising from a confirmed or suspected data security breach or loss of CSU confidential data
 - (E) Any payment made to a third party as a result of extortion related to a confirmed or suspected data security breach or loss of CSU confidential data
 - (3) Professional Liability Insurance if the Contracted Work involves professional services involving specialized skill or training, including but not limited to:
 - (A) preparation of any map, shop drawing, opinion, report, survey, field order, change order, design, drawing, specification, recommendation, warning, permit application, payment request, manual or inspection;
 - (B) supervision, inspection, quality control, architectural, engineering or surveying activity or service;
 - (C) job site safety;
 - (D) construction contracting, construction administration, or construction management;
 - (E) computer consulting or design, software development or programming service;
 - (F) selection of a contractor or subcontractor;
 - (G) real estate, legal, medical, employment, investment, or management services;
 - (H) monitoring, testing, or sampling services; or

- (l) if otherwise directed by CSU in writing.
- (4) Other insurance as agreed upon by CSU and Contractor.
- (c) **Verification of Coverage.** Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to CSU as evidence of the insurance coverage. Renewal certifications and endorsements shall be timely filed by Contractor for all coverage until the Contracted Work is accepted as complete. CSU reserves the right to require Contractor to furnish CSU complete, certified copies of all required insurance policies.
- (d) **Required Provisions.** Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in this Contract. The insurance policies shall contain, or be endorsed to contain, the following provisions.
 - (1) The general and automobile liability policies shall name the State of California, CSU, the Trustees of the California State University, and their officers, employees, representatives, volunteers, and agents as additional insureds. Such endorsement shall be documents on an ACORD or similar form for this purpose; a statement on the certificate itself does not satisfy this requirement.
 - (2) For any claims related to the Contracted Work, Contractor's insurance coverage shall be primary insurance as respects the State of California, CSU the Trustees of the California State University, and their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, CSU, the Trustees of the California State University, and their officers, employees, representatives, volunteers, and agents shall be in excess of Contractor's insurance and shall not contribute with it.
 - (3) Each insurance policy required by this section shall state that coverage shall not be canceled by either Contractor or the insurance carrier, except after thirty (30) days prior written notice by certified mail, return receipt requested (or other written notice with proof of receipt), has been given to CSU.
 - (4) The State of California, CSU, the Trustees of the California State University, and their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
 - (5) Each insurance policy required by this section shall contain an endorsement providing a waiver of transfer of rights of recovery against others (waiver of subrogation) as to the State of California, CSU, the Trustees of the California State University, and their officers, employees, representatives, volunteers, and agents.

7.2 Amount of Insurance

- (a) **Minimum Coverage.** The limits stated below are minimum required amounts of insurance coverage but do not serve to limit amounts recoverable by CSU. CSU is entitled to any valid and collectible insurance and any other sources of recovery. The insurance furnished by Contractor under this Contract shall provide coverage in amounts not less than the following:
 - (1) Comprehensive or Commercial General Liability Insurance—Limits of Liability
 - (A) \$4,000,000 General Aggregate
 - (B) \$2,000,000 Each Occurrence—combined single limit for bodily injury and property damage.
 - (C) \$2,000,000 Each Person/Entity for personal liability
 - (D) \$2,000,000 for contractual liability
 - (2) Business Automobile Liability Insurance—Limits of Liability
 - (A) \$1,000,000 Each Accident—combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.
 - (3) Workers' Compensation—limits as required by law with Employers Liability limits of \$1,000,000.

(b) **Hazardous Materials.** For Contracts involving hazardous materials, Contractor shall provide additional coverage in amounts not less than the following, unless a different amount is agreed upon in writing signed by Contractor and CSU:

(1) Environmental Impairment or Pollution Liability Insurance—Limits of Liability

(A) \$10,000,000 General Aggregate

(B) \$5,000,000 Each Occurrence—combined single limit for bodily injury and property damage, including cleanup costs.

(2) In addition to the above-referenced coverage for Business Automobile Liability Insurance, Contractor shall obtain for hazardous material transporter services:

(A) MCS-90 endorsement

(B) Sudden & Accidental Pollution coverage endorsement—Limits of Liability*

\$2,000,000 Each Occurrence

\$2,000,000 General Aggregate

*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

(3) With CSU's approval, Contractor may delegate the responsibility to provide the additional coverage required under this subsection (2) to its hazardous materials subcontractor. In the event that Contractor has obtained CSU's permission to delegate such responsibility to its hazardous materials subcontractor, Contractor shall provide CSU a letter within thirty (30) days of executing this Contract stating that Contractor is requiring its hazardous materials subcontractor to provide the additional coverage required under this subsection (2), if applicable. Contractor shall affirm in this letter that the hazardous materials subcontractor's certificate of insurance shall adhere to all of the requirements of this Contract. Further, this letter will provide that the subcontractor's certificate of insurance will be provided to CSU as soon as Contractor fully executes its subcontract with the hazardous materials subcontractor, or within thirty (30) days of the Notice to Proceed, whichever is less.

(c) **Cyber.** For Contracts involving Contractor access to or storage of Protected Data, Contractor shall obtain the additional coverage in amounts not less than the following, unless a different amount is agreed upon in writing signed by Contractor and CSU:

(1) Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability Insurance – Limits of Liability

(A) \$5,000,000 General Aggregate

(B) \$5,000,000 Each Occurrence

(d) **Professional Services.** For Contracts involving professional services, Contractor shall obtain the additional coverage in amounts not less than the following, unless a different amount is agreed upon in writing signed by Contractor and CSU:

(1) Professional Liability Insurance – Limits of Liability

(A) \$5,000,000 General Aggregate

(B) \$5,000,000 Each Claim

7.3 Acceptability of Insurers

Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of A:VII, or shall be a carrier otherwise acceptable to CSU.

7.4 Subcontractor's Insurance

Contractor shall ensure that its subcontractors are covered by insurance of the types required by this Contract, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's work as relates to this

Contract. Contractor shall not allow any subcontractor to commence work on its subcontract until the insurance has been obtained and approved by CSU. Only the Contractor and its hazardous materials subcontractor(s) are required to have the coverage for projects involving hazardous materials.

7.5 Miscellaneous

- (a) Any deductible under any policy of insurance required in this Contract shall be Contractor's liability.
- (b) Acceptance of certificates of insurance by CSU shall not limit Contractor's liability under the Contract.
- (c) In the event Contractor does not comply with these insurance requirements, CSU may, at its option, provide insurance coverage to protect CSU. The cost of the insurance shall be paid by Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Contractor.
- (d) If CSU is damaged by Contractor's failure to provide or maintain the required insurance, Contractor shall pay CSU for all such damages.
- (e) Except as specifically provided for in contracts involving hazardous materials, Contractor's obligations to obtain and maintain all required insurance are non-delegable duties under this Contract.

8. University Data

8.1 California Consumer Privacy Act (CCPA)

Contractor warrants that it complies with the CCPA and other California laws regarding data privacy. For purposes of this section only, "personal information" shall have the same meaning as that term is defined in the CCPA. If Contractor meets the definition of a "Business" under the CCPA, Contractor shall comply with the following obligations:

- (a) **Personal Information.** Contractor will only collect, use, retain, or disclose personal information for the contracted business purposes.
- (b) **Use.** Contractor will not collect, use, retain, disclose, sell, or otherwise make personal information available for Contractor's own commercial purposes or in a way that does not comply with the CCPA. If a law requires the Contractor to disclose personal information for a purpose unrelated to the contracted business purpose, the Contractor must first inform CSU of the legal requirement and give CSU an opportunity to object or challenge the requirement, unless the law prohibits such notice.
- (c) **Purpose.** Contractor shall limit personal information collection, use, retention, and disclosure to activities reasonably necessary and proportionate to achieve the contracted business purposes or another compatible operational purpose.
- (d) **Prompt Response.** Contractor shall promptly comply with any request or instruction from a software user or from CSU requiring the Contractor to provide, amend, transfer, or delete the personal information, or to stop, mitigate, or remedy any unauthorized processing.
- (e) **Notice.** If the contracted business purposes require the collection of personal information from individuals on CSU's behalf, Contractor will always provide a CCPA-compliant notice addressing use and collection methods.

8.2 Permissible Use of Data

- (a) **License to Use CSU Data.** All rights, including all intellectual property rights, in and to University Data shall remain the exclusive property of CSU, and Contractor has a limited, nonexclusive license to use such data as provided in this Contract solely for the purpose of performing its obligations pursuant to the Contract, and only to the extent necessary to carry out its obligations to CSU under the terms of the Contract.
- (b) **No Pecuniary Gain.** Contractor shall not utilize any University Data for pecuniary gain not contemplated by this Contract, regardless of whether Contractor is or is not under contract at the time such gain is realized.

- (c) **Disclosure of Data.** Contractor may disclose University Data only to the extent necessary to carry out its obligations to CSU under the terms of the Contract, and shall not share such data with or disclose it to any third party without the prior written consent of CSU, except as required by law or permitted in this Contract. Contractor may only disclose University Data to affiliates or subcontractors for the purposes set forth in this Contract and only after the affiliates or subcontractors agree in writing to be bound by the same restrictions, conditions, and requirements that apply to Contractor under this Contract. For the avoidance of doubt, Contractor is solely responsible for unauthorized disclosure of University Data by any subcontractor.
- (d) **Termination.** Upon termination or expiration of this Contract, or at any time upon the request of CSU, Contractor and its agents and subcontractors shall immediately cease all use of University Data.

8.3 Confidentiality of Data

- (a) **Duty of Confidentiality.** Contractor shall maintain the confidentiality and privacy of Personal Information, Protected Data, and all other information designated “confidential” by CSU, to which Contractor has access, during the Term and after termination of the Contract. For purposes of this Contract, “Personal Information” shall have the same meaning as that term is defined in the Information Practices Act (California Civil Code, § 1798 *et seq.*) (the “IPA”), and “Protected Data” shall have the same meaning as defined in the [CSU Information Security Policy and Standards, section VI](#) (which, for clarification, includes both “Level 1 - [Confidential](#)” data and “[Level 2 - Internal Use](#)” data). Collectively, Personal Information, Protected Data, and all other information designated “confidential” by CSU, and to which Contractor has access, are collectively referred to in this Contract as “University Data”. Contractor acknowledges the privacy rights of individuals to their personal information that are expressed in the IPA and in California Constitution Article 1, Section 1.
- (b) **Level of Care.** Contractor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures shall be no less protective than Contractor uses or would use in good faith to secure its own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
- (c) **Statutory Compliance.** Contractor shall comply with applicable state, Federal, and non-U.S. privacy laws, including but not limited to the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)) (“GLBA”), the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) (“FERPA”), the IPA, the Health Insurance Portability and Accountability Act (110 Stat. 1936) (“HIPAA”), and the California Consumer Privacy Act (CA Civil Code 1798.100 *et seq.*). Contractor shall use best efforts, consistent with guidance from the Federal Trade Commission, the California Office of the Attorney General, the California Privacy Protection Agency, and other applicable guidance, to protect University Data from identity theft, fraud and unauthorized use. Contractor shall comply with all requirements governing redisclosure of education records, as that term is defined in FERPA.
- (d) **Exceptions to Confidentiality.** The obligations of confidentiality of this section shall not apply to any information that:
- (1) Contractor rightfully has in its possession when disclosed to it, free of obligation to CSU to maintain its confidentiality;
 - (2) Contractor independently develops without access to University Data;
 - (3) Is or becomes known to the public other than by breach of this Contract;
 - (4) CSU or its agent releases without restriction; or
 - (5) Contractor rightfully receives from a third party without the obligation of confidentiality.

Any combination of University Data disclosed with information not so classified shall not be deemed to be within such exclusions because individual portions of such combination are free of any confidentiality obligation or are separately known in the public domain.

(e) **Geographical Restriction.** Any access, transmission, processing, or storage of University Data outside the United States shall require prior written authorization by CSU. This requirement is a material term of this Contract.

(f) **Notice of Subpoenas.** Except as otherwise expressly prohibited by law, Contractor shall:

- (1) immediately notify CSU in writing of any threatened or actual subpoenas, warrants, or other legal orders, demands or request received by Contractor seeking University Data, and
- (2) Before making any disclosure of University Data, cooperate with CSU's requests in connection with efforts by CSU to intervene and quash or modify the legal order, demand, or request.

(g) **Return or Destruction of Data.** Within thirty (30) days of termination or expiration of this Contract, or at any time upon the request of CSU, Contractor and its agents and subcontractors shall:

- (1) provide CSU staff with the opportunity and ability to download /export University Data for records retention purposes;
- (2) return or destroy all University Data received from CSU and/or any retained by any of its affiliates, agents, representatives, or subcontractors, in any form, and delete from any computer system, retaining no copies of such information; and
- (3) Provide written certification to CSU that these actions have been completed.

Contractor agrees that all paper, film, or other hard copy media shall be shredded or destroyed such that it may not be reconstructed, and University Data shall be purged or destroyed in accordance with NIST Guidelines for media sanitization (<https://csrc.nist.gov/>). If Contractor determines that return or destruction of University Data is not feasible, Contractor shall extend the protections of this Section 8.3 to such information, and shall limit further uses and disclosures to those purposes that make the return or destruction of the University Data infeasible; and Contractor's obligations under this Section 8.3 shall survive the termination of the Contract.

(h) **Material Breach.** Contractor's failure to comply with any provision of this Section shall constitute a material breach of this Contract.

8.4 Unauthorized Disclosure of Data

(a) **Report to CSU.** Contractor shall report, in writing, to csuciso@calstate.edu any use or disclosure of University Data not authorized by this Contract or in writing by CSU ("Security Incident"), including any reasonable belief that an unauthorized individual has accessed University Data. This report shall:

- (1) be made not later than within twenty-four (24) hours after discovery, if information was, or is reasonably believed to have been, acquired by an unauthorized person;
- (2) include details relating to any known or suspected security breach of Contractor's system or facilities which contain University Data, or any other breach of University Data relating to this Contract; and
- (3) identify:
 - (A) the nature of the unauthorized use or disclosure,
 - (B) the time and date of incident,
 - (C) a description of University Data used or disclosed,
 - (D) who made the unauthorized use or received the unauthorized disclosure,
 - (E) the actions Contractor has taken or will take to mitigate any potentially harmful effect of the unauthorized use or disclosure,
 - (F) the corrective action Contractor has taken or shall take to prevent future similar unauthorized

use or disclosure, and

(G) such other information in the written report as reasonably requested by CSU.

(4) Failure to provide the report required by this paragraph within seventy-two (72) hours of discovery of the Security Incident shall constitute a material breach of this Contract.

- (b) **Cooperation.** Contractor shall cooperate with CSU and its agents and provide reasonable information in its possession or in the possession of any of its affiliates and subcontractors to assist CSU in meeting its obligations to investigate and respond to the Security Incident, including allowing CSU staff to access log information and other pertinent information related to any investigation related to such breach or unauthorized use or disclosure. Contractor shall cooperate with any litigation or investigation proceedings concerning University Data loss or other breach of Contractor's obligations under this Contract.
- (c) **Notice to Affected Parties.** Contractor shall fully cooperate with CSU with the preparation and transmittal of any notice, that CSU may deem appropriate or required by law, to be sent to affected parties regarding the known or suspected Security Incident. If directed by CSU, Contractor shall be administratively responsible for providing such notification in the most expedient time possible, consistent with the methods prescribed in California Civil Code §§ 1798.29 and 1798.82.
- (d) **Financial Responsibility.** Contractor shall reimburse CSU in full for all costs incurred by CSU in investigation and remediation of a Security Incident, including but not limited to providing notification to individuals whose Personal Information was compromised, and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if University Data exposed during the breach could be used to commit identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the security breach. Contractor shall be financially responsible for any notice to affected parties resulting from Contractor's, its Representatives', its Affiliates', or its Subcontractors' acts or omissions with regard to the data security requirements of this Contract.
- (e) **Remedial Action.** In the event of an unauthorized disclosure of data, Contractor shall take appropriate remedial action with respect to the integrity of its security systems and processes.
- (f) **Indemnification.** In addition to any other remedies available to CSU under law or equity, Contractor shall indemnify (to the extent permitted by applicable law), reimburse, and hold CSU, its affiliates, regents, directors, officers, employees, agents and, if applicable, students (the "Indemnified Parties") harmless from and against all claims, actions, causes of action, demands, liabilities, judgments, fines, assessments, penalties, awards, legal fees, third-party service fees, or other costs and/or expenses, of any kind or nature, including without limitation, those associated with: (i) providing notice to the individuals whose personal information may be impacted by a Security Incident; (ii) providing any applicable credit monitoring that CSU may elect in its sole discretion, depending upon the severity of the incident, to provide to the affected individuals; and (iii) legal fees, audit costs, fines and other fees imposed upon any of the Indemnified Parties by regulatory agencies or contracting partners, or relating to or arising out of any breach or alleged breach of this Contract by Contractor, its affiliates or subcontractors.

8.5 Artificial Intelligence.

- a) Contractor shall disclose to CSU, on an ongoing basis, if it uses or has used AI systems, including generative artificial intelligence, in the creation or delivery of the Contracted Work. Contractor use of AI systems with University Data is not permitted except with prior written consent of CSU. "AI system" has the meaning provided in NIST AI RMF 1.0, as may be amended from time to time.
- b) Contractor shall not use any CSU data, or third-party data supplied by CSU, including but not limited to documents, audio, video, text, screen sharing, attachments, (Customer Input) or Output, to train its own or third-party artificial intelligence models.

9. Statutory Requirements

9.1 Examination and Audit

For contracts in excess of \$10,000, this Contract and Contractor shall be subject to examination and audit by:

- (a) the CSU Office of the University Auditor, or its designated agent, and by the California State Auditor, or its designated agent, for a period of three (3) years after final payment under the Contract. Such examinations and audits shall be confined to those matters connected with the performance of the Contract, including, but not limited to, the costs of administering the Contract.
- (b) the Comptroller General of the United States or designated federal authority for a period of up to five (5) years after final payment under the contract in the event the underlying contract is paid for in whole or in part by a federal contract or grant.

9.2 Conflict of Interest

CSU requires a Statement of Economic Interests (California Form 700) to be filed by any Contractor who is involved in the making or participates in the making of decisions which may foreseeably have a material effect on any financial interest of CSU.

9.3 Appropriation of Funds

If the term of this Contract continues into fiscal years subsequent to the fiscal year in which it is approved, such continuation is subject to the appropriation of funds for such purpose by the state legislature. If funds to continue payment are not appropriated, Contractor agrees to take back any commodities furnished under the Contract and not yet paid for by CSU, terminate any future services and/or commodities to be supplied to CSU under the Contract, and to relieve CSU of any further obligation.

9.4 Follow-On Contracts

No person, firm, or subsidiary thereof who has been awarded a contract for Consulting and Direction (as defined in this section) shall be awarded a contract for the provision of services, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

- (a) If Contractor or its affiliates provides Consulting and Direction, Contractor, and its affiliates:
 - (1) shall not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for, or in connection with, any subject of such Consulting and Direction; and
 - (2) shall not act as consultant to any person or entity that does receive a Contract described in sub-section (1). This prohibition will continue for one (1) year after termination of this Contract or completion of the Consulting and Direction, whichever is later.
- (b) "Consulting and Direction" means services for which Contractor received compensation from CSU includes:
 - (1) development of, or assistance in the development, of work statements, specifications, solicitations, or feasibility studies;
 - (2) development or design of test requirements;
 - (3) evaluation of test data;
 - (4) direction of or evaluation of another contractor;
 - (5) provision of formal recommendations regarding the acquisition of products or services; or
 - (6) provisions of formal recommendations regarding any of the above.
- (c) For purposes of this Section, "affiliates" means employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with Contractor; control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.

- (d) Except as prohibited by law, the restrictions of this Section will not apply:
 - (1) to follow-on advice given by vendors of commercial off-the-shelf products, including software and hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - (2) where CSU has entered into a Contract for software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- (e) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

9.5 Covenant Against Gratuities

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

9.6 Nondiscrimination

- (a) **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 race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- (b) **Compliance.** Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § [11000](#) et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135- 11139.8), and the regulations or standards adopted by CSU to implement such article.
- (c) **Access.** Contractor shall permit access by representatives of the Civil Rights Department and CSU upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or CSU shall require to ascertain compliance with this clause.
- (d) **Notice to labor organizations.** Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (e) **Subcontracts.** Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

9.7 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 Contractor within the

immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court to comply with an order of the National Labor Relations Board.

9.8 Drug-Free Workplace Certification

Except in the case of credit card purchase of goods of \$2,500 or less, Contractor certifies that Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 and shall provide a drug-free workplace by taking all of the following actions:

- (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- (b) Establish a Drug-Free Awareness Program to inform employees about all of the following:
 - (1) the dangers of drug abuse in the workplace;
 - (2) the person's or organization's policy of maintaining a drug-free workplace;
 - (3) any available counseling, rehabilitation, and employee assistance programs; and,
 - (4) penalties that may be imposed upon employees for drug abuse violations.
- (c) Require that each employee who works on the proposed or resulting Contract:
 - (1) will receive a copy of Contractor's drug-free policy statement; and
 - (2) agrees to abide by the terms of Contractor's statement as a condition of employment on the Contract.

9.9 Forced, Convict, Indentured and Child Labor

By accepting a contract with CSU, Contractor:

- (a) certifies that no equipment, materials, or supplies furnished to CSU pursuant to this Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further certifies it will adhere to the Sweat-free Code of Conduct as set forth on the California Department of Industrial Relations website located at <https://www.dir.ca.gov/sweatfreecode.htm>, and Public Contract Code section 6108.
- (b) agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (A).

9.10 Recycled Content Certification

Contractor shall certify in writing the minimum, if not exact, percentage of postconsumer material, as that term is defined in Public Contract Code section 12200, in products, materials, goods, or supplies offered or sold to CSU regardless whether the product meets the requirements of Public Contract Code section 12209. With respect to printer or duplication cartridges as defined in Public Contract Code section 12156(e)(1), the certification required by this subdivision shall specify that the cartridges so comply (Public Contract Code, section 12205).

9.11 Entertainment Event Certification

In accordance with CA Labor Code section 9250 *et seq.* (2022), for any contract for the production, set up, operation, or tear down of any live event, Contractor certifies all of the following:

- (a) All of Contractor's employees and any subcontractors or subcontractors' employees involved in the setting up, operation, or tearing down of a live event at the venue have completed the Cal/OSHA-10, the OSHA-10/General Entertainment Safety training, or the OSHA-10 as applicable to their occupation.
- (b) One of the following applies for all of Contractor's employees and any subcontractors or subcontractors'

employees:

- (1) Heads of departments and leads have completed the Cal/OSHA-30, the OSHA-30/General Entertainment safety training, or the OSHA-30, and are certified through the Entertainment Technician Certification Program relevant to the task or tasks they are supervising or performing, or another certification program, as specified by the division.
 - (2) Contractor's employees and any subcontractors' employees meet the conditions for a skilled and trained workforce.
- (c) Contractor certifies that Contractor has verified the training completion and certification requirements of all employees, and any subcontractor's employees, who will work on the setting up, operation, or tearing down of the event.

9.12 Child Support Compliance Act

For any contract in excess of \$100,000, Contractor acknowledges in accordance with Public Contract Code section 7110, that:

- (a) Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- (b) Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

9.13 Americans With Disabilities Act (ADA)

Contractor warrants that it complies with California and federal disabilities laws and regulations (including but not limited to the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq). Contractor hereby warrants the products or services it will provide under this Contract comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Contractor shall ensure that any Contracted Work or deliverables are in compliance with the Web Content Accessibility Guidelines ("WCAG") 2.1 level AA, or a subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor further agrees to indemnify and hold harmless CSU from any claims arising out of Contractor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of this Contract.

9.14 Debarment and Suspension

By accepting a contract with CSU, Contractor certifies neither it nor its principals or its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in this transaction by any federal department or agency, in accordance with the Office of Management and Budget guidelines at 2 C.F.R. Part 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235). The Contractor shall provide immediate written notice to CSU if, at any time, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

9.15 Expatriate Corporations

Contractor declares and certifies that it is not an expatriate corporation and is not precluded from contracting with CSU by The California Taxpayer and Shareholder Protection Act of 2003, Public Contract Code Section 10286, et seq.

9.16 Citizenship and Public Benefits

If Contractor is a natural person, Contractor certifies he or she is a citizen or national of the United States or otherwise qualified to receive public benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69).

9.17 Loss Leader

Contractor certifies and declares it is not engaged in business within this State of California to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code section 17030.

9.18 DVBE and Small Business Participation

- (a) If Contractor has committed to achieve small business (SB) participation, it shall, within sixty (60) days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract), report to CSU:
 - (1) the name and address of the SB(s) that participated in the performance of the Contract;
 - (2) the total amount the prime Contractor received under the Contract; and
 - (3) the amount each SB received from the prime Contractor. (Government Code, section 14841.)
- (b) If Contractor has committed to achieve disabled veteran business enterprise (DVBE) participation, it shall, within sixty (60) days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract), certify to CSU:
 - (1) the name and address of the DVBE(s) that participated in the performance of the Contract and the contract number;
 - (2) the total amount Contractor received under the Contract;
 - (3) the amount and percentage of work that Contractor committed to provide to each DVBE, and the amount each DVBE received from Contractor;
 - (4) the actual percentage of DVBE participation that was achieved for this Contract; and
 - (5) that all payments under the Contract have been made to each DVBE.

Contractor shall provide CSU with proof of payment made to each DVBE. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Ten thousand dollars (\$10,000) (or the full final payment, if less than \$10,000) shall be withheld from final payment until the required certification and proofs of payment have been delivered to CSU. If Contractor fails to comply with the certification and proofs of payment requirement, after notice it may cure the defect. If after thirty (30) calendar days from the date of notice, Contractor does not comply with the certification and proofs of payment requirements, CSU shall permanently deduct ten thousand dollars (\$10,000) (or the full final payment, if less than \$10,000) from the final payment. Such penalty may be levied regardless of whether Contractor ultimately provides documentation indicating it has met the minimum participation obligations. (Military and Veterans Code, section 999.5(d); Government Code, section 14841.)