



The Agreement to furnish certain goods and services described herein and in the documents referenced herein (“Goods and/or Services”) is made by and between The Regents of the University of California, a California public corporation (“UC”) on behalf of the University of California, and the supplier named below (“Supplier”). This Agreement is binding only if it is negotiated and executed by an authorized representative with the proper delegation of authority.

1. Statement of Work

Supplier agrees to perform the Services listed in the statement of work attached as Attachment A (“Statement of Work”) and any other documents referenced in the Incorporated Documents section herein, at the prices set forth in the Statement of Work and any other documents referenced in the Incorporated Documents section herein. Unless otherwise provided in the Agreement, UC will not be obligated to purchase a minimum amount of Goods and/or Services from Supplier.

2. Term of Agreement/Termination

- a) The initial term of the Agreement will be from **January 8th, 2021** and through **January 7th, 2026** (Initial Term) and is subject to earlier termination as provided below. UC may renew the Agreement for **five** successive **one**-year periods (each, a Renewal Term), by providing Supplier with at least **30** calendar days’ written notice before the end of the Initial Term or any Renewal Term.
- b) UC may terminate the Agreement for convenience by giving Supplier at least **30** calendar days’ written notice.
- c) UC or Supplier may terminate the Agreement for cause by giving the other party at least **30** days’ notice to cure a breach of the Agreement (Cure Period). If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Agreement.

3. Purchase Order; Advance Payments

Unless otherwise provided in the Agreement, Supplier may not begin providing Goods and/or Services until UC approves a Purchase Order for the Goods and/or Services.

4. Pricing, Invoicing Method, and Settlement Method and Terms

Refer to Statement of Work or Purchase Order for Pricing. For system-wide agreements, each UC Location will specify the Invoicing Method and Payment Options that will apply, taking into account the operational capabilities of Supplier and the UC Location. See UC’s Procure to Pay Standards <http://www.ucop.edu/procurement-services/files/Matrix%20for%20website.pdf> for the options that will be considered. In the case of systemwide agreements, each UC Location will specify these terms in a Statement of Work or Purchase Order, as the case may be.]

For non-systemwide agreements, the Invoicing Method, and Settlement Method and Terms are addressed below.

Invoicing Method

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, Supplier will be required to use the following Invoicing Method:

All invoices must clearly indicate the following information:

- California sales tax as a separate line item;
- Shipping costs as a separate line item;
- UC Purchase Order or Release Number;
- Description, quantity, catalog number and manufacturer number of the item ordered;
- Net cost of each item;
- Any pay/earned/dynamic discount;
- Reference to original order number for all credit memos issued;

Supplier will submit invoices following the designated invoice method directly to UC Accounts Payable Departments at each UC Location, unless UC notifies the Supplier otherwise by amendment to the Agreement.

5. Notices

As provided in the UC Terms and Conditions of Purchase, notices may be given by email, which will be considered legal notice only if such communications include the following text in the Subject field: FORMAL LEGAL NOTICE – [insert, as the case may be, Supplier name or University of California]. If a physical format notice is required, it must be sent by overnight delivery or by certified mail with return receipt requested, at the addresses specified below.

To UC, regarding confirmed or suspected Breaches as defined under Appendix – Data Security:

Name	David Rusting, Chief Information Security Officer
Phone	510-987-0086
Email	David.Rusting@ucop.edu
Address	1111 Franklin St.
	Oakland, CA 94607

To UC, regarding Breaches or Security Incidents as defined under Appendix – Business Associate:

Name	Roslyn Martorano
Phone	510-987-0564
Email	Roslyn.Martorano@ucop.edu
Address	1111 Franklin St.
	Oakland, CA 94607

To UC, regarding contract issues not addressed above:

Name	Sean Parker
Phone	805-451-1545
Email	Sean.Parker@ucop.edu
Address	1111 Franklin

To Supplier:

Name	Andrew Larson
Phone	716-388-7844
Email	alarson@cannondesign.com
Address	

6. Intellectual Property, Copyright and Patents

The Goods and/or Services involve Work Made for Hire

The Goods and/or Services **do not** involve Work Made for Hire

7. Patient Protection and Affordable Care Act (PPACA)

Because the Services involve temporary or supplementary staffing, they are subject to the PPACA warranties in the T&Cs.

The Services do not involve temporary or supplementary staffing, and they are not subject to the PPACA warranties in the T&Cs.

8. Prevailing Wages

Supplier is not required to pay prevailing wages when providing the Services.

9. Fair Wage/Fair Work

Supplier is not required to pay the UC Fair Wage (defined as \$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17) when providing the Services.

10. Federally Funded Contracts, Grants, and Cooperative Agreements

Not Applicable

11. Restriction Relating to Consulting Services or Similar Contracts – Follow-on Contracts

Please note a Supplier that is awarded a consulting services or similar contract cannot later submit a bid or be considered for

any work “required, suggested, or otherwise deemed appropriate” as the end product of the Services (see Public Contract Code Section 10515).

12. Insurance

Deliver the PDF version of the Certificate of Insurance to UC’s Buyer, by email with the following text in the Subject field: CERTIFICATE OF INSURANCE – FOS – Cannon Design

13. Service-Specific and/or Goods-Specific Provisions

Not Applicable

14. Records about Individuals

Records created pursuant to the Agreement that contain personal information about individuals (including statements made by or about individuals) may become subject to the California Information Practices Act of 1977, which includes a right of access by the subject individual. While ownership of confidential or personal information about individuals is subject to negotiated agreement between UC and Supplier, records will normally become UC’s property, and subject to state law and UC policies governing privacy and access to files. When collecting the information, Supplier must inform the individual that the record is being made, and the purpose of the record. Use of recording devices in discussions with employees is permitted only as specified in the Statement of Work.

15. Amendments to UC Terms and Conditions of Purchase

Article 1 – General to add:

“UC understands that Supplier’s Simplebid™ Order Form and End User License Agreement govern use of Supplier’s Simplebid platform and that each UC Location that wishes to use the Simplebid platform will be required to agree to the terms of the Simplebid Order form and EULA in order to use the Simplebid platform.”

Article 2 – Term and Termination to add:

“F. If payment not received per the terms of this Agreement, upon thirty (30) days’ notice to UC, the Supplier shall have the right to suspend all work, and withhold all deliverables, until payment is received.”

Article 4 – Inspection to read as follows:

“The Goods and/or Services furnished will be as specified in the Agreement, and, except as otherwise provided in the Agreement, will be subject to inspection and test by UC at all times and places. If, prior to final acceptance, any Goods and/or Services furnished are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them at the sole cost of Supplier. If Supplier is unable or refuses to correct such deficiencies within a time agreed upon by the parties, UC may terminate the Agreement in whole or in part. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, fraud or such gross mistakes as amount to fraud.”

Article 6 – Warranties Section A. General Warranties to read as follow:

“Supplier represents, warrants and covenants that: (i) Supplier is free to enter into this Agreement and that Supplier is not, and will not become, during the Term, subject to any restrictions that might restrict or prohibit Supplier from performing the Services or providing the Goods ordered hereunder; (ii) Supplier will, subject to the Standard of Care, comply with all applicable laws, rules and regulations in performing Supplier’s obligations hereunder; (iii) the Goods and/or Services shall be rendered with promptness and diligence and shall be executed in a skilled manner by competent personnel, in accordance with the prevailing industry standards (“Standard of Care”); and if UC Appendix Data Security is NOT included:(iv) Supplier has developed a business interruption and disaster recovery program and is executing such program to assess and reduce the extent to which Supplier’s hardware, software and embedded systems may be susceptible to errors or failures in

various crisis (or force majeure) situations; and (v) if Supplier uses electronic systems for creating, modifying, maintaining, archiving, retrieving or transmitting any records, including test results that are required by, or subject to inspection by an applicable regulatory authority, then Supplier represents and warrants that Supplier's systems for electronic records are in compliance. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.

Article 6 – Warranties Section F. Warranty of Quiet Enjoyment is removed in its entirety.

Article 7 – Intellectual Property, Copyright, Patents and Data Rights to read as follows:

B. Goods and/or Services Not Involving Work Made for Hire.

1. Except as otherwise set forth in this Article 7(B)(1), if the Goods and/or Services do not involve work made for hire, and in the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables. With regard to the Pre-Existing Materials in the Simplebid Software, UC is granted a license as set forth in the Simplebid Order Form and EULA.

2. UC acknowledges and agrees that Supplier will use pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the software and cost book Deliverables ("Simplebid Software"). Supplier will not use any other Pre-Existing Materials in the Deliverables without UC's prior written permission.

3. Except with regard to inventions or discoveries related to the Simplebid Software, whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.

4. Except with regard to intellectual property rights in and to the Pre-Existing Materials in the Simplebid Software, Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.

Article 8 – Indemnity and Liability to read as follows:

To the fullest extent permitted by law, Supplier will indemnify, and hold harmless UC, its officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind resulting from or arising out of a third party claim to the extent arising out of the Agreement, including the performance hereunder of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control, provided such losses, expenses, damages and liabilities are due or claimed to be due to the negligent acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control. UC agrees to provide Supplier with prompt notice of any such claim or action.

Addition of Articles 40 and 41 as follows:

Article 40 – Waiver; Limitation on Liability

Notwithstanding any other provision of this Agreement, or any other agreement, neither Party shall be liable to the other party under this Agreement, whether due to breach of contract, tort (including negligence), strict liability, or otherwise, for loss of anticipated revenues or profits, damages by reason of loss of business reputation or opportunities, or for any special, exemplary, punitive, incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

To the fullest extent permitted by law, the total liability in the aggregate, of the Supplier, its officers, directors, employees, agents, and independent professional associates, and any of them, to UC and anyone claiming by, through, or under UC, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Supplier's services or this Agreement, from any cause or causes whatsoever including, but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of the Supplier, its officers,

directors, employees, agents or independent professional associates, or any of them, shall not exceed two times the total amount of compensation received by the Supplier under this Agreement.

Article 41 – Compliance

Each party to this contract agrees to comply with all applicable laws, including the Anti-Bribery and Anti-Corruption laws, of every government entity having jurisdiction in this matter, as well as the Foreign Corrupt Practices Act (FCPA) of the United States and the Anti-Trafficking provisions of the Federal Acquisition Regulations. Each party to this contract shall comply with its respective Code of Conduct (Policy). Further, each party shall use Contractor’s independently maintained “Ethics Line” to report, anonymously or otherwise, any suspected violation of law or Policy during the course of the services, including any potential violation of the FCPA, or any federal or state procurement laws.

By telephone (24 hours a day, 7 days a week): 1.855.502.1878

By email: www.reportlineweb.com/cannondesign

16. Amendments to Appendix – Data Security

Not Applicable

17. Amendments to Appendix – Business Associate

Not Applicable

18. Not Used

19. Incorporated Documents

This Agreement and its Incorporated Documents contain the entire agreement between the Parties, in order of the below precedent, concerning its subject matter and shall supersede all prior or other agreements, oral and written declarations of intent and other legal arrangements (whether binding or non-binding) made by the Parties in respect thereof.

- a. FOS Cannon Design Job Order Contracting Software Purchase Agreement 2021002785
- b. UC Terms and Conditions of Purchase or Contract Addendum - UC Required Terms
- c. UC Appendix – Data Security
- d. UC Appendix - Business Associate (HIPAA)
- e. Statement of Work – Attachment A
- f. UC JOC Simplebid Fee Structure
- g. FOS Additional Value Services

20. Entire Agreement

The Agreement and its Incorporated Documents contain the entire Agreement between the parties and supersede all prior written or oral agreements with respect to the subject matter herein.

This Agreement can only be signed by an authorized representative with the proper delegation of authority.

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

DocuSigned by:

Lauren Friedman

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(Signature)

Lauren Friedman, Director, Design & Construction, Capital Programs

(Printed Name, Title)

1/8/2021

(Date)

FOS – Cannon Design

Joseph Cassata

(Signature)

Joseph Cassata, RA, NCARB - President

(Printed Name, Title)

1/6/2021

(Date)