

For SMCCCD Use Only

Contractor Employer Identification Number (EIN) # _____

Location: (College Name or District Office) _____ iContracts # _____

**SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT
AGREEMENT
WITH**

FOR EDUCATIONAL SERVICES

This Agreement is entered into this ____ day of _____, 20____ by and between the San Mateo County Community College District, a community college district formed and existing under the law of the State of California, having its principal business address at 3401 CSM Drive, San Mateo, CA 94402 (hereinafter called "DISTRICT") and _____, having its principal business address at _____ (hereinafter called "CLIENT").

WHEREAS, Client has a need for education, training and related services; and

WHEREAS, Client desires that services be provided at Client's facilities; and

WHEREAS District has the ability and authority to provide such services;

NOW, THEREFORE, in consideration of the payments hereinafter set forth, District shall perform services for Client in accordance with the terms and conditions set forth herein and in Exhibits A attached hereto and by this reference made a part hereof. In consideration of the services rendered, Client shall make payment to District in the manner specified in Exhibit A.

1. **TERM AND TERMINATION.** This Agreement shall commence on _____, 20____ and terminate on _____, 20____. Notwithstanding the foregoing, if any applicable law limits the permissible length of the term of this Agreement, then the term of this Agreement shall not extend beyond the length permitted by law. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party.
2. **AMENDMENTS.** This Agreement may be amended only by written instrument signed by both District and Client (collectively "the parties") which writing shall state expressly that it is intended by the parties to amend the terms and conditions of this Agreement.
3. **COMPLIANCE WITH CALIFORNIA EDUCATION CODE AND TITLE 5 OF THE CALIFORNIA CODE OF REGULATIONS**
 - a. Educational services will be conducted in accordance with California Education Code and other applicable laws and regulation. The educational services, program and or courses (PROGRAM) provided under this agreement are further described in Exhibit A, including corresponding outlines of record with documentation showing each course under this PROGRAM has been approved by the District's curriculum committee, is consistent with Title 5 course standards and has been approved by the district board of trustees.
 - b. Although operated on-site by the Client, the PROGRAM provided under this agreement is the sole responsibility of the District. When a course is offered for credit, participants in the course will earn academic credit in accordance with District policy regarding eligibility, attendance, course work, examinations, and related policies and procedures. Accordingly, District retains responsibility for the PROGRAM and/or courses offered pursuant to this Agreement.

- c. The enrollment period and enrollment fees for PROGRAM are described in Exhibit A.
- d. District will determine whether the number of class hours related to PROGRAM are sufficient to meet the stated performance objectives, including where student(s) withdrawal prior to completion of a course or program.
- e. Client and District will agree on procedures for completing and submitting enrollment paperwork and for notifying College registrar regarding student withdrawals prior to completion of PROGRAM. These procedures are more completely described in Exhibit A.
- f. Activities under the PROGRAM will be under the immediate supervision and control of an academic employee of the district who is authorized to render service in that capacity and who has met the minimum qualifications for instruction in the discipline of the course in a California community college. The District has the primary right to control and direct the activities of the person providing the instruction. The District employee will provide immediate instructional supervision and control, in terms of physical proximity and range of communication; is in a position to provide supervision and control for the protection of the health and safety of students; will provide and be the final decision maker on student evaluations; and the authorized employee will not have any other assigned duty during the instructional activity for which attendance is being claimed.
- g. Courses shall be held at facilities which are clearly identified as being open to the general public.
- h. Students may be required to meet course or program prerequisites.
- i. Enrollment in the program will be open to any person who has been admitted to the college and has met any applicable prerequisites.
- j. District policy on open enrollment along with a description of the course and information regarding transferability and credit/non-credit status is published in the college catalogue, schedule of classes and any addenda to the schedule of classes.
- k. Degree and certificate programs have been approved by the State Chancellor's Office and courses that make up the PROGRAM are part of the approved program.
- l. Client or District, as determined by District and as set out in Exhibit A, will maintain permanent records of student attendance, grades and achievement. Records will be open for review at all times by college officials and submitted on a schedule developed by the District.
- m. Client and District will insure that ancillary and support services are provided for students.
- n. District does not receive full compensation for the direct education costs of the PROGRAM courses from any public or private agency, individual or group.
- o. Client agrees that the instructional activity in the PROGRAM will not be fully funded by other sources.
- p. For courses located outside the boundaries of District, District will comply with Title 5 (sections 5530 et seq.) concerning approval by adjoining high school or community college districts and use of non-district facilities.
- q. For courses held at a high school campus the class will not be held during the time the campus is closed to the general public, as defined by the governing board of the school district during a regularly scheduled board meeting.

Agreement with _____

4. **RESPONSIBILITIES OF THE PARTIES UNDER ADA SECTION 504.** Unless otherwise stipulated in Exhibit A of this Agreement, regular or special education and related adjustments, aids, services, and access will be supplied and administered by the parties as follows:
- a. If location is District and course is Middle College High School course, then Client is responsible for providing the accommodation
 - b. If location is District and course is Middle College College course, then District is responsible for providing accommodation
 - c. If location is High School or Other location and course is College course, then CLIENT is responsible for providing accommodation. Depending upon the type of accommodation needed for the student, (e.g. extended time on tests), coordination with the high school or offsite location may be necessary.
 - d. Parties agree that each party is responsible for meeting federal and state mandates regarding access at each location.
 - e. Parties agree that each party is responsible for accessibility of any courses offered as part of this agreement.

It is further agreed that any accommodations or other services provided pursuant to Individual Education Plan between the Client and a Student are the responsibility of the Client and are not included or intended to be addressed in this section. Parties agree to cooperate with each other when necessary in meeting the accommodation requirements stipulated in this section.

5. **CLASS SCHEDULING.** In case of rescheduling or canceling of classes already scheduled, Client will notify the District no less than fourteen (14) days prior to class rescheduling or cancellation. If fourteen (14) days notification is not made, Client will be responsible for fifty percent of contract amount for notification up to seven (7) days prior to commencement of scheduled class. Thereafter, Client will be responsible for full payment of Agreement amount.
6. **PAYMENTS.** Payments to District shall be made payable to SMCCCD and sent to: SMCCCD, Accounts Receivable Office, 3401 CSM Drive, San Mateo, CA 94402.
7. **EMPLOYMENT OF COLLEGE DISTRICT PERSONNEL/LIQUIDATED DAMAGES.** Client agrees and accepts that instructors and trainers provided by District under this Agreement are made possible only by a substantial investment in advertising, recruiting, testing and training of personnel. Client agrees not to enter into any competitive agreement with District instructors or trainers commencing with the date of this Agreement through two years following completion or termination of this Agreement. Furthermore, Client shall not solicit for employment nor employ any District instructor or trainer while said instructor or trainer remains associated with District and for two (2) years following termination of instructor's and trainer's association with District.

District and Client agree that if Client employs any such District instructor or trainer, the damages to District would be difficult and impractical to determine. Accordingly, District and Client agree to fix as liquidated damages the amount of \$35,000 for each and every District instructor or trainer Client employs. District and Client agree that such liquidated damages shall constitute District's sole and exclusive remedy under this paragraph 7. District agrees that these liquidated damages shall be in lieu of any other monetary relief or other remedy to which District otherwise might be entitled at law under this paragraph 7. District and Client specifically acknowledge their agreement to the foregoing liquidated damages provision by initialing this paragraph in the appropriate spaces provided below:

Client's Initials _____

District's Initials _____

8. **GOVERNING LAW AND EXTENT OF AGREEMENT.** This Agreement, including all exhibits attached hereto and incorporated herein by reference, shall be construed in and governed by the laws of the State of California and

Agreement with _____

constitutes the sole agreement of the parties hereto and correctly states the rights, duties and obligations of each party. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are of no force or effect. In the event of a conflict between the terms and conditions set forth herein and those in the exhibits attached hereto, the terms and conditions set forth herein shall prevail.

9. INDEPENDENT CONTRACTORS. It is understood that this is an Agreement by and between independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture of association, or any other relationship whatsoever other than that of independent contractor. Except as the Client may specify in writing, District shall have no authority, expressed or implied, to act on behalf of the Client in any capacity whatsoever. District shall have no authority, expressed or implied, pursuant to this Agreement to bind the Client to any obligation whatsoever.
10. FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS. District is an equal opportunity employer. By entering into this Agreement, Client certifies that he/she is in compliance with the Equal Employment Opportunity Requirement of Executive Order 11246, Title VII of the Civil Rights Act of 1973, the California Fair Employment Practices Act and any other Federal or State laws and regulations related to Equal Employment Opportunity. Each party's personnel policies shall be made available to the other party upon request.
11. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA). The parties agree to comply with the Privacy Rights of Parents and Students Act of 1974 as well as all applicable local, state, and federal health and safety regulations.
12. OWNERSHIP OF PROPERTY. Any tangible or intangible property developed, produced or provided by Client under this agreement shall remain the sole property of Client. Any tangible or intangible property developed, produced or provided by District under this agreement shall remain the sole property of District.
13. LIABILITY AND INSURANCE. Each party shall be responsible for all damages to persons or properties that occur as a result of their or their employees fault or negligence in connection with this Agreement.

Client shall maintain a program of insurance or self-insurance to provide general liability coverage, with limits of at least One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate and umbrella liability in an amount not less than \$2,000,000 per occurrence and annual aggregate. Upon request, Client shall provide District with certificate(s) evidencing the foregoing coverage. The certificates shall show the information that the San Mateo County Community College District is named on Clients' Comprehensive General Liability and Property Damage policies as co-insured or additional insured. Certificates shall clearly state that "The San Mateo County Community College District, its Officers, Agents and Employees are named as additional insured per attached endorsement" and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District. Client shall provide at least thirty (30) days prior written notice to District of any substantial change to or cancellation of said coverage.

District maintains insurance to provide general liability coverage with limits of at least One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) aggregate. The District shall also maintain and provide evidence of workers' compensation and disability coverage as required by law. The District shall provide Client with certificate(s) evidencing the foregoing coverage. District shall provide at least thirty (30) days prior written notice to Client of any substantial change to or cancellation of said coverage.

14. INDEMNIFICATION.
 - a. It is agreed that District shall defend, save harmless and indemnify Client, its officers, Agents and Employees from any and all claims which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of District, its officers, Agents and/ or Employees.

Agreement with _____

- b. It is agreed that Client shall defend, save harmless and indemnify District, its Officers Agents and Employees from any and all claims which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of Client, its Officers, Agents and/or Employees.
- c. In the event of concurrent negligence of Client, its Officers, Agents and/or Employees, and District, its officers, Agents and/or Employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.

15. **FORCE MAJEURE.** Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such parties. Such acts shall include, but not be limited to, Acts of God, labor disputes, civil disruptions, acts of war, epidemics, fire, electrical power outages, earthquakes or other natural disasters.

16. **DISPUTE RESOLUTION.** Should any dispute arise out of this Agreement, the parties agree to meet in mediation and attempt to reach a resolution with the assistance of a mutually agreed upon mediator. The mediation process shall provide for the selection, within fifteen (15) days of either party notifying the other of the existence of a dispute, by both parties of a disinterested third person as mediator and shall be concluded within forty-five (45) days from the commencement of the mediation unless a time requirement is extended by stipulation of both parties.

If a mediated settlement is reached, neither party shall be the prevailing party for the purposes of the mediated settlement. Each party agrees to bear an equal quota of the expenses of the mediator.

A party that refuses to participate in mediation or refuses to participate in the selection of a mediator cannot file a legal action. The non-refusing party shall be permitted to file a legal action immediately upon the other party's refusal to participate in mediation or the selection of a mediator.

17. **SEVERABILITY.** Should any part of this Agreement be declared through a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or to carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexercised portion, can be interpreted reasonably to give effect to the intentions of the parties.

18. **WAIVERS.** No waiver of default by either party of any terms or conditions hereof to be performed, kept, or observed by either party shall be construed to be or act as a waiver of any subsequent default of any of the terms and conditions herein contained.

19. **NOTICES.** All notices to be given between the parties hereto shall be in writing and may be served by commercial express/overnight courier service or by depositing the same in the United States mail, postage prepaid and certified receipt requested and addressed to:

"DISTRICT"
San Mateo County Community College District
Kathy Blackwood, Executive Vice Chancellor
3401 CSM Drive
San Mateo, CA 94402

"CLIENT"

Contact Name: _____

Phone Number: _____

E-Mail Address: _____

Agreement with _____

Either party by written notice to the other party may change the address of the notice or the names of the persons or parties to receive written notices.

- 20. **CAPTIONS.** Any captions to or headings of the articles, sections, subsections, paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of validity of this Agreement or any provision hereof.
- 21. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.
- 22. **EXECUTION.** By their signatures below, each of the following represents that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate.

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT

CLIENT

By: _____
Kathy Blackwood, Executive Vice Chancellor

By: _____

Name/Title of Authorized Signatory

Date: _____

Date: _____

Employer Identification Number: 94-3084147

Federal Tax Payer Identification Number (EIN):

Agreement with _____

**EXHIBIT A
PROGRAM DESCRIPTION**

Location:

[Empty box for program description]