**MASTER AGREEMENT FOR TECHNICAL SERVICES**

THIS MASTER SERVCES AGREEMENT sets forth the terms and conditions between NAME OF SPONSOR ("Sponsor") a DESCRIBE COMPANY TYPE doing business at ENTER ADDRESS and the Cal Poly Corporation ("Corporation"), a separate non-profit auxiliary Corporation serving the interests of the California Polytechnic State University ("University") doing business at 1 Grand Ave. San Luis Obispo, California.

This Master Services Agreement (MSA) and the projects undertaken are of mutual interest and benefit to the University, Corporation and to the Sponsor, and will further benefit the instructional and research programs of the University in a manner consistent with its status as a non-profit, tax-exempt, educational institution, and may derive benefits for the Sponsor, University, and Corporation through improvements, inventions and/or discoveries.

1. PURPOSE AND SCOPE: The purpose of this MSA is to establish a framework within which the Sponsor and Corporation may execute Task Orders to procure specific services such as, but not limited to, the following:
	1. Technical assistance to Sponsor’s personnel and/or Sponsor’s authorized representatives.
	2. Technical meetings as appropriate to provide Sponsor’s personnel and/or representatives special knowledge, ability, and/or expertise of faculty investigators;
	3. Studies for Sponsor culminating in appropriate recommendations, oral briefings of study results, and/or written reports;

The technical services will be in areas of University expertise consistent with the University's academic program and educational mission. Such services for Sponsor may be carried out on either a long- or a short-term basis, and shall be conducted by qualified individuals, including students as appropriate, working separately or in teams.

1. PERIOD OF PERFORMANCE: This Agreement shall be in effect during the period START DATE through END DATE, is effective only when fully executed by both Parties, and can be amended only by mutual written agreement. Individual Task Orders executed under this Agreement will be in effect for the time periods stated on the Task Orders and shall be effective only when fully executed by the parties.
2. PROJECT PROPOSALS (TASK ORDERS)
	1. Specific proposals called “Task Orders” may be conceived in discussions and/or written concept papers developed by Sponsor technical personnel and/or University’s faculty investigators. Each such Task Order will not be considered valid until approved in writing by Corporation's and Sponsor's authorized representatives. Each such approved Project shall be referred to as “Work Project."
	2. Each Task Order carried out under this MSA will be formally initiated by a proposal, submitted by the Grants Development Office to the Sponsor. Requirements and terms for each specific Task Order to be performed under this Agreement will be set forth in writing to be executed by Sponsor’s and Corporation’s authorized representatives. Each Task Order shall include a start date and end date, scope of work, deliverables, responsibilities of all parties, estimated costs (including labor and expenses, and a "not to exceed" amount), contact information for authorized personnel, payment schedule and any other pertinent information.
	3. Task Orders shall be deemed fully executed when signed by the authorized representative of Sponsor and the authorized representative of Corporation. The terms of this Agreement are incorporated by reference into each Task Order.
3. PAYMENT: Task Orders under this MSA will be fixed-price agreements. Sponsor will be obligated to no more than the total price described in the executed Task Order. As research by its nature is unpredictable and without guarantee of successful results, this Project is conducted on a “reasonable efforts” basis. No fee or profit is received on research and such work for extramural sponsors is performed on a “no-profit-no-loss” basis. For these reasons, the Corporation will not accept agreement provisions that guarantee results, impose penalties for failure to make progress against firm deadlines, or provide for withholding of payments if the sponsor is not satisfied with the results. Corporation provides no warranty of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose.
	1. NAME OF SPONSOR will pay to the Corporation Total Costs based on the following schedule:
* A payment equal to 50% of the total cost described in the Task Order will be payable upon execution of that Task Order.
* Payment of monthly invoices for remaining costs equally distributed over the period of performance described in the Task Order.

Payment terms shall be net 30. Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

1. TERMINATION:
	1. Sponsor: Performance under the MSA may be terminated by the Sponsor for convenience. In the event of such termination, the Corporation shall immediately stop all work hereunder and shall immediately notify any and all of its suppliers and subcontractors to cease work. Subject to the terms of this MSA, the Corporation shall be paid a percentage of each Task Order price reflecting the percentage of the work performed prior to the notice of termination plus reasonable charges, including non-cancellable obligations, the Corporation can demonstrate to the satisfaction of the sponsor using its standard record keeping system, have resulted from the termination. The Sponsor may also terminate this MSA, or any part hereof, for cause in the event the Corporation fails to comply with any MSA terms and conditions, or fails to provide the Sponsor, upon written request, with adequate assurances of future performance. In the event of termination for cause, the sponsor shall notify the Corporation of the failure and the Corporation will have thirty (30) days to cure the notice. If it is determined that the Sponsor improperly terminated this MSA for default, such termination shall be deemed a termination for convenience.
	2. Corporation: This MSA and/or any executed Task Order may be terminated by the Corporation if circumstances beyond its control preclude continuation of the Work Project, such as in the event that the Principal Investigator of a Task Order becomes unable or unwilling to continue the Work Project, and a mutually acceptable substitute is not available, the Corporation and/or the Sponsor shall have the option to terminate the Task Order, or in the event of non-payment of the Sponsor. Sponsor shall pay all costs accrued by the Corporation as of the date of termination, including all non-cancelable obligations incurred prior to the effective date of termination. In the event a Task Order Principal Investigator becomes unable or unwilling to complete the project on time and a mutually acceptable substitute is not available, the Corporation shall have the option to terminate the Task Order.
2. PUBLICITY: Sponsor shall not use the name of the University or Corporation, nor any of its employees, or other persons or entities affiliated with the project, in any publicity, advertising, or news release without the prior written approval of the authorized representative of the University or Corporation. The Corporation/University will not use the name of the Sponsor, or its employees or subcontractor of the Sponsor, in any publicity without approval of the Sponsor, except for on-campus newsletters and reports.
3. NON-DISCLOSURE: Pursuant to this MSA, the parties may need to disclose to one another certain information which is not in the public domain and is deemed confidential and proprietary to the disclosing party ("Confidential Information"). Confidential Information may only be used by a receiving party for the Purpose set forth in this MSA. Confidential Information may be disclosed to the employees, agents, and financial or legal advisors of the receiving party only on a “need to know” basis, if such persons are subject to obligations of confidentiality and restricted use substantially identical to the terms specified in this MSA. Each party receiving Confidential Information under this MSA hereby agrees to take reasonable measures to prevent against further disclosure of such Confidential Information, and to restrict access to and control the use of such Confidential Information to the expressly permitted scope under this MSA.
	1. Information will be deemed as Confidential Information and governed by the obligations of nondisclosure and restricted use set forth in this MSA, if it: (A) is clearly and conspicuously marked as "confidential" or "proprietary" by the disclosing party at the time of initial disclosure; (B) is transmitted via electronic or hard copy cover letter or memorandum indicating that the contents are "confidential" or "proprietary;" or (C) orally identified as confidential at the time of disclosure and then subsequently summarized in written form in a clearly and conspicuously marked document and submitted to the receiving party within twenty (20) days of the initial disclosure.
	2. Nothing contained herein will in any way restrict or impair either party's right to use, disclose, or otherwise deal with any Confidential Information which:
4. was lawfully known by the receiving party before receipt of it from the disclosing party;
5. is or becomes generally known to the public through no wrongful act or omission of the receiving party;
6. is rightfully provided to the receiving party by a third party, without restriction on disclosure or use;
7. is independently developed by personnel of the receiving party, without breach of the obligations of confidentiality set forth in this MSA
8. is explicitly approved for release by written authorization of the disclosing party, but only to the extent of and subject to such conditions as may be imposed in such written authorization; or
9. is made available by the disclosing party to a third party, without restriction concerning use or disclosure and not in violation of any confidentiality MSA.
	1. No party will be liable for disclosure of Confidential Information to the extent made: (a) to comply with a valid Public Records Act request (as applicable to public entities); or (b) in response to a valid order of court or authorized government agency, provided that notice must first be given to the party owning the Confidential Information, so a protective order, if appropriate, may be sought by the owner. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this MSA.

The above obligations for Confidential Information shall be in effect for a period of one (1) year from the termination or expiration of the MSA.

1. EXPORT CONTROLLED INFORMATION: Given Cal Poly’s inclusion of students, faculty, staff, and visitors of foreign nationality when providing educational experiences for all students, it is not in the University’s best interests for the Corporation to receive information in the form of technology, software source code or technical data identified on any US export control list, including the US Department of Commerce Control List at 15 CFR 774 and the US Munitions List (USML) at 22 CFR 120-130 (“Export Control-listed Information” or “ECI”) or from entities governed by the Office of Foreign Assets Control (OFAC), 31 CFR 501.

In the event that Sponsor work requires that it provide Corporation with ECI having a classification other than EAR99, Sponsor shall so inform Corporation’s Sponsored Program Representative, as listed in PRIMARY POINTS OF CONTACT section of this MSA, in writing at least thirty (30) days prior to each planned disclosure of Sponsor’s ECI, and will not forward or provide any ECI to Corporation without the express written consent of its Sponsored Program Representative. Corporation retains the right to decline receipt of any ECI that Sponsor wishes to provide. Such notice shall include the US Department of Commerce Export Control Classification List (ECCL) number or USML number of the ECI and the inclusion of any entities or transactions governed by OFAC.

All ECI that Corporation has agreed to receive shall be clearly marked in writing, or if disclosed orally, shall be identified as ECI prior to its disclosure and thereafter summarized in a written document that is provided to the recipient of the disclosure within fifteen (15) days of the disclosure.

Corporation and Sponsor agree to develop an appropriate Technology Control Plan to ensure that any information, data, software or materials that are export controlled and received in the performance of this Agreement shall not be exported from the United States or re-exported from any other country without first complying with applicable Export Control laws and regulations.

1. OWNERSHIP OF RESEARCH RESULTS: The Corporation may hold University intellectual property, and manage the rights to such intellectual property consistent with University regulation and policy. All rights and title to Intellectual Property whether patentable or copyrightable or not, relating to Project made solely by employees of University or Corporation shall belong to California Polytechnic State University and shall be subject to the terms and conditions of this MSA. All rights and title to Intellectual Property, whether patentable or copyrightable or not, relating to Work Projects made and/or owned solely by employees of Sponsor shall belong to Sponsor. Such inventions, improvements, and/or discoveries shall not be subject to the terms and conditions of this MSA. All rights and title to Intellectual Property, whether or not patentable or copyrightable, relating to Work Projects made jointly by the parties shall belong jointly to the parties.
	1. PUBLICATIONS: The Work Project personnel will be free to present at symposia, national, or regional professional meetings and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Work Project, provided, however, that such publications are subject to the terms of Article 7 regarding confidentiality of Sponsor's Confidential Information.
	2. COPYRIGHTS: Title to and the right to determine the disposition of any copyrights, or copyrightable material, first produced in the performance of the Work Projects shall remain with the University, or Corporation as an agent for the University in Intellectual Property.
	3. PATENTS: Title to any invention conceived or first reduced to practice by Work Project personnel will remain with the University, or Corporation as an agent for the University in Intellectual Property, which will have the sole right to determine disposition of any patents or other rights resulting therefrom. Such disposition shall be calculated to protect the public interest, as well as the rights and equities of both parties. This will not, however, give the Corporation any rights to the title of any invention conceived or first reduced to practice prior to this MSA or performed by the Sponsor, and/or employees or other subcontractors, during the time period of this MSA, which may be required to further the research under this MSA. The Corporation agrees to grant to Sponsor a time-limited option to negotiate an exclusive, world-wide, royalty-bearing license, to make, use, or sell any invention or discovery made and conceived under this MSA directly resulting from the performance of the research hereunder, including the right to sublicense on a royalty-bearing basis with accounting to Corporation. Sponsor shall have sixty (60) days from disclosure of any invention or discovery to notify Corporation of its desire to enter into such a license agreement. A license agreement shall be negotiated in good faith within a period not to exceed one hundred and twenty (120) days from Sponsor's notification to Corporation of its desire to enter into a license agreement, or such period of time as the parties shall mutually agree. In the event Sponsor elects to exercise its option as to any invention or discovery, in accordance with above, it shall be obligated to pay all patent expenses for such invention or discovery. Should Sponsor elect not to file or maintain, or decides to discontinue the financial support of the prosecution, maintenance or protection of a patent application or patent for Intellectual Property, Corporation shall be free to file or continue to prosecute or maintain any such application(s), and to maintain any protection issuing thereon in the United States and in any foreign country, at Corporation's sole expense, and Sponsor shall have no rights in the application or resulting patent.
2. INDEPENDENT CONTRACTOR: For the purposes of this MSA and all services to be provided hereunder, each party shall be, and shall be deemed to be, an independent contractor and not an agent or employee of the other party. Neither party shall have authority to make any statements, representation or commitments of any kind, or to take any action, which shall be binding on the other party, except as may be explicitly provided for herein or authorized by the other party in writing.
3. INDEMNIFICATION:
	1. Corporation shall defend, indemnify and hold Sponsor, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this MSA but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Corporation, its officers, agents or employees.
	2. Sponsor shall defend, indemnify and hold Corporation its officers, the trustees of the California State University, employees, volunteers, and subcontractors harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this MSA but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Sponsor, its officers, agents or employees.
4. DISPUTES: Any dispute concerning a question of fact arising under terms of this MSA that is not resolved by mutual agreement of the parties shall be brought to the attention of the authorized signatories of both parties. If resolution of the dispute cannot be accomplished, the parties agree to resolve the dispute by final binding arbitration before the American Arbitration Association (AAA), utilizing its Commercial Arbitration Rules. One arbitrator shall be selected using AAA procedures. The arbitrator shall use all reasonable efforts to minimize discovery and to complete the arbitration proceedings as expeditiously as possible. The Arbitrator shall render a written decision within thirty (30) calendar days of the hearing. The arbitrator will not award attorney’s fees, or punitive, incidental, consequential, treble or other multiple or exemplary damages, and the parties hereby agree to waive and not seek such damages. Either party may seek judicial relief to compel the other party to comply with the provisions of this Section, or injunctive or other equitable relief to protect its intellectual property rights, provided (unless prohibited by applicable law) that the remainder of the dispute or claim is submitted to arbitration. The arbitration shall be held in San Luis Obispo, California; both parties hereby give their irrevocable consent to jurisdiction of courts of or in the State of California, as well as processes of the AAA in California. Awards shall be final, binding and non-appealable (except on the minimal grounds required under the Federal Arbitration Act or other applicable law). All awards may be filed with one or more courts, state, federal or foreign having jurisdiction over the party against whom such award is rendered or its property, as a basis of judgment and of the issuance of execution for its collection.
5. GOVERNING LAW: This MSA will be deemed fully executed when signed by both parties. This MSA shall be governed in accordance with the laws of the State of California.
6. INSURANCE: Corporation represents that it has adequate liability insurance, such protection being applicable to its officers, employees, and agents while acting within the scope of their duties. Corporation represents that the following coverage shall be maintained in full force and effect during the term of this Agreement:
7. Workers’ Compensation and Employer’s Liability insurance indicating compliance with any applicable labor codes, acts, laws, or statutes, whether federal or state, where Corporation or its subcontractors operates, and Employers' Liability insurance of not less than $1,000,000 for injury or death per accident.
8. Commercial/Comprehensive General Liability insurance of not less than $1,000,000 combined single limit or equivalent for bodily injury, property damage and personal injury as a result of any one occurrence.
9. Commercial/Comprehensive Automobile Liability insurance of not less than $1,000,000 combined single limit or equivalent for bodily injury and property damage as a result of any one occurrence including coverage for owned, hired and non-owned automobiles.
10. Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of itself and the officers, employees, and agents thereof.

Corporation has no liability insurance policy that can extend protection to any other person.

1. AGREEMENT MODIFICATION: Any changes in the terms of this MSA in any way shall be valid only if the change is made in writing and approved by mutual agreement of authorized representatives of the parties hereto.
2. SEVERABILITY: The parties agree that if any part, term, or provision of this MSA is held illegal or invalid, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the MSA did not contain the particular part, term, or provision held to be illegal or invalid.
3. PRIMARY POINTS OF CONTACT

Authorized Sponsor Representative

Name, Title

Address

Email

Phone

Sponsor Technical Representative

Name, Title

Address

Email

Phone

Cal Poly Corporation Sponsored Program Representative

Name, Title

Address

Email

Phone

Cal Poly Principle Investigator

Name, Title

Address

Email

Phone

1. FINAL AGREEMENT: This MSA states the entire agreement between the parties relating to the Project and supersedes all prior written or verbal agreements relating to this MSA. This MSA may only be modified in a writing signed by all parties. The parties agree to be legally bound by this MSA. Notwithstanding any statute, regulation, or other rule of law, a signature provided by facsimile or other electronic copy will be deemed to be an original signature, and this MSA may be executed in counterparts, and all counterparts taken together will be regarded as one and the same instrument.

In witness whereof, the parties hereto have executed this agreement by authorized official or designee:

|  |  |  |
| --- | --- | --- |
| **NAME OF SPONSOR** |  | **Cal Poly Corporation** |
|  |  |  |
| *Authorized Sponsor Representative Name**Title, Department (if applicable)* | Date |  | Melissa MullenDirector, Sponsored Programs Office | Date |