

Service Agreement for Sponsored Projects

Instructions

Sections A-D must be fully completed with signatures in Sections E and F. Please forward full service agreement packet to your Sponsored Programs analyst: 1) Service Agreement; 2) Exhibit A Scope of Work; 3) certificate of insurance or insurance waiver from Service Provider; and 4) sole source if applicable.

This agreement is not valid until fully executed by the three parties. This Service Agreement for Sponsored Projects, the attached terms and conditions, Exhibit A Scope of Work, and any amendments constitutes the full agreement.

A. Project Information (If more than one org key to pay for Service Provider's services, separate agreements should be executed for each org key.)

Org key:	Project period:	Project title:
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B. Principal Investigator

Name:	Email:
Telephone:	Campus address:

C. Service Provider

Name:	Email:	Telephone:
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Address:

<p>Federal tax classification:</p> <p><input type="checkbox"/> US citizen/Permanent Resident <small>(Attach W-9)</small></p> <p><input type="checkbox"/> Non-Resident Alien</p> <p style="margin-left: 20px;"><input type="checkbox"/> Services performed in US <small>(Attach copy of visa)</small></p> <p style="margin-left: 40px;">• Subject to 30% federal withholding tax if services performed in US.</p> <p style="margin-left: 40px;">• Contractor may claim withholding exemption by filing IRS 8233 directly to IRS for approval. Must have a US TIN.</p> <p><input type="checkbox"/> Services performed outside of US <small>(no withholding)</small></p>	<p>Location of services: <small>(Attach certificate of insurance or insurance waiver)</small></p> <p><input type="checkbox"/> On campus</p> <p><input type="checkbox"/> Off campus</p> <p><input type="checkbox"/> Outside of the US</p>
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D. Consulting Services

Scope of work: (Complete Exhibit A Scope of Work to detail work and value in the fee schedule.)

Descriptive title of work performed:

Date of service (may be for the project period)

From:

To:

Fee schedule: <small>(Select one)</small>	Rate	Estimated # units	Total estimated cost not to exceed ¹	Travel expenses?	Total estimated travel not to exceed ^{1,2}
<input type="checkbox"/> Hourly rate	\$		\$	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$
<input type="checkbox"/> Daily rate	\$		\$	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$
<input type="checkbox"/> Fixed rate	\$		\$	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$
<input type="checkbox"/> Milestones/Tasks	\$		\$	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$

¹ If total estimated cost of labor and travel is \$5,000 or greater, a sole source must be attached, which should list unique qualifications of the Service Provider. Please attach CV/resume if applicable.

² All travel expenses not incorporated into the labor rate must be submitted on a Cal Poly Corporation travel claim and must be in accordance with Corporation travel policy, which can be found at https://www.calpolycorporation.org/wpfd_file/travel-guidelines/.

E. Background Check

Service Providers handling confidential data or performing services for Cal Poly Corporation (CPC) on California State University (CSU) property are responsible for ensuring that their employees have had the required background checks if they perform duties that the CSU considers sensitive or that would require a background check by law. Service Provider represents that it maintains comprehensive hiring policies and procedures, which include a background check for criminal convictions, all to the extent permitted by law. Service Provider shall conduct thorough background checks as required by the CSU for all its Representatives, Affiliates, and Subcontractors who have access to CPC/CSU's protected information or perform duties in a CSU-designated sensitive position. Service Provider performing as a Sole-Proprietor, Individual, Single Member LLC, or Partnership, must provide confirmation of cleared background checks completed by a qualified independent third party company directly to the CPC prior to CPC's signature below in section H. All other Service Providers certify through responding to bid or contract award that all employees and sub-contracted non-employee third parties who will provide these services have passed a criminal background check as required by the CSU. Costs for background checks are entirely the responsibility of the Service Provider and shall not be chargeable to CPC.

After review of the sensitive positions checklist linked in the paragraph above, does the work outlined in Exhibit A: Scope of Work require a background check?

No Yes If yes, please provide documentation of cleared background check(s).

F. Principal Investigator Certification

- Services to be provided by Service Provider are essential to the referenced project and cannot be performed by persons otherwise compensated by this project or elsewhere employed by Cal Poly.
- Service Provider is most qualified available to provide the services.
- Service Provider's services do not represent nor constitute a transfer of substantive programmatic contract/grant activities by the Corporation to Service Provider.
- The fee specified is commensurate with the qualifications of Service Provider and services to be performed.
- Service Provider is not an employee of Cal Poly State University/Cal Poly Corporation.
- Service Provider is performing services required by this agreement as an independent contractor in accordance with Internal Revenue Service guidelines, and there is no employee-employer relationship.

Principal Investigator Printed Name	Signature	Date
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G. Service Provider Certification

By signing below, I agree to perform and complete all services included in the attached Exhibit A Scope of Work at the agreed upon amount as indicated in Section D. I also certify that I have read and agree to comply with the service agreement terms and conditions attached to this agreement.

I also certify that:

- I am not an employee of California Polytechnic State University/Cal Poly Corporation.
- I am not suspended, debarred, or ineligible to enter into contracts with any department or other agency of the federal government nor in receipt of proposed debarment or suspension.

If unable to certify one or more of the above statements, please attach a letter of explanation.

Printed Name	Signature	Date
Company Name if applicable		

H. Cal Poly Corporation

Jodi Block Director of Sponsored Programs	Signature	Date:
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For internal use only

This agreement has been checked for the following: _____ (analyst initials)

- | | | |
|---|---|---|
| <input type="checkbox"/> W-9 sent/received via Adobe Sign | <input type="checkbox"/> Insurance Certificate/Waiver | <input type="checkbox"/> Sole source if total >\$5,000 |
| <input type="checkbox"/> Requisition | <input type="checkbox"/> Visual Compliance | <input type="checkbox"/> Background check confirmation(s) if yes in Section E |

**Cal Poly Corporation Sponsored Programs
Service Agreement Terms and Conditions**

This Service Agreement ("Agreement") is made and entered into by and between the Cal Poly Corporation ("Corporation"), a nonprofit 501(c)(3) public benefit corporation and CSU auxiliary that provides support to California Polytechnic State University ("University"), and Service Provider ("Service Provider") listed in Section C of the Agreement, each referred to as a "Party" or collectively the "Parties." The Agreement shall be effective on the date set forth in Section D.

- 1) **Exhibits.** The following Exhibits are attached and hereby incorporated into this Agreement:

Exhibit A: Scope of Work

- 2) **Services.** Service Provider agrees to provide all labor, tools, instruments, and resources necessary to complete in a diligent and professional manner the Services identified in Exhibit A in accordance with all Exhibits and the following terms and conditions, collectively (the "Services").

- 3) **Term.** The term of this Agreement shall commence on the effective date and expire upon completion of Services, or the date set forth in Section D, whichever occurs sooner, unless terminated sooner in accordance with Section 21 Termination. The term of the Agreement shall not automatically renew or be extended without the express written consent of the Parties hereto and memorialized via Amendment (Section 15).

- 4) **Compensation for Services and Expenses.** In consideration of the Services provided by Service Provider, Corporation agrees to reimburse Service Provider in accordance with fees for Services and expenses as provided in Section D of the Agreement and Exhibit A and shall be paid in accordance with Section 4.

- (a) **Invoices.** Service Provider shall submit detailed invoices for all Services rendered. Invoices shall be submitted to: Cal Poly Corporation, Sponsored Programs, 1 Grand Avenue, Building 38-102, San Luis Obispo, CA 93407.

- (b) **Costs.** Service Provider shall be responsible for all costs and expenses arising from and incidental to the performance of the Services outlined in Exhibit A, including but not limited to all costs of equipment provided by Service Provider, all employee, agent, and subcontractor costs, all fees, fines, licenses, bonds, or taxes required or imposed against Service Provider or Service Provider's employees, agents, or subcontractors and all other costs of doing business incurred by Service Provider.

- i) Unless otherwise specified herein, Corporation shall not be responsible for any expenses incurred by the Service Provider in the performance of Services hereunder. If Corporation agrees to reimburse any costs, such costs shall be limited to reasonable actual costs and expenses for which receipts are submitted. Travel expense reimbursement is per Corporation policy and procedures unless otherwise agreed (https://www.calpolycorporation.org/wpfd_file/travel-guidelines/). All expenses and purchases will be expended per Corporation policy and procedures.

- 5) **Terms of Payment.** Service Provider shall invoice Corporation monthly for completed Services. All invoices shall be paid by Corporation within thirty (30) calendar days from the date of receipt. All further references to "Day" or "Days" in this Agreement shall have the meaning calendar days.

- (a) **Disputes Regarding Payment.** Corporation reserves the right to withhold payment of any invoiced amount disputed in good faith. Failure by Corporation to pay any invoiced amount disputed in good faith until resolution of such dispute shall not alleviate, diminish, modify, nor excuse the performance of Service Provider or relieve Service Provider's obligations to perform hereunder. Service Provider's acceptance of any payment, and Corporation's payment of any invoiced amount, shall not be deemed to constitute a waiver of amounts that are then in dispute. Service Provider and Corporation shall use reasonable efforts to resolve all disputed amounts reasonably expeditiously and in any case in accordance with the provisions of Section 30 of this Agreement. No payment

made hereunder shall be construed to be acceptance or approval of any Services to which such payment relates or to relieve Service Provider of any of its obligations hereunder.

- 6) **Acceptance of Services.** All Services performed under this Agreement shall be to the satisfaction of Corporation and in accordance with the scope of work as provided in Exhibit A, together with the terms and conditions of this Agreement. Corporation reserves the right to review the Services performed, and in its sole discretion, determine the quality, acceptability, and fitness of such Services. "Acceptance" will occur upon "Final Completion," which means the full operational availability of the Services to the Corporation in conformance with all aspects of the Contract Documents.

- 7) **Ownership of Work Product.** Originals of all drawings, specifications, reports, records, documents, and other materials, whether in hard copy or electronic form, that is prepared by Service Provider, its employees, subcontractors, or agents in the performance of this Agreement shall be the property of Corporation and shall be delivered to Corporation upon the termination of this Agreement or upon the earlier request of Corporation. Service Provider shall have no claim for further engagement or additional compensation as a result of the exercise by Corporation of its full rights of ownership of the documents and materials hereunder. Service Provider may retain copies of such documents for its own use. The drawings, specifications, reports, records, documents, and other materials prepared by Service Provider in the performance of Services under this Agreement shall not be released publicly without the prior written approval of Corporation or as required by law. The proprietary information and methodologies of Service Provider utilized in connection with the Services hereunder shall at all times remain the exclusive property of Service Provider.

- 8) **Independent Capacity of Service Provider.** The Parties hereto agree that Service Provider, their officers, agents, and employees in the performance of this Agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of Corporation. Nothing in this Agreement shall be construed to create a partnership or joint venture, and neither Party is authorized to act as agent or bind the other Party except as expressly stated in this Agreement. Except as expressly provided in this Agreement, Service Provider is not authorized to enter into any contract, lease, or other arrangement in Corporation's or University's name, or for Corporation's or University's account, or by which Corporation or University would be legally bound or held liable. Service Provider shall perform the Services under the general direction of Corporation, but Service Provider shall determine, in Service Provider's sole discretion the manner and means by which the assignment is accomplished.

- 9) **Parking & Deliveries.** Service Provider is required to pay parking fees for vehicles parked on campus during performance of Services under this Agreement. Special permits are available for delivery vehicles. Prices are subject to change without notice. All campus deliveries shall be coordinated prior to delivery with the Corporation or their designee.

- 10) **Taxes and Fees.** Compensation for Services provided in Exhibit A includes all applicable tax. Service Provider assumes exclusive liability for and shall pay before delinquency all other federal, state, or local, use, value added, excise, real estate, income, and other taxes, charges, or contributions imposed on, or with respect to, the Services provided under this Agreement. Each Party shall hold harmless, indemnify, and defend the other Party, together with the other Party's officers, directors, agents, and employees from any liability, penalty, interest, and expense by reason of such Party's failure to pay the taxes, charges, or contributions for which it is responsible by law.

- 11) **Damage to Corporation or University Property.** Service Provider shall protect from damage all existing Corporation and University property insofar as performance of this Agreement affects said property. Should Service Provider damage any Corporation or University property due to its negligence, it is Service Provider's responsibility to restore the property to its

original condition. Service Provider shall immediately notify Corporation of loss, damage, or destruction of Corporation or University property caused by Service Provider and shall furnish Corporation with a statement concerning the loss in such detail as Corporation may require. Should Service Provider fail to restore the damaged property to its original condition, Corporation (or its agent) may do so and assign the full cost to Service Provider. Claims by Corporation or the University under this section shall be made in writing to Service Provider within a reasonable time of the first observance of such damage.

- 12) **Use of University or Corporation Marks.** Service Provider shall not use any image, logo, mark, or intellectual property of Corporation or University in any manner or form without the express written consent of Corporation or the University, respectively. This includes the use of Service Provider or product logo in conjunction with Corporation or University logos, which must be pre-approved by the Corporation and the University.
- 13) **News Releases.** News releases pertaining to this Agreement shall not be made without the prior written approval of Corporation or their designee.
- 14) **Recordkeeping and Record Retention.** Service Provider shall establish and maintain adequate records of all expenditures incurred under this Agreement. All records must be kept in accordance with generally accepted accounting principles (GAAP). All procedures must be in accordance with federal, state, and local ordinances. Corporation shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to this Agreement held by the Service Provider. The Service Provider will retain all documents applicable to the Agreement for a period of not less than three (3) years after payment of final invoice.
- 15) **Amendment.** The Agreement may be modified or amended in writing signed by authorized signatories of the Service Provider and Corporation, including changes altering, adding to, or deducting from the Agreement terms and conditions provided that such changes are within the general scope of the Agreement. Service Provider shall not commence any additional Services prior to receipt of a fully signed amendment. Corporation shall not be liable for any additional fees or charges for work beyond the original scope of work of the Agreement that are not set forth in an approved amendment.
- 16) **Confidentiality.** All data and information submitted or made available to Service Provider by Corporation, University, or any other person while working on this project, unless otherwise publicly available, and all data and information and other work developed by Service Provider under this Agreement ("Confidential Information") shall be utilized by Service Provider in connection with this Agreement only. Except as required otherwise by law, such Confidential Information shall not be made available by Service Provider to any other person without the prior written consent of Corporation, which consent shall not be unreasonably withheld.
 - (a) Confidential information shall include any information that is proprietary or competitively sensitive other than any information which:
 - i) Is known to the Party to which disclosure is made at the time of the disclosure or
 - ii) Is or becomes known to the public generally through no fault or other action of the Party to which disclosure is made, or
 - iii) Is obtained lawfully from a third Party who is not known by the Party to which disclosure is made to be have obtained such information directly or indirectly from the disclosing Party, or
 - iv) Is developed by employees, agents, or representative of the Party to which disclosure is made as a result of their own efforts and not as a direct or indirect result of the disclosure of the same information by the disclosing Party.
 - (b) Service Provider shall not disclose to any other entity or person any information regarding the activities of Corporation

except as required by law or as authorized by Corporation. Further, neither Service Provider nor its employees, agents, or subcontractors thereof shall utilize the aforementioned information for pecuniary gain not contemplated by the terms of this Agreement regardless of whether or not the Agreement is in effect at the time such gain is realized. Corporation shall not disclose to any other entity or person any information regarding the activities of Service Provider that Service Provider has designated in a written notice to Corporation to be confidential, except as required by law or as authorized by Service Provider.

17) **Indemnification.**

- (a) Service Provider shall defend, indemnify, and hold harmless the Cal Poly Corporation, the California State University, and each of their trustees, officers, employees, agents, and volunteers from and against any and all liability, loss, expense, or claims for injury or damages arising out of, resulting from, or in connection with the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligence or intentional acts or omissions of Service Provider, its officers, subcontractors, assignees, appointees, agents, or employees.
- (b) Corporation shall defend, indemnify, and hold harmless the Service Provider and each of their officers, employees, agents, and volunteers from and against any and all liability, loss, expense, or claims for injury or damages arising out of, resulting from, or in connection with the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligence or intentional acts or omissions of Corporation, its officers, subcontractors, assignees, appointees, agents, or employees.
- (c) **Waiver of Consequential Damages.** THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW IN NO EVENT SHALL A PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUE OR LOSS OF USE OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.
- (d) **Limit on Liability.** EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES, EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY UNDER OR ARISING OUT OF THIS AGREEMENT, FROM ANY CAUSE, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY SHALL NOT IN THE AGGREGATE EXCEED BASE CONTRACT VALUE.

- 18) **Insurance.** Service Provider shall provide a certificate of insurance and additional insured endorsement to Corporation, or confirm that current documentation is on file, prior to the commencement of Services as required herein. Corporation requires that the Service Provider shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

Commercial General Liability

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence Limit	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Fire Damage (Any one fire)	\$50,000
Medical Payments (Any one person)	\$5,000

Business Automobile Liability

Bodily Injury/Property Damage	\$1,000,000
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(Each Accident)	
Personal Injury Protection	Statutory
Collision and comprehensive	Deductible Amounts
Uninsured Motorist & Underinsured Motorist	\$500,000

Workers' Compensation

Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability) each accident	\$1,000,000

- (a) If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
- (b) General liability coverage can be provided in the form of an endorsement to the Service Provider's insurance, or as a separate owner's policy. If the project involves subcontractors, the subcontractors must be endorsed as insureds under the Service Provider's policy.
- (c) Service Provider shall not commence performance of any work under this Agreement until Corporation is provided with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Corporation.
- (d) The required insurance must be in effect prior to awarding the Agreement, and it or a successor policy must be in effect for the duration of the project. Maintenance of proper insurance coverage is a material element of the Agreement. Failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract and subject the Agreement to termination. Corporation reserves the right to require complete certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- (e) Service Provider shall disclose deductibles or self-insured retentions (SIRs) for approval by Corporation.
- (f) Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII and insurer may not cancel insured's coverage without thirty (30) Days written notice by certified mail, return receipt requested, to Corporation.
- (g) For any claims related to this project, the Service Provider's insurance coverage shall be primary as respects Corporation, the Trustees of California State University, Cal Poly, its trustees, employees, directors, officers, and volunteers. Corporation's insurance or self-insurance shall be excess of the Service Provider's insurance and shall not contribute to it.
- (h) Business automobile liability insurance is required for any rented commercial or Service Provider-owned commercial or noncommercial vehicles that are to be used in or near the premises, including the campus.

Additional Insured Endorsements. The general liability and automobile liability policies shall be endorsed to provide the following endorsements as additional insureds for General Liability and Automobile:

Cal Poly Corporation, Trustees of California State University, California Polytechnic State University, and the directors, employees, officers, and volunteers of entities, with respect to liability arising out of work or operations performed by or on behalf of the Service Provider including materials, parts or equipment furnished in connection with such services or operations.

- 19) **Title & Risk of Loss.** From the Effective Date and until the date of Acceptance or Termination, whichever occurs sooner, Service Provider bears the risk of loss and full responsibility for the cost of replacing or repairing any damage to all materials, equipment, supplies, and work product that are in Service Provider's care, custody, and control. Title to all materials, equipment, and supplies shall pass to Corporation upon the date of Acceptance or Termination, whichever occurs sooner.

- 20) **Representations and Warranties.** Service Provider represents and warrants that i) it possesses the requisite knowledge, skill, and experience necessary to perform the Services, ii) all Services shall be performed in accordance to applicable federal, state, and local laws, rules, and regulations.

- (a) **Additional Representations and Warranties.** The Parties each hereby represent and warrant to the other Party as follows: (i) that it has full power, authority and capacity to enter into this Agreement and to perform all its obligations hereunder, and (ii) that it is not bound by any other Agreement, arrangement, judgment, or order which would be violated as a result of its entering into this Agreement or performing any of its obligations hereunder.

21) **Termination.**

- (a) **Termination by Corporation.** Corporation may terminate this Agreement at any time without cause, upon submitting notice of termination to Service Provider. Upon notice of termination, Service Provider shall not commence new work, but unless otherwise instructed shall complete any work previously approved by Corporation and that Corporation specifically requests completion upon termination of this Agreement for which Corporation shall be responsible for and shall pay within 30 days of receipt of approved invoices for such work.
- (b) **Termination by Service Provider.** The Service Provider may terminate this Agreement at any time without cause upon thirty (30) Days' written notice to the Corporation.
- (c) **Survival.** The obligations imposed by Sections 7, 10, 11, 12, 13, 14, 16, 17, and 30, as well as any licenses granted hereunder shall survive termination under this Agreement.

- 22) **Severability.** If any provision of this Agreement shall be, or shall be adjudged to be, unlawful or contrary to public policy, then that provision shall be deemed to be null and separable from the remaining provisions, and shall in no way affect the validity of this Agreement.

- 23) **Waiver.** A waiver by either Party of any terms or conditions, provisions, or covenants of this Agreement in any instance shall not be deemed or construed to be a waiver of any such term, condition, provision, or covenant for the future, or of any subsequent breach of same. All remedies, rights, undertakings, obligations, and Agreements contained in this Agreement shall be cumulative and shall not be in limitation of any other right, remedy, undertaking, obligation, or Agreement of either Party.

24) **Force Majeure.**

- (a) Neither Party shall be liable for any failure to perform its obligations under this Agreement 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, 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.").
- (b) 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 Agreement, 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 Agreement.
- (c) Notwithstanding any other term in this Agreement, including, but not limited to, the foregoing subsections of this section 24, during the period of a Force Majeure Event affecting performance by Service Provider, Corporation may elect to do all or any of the following:

- i) Suspend the Agreement for the duration of the Force Majeure Event and be relieved of any payment obligation for services not delivered or accepted due to the Force Majeure Event;
- ii) Obtain elsewhere the services not delivered or accepted due to the Force Majeure Event;
- iii) Extend the time for Service Provider's performance by a period equal to the duration of the Force Majeure Event; and/or
- iv) Terminate the Agreement as to any goods or services not already received with no further financial obligation if the Force Majeure Event continues to exist for more than thirty (30) Days.

25) **COVID-19.** In the event that Corporation considers it necessary or prudent to cancel this Agreement due to circumstances related to COVID-19, or to any reoccurrence of the COVID-19 outbreak, Corporation may do so and be relieved of any further financial obligation, risk, or other liability by providing seventy-two (72) hours prior written notice of cancellation to Service Provider. Corporation's right to cancel the Agreement pursuant to this section 25 shall not be limited or restricted in any manner by any other term or section of this Agreement.

26) **Assignment.** The Service Provider shall not assign or subcontract any of its obligations except as expressly allowed in the Agreement without the prior written approval of Corporation.

27) **Subcontractors & Sub-consultants.** Subcontractors and their employees shall function as subcontractors to Service Provider, not as Parties to any contract with the Corporation for work described in the Services.

Service Provider shall ensure that all prior approved subcontractors and/or sub-consultants are appropriately licensed, possess the requisite skill and capabilities, and are adequately insured for the work they are assigned. Determination of adequate insurance coverage and review is the responsibility of Service Provider as Service Provider remains obligated to Corporation for all subcontractor and sub-consultant work, acts, and omissions.

28) **Successors.** The provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the Parties hereto.

29) **Notices.** Any notice, request, approval, or consent specifically provided for or permitted to be given under this Agreement must be in writing and delivered in person or sent via U.S. mail, overnight carrier, facsimile, or electronic mail to: Cal Poly Corporation, Sponsored Programs, 1 Grand Avenue, Building 38-102, San Luis Obispo, CA 93407; sponprog@calpoly.edu

30) **Resolution of Disputed Claims.**

(a) The Parties each acknowledge and agree that the other Party could be irreparably injured by a breach of the provisions in this Agreement concerning Confidential Information, misuse of intellectual property, or improper news releases concerning the Services and that money damages may be an inadequate remedy for an actual or threatened breach of such provisions because of the difficulty of ascertaining the amount of damage that would be suffered in the event of breach. Therefore, the Parties acknowledge and agree that they may seek specific performance under such provisions and injunctive or other equitable relief as a remedy for a breach of such a provision. Such remedy shall not be deemed exclusive, but shall be in addition to all other remedies available at law or in equity.

(b) The Parties shall first endeavor to resolve any differences which may arise between them by discussion and negotiation rather than litigation. If these methods fail, either Party may refer the matter to non-binding mediation to be conducted in accordance with the commercial rules of the American Arbitration Association (the "AAA"). Mediation shall take place in San Luis Obispo, California, and each Party shall bear its own costs and one-half (½) of the costs of the mediator and the AAA. The first mediation session shall occur within 45 days of filing a request. The Parties will cooperate with the AAA and with one another in selecting a neutral mediator from the AAA's panel of neutrals and in scheduling the mediation

proceedings. If the Parties are unable to select the mediator within 10 business days after receipt of the mediation notice by the AAA, then the AAA shall designate the mediator. The Parties' covenant that they will (i) participate in the mediation in good faith, (ii) share equally in the costs of the mediator and related administrative costs, and (iii) pay in advance the estimated reasonable fees and costs of the mediation, as may be specified in advance by the mediator. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator and any AAA employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any reference, arbitration, litigation, or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 10 business days after the first mediation session, either Party may (i) give written notice to the AAA and the other Party that the mediation is terminated and (ii) submit any remaining disputes to binding arbitration pursuant to Section (c) below.

(c) If the Parties are unable to resolve their differences through mediation, either Party shall refer the matter to final and binding arbitration with the American Arbitration Association ("AAA") in accordance with the commercial rules of the AAA. Arbitration shall take place in San Luis Obispo County, California. Each Party shall bear its own costs and one-half (½) the cost of the arbitrator and AAA. The Parties agree that any and all disputes that are submitted to arbitration in accordance with this Agreement shall be decided by one (1) neutral arbitrator who is experienced in commercial transactions. If the Parties are unable to agree on an arbitrator, AAA shall designate the arbitrator. The Parties will cooperate with AAA and with one another in selecting the arbitrator and in scheduling the arbitration proceedings in accordance with applicable AAA procedures. Either Party may commence the arbitration process called for in this Agreement by filing a written demand for arbitration with AAA, with a copy to the other Party. Any award issued as a result of such arbitration shall be final and binding between the Parties thereto and shall be enforceable by any court having jurisdiction over the Party against whom enforcement is sought. The Parties expressly acknowledge and understand that by entering into this Agreement, they each are waiving their respective rights to have any dispute between the Parties hereto adjudicated by a court or by a jury.

(d) **Choice of Law.** The Parties agree that California law shall govern the construction, interpretation, validity, and enforcement of this Agreement and shall be applied in any mediation or judicial proceeding to resolve all disputes between them. Should either Party institute legal suit or action arising out of this Agreement, it is stipulated that the venue of such suit or action shall be in San Luis Obispo County, California.

(e) **Attorneys' Fees.** Except as expressly provided in this Agreement, in any action or proceeding brought to enforce any provision of this Agreement or arising out of or in connection with the relationship of the Parties hereunder, the prevailing Party shall be entitled to recover against the other its reasonable attorneys' fees and/or arbitration or court costs in addition to any other relief awarded by the court. As used in this Agreement, the "Prevailing Party" is the Party who recovers greater relief in the action.

31) **Statutory Requirements and Policies.** Service Provider shall perform the Services in accordance with laws, statutes, ordinances, rules, regulations, lawful orders, and policies of all public authorities having jurisdiction over Service Provider or Corporation including, without limitation, the following:

(a) **Non-Discrimination/Affirmative Action.** Service Provider agrees to maintain a work environment free of discriminatory practices and to comply with all applicable federal, state, and local non-discrimination/affirmative action laws.

- (b) **Drug-Free Workplace.** Service Provider agrees to maintain a drug-free workplace and remain in compliance with the Drug-Free Workplace Act of 1988 and any subsequent amendments thereto.
 - (c) **Americans with Disabilities.** Service Provider agrees to remain in compliance with the Americans with Disabilities Act of 1990 and any subsequent amendments thereto.
- 32) **Counterparts.** This Agreement may be executed in counterparts all of which taken together shall constitute one and the same Agreement. The exchange of copies of this Agreement by electronic means shall constitute effective execution and delivery of this Agreement and shall have the same force and effect as copies executed and delivered with original signatures.
- 33) **Time is of the Essence.** Timely performance of all obligations by each Party is expressly agreed to be important of this Agreement, and failure to so perform is a material breach of the Agreement.
- 34) **Priority of Documents.** In the event of conflicting provisions between any of the Agreement documents, the provisions shall govern in the following priority: first, duly executed Amendments to the Agreement (to the extent not superseded by a subsequent Amendment), second, the Agreement, and third, other Agreement documents.
- 35) **Entire Agreement.** The Agreement with any duly executed Amendments to the Agreement along with these terms and conditions constitutes the sole and entire Agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, Agreements, representations, and warranties, both written and oral, with respect to such subject matter.

Exhibit A: Scope of Work

(Skip to page two if work is based on milestones/tasks)

Detailed description of services to be provided by Service Provider
Timeline of services and due dates
Deliverables
Location where services will be performed
<p>(If Service Provider resides outside of CA and services are performed outside of CA, no withholding is applicable. If Service Provider resides outside of CA but services are performed in CA, state withholding will be applied at a standard 7%. For reduced withholding, use CA form 589. For withholding exemption, use CA form 590.</p> <p>If the services are performed in a jurisdiction that requires service provider to have a business license or business tax registration, service provider is responsible for acquisition.</p>

For Milestones/Tasks

Location where services will be performed

(If Service Provider resides outside of CA and services are performed outside of CA, no withholding is applicable. If Service Provider resides outside of CA but services are performed in CA, state withholding will be applied at a standard 7%. For reduced withholding, use CA form 589. For withholding exemption, use CA form 590.

If the services are performed in a jurisdiction that requires service provider to have a business license or business tax registration, service provider is responsible for acquisition.

RELEASE OF LIABILITY, PROMISE NOT TO SUE, ASSUMPTION OF RISK AND AGREEMENT TO PAY CLAIMS

Org Key	Date of service
Department contact name:	Telephone number:

In consideration for being allowed to participate in this Activity, on behalf of myself and my next of kin, heirs, and representatives, **I release from all liability and promise not to sue** the Cal Poly Corporation, the State of California, the trustees of the California State University, California Polytechnic State University, and their employees, officers, directors, volunteers and agents (collectively the "Corporation") from any and all claims, **including claims of Corporation's negligence**, resulting in any physical or psychological injury (including paralysis and death) illness, damages, or economic or emotional loss I may suffer because of my participation in this Activity, including travel to, from, and during the Activity.

I am voluntarily participating in this Activity. I am aware of the risks associated with traveling to/from and participating in this Activity, which include but are not limited to physical or psychological injury, pain, suffering, illness, disfigurement, temporary or permanent disability (including paralysis), economic or emotional loss, burns, slip and falls, cuts, and/or death. I understand that these injuries or outcomes may rise from my own or other's actions, inaction, or negligence; conditions related to travel, or the condition of the Activity locations(s). **Nonetheless, I assume all related risks, both known or unknown to me of my participation in this Activity, including travel to, from and during the Activity.**

I agree to hold the Corporation harmless from any and all claims, including attorney's fees or damage to my personal property that may occur as a result of my participation in this Activity, including travel to, from and during the Activity. If Corporation incurs any of these expenses, I agree to reimburse the Corporation. If I need medical treatment, I agree to be financially responsible for any costs incurred as a result of such treatment. I am aware and understand that I should carry my own health insurance.

Health Status - I assert that I, (a) have no medical problems that would contra-indicate participation in the Activities, and 2) possess sufficient fitness to enable safe participation in the Activities.

Emergency Care- I authorize Corporation to, (a) administer emergency first aid, CPR, and AED if deemed necessary by Corporation; (b) secure emergency medical care of transportation if deemed necessary by Corporation; (c) to share my medical history with medical personnel when deemed necessary by corporation, **and further acknowledge and agree** to assume all costs of emergency medical care and transportation.

Rules and Safety Equipment – I agree to, (a) abide by the rules established by Corporation; (b) to inform Corporation immediately if I become aware of participant conduct, or any other condition that presents a danger to others or myself; (c) to wear any required personal protective equipment at all times as directed by Corporation staff; (d) that Corporation may find it necessary to terminate my participation at any time if Corporation staff believes that I am incapable of safely meeting the rigors of the Activity. I further acknowledge and accept Corporations right to take such actions for the safety of myself and/or other Activity participants.

I am 18 years or older. **I understand the legal consequences of signing this document, including (a) releasing the Corporation from al liability, (b) promising not to sue the Corporation, (c) and assuming all risks of participating in this Activity, including travel to, from, and during the Activity.**

I understand that this document is written to be as broad and inclusive as legally permitted by the State of California. I agree that if any portion is held invalid or unenforceable, I will continue to be bound by the remaining terms.

I have read this document, and am signing it freely and voluntarily. No other representations concerning the legal effect of this document have been made to me.

Service Provider Printed Name	Service Provider Signature	Date
Company Name if applicable		