# IOWA STATE UNIVERSITY

# MASTER SERVICE AGREEMENT

This Master Service Agreement (“Agreement”) is entered into by Iowa State University of Science and Technology, on behalf of its <ISU UNIT NAME AND ADDRESS>, Ames, Iowa 50011 (“ISU”), and <CUSTOMER NAME> (“Customer”), <CUSTOMER ADDRESS>. The effective date of this Agreement shall be the date on which the last party signs this Agreement (“Effective Date”).

## **Scope and Performance of Services.**

Customer has expressed a need to use the services of ISU from time to time on various projects. Customer and ISU shall enter into an Individual Project Agreement (“IPA”) for each project for which Customer desires ISU to provide services. The IPA shall be substantially in the form of Attachment A. Each IPA shall be deemed part of and incorporated into this Agreement. ISU shall perform the services described in the IPA (the “Services”). Unless stated otherwise in the IPA, ISU shall provide any personnel, facilities, equipment, materials and supplies required for the Services to be completed. ISU shall use reasonable efforts to perform the Services requested within the projected costs and time period indicated in the IPA. In the event ISU’s costs exceed the projected price or in the event the Services cannot be performed within the time desired, ISU will notify Customer as soon as reasonably possible. Customer shall have the option of terminating the IPA or continuing the Services for an additional cost or, if feasible, an extension of time.

## Customer Materials.

If Customer is to furnish ISU with materials to be tested or used while performing the Services (“Materials”), such Materials shall be identified in the IPA. Customer shall provide ISU, at no charge, with a sufficient quantity of the Materials to perform the Services. Customer represents and warrants that it is authorized to retain ISU to perform the Services using the Materials. Customer shall disclose in the IPA whether the Material is a hazardous substance and of any known hazards and risks associated with the Materials and whether the Material is an item on the Munitions List or the Commerce Control List other than EAR99 items. ISU shall use the Materials only as needed to provide the Services and shall not modify, alter, reverse engineer or run analytic tests to determine the composition of the Materials without Customer’s prior written permission. ISU shall not provide the Materials to a third party nor allow access to the Materials by a third party. ISU may provide the Materials to its employees and students who have a bona fide need to use the Materials in performing the Services provided that ISU requires such employees or students to abide by the terms of this Agreement. Upon completion of the Services or at Customer’s request, ISU shall destroy or return to Customer the Materials not consumed during the performance of the Services in accordance with Customer’s instructions. ISU may retain a sample of the Materials if needed to evidence its fulfillment of its contractual obligations. Unless stated otherwise in the IPA, Customer shall assume all risk of loss for the transportation of the Materials to and from ISU and shall be responsible for all delivery costs. Customer retains ownership of the Materials at all times.

## **Results.**

Customer shall be the sole and exclusive owner of all deliverables generated as part of the Services (“Results”), including any intellectual property rights in the Results. ISU may retain a copy of the Results to evidence its fulfillment of its contractual obligations pursuant to this Agreement. ISU shall treat the Results as Confidential Information.

## **No Warranty.**

The parties recognize the Results cannot be guaranteed even through use of ISU’s reasonable efforts. Accordingly, the failure of ISU to achieve specific Results shall not constitute a breach of this Agreement. ISU DOES NOT MAKE ANY WARRANTIES REGARDING THE SERVICES OR RESULTS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ISU IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. Customer should determine independently whether the Results are suitable for the particular use intended by Customer. To the extent permitted by law, Customer shall indemnify and hold harmless ISU, the State of Iowa, and the Board of Regents – State of Iowa and their respective officers, employees and students from any claims, damages, fines, losses or expenses incurred by any of them arising from or in connection with Customer’s use of the Results, including but not limited to Customer’s sale of a commercial product based upon the Results.

## **Inventions.**

The parties do not anticipate that any potentially patentable discoveries will be first conceived and reduced to practice in ISU’s performance of the Services (“Inventions”). However, if while performing the Services ISU develops an Invention that incorporates or requires use of the Materials or Customer’s Confidential Information, ISU shall promptly notify Customer and all right, title and interest to such Invention shall vest solely and exclusively in Customer. All right, title and interest to any Invention developed by ISU while providing the Services that does not incorporate or require use of the Materials or Confidential Information shall vest solely and exclusively in ISU (e.g., improvements in methodology, processes or equipment that do not incorporate Customer’s Materials or Confidential Information). The parties shall execute any assignments or other documents necessary to effect the foregoing.

## **Confidential Information**

### **Definition.**

If a party shares information with the other party and desires for the recipient to treat such information as confidential, the provider shall identify it as such at the time of disclosure (“Confidential Information”). Results shall be deemed Confidential Information without further need to identify it as such. Confidential Information does not include information that: (a) is or becomes generally known or available to the public without breach of this Agreement; (b) is known by the recipient at the time of disclosure, as shown by recipient’s written records; (c) is disclosed to the recipient by a third party who had no duty of confidentiality; or (d) is independently developed by recipient without use of the provider’s Confidential Information, as shown by recipient’s written records.

### **Use and Disclosure.**

The recipient shall use Confidential Information only for the purpose of this Agreement. The recipient shall hold Confidential Information in confidence and not disclose Confidential Information to any third party. The recipient may disclose Confidential Information to its employees or students provided that the recipient requires such employees or students to abide by the terms of this Agreement. If a recipient is required by judicial or other governmental authority or by a subpoena or a public records request to disclose Confidential Information, the recipient shall promptly inform the provider in writing so that the provider may seek a protective order or take other appropriate measures. Customer acknowledges and understands that ISU is a state entity subject to Iowa’s public records laws.

### **Return or Destruction; Ownership; Survival**.

Upon the provider’s written request, the recipient shall destroy or return to the provider the Confidential Information. The receiving party may retain a copy to evidence its fulfillment of its contractual obligations pursuant to this Agreement. Unless stated otherwise in the IPA, Confidential Information remains the provider’s property. The parties’ obligations with respect to Confidential Information shall remain in effect for a period of five years from the date of termination of this Agreement.

## **Publicity and Use of Name.**

The parties shall not use the name or trademarks of the other party or the name of any of its employees in any publicity or advertising, including endorsements, without the prior written consent of the other party. The parties may use the name of the party and its employees for fulfilling any reporting obligations.

## **Financial.**

In consideration for the Services, Customer shall pay ISU the fees set forth in the IPA. ISU shall issue an invoice or invoices to Customer, and Customer shall pay such invoices within thirty days of receipt. Checks should be made payable to Iowa State University of Science and Technology. Customer shall submit the payments to ISU at the following address:

Iowa State University
Treasurer’s Office
1220 Beardshear Hall
515 Morrill Road
Ames, IA 50011-2103

 If payment is not received from Customer when due, ISU may terminate the IPA and this Agreement. In addition, the full account balance may be accelerated. To the extent permitted by law, ISU may also impose a late payment charge computed at a periodic monthly rate of 1% per month on the balance or an annual percentage rate of 12% when computed from the billing date. The unpaid account may be referred for collection, and Customer shall pay all collection costs and reasonable attorney’s fees if ISU must take action to recover any past due amounts. ISU reserves the right under Iowa Code §421.17(27) to offset State of Iowa tax refunds, lottery winnings or vendor payments.

## **Termination.**

This Agreement shall terminate three years after the Effective Date. Either party may earlier terminate an IPA or this Agreement by providing the other party written notification thirty days prior to the proposed termination date. If the Agreement is terminated, all IPAs are also terminated. In the event of termination, Customer shall pay ISU for Services provided and non-cancelable obligations incurred prior to the termination date and ISU shall provide Customer with Results completed as of the termination date for which payment has been received. The foregoing shall be in addition to any other remedies to which the parties are entitled.

## **Force Majeure.**

Neither party shall be deemed in breach of this Agreement or liable for damages if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its reasonable control, such as acts or omissions of communications carriers, energy shortages or outages, strikes or labor disputes of other’s workforces, fires, floods, inclement weather, acts of God, war, terrorism, civil disturbances, or acts of civil or military authorities.

## **Relationship of Parties.**

Customer and ISU are independent contractors, and nothing in this Agreement creates any partnership or joint venture. Customer warrants that the Services are not sought for the purposes of admitting the Results as evidence in litigation, and Customer shall not call any ISU employee as an expert witness as a result of the Services rendered under this Agreement. This Agreement is not exclusive; Customer reserves the right to select other contractors to provide services similar or identical to the Services, and ISU reserves the right to provide to other clients services similar or identical to the Services.

## **Notices.**

Notices relating to this Agreement shall be in writing and shall be delivered by messenger or overnight carrier to the other party at the address set forth above or such other address as may be given in writing in accordance with this Section. Notice shall be deemed effective upon receipt.

## **Miscellaneous.**

This Agreement (including all IPAs) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, whether written, oral, or implied. All terms and conditions in other instruments, including purchase orders issued by Customer, are void. This Agreement shall not be modified without the written mutual consent of the parties. The failure of either party to require performance of any term or condition of this Agreement by the other party shall not constitute a waiver to subsequently enforce such term or condition. The invalidity or illegality of one or more provisions of this Agreement shall not affect the enforceability of the remaining provisions. The parties’ rights and obligations in this Agreement that, by their nature, would continue beyond the termination of this Agreement shall survive such termination. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which shall not be unreasonably withheld. Customer represents and warrants that it is not a “foreign source” pursuant to Section 117 of the Higher Education Act, 20 USC 1011f. This Agreement shall be construed in accordance with the laws of the State of Iowa, without giving effect to its conflicts of law provisions, and any litigation or actions commenced in connection with this Agreement shall be instituted in a court of competent jurisdiction in the State of Iowa.

## **Counterparts; Authorization.**

This Agreement and the IPAs may be executed in any number of counterparts and delivered by electronic transmission in PDF format. Each party represents and warrants that the person executing this Agreement and the IPAs on its behalf is authorized to do so.

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| --- | --- | --- | --- |
| IOWA STATE UNIVERSITYOF SCIENCE AND TECHNOLOGY |  |  | <CUSTOMER> |
| Name:  |  |  | Name:  |
| Title:  |  |  | Title:  |
| Date:  |  |  | Date:  |
| 42-6004224 |  |  |   |
| IRS Entity Identification Number  |  |  | IRS Entity Identification Number  |

# ATTACHMENT A

# INDIVIDUAL PROJECT AGREEMENT #\_\_\_\_\_

The parties enter into this Individual Project Agreement effective as of the date the last party signs below and subject to the terms and conditions set forth in the Master Service Agreement entered into by the parties on <INSERT DATE OF MASTER AGREEMENT>.

# **Services**

Description of Services to be Performed by ISU:

Description of Results and Deliverables to be Provided by ISU:

Time Period for Performing Services:

Customer Materials – Description:

Customer Materials - Known hazards/risks, Munitions List/ECCN:

# Fee and Payment Schedule

Fees:

Payment Schedule:

Customer’s Address for Receipt of Invoices:

|  |  |  |
| --- | --- | --- |
| IOWA STATE UNIVERSITYOF SCIENCE AND TECHNOLOGY |  | <CUSTOMER> |
| Name:  |  | Name:  |
| Title:  |  | Title:  |
| Date:  |  | Date:  |