

Model Agreement Memorandum of Understanding
Between
The Department of General Services
and
The University of California
and
The California State University
Revised May 15, 2017 – MOU #AB20-2016, Amendment 01

WHEREAS, California Education Code section 67325 finds that for purposes of this article, "contract" means a research, training, or service agreement between the state and the University of California or the California State University, or a grant from the state to the University of California or the California State University for research, training, or service; and

WHEREAS, California Education Code section 67326 finds, among other things, that in the 2006-07 fiscal year, University of California and the California State University receive approximately six billion dollars (\$6,000,000,000) from the State General Fund each year; state agencies and departments entered into more than 2,500 contracts or contract amendments with the University of California and the California State University; that many of these contracts have similar provisions; that the drafting of many of the contracts takes six months to a year; that in many cases, the state pays for both sides of the contract negotiations; and that it would be more cost effective if the state and the universities would establish standardized "boilerplate" provisions that would apply to all contracts between them, unless the Parties agree to alternative terms as provided for in California Education Code section 67327; and

WHEREAS, California Education Code section 67327 provides, among other things, that the Department of General Services shall negotiate and establish a model contract with standard contract provisions with the University of California and with the California State University; and

WHEREAS, California Education Code section 67327 further provides, among other things, that the standard provisions in said model contract "...shall be used in contracts entered into between the University of California or the California State University and the state, unless both contracting parties mutually determine that a specified standard contract provision is inappropriate or inadequate for a specified contract"; and

WHEREAS, representatives of the Department of General Services, other state agencies and departments, the University of California, and the California State University have met typically monthly since January 2010 to negotiate the model contract;

NOW, THEREFORE, the above-referenced entities have reached agreement on the terms and conditions of the model contract, which are contained herein.

1. Effective on January 1, 2016 and as required by Education Code section 67325 et seq., the Department of General Services, The Regents of the University of California and The Trustees of the California State University (collectively, "Parties") have negotiated the model terms and conditions (~~UTC 116~~University Terms & Conditions/UTC), Attachment 3), for use in all new contracts, between State agencies and departments ("Agencies" or "Agency") and The Regents of the University of California ("UC") and The Trustees of the California State University ("CSU"¹). For the purposes of this Memorandum of Understanding ("MOU"), a new contract is defined as the award of funds, not previously budgeted or appropriated, by an Agency to the UC or CSU.
2. The Department of General Services ("DGS") will maintain the model contract terms, ~~(UTC 116)~~UTC, as Exhibit C on the Office of Legal Services, Standard Language website (~~http://www.dgs.ca.gov/Default.aspx?alias=www.dgs.ca.gov/ols~~), http://www.dgs.ca.gov/ols/Resources/ModelContractLanguageUniversities.aspx

¹ For purposes of this MOU, CSU shall also include those recognized CSU auxiliary organizations listed as being in good standing under Section 42406 of the Code of Regulations that administer and receive extramural funds for research, training or services (Attachment 1) on behalf of the campus or the CSU system.

3. The model contract terms ([Attachment 3](#)), ~~UTC-116~~, will be incorporated (as Exhibit C) into the Model Agreement Template ([Attachment 2](#)), to be used as a template for all agreements subject to this MOU. The draft State- ~~and~~ University Proposal and Administration Manual (SUPAM), which may be used in administering projects under the model contract, will be finalized by the Parties within two years, or other mutually agreed upon time period, after execution of the MOU. The Parties may negotiate alternative terms from the Model Agreement Template or model contract terms as provided for in Education Code section 67327.
4. Representatives from DGS, UC Office of the President and the CSU Office of the Chancellor will work together in good faith to resolve implementation issues, ~~if any~~ including approval of exemptions on a case-by-case basis, in a timely manner as they arise.
5. In addition, representatives from DGS, UC Office of the President and the CSU Office of the Chancellor will meet annually, beginning one year from the effective date of this MOU to review the effectiveness of the model contract terms and to work together in good faith to identify and implement improvements to the model contract, if any. Prior to the annual meeting, the Parties will develop and conduct a standard survey of the Parties' respective constituents to identify those provisions, if any, that are considered inappropriate or inadequate.
6. In the event an Agency and UC or CSU mutually agree that a specified standard contract provision is inappropriate or inadequate for a specified contract pertaining to a specific project, the replacement provision, to be effective, must be in writing and executed by authorized representatives of the affected parties. The replacement provision will be applicable only to that specified contract and will be documented in Exhibit G of the agreement.
7. To be effective, any modifications to the model contract terms, ~~(-UTC-116UTC)~~, other than that noted in paragraph 6 above, must be made in writing and executed by authorized representatives of the Parties.
8. Consistent with Chapter 2 (commencing with Section 13988) of Part 4.5 of Division 3 of Title 2 of the Government Code, relating to intellectual property, funding agreements from a state agency to the Regents of the University of California and to the Trustees of the California State University shall be subject to the model contract provisions developed pursuant to Chapter 14.27 (commencing with Section 67325) of Part 40 of Division 5 of Title 3 of the Education Code. While Patent Rights provisions were developed accordingly, the model contract, ~~UTC-116UTC~~, is silent on which one is the default. When applicable, one of these Patent Rights provisions ([Attachment 4](#)) will be incorporated in Exhibit G.
9. Agreements between a State agency and an authorized CSU auxiliary organization, shall incorporate the alternate provision, "4. Liability," set forth in ~~Attachment 1~~ Attachment 2, in Exhibit G as set forth in item #6 of this MOU. Authorized CSU Auxiliary Organizations are listed on [Attachment 1](#), which will be maintained and updated by CSU (and posted to the Office of Legal Services website) in the event that any organizations gain or lose status as an Authorized CSU Auxiliary Organization).
10. This MOU constitutes the entire contract and understanding between the parties with respect to the subject matter of this MOU and supersedes any previous or contemporaneous written or oral representations, statements, negotiations or contracts, if any. ~~UTC-116~~ The UTC, Exhibit C is incorporated by reference into this MOU as Attachment 3. To be effective, any modifications to this MOU must be made in writing and executed by authorized representatives of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the month, day and year specified below.

The Department of General
Services

The Trustees of the California
State University

The Regents of the University of
California

By: David Zoehetti
Leslie Lopez
Deputy Director and Chief
Counsel, Office of Legal Services

By: Sue DeRosa
Director of Sponsored
Programs

By: Wendy Streitz
Executive Director, Research Policy
Analysis and Coordination

Date: _____

Date: _____

Date: _____

Attachment 1
CSU Campus Auxiliary Organizations
Authorized to Accept and Administer Grants & Contracts on Behalf of the University²
<http://auxiliary.calstate.edu/?cat=9&submit.x=31&submit.y=10>

1. California State University, Bakersfield Auxiliary for Sponsored Programs Administration
2. The CSU, Chico Research Foundation
3. California State University, Dominguez Hills Foundation
4. California State University, East Bay Foundation, Inc.
5. California State University, Fresno Foundation
6. CSU Fullerton Auxiliary Services Corporation
7. Humboldt State University Sponsored Programs Foundation
8. California State University, Long Beach Research Foundation
9. Cal State LA University Auxiliary Services, Inc.
10. University Corporation at Monterey Bay
11. The University Corporation (CSU Northridge)
12. Cal Poly Pomona Foundation, Inc.
13. University Enterprises, Inc. (CSU Sacramento)
14. University Enterprises Corporation at CSUSB (CSU San Bernardino)
15. San Diego State University Research Foundation
16. San Jose State University Research Foundation
17. Cal Poly Corporation (Cal Poly San Luis Obispo)
18. University Auxiliary and Research Services Corporation (CSU San Marcos)

Alternate Liability Clause for Agreements with CSU Auxiliary Organizations:

4. Liability

- A. The contracting CSU Auxiliary Organization (Auxiliary)³ shall defend, indemnify and hold harmless the State, its officers, employees and agents from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement 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 the Auxiliary, its respective officers, agents or employees.
- B. If the University⁴ provides funds to any third party ("Subawardee"), excluding any agency or department of the United States, to accomplish any of the work of this agreement, the University shall first enter into a written agreement with each Subawardee by which the Subawardee agrees to indemnify and hold harmless the State of California, the State and its officers, agents, and employees from any and all liabilities, losses, claims, demands, damages, or costs, including without limitation litigation costs and attorney's fees, resulting from or arising out of the Subawardee's performance under its agreement with the University, 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 the Subawardees, its respective officers, agents or employees. The foregoing does not limit any breach of contract action that the State may have against the University.

² CSU campuses administering grants and contracts through their campus research and sponsored programs office (not through an auxiliary) include: California Maritime Academy, CSU Channel Islands, San Francisco State University, Sonoma State University and CSU Stanislaus.

³ CSU Auxiliary Organization: A CSU Auxiliary Organization authorized to receive and administer externally funded projects on behalf of the Trustees of the California State University, pursuant to CCR Title 5, Division 5, Chapter 1, Subchapter 6, Article 2, Section 42500 ([5 CCR § 42500](#)).

⁴ University, as defined in Exhibit C, University Terms and Conditions (UTC-MYY): The California State University campus or auxiliary or the University of California system, as represented by the specific campus identified as the "Contractor" on the Standard Agreement Form STD 213 to perform research, training, or service under this Agreement.

Attachment 2

***Model Agreement
Template
(with Exhibits)***

Attachment 3

Exhibit C
~~UTC-116~~UTC

Attachment 4

Patent Rights

(to be incorporated in Exhibit G, when applicable)

Patent Rights – University

- A. Subject to the requirements of law, all rights to any patentable inventions or discoveries conceived and first actually reduced to practice in the performance of the Scope of Work, Exhibit A, conducted under this Agreement (“Patentable Inventions”) shall belong to the University. The State shall have a nonexclusive, sublicensable, irrevocable, paid-up license to practice or have practiced such Patentable Invention for government purposes.
- B. A State Confirmatory License (attached) will be executed by the University to provide said license to any such Patentable Invention, within ninety (90) days after filing of patent application.
- C. University shall file, prosecute and maintain a patent application claiming a Patentable Invention described in paragraph A above within two years of disclosure of a Patentable Invention to University by inventors and will diligently pursue broad application of such Patentable Invention. If State notifies University of a need that is not being met by University, University will take steps to meet such need or will offer sufficient field-of-use rights to State to address such unmet need.
- D. If University decides not to file a patent application within such two-year period or decides to abandon a patent or patent application claiming such Patentable Invention, and determines that it does not intend to pursue commercialization of such Patentable Invention, then University will notify the State in sufficient time to preserve patent rights, and upon State agency request, University agrees to assign title to State, subject to requirements of law, outstanding rights in third parties, and a reserved right to use the Patentable Invention for educational and research purposes and to allow other educational and nonprofit institutions to do so.
- E. Copyrightable works that may be patentable are also subject to the Patent Rights clause, which will take precedence in case of a conflict.

Patent Rights – State

- A. Subject to the requirements of law, all rights to any patentable inventions or discoveries conceived and first actually reduced to practice in the performance of the Scope of Work, Exhibit A, conducted under this Agreement (“Patentable Inventions”) shall be assigned to the State. The University shall have a nonexclusive, sublicensable, irrevocable, paid-up license to practice or have practiced such Patentable Invention for or on behalf of the University and to allow other non-profit research and academic institutions to do so for research and education purposes.
- B. A University Confirmatory License (attached) will be executed by the State to provide said license to any such Patentable Invention, within 90 days after filing of patent application.
- C. State shall file, prosecute and maintain a patent application claiming a Patentable Invention described in paragraph A above within two years of University disclosure of a Patentable Invention to State and will diligently pursue broad application of such Patentable Invention. If University notifies State of a need that is not being met by State, State will take steps to meet such need or will offer sufficient field-of-use rights to University to address such unmet need.
- D. If the State decides not to file a patent application within such two-year period or decides to abandon a patent or patent application claiming such Patentable Invention, then the State will notify the University in sufficient time to preserve patent rights, and upon University request, State agrees to assign title to the University, subject to requirements of law, outstanding rights in third parties, and a reserved right to use the Patentable Invention for government purposes.
- E. Copyrightable works that may be patentable are also subject to the Patent Rights clause, which will take precedence in case of a conflict.

License to the State of California

Invention Title: _____

Inventor(s): _____

Patent or Application Serial No.: _____ **US Filing/Issue Date:** _____

Grant/Contract Identification Number(s): _____

Foreign Application filed/intended in (countries): _____

The invention identified above is a Subject Invention under the Patent Rights – University clause which is included among the terms of the above-identified grant/contract award from the State of California. Subject to the requirements of federal funds, if any, this document is confirmatory of:

1. The nonexclusive, sublicensable, irrevocable, paid-up license to practice or have practiced for government purposes the invention described in any patent application and in any and all divisions and continuations, and in any and all patents and re-issues granted thereon throughout the world; and
2. All other rights acquired by the State by reason of the above identified grant/contract award and the laws and regulations which are applicable to the award.

The State is hereby granted the power to inspect and make copies of the above-identified patent application.

Signed this _____ day of _____, 20 _____

By _____

Name and Title _____

For _____
(Organization)

At _____

(Business Address)

License to the University

Invention Title: _____

Inventor(s): _____

Patent or Application Serial No.: _____ **US Filing/Issue Date:** _____

Grant/Contract Identification Number(s): _____

Foreign Application filed/intended in (countries): _____

The invention identified above is a Subject Invention under the Patent Rights – State clause which is included among the terms of the above-identified grant/contract award from the State of California. Subject to the requirements of federal funds, if any, this document is confirmatory of:

1. The nonexclusive, sublicensable, irrevocable, paid-up license to practice or have practiced for or on behalf of the University the invention described in any patent application and in any and all divisions and continuations, and in any and all patents and re-issues granted thereon throughout the world; and
2. All other rights acquired by the University by reason of the above identified grant/contract award and the laws and regulations which are applicable to the award.

The University is hereby granted the power to inspect and make copies of the above-identified patent application.

Signed this _____ day of _____, 20 _____

By _____

Name and Title _____

For _____
(Organization)

At _____

(Business Address)