

MONTANA STATE UNIVERSITY MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT (“Agreement”) is entered into on this day of , (the “Effective Date”), between , a corporation organized under the laws of the State of , with its principal place of business located at , (“Client”) and Montana State University, a state institution of higher education located in Bozeman, Montana, (“University”) (individually a “Party”; collectively the “Parties”).

RECITALS:

Client desires services which the University has the equipment, facilities and capability to provide; and the performance of the services is consistent, compatible, and beneficial to the role and mission of University to provide educational experience for students and to encourage and support services and related research and educational activities. Services covered under this Agreement will not involve sponsored research projects.

NOW, THEREFORE, the Parties agree as follows:

1. Scope of Work.

- 1.1. For mutual benefit and convenience, it is the intent of the Parties to establish this Master Services Agreement to govern one or more mutually agreed upon Scope of Work (“SOW”) Attachments to this Agreement. A SOW will only be incorporated into and subject to the terms of this Agreement only upon execution by both Parties, using the form attached hereto as *Appendix A- Sample SOW Attachment Template*. The University shall perform the services described in each fully-executed SOW Attachment (the “Services”).
- 1.2. No SOW Attachment shall be valid or binding unless it has first been reviewed and approved by the University Office of Research Integrity and Compliance to ensure all applicable compliance protocols and requirements are satisfied.
- 1.3. The Services shall be performed under the direction and supervision of the University employee identified in the applicable SOW Attachment, within the designated

University department or service center. The University retains discretion to involve its students in the conduct of the Services as part of their educational experience, without requiring additional Client approval.

2. **Scheduling.** The University agrees to make available facilities, equipment, and support personnel for the Services. The scheduling of Services shall be arranged to avoid conflict with the University's educational and research programs. The University shall control the scheduling of Services but will try to meet the convenience of the Client.

3. **Term and Termination.**

- 3.1. This Agreement shall become effective on the Effective Date and shall terminate seven (7) years from the Effective Date.
- 3.2. Each SOW Attachment shall terminate on the date specified within the SOW Attachment.
- 3.3. Either Party may terminate this Agreement or a given SOW Attachment upon thirty (30) days written notice to the other Party. Upon such termination, University will be paid for all expenses incurred through the termination date and for any uncancellable commitments.

4. **Publication and Confidentiality.**

- 4.1. University, as an institution of higher education, engages in providing Services that are compatible, consistent and beneficial to its role and mission of advancing educational opportunity, scientific knowledge, and providing for its dissemination and the transfer of technology related thereto. Therefore, significant results of service activities on non-proprietary materials must be reasonably available for publication. Before publishing, University agrees to give Client a copy of any proposed publication and Client shall have six (6) weeks to review the publication. University shall consider Client's suggested modifications; however, with the exception of removal of proprietary information or information subject to the confidentiality provisions of section 4.2, the decision of the University as to what the publication shall contain is final.

- 4.2. University, to the extent allowed by Montana law, agrees to keep confidential, (i) any

Client proprietary information supplied during the course of Services performed by University and designated as confidential, and (ii) any data or results of the Services performed by the University on the Client's proprietary materials, and such information will not be included in any published material without prior approval by Client; provided however, that pursuant to Section 12.2, University shall be free to disclose and publish methods and processes developed solely by University in performance of Services. Client further agrees that any data from Services using non-proprietary materials may be entered into University database and be available for publication without approval by Client.

5. **Equipment.** Special equipment and supplies purchased under the terms of this Agreement become the property of University unless otherwise specified in an applicable SOW Attachment.

6. **Indemnification.**

- 6.1. Client hereby agrees to save, defend, indemnify and hold harmless University and its employees, students, agents and their respective successors, heirs and assigns (the "Indemnified Parties") from and against any and all losses, damages, liabilities, expenses and costs, including reasonable legal expenses and attorneys' fees to which any of the Indemnified Parties may become subject as a result of any third party claim, demand, action or proceeding that use of any of the materials provided by Client infringes or violates any patent, copyright, trademark or other intellectual property rights of any third party.
- 6.2. Client hereby agrees to save, defend, indemnify and hold harmless University, its trustees, officers, employees and agents from and against all claims, demands, loss, liability, expense or damage, (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person as a result of a defect in any product tested under this Agreement or from Client's use or possession of the results produced hereunder.

7. **LIMITATION OF LIABILITY.** UNIVERSITY'S AGGREGATE LIABILITY FOR ALL

DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNTS ACTUALLY RECEIVED FROM CLIENT UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY; HOWEVER, IN NO EVENT SHALL UNIVERSITY'S LIABILITY EXCEED ANY LIMIT PROVIDED UNDER APPLICABLE MONTANA LAW.

8. **NO WARRANTIES.** UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE WORK TO BE PERFORMED OR THE DELIVERABLES TO BE PROVIDED UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, THE UNIVERSITY EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE UNIVERSITY DOES NOT WARRANT THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT ANY PARTICULAR RESULT WILL BE ACHIEVED. IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY SPECIAL, INDIRECT (INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOST PROFITS, OR LOSS OF DATA), INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OF ANY KIND, RESULTING FROM WHATEVER CAUSE WHETHER IN AN ACTION UNDER THEORIES OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE WORK TO BE PERFORMED OR THE DELIVERABLES TO BE PROVIDED UNDER THIS CONTRACT.
9. **Force Majeure.** University shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reason beyond the University's control, or by reason of any of the following: labor disturbances or disputes of any kind, accidents, failure of any required governmental approval, government regulations or court orders, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failures of utilities, mechanical breakdowns, material shortages, disease, epidemic, pandemic, or government or public health directives and regulations, or other dangers to

public health, or similar occurrences.

10. Applicable Law. Any dispute regarding or arising under this Agreement shall be subject to and resolved in accordance with the laws of the State of Montana.

11. Assignment. Neither Party shall assign or transfer any interest in this Agreement without prior written approval of the other Party.

12. Intellectual Property.

12.1. University has previously developed certain data, technical information, writings, observations, methodologies, programs, techniques, records, reports, curricula or other protocols related to the services provided under this Agreement which it considers proprietary and confidential. All previously created data, technical information, writings, observations, methods, programs, techniques, records, reports, curricula or other documents owned by University shall remain the sole property of University. University retains all right, title, and interest, including any intellectual property rights, in and to any data from services using non-proprietary materials (e.g., controls or generic materials or samples).

12.2. Additionally, University retains all right, title and interest, including any intellectual property rights, in and to the following: 1) any methodologies or protocols developed by University, regardless of whether used for or developed for the purpose of conducting the Services and irrespective of when any such methodologies or protocols were developed; and 2) any inventions, discoveries or works created or developed without the use of Client materials or information.

12.3. All data, materials, documents and information provided by Client to University shall remain the property of Client. All data, results, and information arising from the provision of the Services that reflect or utilize Client proprietary or confidential materials and information provided pursuant to this Agreement shall belong to Client, including any intellectual property rights associated with the same. For further clarity, all right, title and interest, including any intellectual property right, in and to any data or results of the Services that relate to the proprietary materials or information of the

Client shall belong to the Client and the University agrees to take all necessary steps to transfer and assign such right, title and interest to the Client.

12.4. Except as provided herein, University shall use the Client supplied materials and information only in the course of performing Services for the Client.

12.5. Except as expressly granted herein and required to perform the Services within an applicable SOW Attachment, nothing in this Agreement shall be construed to grant to either Party any right, title, or interest in or to any patent, trademark, trade secret, copyright, or other right belonging to the other Party.

13. Similar Services. Nothing in this Agreement shall be construed to limit the freedom of University or of its researchers who are not participants under this Agreement, from engaging in similar services made under other grants, contracts or agreements with parties other than the Client. However, University and its researchers who are participants under this Agreement warrant that performance of the Services as provided for herein will not cause a conflict of interest because of work undertaken with others.

14. Publication of Results by Client and Use of Names.

14.1. Client will not include the name of University or any of its employees in any advertising, sales promotion or other publicity matter without prior written approval of same. University does not endorse any product or service. Reports provided by University under a Services Agreement may be published by Client. However, the published data or report shall include the following statement:

“This information was provided under a Montana State University Services Agreement and is not intended to endorse or recommend any product or service.”

14.2. University will not include the name of Client or any of its employees in any advertising, sales promotion or other publicity matter without prior written approval of same.

15. Compliance with Laws. The Parties agree to comply with all applicable federal, state, and

local laws and regulations governing performance hereunder, including, but not limited to, US export controls. To the extent that the Services implicate US export controls compliance obligations, the Parties agree to reasonably cooperate to ensure mutual compliance; however, as a non-delegable duty, each Party shall remain solely responsible for their compliance with any applicable export controls.

16. Entire Agreement. This Agreement contains the entire and only agreement between the Parties respecting the subject matter hereof and supersedes or cancels all previous negotiations, agreements, commitments and writings between the Parties on the subject of this Agreement. Should processing of this Agreement require issuance of a purchase order or other contractual document, all terms and conditions of said document are hereby deleted in entirety. This Agreement may not be amended in any manner except by an instrument in writing signed by the duly authorized representatives of each of the Parties hereto.

The Parties hereto have caused this Services Agreement to be executed as of the date set forth herein by their duly authorized representatives.

	MONTANA STATE UNIVERSITY
Signature:	Signature:
	Kirk Lubick
President	Associate VP for Research Integrity and Compliance
Date:	Date:

APPENDIX A - SAMPLE SOW ATTACHMENT TEMPLATE

SOW Attachment 1 ? - MSU Master Services Agreement

Upon execution by both Parties, this SOW Attachment is incorporated into and subject to the Services Agreement between (Client) and Montana State University (University) entered into on [insert Effective Date of Master Services Agreement]. In the event of a conflict between this SOW Attachment and the Master Services Agreement, the terms and conditions of the Services Agreement shall control.

University Supervising Faculty: [Insert Name]

Email:

Phone:

University Department: [Insert Supervising Faculty Dept.]

Client Point of Contact: [Insert Client POC]

Email:

Phone:

Statement of Work.

[Insert description of services here. The description should be sufficiently detailed to allow a reviewer skilled in the applicable subject matter to reasonably understand what is being requested, what analyses are involved, and what particular deliverables are anticipated as outcomes for the services. The description should also include a list of all proprietary materials that will be supplied to the University by the Client.]

The description should also include an anticipated timeline and end date for completion.]

Compensation. Client agrees to pay University for services performed under this SOW Attachment in the amount of [dollar amount] (\$00.00) under the following payment schedule:

All payments shall be made payable to MONTANA STATE University at the following address:

Department Name

Address

Montana State University

Bozeman, MT zip code

Termination. Either Party may terminate work under this SOW Attachment upon thirty (30) days written notice to the other Party. Upon such termination, University will be paid for all expenses incurred through the termination date and for any uncancellable commitments.

APPENDIX A - SAMPLE SOW ATTACHMENT TEMPLATE

Signature:

Date:

MONTANA STATE UNIVERSITY

Signature:

Kirk Lubick
Associate VP for Research Integrity and Compliance

Date:

Acknowledged:

[Insert Name]
University Supervising Faculty