

CALCE FEE-FOR-SERVICE AGREEMENT

This Agreement, entered into by and between the University of Maryland (“University”), a constituent institution of the University System of Maryland, itself a public agency and instrumentality of the State of Maryland, and the Client hereto sets forth the terms and conditions under which University, by and through CALCE, a research lab within the University’s A. James Clark School of Engineering, will conduct CALCE FEE-FOR-SERVICE Projects.

A. Definitions

1. “Client” means the individual, company, or organization identified in this Agreement.
2. “Client Information” means data and other information owned by Client that Client determines University needs to conduct the Project.
3. “Client Intellectual Property” means intellectual property, including ideas, inventions, techniques, software, code, other copyrightable works and other discoveries owned by and proprietary to Client that Client determines University needs to conduct the Project but excluding Client Information and Client Materials.
4. “Client Materials” means materials owned by Client that Client determines University needs to conduct the Project.
5. “Project” means any service described in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL between parties referencing this Agreement. The Project Proposal is incorporated as part of this Agreement as Attachment 1.
6. “Report” means the written report describing the Project results to be prepared by CALCE and issued to Client upon completion of a Project.
7. “Other University Intellectual Property”, means ideas, inventions, techniques, copyrightable works, software, code, and other discoveries, created, gathered, developed, or first reduced to practice solely by University personnel or students in the course of performing the Project with the exceptions of those ideas, inventions, techniques, copyrightable works, software, code, and other discoveries [owned by Client pursuant to Section E2](#).

B. Client Materials, Client Information and Client Intellectual Property

1. Client will provide, at its sole expense, Client Materials, Client Information, and Client Intellectual Property.
2. Client is responsible for determining and notifying University if any Client Information, Client Materials or Client Intellectual Property are subject to export control laws of the United States, including the Arms Export Control Act, the Export Administration Act, and their implementing regulations, or boycott and sanction programs and laws (collectively, “Export Control Laws”). Client shall not submit to CALCE any Client Materials, Information or Intellectual Property that are subject to Export Control Laws (“Controlled Client Materials”) without prior written notice to CALCE describing the Controlled Client Materials, Information or Intellectual Property, the specific regulation, including the Commerce Control List or US Munitions List entry (down to the specific subsection) that applies to the Controlled Client Material, Information or Intellectual Property, and explaining why the Project requires University access to the Controlled Client Materials, Information or Intellectual Property. The University shall determine, in its sole discretion, whether or not to accept the Controlled Client Materials, Information or Intellectual Property. If the University decides to accept any such Controlled Materials, Information or Intellectual Property,

Client and University shall execute a separate University agreement specifying the conditions of their disclosure and use. University shall have no liability to Client of any kind if University decides not to accept Controlled Client Materials, Information or Intellectual Property.

3. If Client considers any Client Materials, Client Information or Client Intellectual Property to be confidential and proprietary to Client, regardless of their export-control status, Client will clearly mark such Client Materials, Client Information or Client Intellectual Property as “confidential or proprietary” and provide or send the same to the University Designated Point of Contact for the Project. All releases will be documented by Client. If a particular disclosure is not amenable to labeling (e.g., it is an oral disclosure), Client shall summarize the Client Materials, Client Information or Client Intellectual Property that were disclosed in a writing marked “confidential or proprietary” and delivered within thirty (30) days of the date of initial disclosure. University shall not disclose Client Materials, Client Information or Client Intellectual Property to any third party and shall not use any such Client property except for purposes of the Project. University shall inform those individuals working on the Project that they shall not disclose Confidential Client information, Client Materials or Client Intellectual Property to any third party without Client’s prior written consent and shall not use them for any purpose other than the Project.
4. University shall not be liable for loss of or damage to any Client Materials and shall have no obligation to return Client Materials, Client Information or Client Intellectual Property to Client unless otherwise specifically agreed by the parties in writing.

C. Conduct of Project

1. CALCE designates the individual identified as technical contact in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL to serve as principal investigator for the Project. Client designates the individual identified in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL to serve as its primary technical contact for this Agreement. Either party may designate a new contact upon written notice to the other.
2. University will use its best efforts to complete the Project within the time frame set forth in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL.

D. Deliverables

1. University shall deliver the Report to Client by the estimated delivery date specified on the Project Proposal. University will notify Client of any delay in delivering the Report.
2. University shall provide a copy of data and information developed or collected by University in conducting the Project upon Client’s written request.

E. Rights In Report, Data And Information

1. Client shall retain ownership of all rights in Client Information, Client Materials and Client Intellectual Property.
2. All rights in intellectual property, including data, information and Other University Intellectual Property that result from or constitute improvements in or additions to Client Information, Client Materials or Client Intellectual Property shall belong to Client, provided such improvements or additions result from and could reasonably be anticipated as arising out of the performance of the approach described in the Project proposal. Client hereby grants University a royalty-free,

nonexclusive, nontransferable right and license to use such improvements or additions for internal research and educational purposes in perpetuity.

3. Subject to E.1 and E.2, University shall own all rights, title to and interests in the Report data, information, and Other University Intellectual Property. University hereby grants Client an unlimited, royalty-free, non-exclusive right and license to use the Report and data and information developed by the University in performing the Project in perpetuity with a right to sublicense and to assign the same to Client's affiliates and/or to a successor to Client's business to which the Project relates.
4. **UNIVERSITY GRANTS CLIENT AN OPTION TO NEGOTIATE A ROYALTY-BEARING LICENSE TO OTHER UNIVERSITY INTELLECTUAL PROPERTY AS FOLLOWS: UNIVERSITY SHALL DISCLOSE SUCH OTHER UNIVERSITY INTELLECTUAL PROPERTY TO CLIENT NO LATER THAN SIXTY (60) DAYS AFTER UNIVERSITY RECEIVES A DISCLOSURE OF SUCH OTHER UNIVERSITY INTELLECTUAL PROPERTY FROM ITS EMPLOYEES. BEFORE GRANTING A LICENSE TO A THIRD PARTY UNDER OTHER UNIVERSITY INTELLECTUAL PROPERTY, UNIVERSITY WILL NOTIFY CLIENT OF SUCH THIRD PARTY'S INTEREST IN A LICENSE AND CLIENT SHALL GIVE WRITTEN NOTICE TO UNIVERSITY WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THE UNIVERSITY'S NOTIFICATION OF CLIENT'S DECISION TO ELECT OR NOT TO ELECT TO EXERCISE ITS OPTION UNDER THIS SUBSECTION.**

F. DISCLAIMER OF WARRANTIES, LIMITATION ON DAMAGES FOR SERVICES AND REPORTS

1. SERVICES AND REPORTS ARE PROVIDED "AS IS." THE UNIVERSITY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES – WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, IN FACT OR ARISING BY OPERATION OF LAW – REGARDING REPORTS AND SERVICES INCLUDING THEIR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, CONFORMITY TO ANY DESCRIPTION, THEIR ACCURACY OR COMPLETENESS AND FREEDOM FROM INFRINGEMENT OF INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.
2. EXCEPT FOR A BREACH UNDER SECTION B.3 ABOVE, UNDER NO CIRCUMSTANCES SHALL THE STATE OF MARYLAND, THE UNIVERSITY OR THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO CLIENT OR ANY THIRD PARTIES FOR ANY CLAIMS OR DAMAGES CAUSED, IN WHOLE OR IN PART OR DIRECTLY OR INDIRECTLY, BY CLIENT'S USE OR POSSESSION OF SERVICES, INFORMATION, DATA OR REPORTS OR FOR LOST PROFITS, LOST REVENUES, LOST DATA, INTERRUPTION OF BUSINESS OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

G. Payment

1. The cost to conduct a Project shall be set forth in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL.
2. The University shall not commence work on a Project unless and until it receives signed service proposal acknowledging acceptance of CALCE-FEE-FOR-SERVICE AGREEMENT.
3. Payment may be in the form of purchase order, credit card, wire transfer, cash or check. Client shall remit payment in full within forty five (45) days after the date of the invoice. All payment shall be made payable to "University of Maryland" and mailed to the following address:

Center for Advanced Life Cycle Engineering
Mechanical Engineering

2181D Martin Hall
University of Maryland, College Park MD 20742-3035
Attn: Erin Chen
Telephone: +1 301 405 6427

- H. Disputes: The parties shall first attempt to resolve any disagreements that arise under this Agreement in good faith. Under no circumstances shall the parties submit a dispute to arbitration or mediation without prior written authorization from and written agreement of their respective legal counsel.
- I. General:
1. The relationship between Client and University is that of independent contractor and not employer-employee or agent principle, or joint venture partners. Client acknowledges that the University is conducting the Project as a service to the public and in fulfillment of its history and status as a land grant institution.
 2. The disclosure of this Agreement to third parties is governed by the Maryland Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland, as amended from time to time.
 3. Client shall not use the name of the University, CALCE or of any University employee in advertising or in any manner that could reasonably be interpreted as a University endorsement of Client or Client's business.
 4. Client may not assign, delegate, license or otherwise transfer its duties under this Agreement except with prior written consent of University which shall not be unreasonably withheld.
 5. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maryland excluding its conflict of laws principles.
 6. This Agreement, including any CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL between parties, constitutes the entire understanding between the parties with respect to the subject matter herein. All prior agreements, written or oral, between the parties regarding this or other transactions are null and void and superseded by this Agreement. Any terms or conditions contained in any document or process that Client requires University to accept or complete as a condition of doing business with Client or receiving payment from Client for services shall not modify or be deemed to modify the terms and conditions of this Fee-for-Service Agreement and, to the extent any such document contains terms in addition to or different from the terms of this Agreement, all such terms are hereby rejected by University.
 7. This Agreement may only be modified by a written amendment to this Agreement signed by an authorized representative of each party.
 8. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.