

## MASTER OPERATING AGREEMENT

This Master Operating Agreement (the "Master Agreement" or "MA") is made and entered into as of August 1, 2000 by and between the Trustees of The California State University ("Trustees") by their duly qualified and acting Chancellor on behalf of the California State Polytechnic University, Pomona ("University") and the Cal Poly Pomona Foundation, Inc. ("Auxiliary" or "Foundation"). The term of this agreement shall be from August 1, 2000, to February 1, 2025, unless sooner terminated as herein provided.

### Recitals

Auxiliary organizations are formed to provide essential functions which are an integral part of the educational mission of the University. Functions that have been determined by the Board of Trustees to be appropriate for auxiliary organizations shall be performed in accordance with applicable policies, rules, and regulations. The University shall encourage an active role of the Auxiliary in support services associated with these broad functions.

### I. Purpose

The purpose of this Master Agreement is to set forth the terms and conditions under which Auxiliary may operate as an auxiliary organization pursuant to Chapter 7; Part 55, Division 8, Title 3 (Sections 89900 *et seq.*) of the Education Code and Subchapter 6, Article 1, Part V (Sections 42400 *et seq.*) of Title 5 of the California Code of Regulations (Title 5) and lease property from the University. In entering this agreement, Trustees find certain support functions, advantageous to the mission of The California State University, are more effectively accomplished by the use of an auxiliary organization.

This Master Agreement authorizes the functions listed below. The Trustees and Auxiliary may enter into supplemental agreements specific to these functions and the related services to further clarify the role and responsibility of each party relative to the management and operation of program activity, and to authorize use of state facilities in the performance of these functions. These supplemental agreements are not intended to supercede the general terms and conditions of this Master Agreement in its entirety but shall take precedence over the identified sections of the MA being amended. The balance of the MA will be in full force and effect for the authorized function being amended by the supplemental agreement.

Upon execution of this MA, functions currently being performed by the Auxiliary under existing agreements shall continue under existing terms and conditions until appropriate supplemental agreements and facility leases or licenses are in place.

## **II. Support Functions**

In consideration of receiving recognition as an official auxiliary organization in good standing of The California State University, Auxiliary is hereby authorized to perform the following functions specified in Section 42500, Title 5, California Code of Regulations for the term of this Agreement in accordance with any and all related supplemental agreements. Some of these functions will be performed exclusively by the Auxiliary while others will be performed in concert with the University as noted in the supplemental agreements. This is a comprehensive list of the general functions authorized by the University.

- Externally funded projects and programs
- Instructionally-related Programs and activities
- Gifts, Bequests, Endowments, Trusts and similar gift management
- Public relations, fundraising and fund management
- Bookstores
- Food Services
- Campus Services
- Acquisition and development of real property
- Other functions approved by the Board of Trustees and authorized by the University.

Auxiliary further agrees to receive and apply exclusively the funds and properties coming into its possession toward these functions. Prior to initiating any additional functions, Auxiliary agrees to obtain written approval of Trustees.

Operations of Auxiliary under this Master Agreement shall be integrated with campus operations and shall be supervised by campus officials so as to assure compliance with the objectives stated in Title 5, CCR, 42401.

The University authorizes the Auxiliary to protect and use the University's name, symbols, and trademarks in the performance of the authorized functions. The University may also, by written approval, authorize the Auxiliary to serve as its agent in the licensing of approved uses.

## **III. Conformance with State Law, Regulations and Policies**

A. Auxiliary agrees to maintain its organization and operate in accordance with all applicable regulations and policies of Trustees and all policies of the University in effect during the term of this agreement.

B. With respect to expenditures for public relations or other purposes, which would serve to augment appropriations for CSU operations, Auxiliary may expend funds in such amount and for such purposes as are approved by Auxiliary's governing body. Auxiliary shall file with Trustees a statement of Auxiliary's policy on accumulation and use of public relations funds. The statement shall include the policy and procedures for solicitation of funds, purposes for which the funds will be used, allowable expenditures, and procedures of control.

C. No officer or employee of The California State University shall be employed by Auxiliary if such employment would be incompatible, inconsistent, or in conflict with his or her duties as a State officer or employee.

D. Auxiliary shall maintain adequate records and shall submit periodic reports as required by Trustees showing the operation and financial status of Auxiliary. The records and reports shall cover all activities of Auxiliary whether pursuant to this Agreement, supplemental agreement or otherwise.

E. Auxiliary agrees to assist the President and his or her designee in carrying out the compliance and operational reviews required by Executive Order 682 and related policies.

F. Auxiliary is subject to the provisions of Section 89900 of the Education Code and Section 42408 of Title 5, California Code of Regulations. In accordance with these provisions, Auxiliary agrees to:

1. Contract with a certified public accountant for an annual audit at Auxiliary's expense. The report on such examinations shall be furnished to the Trustees.
2. Permit examination of all Auxiliary records by Trustees.

#### **IV. Termination or Breach**

A. Failure of Auxiliary to comply with any term of this agreement may result in the removal, suspension, or placing on probation of Auxiliary as an auxiliary organization in good standing. Such action by Trustees may involve the limitation or removal of Auxiliary's right to utilize the resources, facilities, and name of Trustees and University.

B. Upon termination or breach of this agreement, Trustees, at its sole discretion, may require Auxiliary to transfer all assets in its possession by reason of its status as a CSU auxiliary organization to a successor nonprofit corporation qualifying as an auxiliary organization. This remedy shall be in addition to any other remedies available to Trustees upon termination or breach of this agreement.

C. This MA and or any subsequent supplemental agreements may be terminated without cause by the Trustees at any time, without recourse by the Foundation. Any termination notification must be in writing giving 180 days notice to the Foundation. In the event of an urgent necessity by the Trustees no waiting period is necessary for termination. In the event of a termination of this MA, all Supplemental Operating Agreements shall terminate.

#### **V. Fair Employment Practices**

In the performance of this Master Agreement, Auxiliary shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, sexual orientation, marital status, pregnancy, age, physical or mental disability, medical

condition, or veteran's status. Auxiliary shall adopt employment procedures consistent with the policy statement on nondiscrimination and affirmative action in employment adopted by Trustees.

#### **VI. Disposition of Assets**

Upon dissolution of Auxiliary, the net assets, other than trust funds, shall be distributed in accord with Section 42600, Title 5, California Code of Regulations. For the period covered by this agreement, Auxiliary agrees to maintain this provision as part of its Articles of Incorporation. In the event Auxiliary should change this provision to make other disposition of the net assets, this agreement shall terminate as of the date immediately preceding the date such change becomes effective, and all net assets shall become the property of Trustees.

#### **VII. Disposition of Net Earnings**

Auxiliary agrees to comply with Trustees policy on expenditure of funds, including but not limited to Trustees guidelines for the disposition of revenues in excess of expenses and Trustees policies on maintaining appropriate reserves.

#### **VIII. Use of Campus Facilities**

University may permit Auxiliary to utilize campus facilities on an exclusive basis in connection with the authorized functions and activities after execution of a lease agreement. Other facilities used on a non-exclusive shared basis with the University may be authorized after execution of a license agreement. Facilities needed for research projects, institutes, workshops, and conferences are available only when such use does not interfere with the instructional program of the campus.

The use of state facilities is subject to:

1. The use of the campus facilities for civil defense purposes or in the event of a State or national emergency.
2. Unanticipated need of Trustees to meet the demands of the educational objectives of the University. The right to the use of any campus facilities included in this MA or supplemental agreement shall cease upon written notice by the President to Auxiliary that the facility is needed for the exclusive use of Trustees.

#### **IX. Specific Provisions Relating to the Acceptance and Administration of Gifts and Trusts**

Auxiliary agrees that it will accept and administer only such gifts, grants, contracts, scholarships, loan funds, fellowships, and bequests as are so conditioned that they may be used only for purposes consistent with all policies of Trustees and all policies of University in effect during the term of this Master Agreement.

## **X. Indemnification**

Auxiliary agrees to indemnify, defend, and save harmless the State, the Trustees, the Chancellor and the University, the officers, agents and employees of each of them from any and all loss, damage, or liability that may be suffered or incurred by such parties, caused by, arising out of, or in any way connected with the operation of Auxiliary pursuant to this Master Operating Agreement.

## **XI. Charges for Services**

Auxiliary shall reimburse Trustees for expenditures incurred by Trustees as the result of Auxiliary's activities under the terms of this agreement. Reimbursement shall be on a simple but equitable basis and in accordance with the policies for reimbursement of costs as established by Trustees. Auxiliary agrees to make reimbursement within 30 days from receipt of notice of determination of such costs.

The University shall reimburse Auxiliary for extraordinary costs incurred by Auxiliary for special campus programs, activities, or transactions pursuant to separate agreements entered into prior to the expenditure.

## **XII. Insurance**

### **Insurance Requirements for Cal Poly Pomona Foundation, Inc.**

Foundation shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Foundation, its agents, representatives, employees or contractors not a party to this Master Agreement.

#### **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) for liability arising out of work or operations performed by or on behalf of the Foundation including materials, parts, products or equipment furnished in connection with such work or operations and completed operations.
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto) for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Foundation.
3. Workers' Compensation coverage as required by the State of California and Employer's Liability coverage.

4. Crime coverage with coverage for employee dishonesty, forgery or alteration, premises, transit, money orders and counterfeit currency, computer fraud and fund transfer fraud.
5. Directors and Officers Liability including coverage for the acts of directors and employees including employment practices liability.

#### **Minimum Limits of Insurance**

Foundation shall maintain limits no less than:

1. **General Liability (GL):**  
\$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability (AL):**  
\$1,000,000 per accident for bodily injury and property damage.
3. **Workers Compensation and Employer's Liability (WC):**  
Statutory limits for Workers Comp and \$1,000,000 per accident for bodily injury or disease for Employer's Liability.
4. **Crime coverage:**  
Minimum of \$1,000,000 for employee dishonesty and forgery, \$500,000 for premises and transit coverage, \$500,000 for money orders and computer fraud.
5. **Directors and Officers Liability coverage:**  
\$1,000,000 per occurrence.

#### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions greater than \$25,000 must be declared to and approved by the University. At the option of the University, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the "University"; or the Foundation shall provide a financial guarantee satisfactory to the University guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### **Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The State of California, the Trustees, the University, and each of their officers, public officials, employees, representatives, agents, and volunteers are to be covered as additional insureds.
2. For any claims which are the responsibility of the Foundation pursuant to the provisions of the indemnification clause contained in the Master Agreement (Provision X) or any sub agreement between the University and the Foundation, the Foundation's insurance coverage shall be primary insurance as respects the University. Any insurance or self-insurance maintained by the University shall be excess of the Foundation's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice has been given to the University.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

### **Subrogation**

The insurers providing GL, AL, and WC shall provide endorsements waiving all rights of subrogation against the other party.

### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

### **Verification of Coverage**

Foundation shall furnish the University with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the University or on other than the University's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the University before any work commences. The University reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

### **Contractors**

Foundation shall ensure that all contractors, not a party to this agreement, performing work for the Foundation shall have adequate insurance coverage including general liability,

automobile liability, and workers compensation coverage. Where appropriate, such policies should name the Foundation and the State of California, the Trustees, the University, its officers, public officials, employees, representatives, agents, and volunteers as additional insureds to protect the Foundation and University.

### **Sub Agreements**

Additional forms and limits of coverage may be required as agreed upon by the parties in specific supplemental agreements.

### **Form of Coverage**

It is understood and agreed that the Foundation may participate in various risk financing programs and will provide comparable coverage and evidence of such coverage shall be acceptable in lieu of the requirements stated above.

### **Insurance Requirements for California State Polytechnic University, Pomona**

University shall procure and maintain for the duration of the contract insurance or self insurance funds against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the University, its agents, representatives, employees or contractors not a party to this Master Agreement.

### **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) for liability arising out of work or operations performed by or on behalf of the University including materials, parts, products or equipment furnished in connection with such work or operations and completed operations.
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto) for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the University.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability coverage.
4. Errors and Omissions Liability coverage providing coverage for the acts of officers and employees.

### **Minimum Limits of Insurance**

University shall maintain limits no less than:

1. General Liability (Including operations, products and completed operations.):



\$10,000,000 per occurrence for bodily injury, personal injury and property damage.

2. Automobile Liability:

\$1,000,000 per accident for bodily injury and property damage.

3. Workers Compensation and Employer's Liability:

Statutory limits for Workers Comp and \$1,000,000 per accident for bodily injury or disease for Employer's Liability.

4. Errors and Omissions Liability Coverage:

\$1,000,000

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions greater than \$100,000 must be declared to and approved by the Foundation. At the option of the Foundation, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Foundation, its officers, officials, employees and volunteers; or the University shall provide a financial guarantee satisfactory to the Foundation guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### **Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Foundation, its officers, officials, employees, and volunteers are to be covered as additional insureds.
2. For any claims which are the responsibility of the University pursuant to the provisions of the indemnification clause contained in this Agreement (Provision X) or any sub agreement between the University and Foundation, the University's insurance coverage shall be primary insurance as respects the Foundation, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Foundation, its officers, officials, employees, or volunteers shall be excess of the University's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice has been given to the Foundation.
4. Coverage shall not extend to any indemnity coverage for the sole negligence and/or willful misconduct of the additional insured in any case where an

agreement to indemnify the additional insured would be invalid under Subdivision (a) of Section 2782 of the Civil Code.

### **Subrogation**

The insurers providing GL, AL and WC shall provide endorsements waiving all rights of subrogation against the other party.

### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

### **Verification of Coverage**

University shall furnish the Foundation with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Foundation before any work commences. The Foundation reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

### **Contractors**

University shall ensure that all contractors performing work for the University shall have adequate insurance coverage including general liability, automobile liability, and workers compensation coverage. Where appropriate, such policies should name the University and the Cal Poly Pomona Foundation, Inc. as additional insureds to protect the University and the Foundation.

### **Sub Agreements**

Additional forms and limits of coverage may be required as agreed upon by the parties in specific supplemental agreements.

### **Form of Coverage**

It is understood and agreed that the University participates in various risk financing programs and will provide comparable coverage and evidence of such coverage shall be acceptable in lieu of the requirements stated above.

## **XIII. Amendment Clause**

This Master Agreement may not be amended, changed, modified, or altered without the written consent of the Trustees and Auxiliary.

#### XIV. Encumbrances

Auxiliary shall not have the right to subject any of its interests obtained pursuant to this Master Agreement to any encumbrance, trust deed or other security device without the written consent of Trustees. The Trustees hereby consent to the security interest and pledge of this Master Agreement under the Indenture, dated as of August 1, 2000, between the Cal Poly Pomona Foundation, Inc. and U.S. Bank Trust National Association, as trustee.

#### XV. Notices

All notices herein required to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as herein provided.

Notice to the Trustees shall be addressed as follows:

Trustees of The California State University  
401 Golden Shore  
Long Beach, CA 90802  
Attn: Contracts & Procurement

Notice to the University shall be addressed as follows:

President  
California State Polytechnic University, Pomona  
3801 West Temple Avenue, Building 98  
Pomona, CA 91768

Notice to Auxiliary shall be addressed as follows:

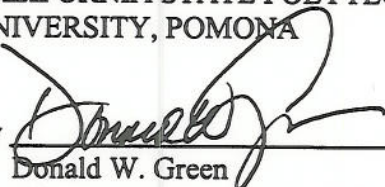
Executive Director  
Cal Poly Pomona Foundation, Inc.  
3801 West Temple Avenue, Building 55  
Pomona, CA 91768-4038

IN WITNESS WHEREOF, this Master Agreement has been executed by the duly authorized representatives of the parties hereto as of the date first above written.

CAL POLY POMONA FOUNDATION, INC.

By   
\_\_\_\_\_  
G. Paul Storey  
Executive Director

CALIFORNIA STATE POLYTECHNIC  
UNIVERSITY, POMONA

By   
\_\_\_\_\_  
Donald W. Green  
Director of Procurement & Support Services

TRUSTEES OF THE CALIFORNIA STATE  
UNIVERSITY

By   
\_\_\_\_\_  
Patricia L. Dayneko  
Director, Contract Services & Procurement