

# SERVICE AGREEMENT

This Service Agreement (“Agreement”) is entered into by and between **The Regents of the University of California on behalf of its San Diego campus,** a public, not-for-profit, educational institution located at 9500 Gilman Drive, La Jolla, California 92093 (“UCSD”), and the **Company** whose name and address appear on Exhibit A, attached hereto and incorporated by reference herein (“Company”).

In consideration of the mutual covenants set forth herein, the parties agree as follows:

1. **Scope of Work**. UCSD will perform the services set forth in Exhibit A, attached hereto and incorporated herein by reference (“Services”).
2. **Deliverables**. UCSD will provide to the Company the Deliverables set forth on Exhibit A, incorporated by reference.
3. **Cost**. As consideration for UCSD’s performance of the Services, the Company will pay UCSD the compensation set forth on Exhibit A, incorporated herein by reference.
4. **Payment**.
   1. **Schedule**. The Company shall pay UCSD the compensation on the dates or milestones set forth in Exhibit A, incorporated herein by reference. In order to receive payment, UCSD will not be required to submit an invoice unless otherwise stated on Exhibit A.
   2. **Remittance**. Payment shall be made as set forth in Exhibit A.
5. **Term of Agreement**. This Agreement will begin on the date of its full execution (“Effective Date”) and will end two years later or the end date listed on Exhibit A, whichever is later.
6. **UCSD Contact**. All inquiries and notices with respect to this Agreement shall be sent to the UCSD contact whose name and information are set forth in Exhibit A.
7. **Responsibilities**. TheCompany shall provide to UCSD any items or information required to allow UCSD to perform its work, and shall do so in a timely and secure manner. The parties agree to comply with any and all applicable laws, rules, regulations, and policies.
8. **Termination**. Either party may terminate this Agreement for any or no reason upon thirty (30) days’ written notice. If the Company terminates this Agreement, the Company will pay UCSD for all costs and any non-cancelable obligations incurred up to the effective date of termination. If UCSD terminates this Agreement, UCSD will return any unexpended advance payments from the Company (if any), but only to the extent that such payments exceed the cumulative total of all costs and obligations incurred by UCSD that cannot be cancelled. This Agreement shall automatically terminate in the event of the loss of Company’s professional or business license, the loss of Company’s insurance coverage as described in Section 9 of this Agreement, or the insolvency or bankruptcy of Company.
9. **Insurance**. Each party shall, at its sole cost, insure its activities and indemnification obligations in connection with this Agreement from its inception and shall keep in force and maintain insurance or self-insurance as follows: general liability, business automobile liability, and workers’ compensation and such other insurance as may be necessary to provide coverage for its performance under this Agreement. If the insurance is written on a claims-made form, it shall continue for a period of three years following termination of this Agreement. The coverage required herein shall not in any way limit the liability of either party.
10. **Indemnification**. Each party shall defend, indemnify, and hold the other party, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including attorneys’ fees), and 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, attorney’s fees, or claims for injury (including death) or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, employees, or agents.
11. **Patent Infringement Indemnification**.Company shall indemnify, defend, and hold harmless UCSD, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that Company’s furnishing or supplying UCSD with parts, goods, components, programs, practices, or methods under this Agreement or UCSD’s use of such parts, goods, components, programs, practices, or methods supplied by Company under this Agreement constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. Company shall inform UCSD as soon as practicable of the suit or action alleging such infringement. Company shall not settle such suit or action without the consent of UCSD, and UCSD retains the right to participate in the defense against any such suit or action.
12. **Disclaimer of Warranty and Limitation of Liability**. UCSD MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE SERVICES, THE DELIVERABLES, OR THE RESULTS PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. COMPANY ACKNOWLEDGES THAT THE SERVICES, THE DELIVERABLES, AND THE RESULTS ARE PROVIDED ON AN "AS IS" BASIS AND WITHOUT WARRANTIES OF ANY KIND. COMPANY FURTHER ACKNOWLEDGES THAT IT USES SUCH SERVICES, DELIVERABLES, AND RESULTS AT ITS OWN RISK. UCSD SHALL BEAR NO RESPONSIBILITY FOR THE SUCCESS OR FAILURE OF THE SERVICES OR DELIVERABLES.

UCSD SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, WHETHER IN WARRANTY, TORT, CONTRACT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR LOSS OF GOOD WILL, WHETHER OR NOT UCSD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE. UCSD AGGREGATE LIABILITY SHALL NOT EXCEED THE FEES RECEIVED BY UCSD FROM COMPANY PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING COMPANY’S CLAIM. COMPANY EXPRESSLY ACKNOWLEDGES THAT UCSD SHALL HAVE NO LIABILITY WITH RESPECT TO ANY LOSS OF PROPERTY, MATERIALS, DATA, OR INFORMATION THAT COMPANY PROVIDES TO UCSD UNDER THIS AGREEMENT.

1. **Fabrications and Research Prototypes – Assumption of Risk and Related Liability**. Items that UCSD builds pursuant to this Agreement, if any, are not for use in the commercial markets. UCSD is an educational and research institution and, to the extent this project calls for a research prototype fabrication or a design based on specifications provided by the Company, UCSD disclaims all warranties of all kinds with respect to such items and Company expressly acknowledges that such deliverables are not expected to meet commercial standards. Company shall carefully review the design of any Deliverables, and in choosing to utilize the prototypes or fabrications, agrees to accept all responsibility for infringement actions and any problems with the design or quality of the manufacture of the items and shall be solely responsible for resulting damages or injuries. In the event of a third party action, as between the parties, Company shall be ultimately responsible for claims based on the design or manufacture of the deliverables. COMPANY IS SOLELY RESPONSIBLE FOR DETERMINING WHETHER THE DELIVERABLES AND/OR ADVICE RENDERED HEREUNDER SUIT ITS NEEDS AND FOR ANY RESULTS OBTAINED AS A CONSEQUENCE OF THE USE OF ANY SUCH DELIVERABLES AND/OR ADVICE.
2. **Company’s Ownership of Deliverables**. The Company will own the Deliverables upon payment in full of the cost of the Services, provided, however, that UCSD reserves and retains an irrevocable, fully-paid worldwide right to use the Deliverables for educational and/or research purposes. This reservation of rights applies only to the extent that Deliverables do not contain Company’s Confidential Information. There shall be no other transfer of intellectual property rights between the parties under this Agreement, including but not limited to such intellectual property disclosed under any separate non-disclosure agreement or confidentiality agreement between the parties whether or not incorporated into this Agreement.
   1. “Background Intellectual Property” shall mean all intellectual property, including without limitation, technical information, know-how, copyrights, trademarks, patents and trade secrets, ideas, thoughts, concepts, processes, techniques, data, models, drawings, inventions, and software, that is or was conceived, created or developed prior to, or independent of, the Services. Unless otherwise stated herein, UCSD shall not incorporate any UCSD Background Intellectual Property into the Deliverables. The parties further agree that any and all improvements in UCSD Background Intellectual Property, which may be conceived or reduced to practice by UCSD during the course of the Services, shall remain the sole property of UCSD.
   2. Certain aspects of the Deliverables may constitute original works of UCSD and are subject to US and international copyright protection. Company is hereby granted a limited license to such copyrights rights, without fee, including the right to make archival copies but specifically excluding the right to distribute such original works to others and specifically excluding a license to any patent rights. No grant of license is provided for reproducing the Deliverables or granting any sublicense in the copyrights therein for any third party without prior written consent of UCSD.
3. **Use of UCSD Name**. California Education Code Section 92000 prohibits use of the University of California, San Diego’s name to suggest that UCSD endorses a product or service. The Company will not use The University of California’s name, or any acronym thereof, including UCSD, without UCSD’s prior written approval.
4. **Excusable Delay**. In the event of a delay caused by inclement weather, fire, flood, strike or other labor dispute, acts of God, acts of Governmental officials or agencies, or any other cause beyond the control of UCSD, UCSD's performance is excused hereunder for the periods of time attributable to such a delay, which may extend beyond the time lost due to one or more of the causes mentioned above. The Company's duty to pay for past or continuing costs is not suspended hereunder. Project impact resulting from UCSD’s compliance with health and safety policies or regulations shall be considered an excusable delay under this clause.
5. **Non-Exclusivity and Non-Interference.** The Services herein are being offered to Company on a non-exclusive basis. Nothing herein shall be construed as granting Company any exclusive right(s) to the Service(s) referenced herein, and UCSD retains the right to offer and perform similar or identical Services for others. Further, notwithstanding any other provision contained herein, the use of UCSD facilities and/or UCSD personnel in support of this Agreement can only be authorized to the extent it will not interfere with work related to the prime missions of UCSD, (e.g., education, research, and outreach), as determined in UCSD’s sole discretion. Accordingly, UCSD shall not be responsible for any delay caused by UCSD faculty, researchers, and students having priority in the use of UCSD facilities and services, and Company’s exclusive remedy for UCSD delay or failure to perform any of its obligations hereunder because of this shall be limited to a refund of any unallocated/unexpended funds paid by Company to UCSD under this Agreement.
6. **Notice**. Any notice or communication required by this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, or sent by overnight mail, or prepaid registered mail, or confirmed email transmission, addressed to the other party at the address set forth in Exhibit A, or at such other address as such party hereto may hereafter specify in writing to the other party. Notices by email will be considered legal notice if such communications include the following text in the Subject field: “FORMAL LEGAL NOTICE – University of California, San Diego”.
7. **Status of Parties**. This Agreement is not intended to create, nor shall it be construed to be, a joint venture, association, partnership, franchise, or other form of business relationship. Neither party shall have, nor hold itself out as having, any right, power, or authority to assume, create, or incur any expenses, liability, or obligation on behalf of the other party, except as expressly provided herein.
8. **Third-Party Beneficiary**. There are no intended third-party beneficiaries to this Agreement.
9. **Severability**. If any provision of this Agreement is held invalid, illegal, or unenforceable in any respect, such provision shall be treated as severable, leaving the remaining provisions unimpaired, provided that such does not materially prejudice either party in their respective rights and obligations contained in the valid terms, covenants, or conditions.
10. **Non-Waiver**. The failure of either party to require the performance of any of the terms of this Agreement or the waiver by either party of any default under this Agreement shall not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach.
11. **Modification of Agreement**. This Agreement shall be changed only by written agreement of authorized representatives of the parties.
12. **Applicable Law and Disputes.**
    1. **Applicable Law, Venue, and Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Company agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of San Diego.
    2. **Disputes.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both. Should a dispute fail to be resolved through discussion between them, it may be finally settled in court in San Diego, California or arbitration in San Diego, California.
13. **Confidential Information**.Should Company deem it necessary to disclose information to UCSD during the term of this Agreement that it considers confidential and/or proprietary, UCSD shall only be required to use reasonable efforts to protect such information in a manner consistent with the efforts used by UCSD to protect its own confidential information. Confidential information shall be clearly marked in writing as "Confidential Information" or the equivalent. If Confidential Information is disclosed orally, electronically, or visually, it shall be confirmed as such at the time of such disclosure and reduced to writing, clearly marked “Confidential Information” and delivered to UCSD within thirty (30) days of such disclosure. To the extent allowable by law, UCSD shall disclose Confidential Information only to persons within its organization and its authorized representatives who have a need to know such Confidential Information in the course of the performance of their duties and who understand and will comply with the terms of this Agreement to protect the confidentiality of such Confidential Information. UCSD and its personnel shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the Company. UCSD will promptly report to Company any actual violation of the terms of this Agreement and will assist Company to prevent, control, or remedy any such violation. The obligations of UCSD specified shall not apply, and Company shall have no further obligations, with respect to any Confidential Information to the extent UCSD can reasonably demonstrate that such Confidential Information: (a) is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of UCSD; (b) is in UCSD’s possession at the time of disclosure otherwise than as a result of UCSD’s breach of any legal obligation; (c) becomes known to UCSD through disclosure by sources other than Company having the legal right to disclose such Confidential Information; or (d) is independently developed by UCSD without the use of or reference to such Confidential Information. In the event of a disputed disclosure, UCSD shall bear the burden of proof of demonstrating that the information falls under one of the above exceptions. UCSD may disclose Company’s Confidential Information if and to the extent required by applicable laws, governmental or regulatory regulations, or proper legal or governmental authority, provided that if permitted to do so UCSD provides prior written notice of such disclosure to Company and UCSD reasonably assists Company in taking reasonable and lawful actions to avoid and/or minimize the extent of such disclosure. UCSD agrees that Company is and shall remain the exclusive owner of the Confidential Information. No license or conveyance of any intellectual property rights to UCSD is granted or implied under this Agreement. Company recognizes and acknowledges that UCSD honors the disclosure obligations of the California Public Records Act (the “CPRA”), and that nothing in this Agreement shall be interpreted as limiting UCSD’s ability to honor and abide by the requirements of the CPRA as UCSD, at its sole discretion, deems appropriate. Upon expiration of this Agreement, at Company’s request, UCSD shall promptly destroy, or return to Company, any Confidential Information, except UCSD may retain one copy of Confidential Information for administration purposes and to determine its obligations under this Agreement.
14. **Materials**. All materials provided by the Company for the purposes of the Agreement are owned by the Company and UCSD shall use the materials solely for the work specified in Exhibit A. UCSD shall not modify, reverse engineer, transfer, or use the materials for any other purpose other than performance of the Agreement. Upon completion of the work, at Company’s request, UCSD shall promptly destroy, or return to Company, any unused materials.
15. **Signatures, Counterparts, and Copies.**  This Agreement may be executed in counterparts, all of which, when taken together, shall constitute one contract with the same force and effect as if all signatures had been entered on one document. Signatures may be delivered among and between parties by electronic means. Electronic copies of this Agreement may be used for any and all purposes for which the original may have been used.
16. **Headings and Captions**. Headings and captions in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the interpretation hereof.
17. **Authority**. Both parties represent that each has the full authority to perform its obligations under this Agreement and that the person executing this Agreement has the authority to bind it.
18. **Survival**. Provisions of this Agreement, which by their express terms, or by necessary implication, apply for a period of time other than specified herein, shall be given effect, notwithstanding termination or expiration.
19. **Company’s Representations and Warranties**. Company represents and warrants that, except as expressly provided for herein, no obligations are imposed upon UCSD as a result of any other agreement(s) involving Company to which UCSD is not a party.
20. **Contractor Determination (Uniform Guidance - 2 CFR 200.330)**. Company represents that, if it has received federal funds to support this agreement, then, pursuant to the Uniform Guidance, it has reviewed the Services to be performed by UCSD and has determined UCSD to be a "Contractor". Company therefore represents that it is not providing a "Subaward" to UCSD but rather is engaging UCSD to provide “goods and services for [Company’s] own use” and creating a “procurement relationship” with UCSD. Accordingly, Company is not providing federal award information or terms to UCSD or otherwise complying with 2 CFR 200.331, and will not report to its sponsor or the federal government that UCSD is a "Subrecipient" in FFATA or other reporting, nor will it treat UCSD as a “Subrecipient” in overhead calculations or in any other way.
21. **Export Control**. None of the following shall be conducted under this Agreement: the transfer of export restricted equipment, materials, software or technical information from one party to the other; any activities involving a human or animal pathogen (ECCN 1C351), genetic elements of a pathogen, toxin or select agent (ECCN 1C353), plant pathogens (ECCN 1C354) and/or prohibited chemicals (ECCN 1C350); enhancement or modification of non-EAR99 equipment; activities involving nuclear materials or radionuclides as enumerated under ECCN 1C236 or genetic assemblers or synthesizers under ECCN 2B352.j. Company attests that no work under this Agreement is funded by the US Departments of Defense or Energy or NASA or will involve the transmission of a defense article or related technical data to UCSD.
22. **Protected Health Information and Personally Identifiable Information**. Company represents that all materials provided to UCSD in connection with this Agreement are de-identified in accordance with the Health Insurance Portability and Accountability Act (HIPAA). Company shall not exchange, reveal, or otherwise share protected health information or personally identifiable information with UCSD.
23. **Entire Agreement**. This Agreement, including Exhibit A which is made a part hereof, sets forth the entire agreement of the parties with respect to

the subject matter herein and supersedes any prior agreements, oral and written, and all other communications between the parties with respect

to such subject matter. Any terms and conditions contained in the Company’s purchase order or similar document shall have no force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below.

|  |  |
| --- | --- |
| **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UC SAN DIEGO** | **COMPANY** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_ |
| Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title :\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT A**

**COMPANY**:

Enter full legal name of the Company

Enter the state in which the Company is incorporated corporation

Principal place of business located at enter the headquarters address

Attention: Name of responsible person at the Company

Telephone:        Email:

Procurement contact: Name of responsible person at the Company

**1. SCOPE OF WORK**:

The Services will consist of the activities/work set forth below or in accordance with the attachment(s) hereto and incorporated herein by reference (e.g., UCSD quote). Any terms and conditions set forth on a Company purchase order or in a Company communication to UCSD are of no force and effect: only the terms and conditions set forth in this Agreement, which may only be revised in writing by an authorized representative of UCSD, shall apply to these Services.

**2. DELIVERABLES**:

Deliverables description:

**3. COST**: Total $

1. **PAYMENT** 
   1. **SCHEDULE**:

1st payment of $      is due upon execution of contract, date, or submission of 1st deliverable or milestone (choose)

2nd payment of $      is due upon date, or submission of 2nd deliverable or milestone

3rd payment of $      is due upon date, or submission of 3rd deliverable or milestone

4th payment of $      is due upon date, or submission of 4th deliverable or milestone

* + 1. Invoice required for payment? Yes  No  If an invoice is required, payment is due within 30 days of receipt of invoice. If no invoice is required, payment is due within 30 days of the completion of the respective deliverable or milestone.
  1. **REMITTANCE**: Please reference invoice number on all payments. Checks are to be made payable to **The Regents of the University of California** and sent to:

The University of California, San Diego

UCSD Campus Main Depository

PO Box 741539

Los Angeles, CA 90074-1539

Email payment notification to accountsreceivable@ucsd.edu as well as to contact listed below

Electronic Payment Information:

Bank of America, NA

Name of Account: Regents of the University of California, San Diego

Account #: 1233-0-18188

ACH Routing #: 121000358

Wire Routing #: 0260-0959-3

ACH Preferred format: CTX

Type of Account: Checking

Bank Address: PO Box 37025, San Francisco, CA 94137

1. **TERM OF SCOPE OF WORK**: This Agreement will begin on the date of its full execution, and end two years later.
2. **UCSD CONTACT**:

Name of UCSD Contact (Departmental Contact)

The University of California, San Diego

9500 Gilman Drive Mail Stop

La Jolla, California 92093-

Telephone: (   )       Email:

Legal notice: [researchadmin@ucsd.edu](mailto:researchadmin@ucsd.edu)

END OF EXHIBIT A