 **Sales and Services Agreement #\_\_\_\_\_**

This Sales and Services Agreement (this “Agreement”), dated \_\_\_\_\_\_\_\_ , 20\_\_ (the “Effective Date”), is by and between The Regents of the University of California (“University”), a California public corporation, on behalf of [CAMPUS/DEPARTMENT], and [COMPANY ] (“Client”), having a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.  
  
In consideration of the mutual agreements in this Agreement, the parties agree to the following:

**Section 1 – Term and Termination.**

* 1. **Term**   
     The Term of this Agreement shall be the period set forth in the Statement of Work, which is attached hereto as Exhibit A and incorporated herein by reference (hereinafter, “Exhibit A”).
  2. **Termination for Convenience**.   
     Either party may terminate this Agreement for any reason upon thirty (30) days’ written notice [**LOCATION: May change number of days]**. When this Agreement is terminated for convenience under this provision, Client shall pay University the pro rata fees for the Services through the date the notice of termination was effective, and all costs and any non-cancelable obligations incurred by University up to and including the date of termination.
  3. **Termination for Cause.**   
     Either party may terminate this Agreement upon the material breach of this Agreement by the other party, by giving the other party thirty (30) days’ prior written notice specifying the breach and expressing its intent to terminate. If such breach is not cured by the breaching party within thirty (30) days of receipt of the notice, this Agreement may be immediately terminated at the option of the non-breaching party upon written notice to the breaching party. If Client is more than thirty (30) days delinquent in any payment due under this Agreement, such delinquency shall constitute a “material breach” of this Agreement for the purposes of this provision.

**Section 2 – Statement of Work**.

**2.1. Services.**

University shall perform the services set forth in Exhibit A (the “Services”).

**2.2.** **Ownership/License of Deliverables.**

Client shall own the Deliverables (as defined in Exhibit A) upon payment in full to University for the Services; provided, however, that University reserves and retains an irrevocable, fully-paid, worldwide right to use the Deliverables for educational and/or research purposes. Notwithstanding the foregoing, University does not transfer, and hereby retains and reserves, all rights in Background Intellectual Property (as defined below). Furthermore, any and all improvements in University’s Background Intellectual Property, which are conceived or reduced to practice by University during the course of the Services, shall remain the sole property of University.

“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.

Client shall indemnify, defend, and hold harmless University, 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 Client’s furnishing or supplying University with parts, goods, components, programs, practices, methods or other property under this Agreement (collectively, “Client Materials”) or University’s use of Client Materials constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. University retains the right to participate in the defense against any such suit or action, and Client shall not settle any such suit or action without University’s consent.

**2.3. Client Responsibilities.**

Client shall provide to University Information/Materials listed in Exhibit A, if any, in a timely and secure manner so as to allow University to perform the Services.

**2.4. No Liability for Delay.**

University offers priority to its faculty, researchers and students for the use of University facilities and services. Accordingly, University shall not be responsible for any delay caused by University faculty, researchers and students having priority in the use of University facilities and services, and Client’s exclusive remedy for University’s delay or failure to perform any of its obligations hereunder shall be limited to a refund of any unallocated/unexpended funds paid by Client to University under this Agreement.

**2.5. Shipment and Delivery.**

Client shall be responsible for the cost of shipping all Deliverables specified herein (including, without limitation, costs of insurance and other related costs). Shipments shall be sent FOB (Client or University, as applicable). University, at its option, may not tender delivery of any Deliverables for which Client has not provided shipping instructions, payment and other required information. If Client postpones or delays delivery of Deliverables for any reason (for example, if Client requests a delay in delivery), Client agrees to reimburse University for any and all storage costs and other additional expenses resulting therefrom.

Unless otherwise stipulated herein, for all shipments of Deliverables, legal title shall pass from University to Client upon University’s delivery to the carrier at the shipping point, at which time Client shall take possession of the Deliverables, bearing all risk of loss, paying all insurance, storage and transportation expenses and acting as the importer of record (if applicable).   
  
Any claims for shortages of or damages to Deliverables suffered in transit are the responsibility of Client and shall be submitted by Client directly to the carrier. Client shall identify any shortages or damages at the time of delivery; claims of shortages or damages after the date of delivery are hereby waived.

**Section 3 –Fees and Payment Schedule**.

**3.1 Fees, Schedule and Invoicing.**

Client shall pay University for the Services in accordance with the Fees and Payment Schedule set forth in Exhibit A. Client shall pay University within thirty (30) days of the date on the applicable invoice. University shall submit all invoices to Client at the Invoicing Address specified in Exhibit A.

**3.2 Service Charge.**Client agrees to pay University a one-percent (1%) service charge per month for any payments that are not made within thirty (30) days.

**3.3 Form of Payment.**   
All payments from Client to University shall be made payable to “The Regents of the University of California” in a form specified in Exhibit A.

**Section 4 – Insurance. IF APPLICABLE**

**Section 4.1 Client Insurance.**Client shall provide proof of insurance, endorsing The Regents of the University of California as additional insured, showing amounts of coverage set forth below. If the insurance is written on a claims-made form, it shall continue for a period of three years following termination of this Agreement. Coverage required herein shall not in any way limit the liability of either party.

Commercial Form General Liability Insurance   
(contractual liability included):

Each Occurrence: $1,000,000

Products/Completed Operations Aggregate: $2,000,000

Personal and Advertising Injury: $1,000,000

General Aggregate: $2,000,000

Workers Compensation as required by law.

**Section 4.2 University Insurance.**   
During the term of this Agreement, University shall keep and maintain self-insurance with minimum limits as follows:

Commercial Form General Liability Insurance:

Each Occurrence: $1,000,000

Products/Completed Operations Aggregate: $2,000,000

Personal and Advertising Injury: $1,000,000

General Aggregate: $2,000,000

Workers Compensation as required by law.

**Section 5 – 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, 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 (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. The party seeking indemnification agrees to provide the other party with prompt notice of any such claim or action and to permit the indemnifying party to defend any claim or action, and to cooperate fully in such defense. The indemnifying party shall not settle or consent to the entry of any judgement in any action, suit or proceeding without the consent of the indemnified party, and such consent to any settlement, which consent shall not be unreasonably withheld, conditioned, or delayed.

**Section 6 –Disclaimer of Warranty and Limitation of Liability**.

UNIVERSITY 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. CLIENT ACKNOWLEDGES THAT THE SERVICES, THE DELIVERABLES, AND THE RESULTS ARE PROVIDED ON AN "AS IS" BASIS AND WITHOUT WARRANTIES OF ANY KIND. CLIENT FURTHER ACKNOWLEDGES THAT IT USES SUCH SERVICES, DELIVERABLES, AND RESULTS AT ITS OWN RISK. UNIVERSITY SHALL BEAR NO RESPONSIBILITY FOR THE SUCCESS OR FAILURE OF THE SERVICES OR DELIVERABLES.   
  
UNIVERSITY 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 UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE. UNIVERSITY’S AGGREGATE LIABILITY SHALL NOT EXCEED THE FEES RECEIVED BY UNIVERSITY FROM CLIENT PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING CLIENT’S CLAIM. CLIENT EXPRESSLY ACKNOWLEDGES THAT UNIVERSITY SHALL HAVE NO LIABILITY WITH RESPECT TO ANY LOSS OF PROPERTY, MATERIALS, DATA, OR INFORMATION THAT CLIENT PROVIDES TO UNIVERSITY UNDER THIS AGREEMENT.

**Section 7 – University Name and Trademarks.**

Client agrees that it will not use the name of the University of California, or any abbreviation thereof, or any name of which “University of California” is a part, or any trademarks (including, but not limited to, logo, seal, landmarks, acronyms, campus department names, and graphic images) of the University (“University Marks”) in a commercial context, such as may appear on products, in media (including websites) and print advertisement, without the prior written consent of University’s authorized representative. This provision is in compliance with California Education Code section 92000.

University Marks are and shall remain exclusively the property of University. Client shall, neither directly nor indirectly, obtain or attempt to obtain during the Term hereof or at any time thereafter, any right, title or interest in or to University Marks, and Client hereby expressly waives any right which it may have in University Marks. Client recognizes University’s exclusive ownership of University Marks.

**Section 8 – Export Control and Biohazardous Materials.**

If any of the materials and/or information provided to University by Client (“Client Materials”) are: export-controlled under the International Traffic in Arms Regulations (22 CFR 120-130), the United States Munitions List (22 CFR 121.1), or Export Administration Regulations (15 CFR 730-774) 500 or 600 series; controlled on a military strategic goods list; Select Agent(s) under 42 CFR Part 73, et seq.; or subject to regulations governing access to such Client Materials, Client shall provide the University Contact (listed on Exhibit A) with written notification that identifies such Client Materials, including their export classification.

**Section 9 – Protected Health Information and Personally Identifiable Information.**

Client represents that all materials provided to University in connection with this Agreement are de-identified in accordance with the Health Insurance Portability and Accountability Act (HIPAA). Client shall not exchange, reveal, or otherwise share protected health information or personally identifiable information with University.

**Section 10 – Force Majeure.**

Neither party shall be liable for delays due to causes beyond the party’s control (including, but not restricted to, war, civil disturbances, earthquakes, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather). With respect to any delays on the part of University, this Section shall apply in addition to the provision in Section 2.4.

**Section 11 – Notices.**

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 addressed to the other party at the address set forth on Exhibit A **[LOCATION: May add e-mail if willing to accept notice in that manner. If so, include the following: “Additionally, notices by Email will be considered legal notice if such communications include the following text in the Subject field: FORMAL LEGAL NOTICE – [insert, as the case may be, Supplier name or University of California]”]**.

**Section 12 – Relationship of the Parties.**

In the performance of this Agreement, the parties, and their officers, agents and employees, shall act as independent contractors. Nothing in this Agreement shall create, or be construed to be, a joint venture, association, partnership, franchise or other form of business relationship. At no time will the employees, agents or assigns of one party be considered the employees of the other party for any purpose, including but not limited to workers’ compensation purposes.

**Section 13 – Third Party Beneficiary.**

There are no intended third-party beneficiaries to this Agreement.

**Section 14 – Conflict of Interest.**

Client affirms that, to the best of Client’s knowledge, no University employee who has participated in University’s decision-making concerning this Agreement has an “economic interest” in this Agreement or Client. A University employee’s “economic interest” means:

An investment worth $2,000 or more in Client or its affiliate;

A position as director, officer, partner, trustee, employee or manager of Client or its affiliate;

Receipt during the past 12 months of $500 in income or $440 in gifts from Client or its affiliate; or

A personal financial benefit from this Agreement in the amount of $250 or more.

In the event of a change in these economic interests, Client shall provide written notice to UC within thirty (30) days after such change, noting such changes. Client shall not be in a reporting relationship to a University employee who is a near relative, nor shall a near relative be in a decision-making position with respect to Client.

**Section 15 – Assignment.**

Except for University’s ability to assign any payment due hereunder, neither party may assign this Agreement without the prior written consent of the other party. In case such consent is given, the assignee shall agree, in writing, to be subject to all of the terms of this Agreement that are applicable to the assignor.

**Section 16 – Severability**.

If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

**Section 17 – Non-Waiver.**

Waiver or non-enforcement by either party of a term or condition shall not constitute a waiver or a non-enforcement of any other term or condition or of any subsequent breach of the same or similar term or condition.

**Section 18 – Survival.**

Provisions of this Agreement, which by their express terms, or by necessary implication, apply for period of time other than specified herein, shall be given effect, notwithstanding termination or expiration.

**Section 19 – Amendments.**

Any changes, additions or other amendments to this Agreement must be made in a writing, signed by the authorized representatives of Client and University.

**Section 20 – Governing Law and Venue.**

California law shall control this Agreement and any document to which it is appended. The exclusive jurisdiction and venue for any and all actions arising out of or brought under this Agreement is in a state court of competent jurisdiction, situated in the county in the State of California in which the University campus is located or, where this Agreement covers more than one campus or the Office of the President, the exclusive venue is Alameda County, California.

**Section 21 – Signatures and Counterparts.**

This Agreement may be executed in two or more counterparts, which may be transmitted via facsimile or electronically, each of which shall be deemed an original and all of which together shall constitute one instrument.

**Section 22 – Entire Agreement/Integration.**

This Agreement, including Exhibit A, which is hereby incorporated by reference and made a part hereof, sets forth the entire agreement of the parties with respect to the subject matter herein and supersedes any prior or contemporaneous agreements, oral and written, and all other communications between the parties with respect to such subject matter. Any terms and conditions contained in Client’s purchase order, and any NDA or separate scope of work or similar document, shall have no force and effect.

**Section 23 - Authority of Parties/Signatories.**

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute this Agreement. Each party represents and warrants to the other that the execution of this Agreement and the performance of such party’s obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

|  |  |
| --- | --- |
| THE REGENTS OF THE UNIVERSITY  OF CALIFORNIA ON BEHALF OF THE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CAMPUS/DEPARTMENT (“University”) | CLIENT |
| By: | By: |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |

**EXHIBIT A – STATEMENT OF WORK**

**I. PARTIES**

**Client**

Full Legal Name:

Address (principal place of business):

Phone Number:

Client Contact:

Invoice Remittance Address/Instructions:

*NOTICES SHOULD BE SENT TO (IF DIFFERENT THAN ABOVE):*

**University**

Name (of Campus/Department):

Address:

Phone Number:

University Contact:

Additional Payee Information (if applicable):

*NOTICES SHOULD BE SENT TO (IF DIFFERENT THAN ABOVE)*:

**II. TERM OF AGREEMENT**

This Agreement begins on \_\_\_\_\_\_ and ends on \_\_\_\_\_\_\_, unless terminated earlier by either of the parties pursuant to this Agreement (the “Term”).

**III. STATEMENT OF WORK**

Services:

Deliverables:

Information/Materials provided by Client:

Additional Client Responsibilities:

**IV. FEES AND PAYMENT SCHEDULE**

Fees (i.e., Rates/Cost):

Payment Schedule:

Terms of Payment: **[Location – please consider setting up terms requiring payment in full before (or at the same time that) deliverables are provided, so that we have leverage to get the final payment from the Client. If all services are provided before the UC receives final payment, it may be difficult to collect outstanding fees from the Client. Also, if the UC is performing services before payment is due, consider running a credit check on the Client, to determine whether the Client pays its debts on-time.]**

Limitations of Charges (if any):

Invoicing Address:

Form of Payment: