

SERVICE AGREEMENT

This Service Agreement ("Agreement") is entered into by and between **The Regents of the University of California on behalf of the University of California, San Diego**, 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 on Exhibit A, Services, attached hereto and incorporated by reference herein ("Services").
2. **Deliverables.** UCSD will provide to the Company the deliverables set forth on Exhibit A, incorporated by reference herein.
3. **Cost.** As consideration for UCSD's performance of the Services, the Company will pay UCSD the costs set forth on Exhibit A, incorporated by reference herein.
4. **Payment.**
 - 4.1. **Schedule.** The Company shall pay UCSD the compensation on the dates or milestones set forth on Exhibit A, incorporated by reference herein. In order to receive payment, UCSD will not be required to submit an invoice, unless otherwise stated on Exhibit A.
 - 4.2. **Remittance.** Checks are to be made payable to The Regents of the University of California and sent to the address set forth in Exhibit A.
5. **Term of Agreement.** This Agreement will begin and end on the dates set forth on Exhibit A.
6. **UCSD Contact.** All inquiries and notices with respect to this Agreement shall be sent to the UCSD contact whose name and related information are set forth on Exhibit A.
7. **Responsibilities.** The Company shall provide to UCSD those items listed in Exhibit A, if any, in a timely and secure manner so as to allow UCSD to perform its work. The parties agree to comply with any and all applicable laws, rules, regulations, and policies.
8. **Termination.** Either party may terminate this Agreement 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 shall 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.
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. **Performance.** UCSD agrees to perform the Services in accordance with applicable state and federal regulations. Except with regard to its indemnification obligations, neither party will be liable to the other for any indirect special, incidental, exemplary, or consequential damages, or costs, including but not limited to any lost profits or revenues, even if such party has been advised of the possibility of such damages and regardless of the legal theory under which such damages are sought. **UCSD DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF ANY PATENT OR PATENT APPLICATION WITH REGARD TO DELIVERABLES PROVIDED TO THE COMPANY.** Company's remedy for failure by UCSD or persons acting on its behalf to perform services under this Agreement is limited to re-performance, replacement, or reimbursement of any unexpended payments.
12. **Company's Ownership of Deliverables.** The Company will own the deliverables upon payment in full of the cost of 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. 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.
 - 12.1. 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 rights under 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.
13. **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.
14. **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.
15. **Non-Interference.** 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.
16. **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.

17. **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 on Exhibit A, or at such other address as such party hereto may hereafter specify in writing to the other party.
18. **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.
19. **Third-Party Beneficiary.** There are no intended third-party beneficiaries to this Agreement.
20. **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.
21. **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.
22. **Modification of Agreement.** This Agreement shall be changed only by written agreement of the parties.
23. **Applicable Law and Disputes**
 - 23.1. **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.
 - 23.2. **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, CA or arbitration in San Diego, California.
24. **Disclosure Obligations.** Company recognizes and acknowledges that UCSD honors the disclosure obligations of the California Public Records Act (the "PRA"), and that nothing in this Agreement shall be interpreted as limiting UCSD's ability to honor and abide by the requirements of the PRA as UCSD, at its sole discretion, deems appropriate. UCSD shall attempt to notify the Company promptly upon determining that any materials that Company previously designated, in writing, as "confidential" may be subject to a pending PRA request. Such notification shall include a reasonably specific description of the "confidential" information potentially subject to disclosure pursuant to the pending PRA request (the "Potentially Relevant Records"). To the extent permitted by law, and to the extent that time permits, UCSD shall then give the Company a reasonable time period to demonstrate — to the sole satisfaction of UCSD — that some or all of the

Potentially Relevant Records are (i) not relevant to the pending PRA request and/or (ii) protected from disclosure pursuant to an exception codified in the PRA. If UCSD thereafter concludes — in its own sole discretion — that some or all of the Potentially Relevant Records must be disclosed, UCSD shall so notify the Company and — to the extent permitted by law, and to the extent that time permits — give the Company a reasonable opportunity to seek a court order protecting such Potentially Relevant Records. Unless such a court order is secured in a timely fashion, UCSD shall disclose those records it determines — in its own sole discretion — must be released pursuant to the pending PRA request.

25. **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.
26. **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.
27. **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.
28. **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.
29. **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.
30. **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.
31. **Export Control.** The parties agree to abide by all United States export control regulations. Notwithstanding the foregoing, no export controlled materials or information/data shall be transferred from one party to the other under this Agreement.
32. **Entire Agreement.** This Agreement, including Exhibit A which terms and conditions are 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 ON BEHALF OF THE UNIVERSITY OF CALIFORNIA, SAN DIEGO

COMPANY

By: _____ Date: _____

By: _____ Date: _____

Name: _____ Title _____

Name: _____ Title _____

EXHIBIT A

SERVICES

COMPANY:

Enter full legal name of the Company _____

A enter the state in which the Company is incorporated corporation _____

Principal place of business located at enter the headquarters address, city, state ZIP _____

Attention: Name of responsible person at the Company _____

Telephone: (____) _____

Email: _____

1. SCOPE OF WORK:

The Services will consist of the activities/work/deliverables set forth below or in accordance with the attachment(s) hereto and incorporated by reference herein (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 the University, shall apply to these Services.

2. DELIVERABLES:

1st deliverable: _____

3. COST: Total \$ _____

4. PAYMENT

4.1. SCHEDULE:

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

2nd payment of \$ _____ is due upon execution of contract, date, or submission of 2nd deliverable (choose one)

3rd payment of \$ _____ is due upon execution of contract, date, or submission of 3rd deliverable (choose one)

4th payment of \$ _____ is due upon execution of contract, date, or submission of 4th deliverable (choose one)

4.1.1. Invoice required for payment? Yes No If an invoice is required, payment is due within 30 days of the completion of the respective deliverable or milestone.

4.2. 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 emfcashmgt@ucsd 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

5. TERM OF AGREEMENT: This Agreement will begin on the ___ day of _____, 200_ and end on the ___ day of _____, 200_.

6. 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: _____

END OF EXHIBIT A