

SERVICES AGREEMENT
BETWEEN
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
AND

THIS SERVICES AGREEMENT (the "AGREEMENT") is entered into by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a public corporation under Article IX, Section 9 of the Constitution of the State of California, acting for and on behalf of its San Francisco Campus, with administrative offices at 490 Illinois Street, Fourth Floor - Campus Box 0962, San Francisco, CA 94143 (the "UNIVERSITY") and _____, having its principal offices at <BUYER'S ADDRESS> (the "BUYER"). Collectively, UNIVERSITY and BUYER may be referred to as the "Parties" and either individually as a "Party."

WHEREAS, BUYER would like to have UNIVERSITY perform certain services on behalf of BUYER as it has determined that those services cannot be adequately performed by other agencies or commercial firms.

WHEREAS, UNIVERSITY has the experience, capabilities, and expertise (including supplies, equipment, material, and labor) necessary to perform the services contemplated by this AGREEMENT and the performance of such services is consistent with its educational, research, and patient care activities.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the Parties agree as follows:

- 1.0 Term of AGREEMENT.** The term of this AGREEMENT shall begin as of the last date of signature by the Parties (the "EFFECTIVE DATE"), and shall continue indefinitely unless terminated in accordance with paragraph 10.0.
- 2.0 Scope of Services.** UNIVERSITY agrees to perform the services described in Exhibit A, attached hereto and incorporated herein (the "SERVICES"), in accordance with all applicable state and federal laws and regulations. SERVICES may also include the BUYER's use of UNIVERSITY equipment. UNIVERSITY (and its licensors or sponsors as applicable) solely owns and shall solely own all right, title, and interest in any equipment or instruments of any kind to which UNIVERSITY provides an employee or agent of BUYER access (collectively "Equipment") in order for BUYER to perform research, to run tests, or otherwise to use the Equipment (to "Use"). UNIVERSITY shall permit BUYER to Use the Equipment, in accordance with the AGREEMENT, lab policies, and University Environmental Health and Safety requirements, provided that BUYER shall not have, nor shall it be granted, or acquire rights, title, or interest in the Equipment. BUYER represents and warrants that it shall only Use the Equipment as contemplated herein. If the Equipment is Used at BUYER's facilities, BUYER (i) shall only Use the Equipment for its sole business purposes; (ii) shall not transfer, rent, donate, assign, lease, or timeshare the Equipment or otherwise take any actions or permit any actions to be taken, which would compromise the sole ownership of the Equipment by University (and its licensors or sponsors as applicable); and (iii) upon completion of Use or upon termination, cancellation, or expiration of this AGREEMENT, shall within five (5) business days, return, at its sole cost, the Equipment to the UNIVERSITY facility from which the Equipment was delivered or taken possession of, unless otherwise agreed to mutually by the parties.
- 3.0 Payment.** BUYER agrees to remit payment to the UNIVERSITY for invoiced amounts, made in accordance with Exhibit A. Prices listed in Exhibit A are subject to change without notice. BUYER agrees to pay all amounts within thirty (30) days of invoice. UNIVERSITY shall submit invoices to the following address:

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BUYER:
NAME TITLE ADDRESS

4.0 Materials. BUYER may provide materials, including, without limitation, organisms, cell lines, biological samples, tissues, chemicals, proteins, and/or nucleic acids to UNIVERSITY for use in the performance of the SERVICES (the “MATERIALS”), subject to the following terms:

Legal title to MATERIALS will be unaffected by this AGREEMENT or the provision of such MATERIALS by BUYER to UNIVERSITY hereunder.

The provision of MATERIALS by BUYER to UNIVERSITY constitutes a non-exclusive license to use the MATERIALS solely in the performance of the SERVICES under this AGREEMENT. MATERIALS will not be used for any other purpose than the performance of the SERVICES.

MATERIALS will only be made available to UNIVERSITY employees who are responsible for the performance and administration of the SERVICES.

BUYER warrants that any MATERIALS provided pursuant to this AGREEMENT were collected or will be collected in accordance with applicable laws, regulations, patient consent forms and authorizations pursuant to Institutional Review Board (IRB) approval and will be de-identified in accordance with the Health Insurance Portability and Accountability Act (HIPAA), and agrees to properly label, package, and transport the MATERIAL in accordance with all applicable state and federal laws and regulation. At the request of BUYER, all unused MATERIALS will be returned to BUYER or destroyed in accordance with applicable law, at the BUYER’S expense. If requested by BUYER in writing, a certificate of destruction will be provided by UNIVERSITY to BUYER. Unless otherwise directed by BUYER, UNIVERSITY will return MATERIALS supplied by BUYER to the following address: <BUYER’S ADDRESS>.

5.0 Deliverables. UNIVERSITY agrees that results and other deliverables described in Exhibit A (collectively, the “Deliverables”), prepared by UNIVERSITY for BUYER, or developed by BUYER during BUYER’s use of the UNIVERSITY core lab facility, under this AGREEMENT, shall be owned by BUYER.

Notwithstanding the foregoing, if BUYER engages in research activities on the UNIVERSITY campus or with UNIVERSITY employees or students beyond the SERVICES described in EXHIBIT A, then any inventions created as a result will be subject to the University of California Patent Policy, which may be found at <https://www.ucop.edu/innovation-alliances-services/innovation/training-and-education/uc-patent-policy.html> and U.S. patent laws.

6.0 Indemnification. UNIVERSITY shall defend, indemnify and hold BUYER, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable 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 that such liability, loss, expense, attorneys’ fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UNIVERSITY, its officers, employees and agents.

BUYER shall defend, indemnify and hold UNIVERSITY, its officers, employees, agents, guests or invitees harmless from and against any and all liability, loss, expense (including reasonable 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 that such liability, loss, expense, attorneys’ fees, or claims for injury or damages are

caused by or result from the negligent or intentional acts or omissions of BUYER, its officers, employees and agents.

BUYER and UNIVERSITY represent that they have sufficient insurance or self-insurance to cover the activities described in Exhibit A, and the indemnification obligations detailed above.

7.0 DISCLAIMER OF WARRANTY. SERVICES AND/OR DELIVERABLES PROVIDED BY UNIVERSITY TO BUYER UNDER THIS AGREEMENT ARE PROVIDED WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

8.0 LIMITATION OF LIABILITY. UNIVERSITY SHALL NOT BE LIABLE FOR ANY LOST PROFITS, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST BUSINESS, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES, SUFFERED BY THE OTHER PARTY, ITS AFFILIATES, EMPLOYEES, AGENTS, SUBLICENSEES, OR JOINT VENTURERS ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ALL CAUSES OF ACTION OF ANY KIND INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY AND BREACH OF WARRANTY. IN NO EVENT SHALL UNIVERSITY'S TOTAL CUMULATIVE LIABILITY FOR ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE FEES PAID UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE WRITTEN NOTICE OF THE CLAIM FOR LIABILITY HEREUNDER.

9.0 Interruption of Service. Either Party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war or terrorism, fire, insurrection, laws, proclamations, edicts, ordinances or regulations, strikes, lock-outs or other serious labor disputes, riots, contamination or disease affecting the use of animal or research facilities, earthquakes, floods, explosions or other acts of nature. The obligations and rights of the Party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the Parties' respective obligations hereunder shall resume. Except for mandatory services set forth in Exhibit A, in the event the interruption of the excused Party's obligations continues for a period in excess of thirty (30) days, either Party shall have the right to terminate this AGREEMENT upon ten (10) days' prior written notice to the other Party.

10.0 Effect of Termination. Either Party may terminate this AGREEMENT at any time for any reason upon thirty (30) days' prior written notice. BUYER shall reimburse UNIVERSITY for all costs incurred within the scope of this AGREEMENT by UNIVERSITY prior to receiving notice of termination or as a result of termination or expiration.

In the event that either Party shall be in default of any of its obligations under this AGREEMENT and shall fail to remedy such default within thirty (30) days after written notice thereof, the Party not in default shall have the option of terminating this AGREEMENT by giving written notice of termination with an immediate effect to the defaulting Party.

Termination of this AGREEMENT shall not affect the rights and obligations of the Parties accrued prior to termination.

Upon termination or expiration of this AGREEMENT, any provisions herein which are intended to continue and survive such termination or expiration (including without limitation, Sections 6, 8, 12, 13, 16, 17 and 18) shall survive expiration or termination of this AGREEMENT.

11.0 Notice. Any notice required or permitted under this AGREEMENT shall be effective only if given in writing and delivered by one Party to the other by personal service, by US Mail, or by electronic mail.

<p>To UNIVERSITY:</p> <p>Government & Business Contracts UCSF Wayne & Gladys Valley Center for Vision - Valley Tower 490 Illinois Street, Fourth Floor Campus Box 0962 San Francisco, CA 94143 use 94158 for Federal Express. orbusinesscontracts@ucsf.edu</p>
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<p>To BUYER:</p> <p>NAME TITLE ADDRESS</p>

- 12.0 Public Records.** The Parties acknowledge that UNIVERSITY is a California constitutional corporation subject to California Government Code 6250, et seq. also known as the California Public Records Act ("Act") and that all records and files of UNIVERSITY except those that may be excepted by the Act are available to any member of the public who makes a request pursuant to the Act.
- 13.0 Confidentiality.** "CONFIDENTIAL INFORMATION" shall mean proprietary and confidential information communicated by one Party to the other in writing, marked as "Confidential" or, in the case of oral disclosures, identified at the time of such oral disclosure as confidential, and reduced to writing and identified as "Confidential" within thirty (30) days of disclosure. The receiving Party shall use reasonable efforts not to disclose the disclosing Party's CONFIDENTIAL INFORMATION to anyone except as necessary for purposes of the SERVICES. The receiving Party will use the CONFIDENTIAL INFORMATION only in the performance of the SERVICES. The obligations of confidentiality set forth herein shall remain in effect for a period of five (5) years from the EFFECTIVE DATE. The receiving Party shall have no obligations under this paragraph with respect to information which:
- a. was known to it prior to receipt hereunder, as demonstrated by written records;
 - b. at the time of disclosure was generally available to the public, or which after disclosure becomes generally available to the public through no fault attributable to receiving Party;
 - c. is hereafter made available to receiving Party for use or disclosure from any third Party having a right to do so;
 - d. is required to be disclosed by law, governmental rule or regulation or order of a court with competent jurisdiction; or
 - e. is independently developed by receiving Party without reference to the CONFIDENTIAL INFORMATION.
- 14.0 Waiver.** No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. The failure of either Party to exercise any right or remedy hereunder shall not be deemed to be a waiver of such right or remedy or other right or remedy hereunder.
- 15.0 Exhibits.** Any and all exhibits attached hereto are incorporated herein by reference and made a part of this AGREEMENT.
- 16.0 Use of Names.** Neither Party will use the name or derivative thereof of the other Party or its employees, contractors or affiliates in any advertisement, press release, or other publicity without prior written approval of the other Party. BUYER understands that the California Education Code section 92000 provides that the name "University of California" is the property of the state and that no person will use that name without permission of University.
- 17.0 Governing Law.** California law shall govern the interpretation and enforcement of this AGREEMENT, without regard to the conflict of law principles thereof.

18.0 Counterparts; Electronic Copies. This AGREEMENT may be executed in one or more counterparts. Delivery of an executed counterpart of this AGREEMENT by facsimile or a .pdf data file or other scanned executed counterpart by email shall be equally as effective as delivery of a manually executed counterpart of this AGREEMENT. Each duplicate and counterpart shall be equally admissible in evidence, and each shall fully bind each Party who has executed it. The Parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The Parties agree they will have no rights to challenge the use or authenticity of this document based solely on the absence of an original signature.

19.0 Integration Clause. This AGREEMENT, together with any Exhibits hereto, represents the entire understanding of the Parties and supersedes any prior or contemporaneous agreements or understandings, including purchase orders, between UNIVERSITY and BUYER with respect to the subject matter hereof. No modification of this AGREEMENT may be executed between the Parties with respect to the subject matter hereof without formal written amendment of this AGREEMENT signed by duly authorized representatives of both Parties.

20.0 Export Control. No International Traffic in Arms Regulations or export controlled materials shall be delivered to UNIVERSITY pursuant to this AGREEMENT.

IN WITNESS, WHEREOF, intending to be legally bound, each Party represents it has caused this AGREEMENT to be signed by its duly authorized officer as of the day and year written below.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

BUYER

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: Contract Specialist,
Government and Business Contracts

TITLE: _____

DATE: _____

DATE: _____

EXHIBIT A

SERVICES AND PRICING