

UCD Agreement #

**CROCKER  
LABORATORY SERVICES  
AGREEMENT**

THIS AGREEMENT is made and entered into by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (University), on behalf of its Davis Crocker Nuclear Laboratory (the Facility) and (Sponsor)

R E C I T A L S

WHEREAS, The Facility has been established and is maintained to support University's pursuit of its constitutional objectives of instruction, research, and public service; and

WHEREAS, the services of the Facility may be extended to non-University users (including, when permitted by University policy, University students, faculty, and staff requesting such services for their personal use) only when, in the sole judgment of University, such action will serve purposes consistent with University's objectives and will not adversely affect the conduct of University activities; and

WHEREAS, the services requested by Sponsor have been determined to serve purposes consistent with University objectives and their provision to Sponsor not to adversely affect the conduct of University activities; and

WHEREAS, Sponsor has determined that satisfactory facilities for such services do not exist elsewhere; and

NOW, THEREFORE, University shall furnish the following services to sponsor.

T E R M S A N D C O N D I T I O N S

1. Services. Services and deliverables to be performed under this agreement are identified in "Exhibit A", attached and made a part hereof. Sponsor's purchase order's terms shall not affect the terms of this agreement. Please mark one or both of the following:
  - 1.1.  University shall provide use of Facility and personnel for utilization of Facility's cyclotron. Facility shall calibrate estimated beam flux and shall operate cyclotron so that Sponsor can test its own material, or
  - 1.2.  Facility shall provide other services and deliverables related to beam time through its shop services.
2. Priority of University work. University work always has priority over work to be performed

for non-University users.

3. Term. The term of this agreement shall be from **Date of Last Signing** through
  
4. Payment. Fees for services by Facility shall be based upon Facility's most recent approved rates, available at <http://crocker.ucdavis.edu/cyclotron/rates/>. University policy requires the Facility to recover the full cost of providing services; rates are reviewed regularly and are subject to change. Facility will provide Sponsor 30 days' written notice of any proposed rate change and an option to amend or terminate the agreement. The total cost of services shall not exceed  
There is a required minimum of eight hours of beam time. Sponsor shall pay for services within 30 days of Sponsor's receipt of University's invoice; Facility reserves the right to suspend performance of future services if Sponsor fails to make payment in full within 60 days.
  
5. Indemnification and Insurance. The parties shall defend, indemnify, and hold one another, their officers, employees, and agents, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of or in connection with this agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents or employees.
  - 5.1. Evidence of Insurance. Prior to services being rendered Sponsor shall provide University written evidence of Sponsor's insurance coverage relevant to the presence or activity of Sponsor, its officers, agents, and employees while in, on or about University property. In the event Sponsor's coverage is not acceptable to University, University shall have the right to immediately suspend services. If Sponsor fails to provide acceptable insurance University may terminate this agreement.
  - 5.2. Patent Infringement. Sponsor shall indemnify University, its agents and employees, against all liability (including costs and expenses incurred) for use of any invention or discovery and for the infringement of any Letter Patent (not including liability arising pursuant to U.S. Code section 183, Title 35 (1952) prior to the issuance of Letters Patent) occurring during the performance of this agreement and resulting from Sponsor's request or instruction that the Facility utilize any device, method, or technique not normally utilized by the Facility.
  
6. Non-Liability of University.
  - 6.1. Consequential Damages. University shall not be liable for any loss of profits, claims against Sponsor by any third party, or consequential damages.
  - 6.2. Delay/Desired Result. University shall incur no liability to Sponsor or to any third party for any loss, cost, claim or damage, either direct or consequential, arising from University's delay in performance or failure to perform services, or failure to achieve a desired result.

- 6.3. Property Damage. University shall incur no liability to Sponsor or to any third party for loss or destruction of or damage to any materials to be sampled, assayed, or tested, data, equipment, or other property brought upon University premises by Sponsor or delivered to University by Sponsor in connection with this agreement. Sponsor accepts all liability for risk of loss to any and all such property.
- 6.4. Liability Limitation. University's liability for damages shall not exceed the total of all charges paid by Sponsor.
7. Confidential Information. During the course of this agreement, Sponsor may provide University with information, data, or material that it regards as proprietary or confidential. Such information shall be marked or stamped "CONFIDENTIAL INFORMATION". If communicated orally to University, Sponsor shall submit confirmation in writing within five days of such disclosure.
- 7.1. University's Obligation. University shall treat Sponsor's Confidential Information in the same manner as University treats its own similar information. Upon Sponsor's written request, University shall protect Sponsor's Confidential Information by means not normally employed by University, however, University shall have no obligation to comply with any such request by Sponsor. Should such protection occur, any related costs shall be borne by Sponsor. University shall not be liable for inadvertent disclosure of Confidential Information provided University has exercised reasonable care.
- 7.2. Exempt Information. Confidential Information does not include information that is (i) not exempt from disclosure under the California Public Records Act (Calif. Gov. Code sec. 6250 et seq.); (ii) otherwise available to the public; (iii) rightfully received from a third party not in breach of an obligation of confidentiality; (iv) independently developed by University; (v) previously known to University; or (vi) produced in compliance with a court order or when required by law. University shall give reasonable notice to Sponsor that Confidential Information is being sought by a third party, to afford Sponsor an opportunity to limit or prevent disclosure. Any defense against disclosure shall be at Sponsor's sole initiative, risk, cost, and expense. University is not obligated to participate in any defense against such request for disclosure. Upon Sponsor's request, University agrees to cease using all Confidential Information and to return it promptly to Sponsor.
- 7.3. Time Limitation. University shall not divulge Sponsor's Confidential Information for a period of three years following termination of this agreement, or earlier if Sponsor makes or allows its Confidential Information to become public knowledge, or by communicating such Confidential Information to a party not bound by an obligation of confidentiality.
- 7.4. Disposition of Confidential Information. Upon completion of services or termination of this agreement, by Sponsor's written request, University shall return any Confidential Information. Absent such request, Facility shall destroy or dispose of it according to its established procedures.
8. Disclaimer of Warranty. UNIVERSITY MAKES NO WARRANTY AS TO RESULTS

TO BE OBTAINED BY THE USER FROM THE USE OF ANY SERVICES AND/OR FACILITIES PROVIDED BY UNIVERSITY UNDER THIS AGREEMENT. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. Shipment of Restricted Materials. In the event that Sponsor will be providing materials to be sampled, assayed, or used by University in providing Services hereunder whose shipment would require authorization or permits from governmental authorities (including return of any such materials to Sponsor following completion of Services or termination of this agreement), application for such authorization or permit shall be solely at Sponsor's initiative, risk, cost, and expense.

10. Sponsor's Ownership of Test Results and University's Right to Use Data.

10.1. Test results, corresponding reports, and other deliverables described in Exhibit A Prepared by University for Sponsor, or developed by Sponsor during Sponsor's use of the Facility shall be owned by Sponsor, provided University retains copies according to its normal practices.

10.2. Notwithstanding the foregoing, if Sponsor engages in research activities on University's Davis campus or with University's 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 <http://www.ucop.edu/ott/> and U.S. patent laws.

10.3. Should Facility perform other services, University shall have the unrestricted right to use for its own purposes, including publication, any data or information which it may develop in connection with or as a result of performing services, however University shall not publish Sponsor's Confidential Information.

11. Use of University's Name. Sponsor shall not use the name or mark of University in any form or manner in advertisements, reports, or other information released to the public without the prior written approval of University.

12. Termination. This agreement may be terminated by either party upon ten days written notice to the other party.

13. Notices. Notices shall be directed to the appropriate parties at the following addresses:

13.1. Regarding Contract. Correspondence or inquiries regarding contractual matters shall be directed to the appropriate party at the following addresses:

UNIVERSITY

SPONSOR

Business Contracts & Analysis

Attn:

One Shields Avenue

Address:

Davis, California 95616

City:

State:

Zip:

Tel:

E-Mail:

13.2. Regarding Program/Work. Correspondence or inquiries regarding the substance and progress of work to be performed, or payment for services should be directed to the following addresses:

Carol Chandler  
Crocker Nuclear Laboratory  
University of California  
One Shields Avenue  
Davis, California 95616

Telephone: (530) 752-7120  
E-mail: cchandler@ucdavis.edu

14. Attorneys' Fees. If any action at law or equity is brought to enforce or interpret the terms of this agreement, including collection of delinquent payment, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.
15. Relationship of the Parties. The parties to this agreement shall be and remain at all times independent contractors, neither being the employee, agent, representative, or contractor of the other in their relationship under this agreement.
16. Governing Law. This agreement shall be construed pursuant to California law.
17. Amendment. No change in any term or condition of this agreement shall become effective unless by amendment in writing signed by both parties.
18. Entire Agreement. This agreement constitutes the entire understanding of the parties respecting the subject matter hereof and supersedes any prior understanding or agreement between them, written or oral, regarding the same subject matter.

AGREED:

SPONSOR

THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA

By: \_\_\_\_\_

By: \_\_\_\_\_

(Authorized signature)

Kelly Gilmore  
Manager Contracting Services  
Business & Revenue Contracts  
University of California, Davis

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A – CROCKER NUCLEAR LABORATORY**

The Cyclotron produces high-intensity, external beams of light ions that can be tuned to energies between 4 MeV and 67.5 MeV. The primary particles accelerated are protons, deuterons, helions and alphas. Neutron beams can also be provided.

### **SERVICES:**

Cyclotron Beam Time

Sample Irradiation Technician

Shop – Engineer

Shop - Technician



