**UC Davis Agreement #A\_\_\_\_\_\_**

UNIVERSITY SERVICES agreement

(Click here to enter text.)

THIS AGREEMENT (**“Agreement”**) is made and entered into by and between The Regents of the University of California (**“University”**), on behalf of its Davis Campus Crocker Nuclear Laboratory (the **“Facility”**) and CLICK HERE TO ENTER TEXT. (**“Sponsor”**).

RECITALS

WHEREAS, the Facility is home to a 76-inch isochronous cyclotron built by the UC Davis physics department in 1966 in collaboration with Oak Ridge National Laboratory and the Naval Research Laboratory; and

WHEREAS, the Facility can produce 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; and

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 the services in question cannot be adequately performed by other agencies or commercial firms; and

NOW, THEREFORE, University shall furnish the following services to Sponsor:

 TERMS AND CONDITIONS

1. Services. University shall provide rate-based services (**“Services”**) for use of Facility and personnel for utilization of Facility’s cyclotron, peripheral devices, and/or clean laboratory. When Sponsor's representatives are in attendance at the facility, they will receive a briefing on the safety policies of the facility and must agree to abide by them. Facility personnel shall calibrate and operate instrumentation. Services may include those performed solely by Facility or may include facility-assisted Services performed by both Facility and Sponsor for analysis of Sponsor’s samples as more fully described in **“Exhibit A”**, attached hereto and incorporated herein. Deliverables shall consist of a report (**“Deliverables”**) which shall be sent by Facility to Sponsor by e-mail upon completion of Services; University shall retain a copy of the report. Additional work shall be performed only if authorized in advance by written amendment to this Agreement executed by both parties. To the extent that any provision of Exhibit A is inconsistent with this Agreement, this Agreement shall take precedence. Sponsor’s addendum or purchase order shall have no effect on the terms and conditions of this Agreement.
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 the date of Sponsor’s signature and continuing through CLICK HERE TO ENTER END DATE (the **“Term”**). Upon mutual consent and written agreement, the parties shall have the option to extend the Term of the Agreement up to a maximum Term of five (5) years.
4. Payment. Fees for Services by Facility shall be based upon Facility’s most recently approved rates as more fully described and shown at <http://cyclotron.crocker.ucdavis.edu/rates>. The total cost of Services shall not exceed $Click here to enter text. Facility will provide Sponsor thirty (30) days’ written notice of any proposed rate change if approved rate(s) increase during the term hereof and an option to amend or terminate the Agreement. Sponsor shall pay for Services within thirty (30) days of Sponsor’s receipt of University’s invoice. Facility reserves the right to suspend performance of Services if Sponsor fails to make payment in full within sixty (60) days.

4.1 Minimum Reserved Time. The minimum reserved time is eight (8) hours per day, including one (1) hour of tuning time, with the exception that users may reserve as few as four (4) hours on the final day of a multiple day reservation of three (3) or more days.

4.2 Cancellation Policy. University reserves the right to charge a cancellation fee for cancellations made within ten (10) business days of the first reserved day, up to, but not exceeding, the full amount for the reserved time.

1. Indemnification and Insurance. The parties agree to defend, indemnify and hold one another harmless from and against any and all liability, loss, expense, attorneys’ fees, or claims for injury or damages arising from the performance of this Agreement, but only in proportion to and to the extent 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 the indemnifying party, its officers, agents, students, or employees.
	1. Evidence of Insurance. Prior to provision of Services or upon University request, 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 or in connection with this Agreement. 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 within ten (10) days after University’s written notice, University may terminate this Agreement.
	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 l83, Title 35 (l952) 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.
2. Non-Liability of University.
	1. 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.
	2. Consequential Damages. University shall not be liable for any loss of profits, claims against Sponsor by any third party, or consequential damages.
	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.
3. 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 (5) days of such disclosure. Sponsor’s samples are its Confidential Information and do not need to marked as Confidential Information.
	1. University’s Obligation. University shall treat Sponsor’s Confidential Information in the same manner as University treats its own similar information. University shall use reasonable means to protect Sponsor’s Confidential Information and shall use means not normally employed by University by Sponsor’s request. Should such protection occur, any related costs shall be borne by Sponsor. University shall not be liable for inadvertent disclosure of Confidential Information.
	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.
	3. 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.
4. 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.
5. 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.
6. Rules, Regulations, Policies and Guidelines. University facilities shall be used only in accordance with all federal, state and local laws and University policies. Use of the facilities shall be denied if they are not in accordance with these laws and policies, or if circumstances are such that the proposed use would interfere with the orderly operation of University's programs. Sponsor agrees to comply with all federal, state and local laws and University policies, as well as guidelines from the Centers for Disease Control and Prevention, state, county and other local state public health officials and University health and wellness standards, which may change from time-to-time with little or no notice. Sponsor agrees to comply with University facility use rules. Sponsor is responsible for ensuring that its directors, officers, agents, employees, or contractors who will use University facilities, comply with all applicable requirements.
7. Ownership & Right to Use Data. Sponsor shall own the Deliverables (as defined in Exhibit A) upon payment in full to University for the Services. Sponsor shall be free to use data and information provided in Deliverables, as it deems fit, and for any research or commercial purposes. Notwithstanding the foregoing, however, as mandated by University policy, University reserves the right to use any and all information and data that it generates in performance of the Services for educational and/or research purposes. Notwithstanding the foregoing, University does not transfer to the Sponsor, 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 generated 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.

1. Use of Name. Neither party shall use the name or mark of the other party in any form or manner in advertisements, reports, or other information released to the public without the prior written approval of the other party.
2. Termination. The parties may terminate this Agreement at any time by giving the other party thirty (30) calendar days’ written notice of such action.
3. Force Majeure. Neither party shall be liable for delays due to causes beyond the party’s control, including, but not limited to, acts of God, war, public enemy, civil disturbances, earthquakes, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, rolling blackouts, terrorist threats or actions on University property and unusually severe weather.
4. Notices. Notices shall be directed to the appropriate parties at the following addresses:
	1. Regarding Contract. Correspondence or inquiries regarding contractual matters shall be directed to the appropriate party at the following addresses:

UNIVERSITY SPONSOR

 Name of contact

Business & Revenue Contracts Contact Title

University of California, Davis Sponsor’s Name

One Shields Avenue Address

Davis, CA 95616 Address

E-mail: E-mail: Enter E-mail address

* 1. 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:

Eric Prebys, Director Telephone: (530) 771-7024

Crocker Nuclear Laboratory E-mail: eprebys@ucdavis.edu

University of California, Davis

One Shields Avenue

Davis, CA 95616

1. 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.
2. 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 sponsor of the other in their relationship under this agreement.
3. Governing Law. This Agreement shall be construed pursuant to California law.
4. Amendment. No change in any term or condition of this Agreement shall become effective unless by amendment in writing signed by both parties.
5. Severability. If a provision of this Agreement becomes, or is determined to be, illegal, invalid, or unenforceable, that will not affect the legality, validity, or enforceability of any other provision of the agreement or of any portion of the invalidated provision remains legal, valid, or enforceable.
6. 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:

ENTER SPONSOR’S NAME THE REGENTS OF THE

 UNIVERSITY OF CALIFORNIA

 By: By:

(authorized signature)

 Print name: UC Davis

 Title:

 Date: Date: