

<i>FOR ACCOUNTING PURPOSES ONLY</i>	
Agreement Number:	_____
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<u>Location(s)/Account(s)/Fund(s)/Subaccount(s)</u>	
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**UNIVERSITY OF CALIFORNIA  
PROFESSIONAL SERVICES AGREEMENT**

This Agreement to furnish certain professional services is made as of **[Insert Date]** by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation (hereinafter called "the University") and **[Insert Contractor Firm or Name]** hereinafter called (the "Contractor") located at **[Insert Contractor Address]** .

I. NATURE AND PLACE(S) OF SERVICE

- A. The Contractor shall furnish to the University the following described services:
- B. In addition to the services described in subparagraph A. above, the Contractor's proposal to the University shall be incorporated herein by reference and made part of this Agreement.
- C. If the Contractor is an entity other than an individual, the University requires that **[insert individual's name within the company]** be assigned to perform the work set forth herein. No reassignment of work to any other individual shall be made without the written approval of the University
- D. Reports:
  - \_\_\_\_\_ The Contractor shall provide reports as described below (include number of copies and due date).
  - \_\_\_\_\_ No report required.
- E. Places(s) of performance will be:
 

**[Insert Place(s) of Performance]**
- F. The University will provide working space, equipment, furniture, utilities, and services, as follows:
 

**[Insert Working Space, etc.]**
- G. If applicable, the services of the Contractor will assist the University in the performance of contract/grant no. **[Insert Contract/Grant Number]** sponsored by **[Insert Agency Name]** dated **[Insert Contract/Grant Date]**. Applicable portions of contracts are attached.
- H. The Contractor shall use recording devices in discussions with University employees only when the University and said employees so authorize; this authorization shall be in writing. If applicable, the Contractor's use of recording devices in such discussion is proposed as follows:

**[Insert Terms]**

II. TERM OF AGREEMENT

- A. The period of performance for this Agreement shall be from **[Insert Start Date]** through **[Insert End Date]**.
- B. Either the University or the Contractor may terminate this Agreement for convenience at any time by giving the other 30 calendar days' written notice of such action.
- C. If one party gives **[Insert Number of Days]** days' notice to the other of a breach of this Agreement and the breaching party fails to cure said breach within said **[Insert Number of Days]**-day period, this Agreement may be terminated by the non-breaching party.

III. COMPENSATION AND REIMBURSEMENT OF EXPENSES

A. The University will pay the following to the Contractor for services performed:

1. Professional Fees:

\_\_\_\_\_ See attached fee schedule.  
\_\_\_\_\_ \$ . per \_\_\_\_\_ x \_\_\_\_\_  
\_\_\_\_\_ \$ . (flat rate)

Subtotal: **\$ 00.00**

2. Other Expenses:

\_\_\_\_\_ See attached fee schedule.  
\_\_\_\_\_ Per Diem at \$ \_\_\_\_\_ for \_\_\_\_\_ days  
\_\_\_\_\_ Travel expenses (specify)  
\_\_\_\_\_ Other expenses (specify)

Subtotal: **\$ 00.00**

MAXIMUM TO BE PAID UNDER THIS AGREEMENT:

TOTAL: **\$ 00.00**

B. Payments.

\_\_\_\_\_ Payment will be made upon submission of an invoice by the Contractor indicating the Agreement Number and setting forth charges in accordance with rates detailed in paragraph A above and the performance schedule in Article IV. below. The invoice must include the Contractor's taxpayer identification number. Contractors shall submit invoices to person named in V., below.

\_\_\_\_\_ Payments will be made on a monthly or periodic basis without invoice provided a schedule of specific payment has been made a part of this Agreement and is in accordance with the performance schedule set out in Article IV. below.

No payments shall be made in advance of work performed, except as specified in the Agreement.

IV. PERFORMANCE SCHEDULE

**[Insert time schedule by which the Contractor is to produce or provide specified material or perform certain consulting services.]**

V. REPORTING

In performing consulting services hereunder, the Contractor shall report to:

**[Insert Director Name], Director**  
**[Insert Unit Name]**

VI. NOTIFICATION

Any written notification required hereunder shall be personally served or mailed by certified mail, return receipt requested, to the following:

For the University: **[insert Director Name], Director**  
**[insert FA Unit Name]**  
**1111 Franklin Street, 6<sup>th</sup> Floor**  
**Oakland, California 94607**

For the Contractor: **[insert Contractor name]**  
**[insert Contractor address]**  
**[insert Contractor address]**  
**[insert Contractor address]**

VII. TAXES

The compensation stated in Article III. of this Agreement includes all applicable taxes and will not be changed hereafter as the result of Contractor's failure to include any applicable tax, or as the result of any changes in the Contractor's tax liabilities.

VIII. ASSIGNMENT OR SUBCONTRACTING

The Contractor may not assign or transfer this agreement, or any interest therein or claim thereunder, or subcontract any portion of the work thereunder, without the prior written approval of the University. If the University consents to such assignment or transfer, the terms and conditions of this Agreement shall be binding upon any assignee or transferee.

IX. PATENTS

Whenever any invention or discovery is made or conceived by the Contractor in the course of or in connection with this Agreement, the Contractor shall promptly furnish the University complete information with respect thereto and the University shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. The Contractor will, at University expense, execute all documents and do all things necessary or proper with respect to such patent applications. The Contractor is specifically subject to an obligation to assign all right, title and interest in any such patent rights to the University as well as all right, title and interest in tangible research products embodying such inventions whether the inventions are patentable or not.

X. COPYRIGHT

Contractor agrees that all deliverables required herein are works made for hire under the Copyright Act and, accordingly, that the University owns all right, title, and interest, including, but not limited to, copyright and all copyright rights in said deliverables. To the extent said deliverables do not qualify as works made for hire, Contractor hereby assigns irrevocably all right, title, and interest in said deliverables, including, but not limited to, copyright and all copyright rights, to the University. Contractor shall execute any and all agreements and forms that may be required by University in order to effectuate said assignment and to allow the University to register copyrighted material with the U.S. Copyright Office.

XI. CONTRACTOR'S LIABILITY AND INSURANCE REQUIREMENTS

1. The Contractor shall defend, indemnify, and hold the University, 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 that are caused by or result from the negligent or intentional acts or omissions of the Contractor, its officers, agents, or employees.
2. The Contractor, at its sole cost and expense, shall insure its activities in connection with the work under this Agreement and obtain, keep in force, and maintain insurance as follows:

a. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:

(1) Each Occurrence	<b><u>\$1,000,000</u></b>
(2) Products/Completed Operations Aggregate	<b><u>\$2,000,000</u></b>
(3) Personal and Advertising Injury	<b><u>\$1,000,000</u></b>
(4) General Aggregate (Not applicable to the Comprehensive Form)	<b><u>\$2,000,000</u></b>

If the above insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

- b. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit not less than **One Million** dollars (**\$1,000,000**) per occurrence. **(REQUIRED ONLY IF THE CONTRACTOR DRIVES ON THE UNIVERSITY PREMISES IN THE COURSE OF PERFORMING WORK FOR UNIVERSITY.)**
- c. Professional Liability Insurance with a limit not less than **One Million** dollars (**\$1,000,000**) per occurrence. If this insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.
- d. Workers' Compensation as required by California State law.

It should be expressly understood, however, that the coverage and limits referred to under a., b., and c. above shall not in any way limit the liability of the Contractor. The Contractor shall furnish the University with certificates of insurance evidencing compliance with all requirements prior to commencing work under this Agreement. Such certificates shall:

- (1) Provide for thirty (30)-days advance written notice to the University of any modification, change, or cancellation of any of the above insurance coverage.
- (2) State that "The Regents of the University of California as additionally insured" under the coverage referred to under a. and b.
- (3) Include a provision that the coverage will be primary and will not participate with nor be excess over any valid and collectible insurance or program of self-insurance carried or maintained by the University.

It should be further understood that the provisions under (2) and (3) above shall only apply in proportion to and to the extent of the negligent act or omissions of the Contractor, its officers, agents, or employees.

## XII. RECORDS ABOUT INDIVIDUALS

The State of California Information Practices Act of 1977, as well as University policy, sets forth certain requirements and safeguards regarding records pertaining to individuals, including the rights of access by the subject individual and by third parties.

If the Contractor creates records about an individual of a confidential or personal type, including notes or tape recordings, the information shall be collected to the greatest extent practicable directly from the individual who is the subject of the information. When collecting the information, the Contractor shall inform the individual that the record is being made and the purpose of the record. Use of recording devices in discussions with employees is permitted only as specified in this Agreement.

## XIII. OWNERSHIP AND ACCESS TO RECORDS

While ownership of confidential or personal information about individuals shall be subject to negotiated agreement between the University and the Contractor, records will normally become the property of the University of California and subject to state law and University policies governing privacy and access to files.

## XIV. EXAMINATION OF RECORDS

The University, and if the applicable contract or grant so provides, the other contracting party or grantor (and if that be the United States, or an agency or instrumentality thereof, then the Controller General of the United States) shall have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor involving transactions and work related to this Agreement until the expiration of five years after final payment hereunder. The Contractor shall retain project records for a period of five years from the date of final payment.

## XV. CONFLICT OF INTEREST

1. The Contractor shall not hire any officer or employee of the University to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, the Contractor shall not hire any employee of the United States government to perform any service covered by this agreement.
2. The Contractor affirms that to the best of his/her knowledge there exists no actual or potential conflict between the Contractor's family, business, or financial interests and the services provided under this Agreement, and in the event of change in either private interests or service under this agreement, any question regarding possible conflict of interest which may rise as a result of such change will be raised with the University.
3. The Contractor shall not be in a reporting relationship to a University employee who is a near relative, nor shall the near relative be in a decision-making position with respect to the Contractor.

## XVI. AFFIRMATIVE ACTION

The Contractor recognizes that as a federal and state government contractor or subcontractor, the University of California is obligated to comply with certain laws and regulations of the federal and state government regarding equal opportunity and affirmative action. When applicable, the Contractor agrees that, as a government subcontractor, the following are incorporated herein as though set forth in full: the non-discrimination and affirmative action clauses contained in Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations contained in Title 41, part 60 of the Code of

Federal Regulations, as amended; the non-discrimination and affirmative action clause contained in the Rehabilitation Act of 1973, as amended, as well as the Americans With Disabilities Act relative to the employment and advancement in employment of qualified individuals with disabilities, and the implementing rules and regulations in Title 41, part 60-741 and 742 of the Code of Federal Regulations; the non-discrimination and affirmative action clause of the Vietnam Era Veterans Readjustment Assistance Act of 1974 relative to the employment and advancement in employment of qualified special disabled veterans and Vietnam era veterans without discrimination, and the implementing rules and regulations in Title 41, part 60-250 of the Code of Federal Regulations; and the non-discrimination clause required by California Government Code Section 12900 relative to equal employment opportunity for all persons without regard to race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex, and the implementing rules and regulations of Title 2, Division 4, Chapter 5 of the California Code of Regulations. The Contractor, as a government subcontractor, further agrees that when applicable it shall provide the certification of non-segregated facilities required by Title 41, part 60-1.8(b) of the Code of Federal Regulations.

#### XVII. CONFIDENTIALITY

The Contractor shall use his or her best efforts to keep confidential any information provided by the University and marked "Confidential Information," or any oral information conveyed to the Contractor by the University and followed by a written communication within thirty (30) days that said information shall be considered Confidential Information. This non-disclosure provision shall not apply to any of the following:

1. Information which the Contractor can demonstrate by written records was known to him or her prior to the effective date of this Agreement;
2. Is currently in, or in the future enters, the public domain other than through a breach of this Agreement or through other acts or omissions of Contractor; or
3. Is obtained lawfully from a third party.

#### XVII. 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.

#### XIX. NO THIRD-PARTY RIGHTS

Nothing in this Agreement is intended to make any person or entity who is not signatory to the agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

#### XX. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement.

#### XXI. STANDARD FOR PERFORMANCE

The parties acknowledge that the University, in selecting the Contractor to perform the services hereunder, is relying upon the Contractor's reputation for excellence in the performance of the services required hereunder. The Contractor shall perform the services in the manner of one who is a recognized specialist in the types of services to be performed. All deadlines set forth in the Agreement are binding and may be modified only by subsequent written agreement of the parties. The Contractor shall devote such time to performance of its, her, or his duties under this Agreement as is reasonably necessary for the satisfactory performance of such duties within the deadlines set forth herein. Nothing in the foregoing shall be construed to alter the requirement that time is of the essence in this Agreement.

#### XXII. DISPUTE RESOLUTION

Any dispute arising regarding the interpretation or implementation of this Agreement, including any claims for breach of this Agreement, shall be resolved by submitting the claim for arbitration to the American Arbitration Association in accordance with its rules and procedures applicable to commercial disputes. The location of any arbitration hearing shall be **Oakland**, California, and any enforcement of the arbitrator's decision shall be brought in the Superior Court of **Alameda County**, California.

**XXIII. ATTORNEY'S FEES**

In any action brought by a party to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs. The prevailing party shall be entitled to the reasonable value of any services provided to it by in-house counsel. The reasonable value of services provided by in-house counsel shall be calculated by applying an hourly rate commensurate with prevailing market rates charged by attorneys in private practice for such services.

**XXIV. REPRESENTATIVES**

Any changes to this Agreement may be made only by the following representatives of the University, or their successors as designated in writing:

Responsible Administrative Official

Program Review Official

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**XXV. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral agreements with respect to the subject matter herein. Any modification to this Agreement must be on Amendment forms (Appendix 2).

**XXVI. APPLICABLE LAW**

This agreement shall be governed by the laws of the State of California.

**CONTRACTOR**

**THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA**

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
Responsible Administrative \*

\_\_\_\_\_  
Title

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
Program Review Official

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Title

Retention Period: Office of Record, Accounting, Executing Office, 5 years following termination, subject to Federal contract and grant requirements. Other Copies, 0-5 years.

\* PRIVACY NOTICE

If the Employer Identification Number is not used, the Social Security Number must be shown. Pursuant to Federal Privacy Act of 1974, you are hereby notified that disclosure of your Social Security number is required pursuant to Sections 6011 and 6051 of Subtitle F of the Internal Revenue Code and Regulation 4, Section 404, 1256, Code of Federal Regulations, under Section 218, Title II of the Social Security Act, as amended. The Social Security Number is to verify your identity. The principal use of the number shall be to report payments you have received to Federal and State governments.