

Research Infrastructure Commons Routine Services Agreement

This routine services agreement ("**Agreement**"), effective as of [effective date] ("**Effective Date**"), is by and between The Regents of the University of California, a California public corporation, solely on behalf of, and limited to, its Santa Cruz campus ("**University**"), and [Company Name] ("**Company**"), a [jurisdiction name] [entity type] having a principal place of business at [address]. "**Party**" hereinafter refers to each party individually and "**Parties**" refers to the parties collectively.

Background

1. University has core facility recharge centers with published rates (collectively, "**Research Infrastructure Commons**" or individually, "**RIC**").
2. [Core User Facility Name] is a RIC with experience and capabilities necessary to perform the routine services contemplated by this Agreement, and the performance of such services is consistent with University's educational, research, and public service activities.
3. Company would like University to provide the services as set forth in this Agreement.

In consideration of the conditions and terms set forth in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

Agreement

1. Services

University staff will perform services on behalf of Company and, if applicable, provide deliverables to Company as set forth in the attached and incorporated **SCHEDULE A** ("**Services**" and "**Deliverables**," respectively), subject to the following:

- 1.1. Routine and Non-Inventive:** All Services listed in SCHEDULE A must be limited to activities that are routine, and not inventive as defined by U.S. patent law. Examples of routine, non-inventive services performed by University staff include: preparing samples for testing, and acquiring data from testing in accordance with a Company-authored protocol. The Parties agree that Services performed by University will be routine and narrowly defined by Company. Company understands and acknowledges that University staff have agreed, as a condition of their employment by University, to promptly report and fully disclose the conception and/or reduction to practice of potentially patentable inventions to University, and to assign inventions and patents to University, in accordance with the University of California Patent Policy ("**Patent Policy**"), which may be found at <https://policy.ucop.edu/doc/2500493/PatentPolicy>.
- 1.2. Not Sponsored or Collaborative Research:** No Services provided under this Agreement will be sponsored research undertaken by University for Company, or collaborative research conducted by University with Company.
- 1.3. No Company On-Site Access to University Facilities:** Notwithstanding anything to the contrary herein, including those terms and conditions in EXHIBIT 1, this Agreement does not permit Company, including Company employees or agents, to physically access and/or use University facilities.

1.4. Company Responsible for Compliance with Laws and Regulations: Company agrees that University will not perform Services in compliance with current Good Manufacturing Practices (21 CFR Parts 210 and 211) or Good Laboratory Practices for Non-Clinical Laboratory Studies (21 CFR Parts 58), and that University is not a "sponsor" (as defined in 21 C.F.R. § 58.3(f)), a "testing facility" (as defined in 21 C.F.R. § 58.3(g)) or an "investigator" (as defined in 21 C.F.R. § 312.3), and is not intended to be a "contract research organization" (as defined in 21 C.F.R. § 312.3) for any purpose under FDA regulations or guidelines. Company agrees that it is solely responsible for full compliance with any legal and regulatory requirements and the terms and conditions of any funding source pertaining to Services. Company represents and warrants that it has acted and will act in full compliance with all applicable laws, regulations, and the terms and conditions of any funding source pertaining to Services.

2. Deliverables

2.1. Ownership of Deliverables: Subject to Article 1, Company shall own all Deliverables upon payment of Agreement Fees (as defined in Article 5). University shall submit Deliverables to Company in accordance with the due dates established in SCHEDULE A.

2.2. University Use of Data: Unless otherwise agreed in writing by the Parties, data generated in the direct performance of the Services will belong to Company and will not be used by University for other purposes.

3. Material

3.1. Materials Supplied by Company: In the event Services require Company to furnish or supply University with parts, goods, data, specifications, components, programs, practices, methods, export materials (if approved by the University pursuant to Agreement), or other property such materials will be identified in SCHEDULE A and provided by Company to University in a timely and secure manner so as to allow University to meet its commitments under Agreement ("**Company Materials**"). Provision of Company Materials to University has no impact on Company's ownership of Company Materials. To the extent any Company Materials are returned to Company, any claims for shortages of or damages to materials suffered in transit are the responsibility of Company and will be submitted by Company directly to the carrier. Company will identify any shortages or damages at the time of delivery; claims of shortages or damages after the date of delivery are hereby waived.

3.2. University Use of Materials: Unless otherwise agreed in writing by the Parties, University will not use any Company Materials except to fulfill the Services.

3.3. Materials Warranty: Company warrants that Company Materials will: (1) conform to the requirements of this Agreement, including all descriptions, specifications, and attachments made a part hereof; and (2) will not infringe any third party rights. The University's acceptance of Company Materials will not relieve Company from its obligations under this warranty.

3.4. Materials Shipping Costs: Company will be responsible for the cost of shipping all Company Materials (including, without limitation, costs of insurance and other related costs), whether shipped by Company to University or by University to Company. University, at its option, may not tender delivery to Company of any Company Material for which Company has not provided

shipping instructions, payment and other required information. If Company postpones or delays delivery of Company Materials by University to Company for any reason (for example, if Company requests a delay in delivery), Company agrees to reimburse University for any and all storage costs and other additional expenses resulting therefrom.

3.5. No Bailment: Nothing herein shall be construed to create a bailment relationship between the Parties concerning any Company Materials.

3.6. Materials Indemnification: Company will indemnify, defend, and hold harmless the University, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that Company Materials or the University's use of Company Materials constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. The University retains the right to participate in the defense against any such suit or action, and Company will not settle any such suit or action without the University's consent.

4. Intellectual Property

4.1. Background Intellectual Property: Both parties shall retain all rights to their respective Background Intellectual Property. "**Background Intellectual Property**" means property and the legal right therein of either or both parties developed before or independent of this Agreement including inventions, patent applications, patents, and copyright.

4.2. No Implied License: Company agrees that this Agreement does not grant Company any right, title or interest in or to any intellectual property owned by University. Subject to the right to use Company Materials granted to University under Article 3, University agrees that this Agreement does not grant University any right, title or interest in or to any intellectual property owned by Company.

5. Payments

Company will pay University the fees in accordance with the attached **SCHEDULE B** which is incorporated as part of this Agreement ("**Agreement Fees**").

6. Indemnification

Each Party will defend, indemnify, and hold the other Party, 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 (collectively, "**Claim**") but only in proportion to and to the extent such Claims are caused by or result from the negligent or intentional acts or omissions of the indemnifying Party, its officers, agents, or employees. The Party seeking indemnification agrees to provide the other Party with prompt notice of any such Claim and to permit the indemnifying Party to defend any Claim or action, and to cooperate fully in such defense. The indemnifying Party will not settle or consent to the entry of any judgment in any Claim without the consent of the other Party, and such consent will not be unreasonably withheld, conditioned, or delayed.

7. Survival

Any termination or expiration of Agreement will not affect the rights and obligations set forth in the following provisions of Agreement: Section 2 (Deliverables), Section 3 (Material), Section 4 (Intellectual Property), Section 6 (Indemnification), Section 8 (RIC Standard Terms).

8. RIC Standard Terms

RIC Standard Terms specified in the attached **EXHIBIT 1** are incorporated as part of this Agreement.

9. Representations

Each person signing Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute Agreement. Each Party represents and warrants to the other that the execution of Agreement and the performance of such Party’s obligations hereunder have been duly authorized, and that Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

In witness whereof, the Parties have executed Agreement as of the Effective Date.

[Long Company Name]

By: _____

Name: _____

Title: _____

Date: _____

The Regents of the University of California

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1
Research Infrastructure Commons
Standard Terms

These Standard Terms are used for Research Infrastructure Commons' Access Agreement and Routine Services Agreement. The terms "**Company Users**", "**Shared Access Facility**", and "**Access**" are defined in, and applicable to, the Access Agreement.

1. Priorities

Research Infrastructure Commons are shared by University faculty, students, staff and researchers as well as Company Users. The Parties agree that University work will have priority over work performed by, or for non-University users. Accordingly, University will not be responsible for any delays incurred by Company caused by any such University priority.

2. Term and Termination

- 2.1. Start:** The term of Agreement will commence on Effective Date and terminates one (1) year from Effective Date or an [end date], whichever is later ("**Term**").
- 2.2. Termination Without Cause:** Either Party can terminate Agreement at any time, without cause, with ten (10) days' written notice to the other Party. If Agreement is terminated without cause, then Company will pay University the pro rata Agreement Fees through the date of termination, and all costs and non-cancelable obligations incurred by University up to and including the termination date. In no event will any capacity fees that are included in Agreement Fees be refundable.
- 2.3. Failure to Pay:** University will have the right to terminate Agreement without notice if Company fails to pay Agreement Fees in accordance with SCHEDULE B.
- 2.4. Survival:** Any termination or expiration of Agreement will not affect the rights and obligations set forth in the following provisions of this Exhibit 1: Paragraph 2.4 (Survival), Section 4 (Disclaimer of University Warranty), Section 5 (Limitation of Liability), Section 6 (Confidential Information), Section 7 (Use of Names and Trademarks), Section 9 (Data Security and Privacy), and Section 10 (Miscellaneous).

3. Notices

All notices under Agreement must be in writing and must be mailed or delivered by hand or recognized overnight delivery service to the Party to whom such notice is being given. Any such notice will be considered to have been given when received by the Party to whom notice is given, or upon receipt by the sending Party of written confirmation of refusal of delivery by the Party to whom notice is sent. The address and representatives for each Party for all such notices are listed in **SCHEDULE C**.

4. Disclaimer of University Warranty

EXCEPT AS EXPRESSLY SET FORTH OTHERWISE IN THIS AGREEMENT, THE UNIVERSITY MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE SHARED USER FACILITIES, THE ACCESS, THE SERVICES, THE DELIVERABLES, OR THE RESULTS OBTAINED BY COMPANY, OR PROVIDED UNDER THIS AGREEMENT,

INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. COMPANY ACKNOWLEDGES THAT THE FACILITIES, THE SERVICES, THE DELIVERABLES, AND THE RESULTS ARE PROVIDED ON AN "AS IS" BASIS AND WITHOUT WARRANTIES OF ANY KIND. COMPANY FURTHER ACKNOWLEDGES THAT IT USES SUCH FACILITIES, SERVICES, DELIVERABLES, AND RESULTS AT ITS OWN RISK. THE UNIVERSITY WILL BEAR NO RESPONSIBILITY FOR THE SUCCESS OR FAILURE OF THE SERVICES, DELIVERABLES, OR RESULTS.

5. Liability Limitation

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, WHETHER IN WARRANTY, TORT, CONTRACT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR LOSS OF GOOD WILL, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE.

6. Confidential Information

6.1. Confidentiality: "Confidential Information" is defined as non-public information that: (i) a Party considers confidential or proprietary; and (ii) is clearly marked "Confidential" or "Proprietary" at the time it is disclosed to the receiving party. If a Party discloses Confidential Information orally, the disclosing Party will indicate its confidentiality at the time of disclosure and will confirm such in writing within ten (10) days of the disclosure. Each Party agrees to use the Confidential Information solely in connection with Agreement and not for any purpose other than as authorized by the Agreement. The receiving Party will not disclose the disclosing Party's Confidential Information to any third party without prior written approval from the disclosing Party. The receiving Party's confidentiality and use obligations will extend for a period of one (1) year from the date of receipt of the disclosing Party's Confidential Information unless specified otherwise in Schedule A.

6.2. Non-Confidential Information: The Parties agree that information will not be deemed Confidential Information and the receiving Party will have no obligation to hold in confidence such information which: (i) was legally in its possession or known to the receiving Party without any obligation of confidentiality prior to receiving it from the disclosing Party; (ii) is, or subsequently becomes legally and publicly available without breach of Agreement by the receiving Party; (iii) is legally obtained by the receiving Party from a third party without any obligation or confidentiality; or (iv) is independently developed by or for the receiving Party without use of the Confidential Information as demonstrated by competent evidence.

6.3. Exceptions: If the receiving Party is required by law to disclose Confidential Information of the disclosing Party, the receiving Party will notify the disclosing Party, to the extent permitted by law, so that the disclosing Party may seek a protective order or other appropriate remedy. Notwithstanding anything to the contrary in this Agreement, Company acknowledges and agrees that the University is subject to compliance with the requirements of the California Public Records Act, Government Code Section 6250 et seq. and that any confidential information or the terms or conditions of this Agreement may be subject to disclosure pursuant thereto (or other similar applicable law) in the absence of applicable statutory exemptions for such confidential information.

7. Use of Names and Trademarks

Company will not use the name of the University of California ("UC"), any abbreviation thereof, any name of which "University of California" is a part, or any trademarks or logos of the University ("University Marks"), in any commercial context (including, without limitation, on products, in media including websites, and in advertisements), or in cases when such use may imply an endorsement or sponsorship of Company, its products or services. All such uses of University's name and trademarks must receive prior written consent from The Regents of the University of California. At all times, Company agrees to comply with California Education Code Section 92000.

University Marks are and will remain exclusively the property of the University. Company will not, either directly or indirectly, obtain or attempt to obtain during the Term hereof or at any time thereafter, any right, title or interest in or to University Marks, and

Company hereby expressly waives any right which it may have in University Marks. Company recognizes the University's exclusive ownership of University Marks.

8. Export Control and Biohazardous Materials

Company will not provide to University any materials and/or information that are export-controlled under the International Traffic in Arms Regulations (22 CFR 120-130), the United States Munitions List (22 CFR 121.1), or Export Administration Regulations (15 CFR 730-774); controlled on a military strategic goods list; Select Agent(s) under 42 CFR Part 73, et seq.; or subject to regulations governing access to such Export Materials ("**Export Materials**"). If Company desires to provide any Export Materials to the University, Company must provide written notification that identifies such Export Materials, including their export classification to the University contact in SCHEDULE C and receive confirmation and approval from University, prior to disclosure.

9. Data Security and Privacy

9.1. Definition: For the purpose of Agreement, "**Data Protection Law**" means applicable laws relating to privacy and data protection, including in the case of University, the Family Educational Rights and Privacy Act ("**FERPA**"), and other applicable U.S. federal and California state laws on privacy and data protection; and in the case of Company, Company's applicable national and local laws on privacy and data protection. In the event any Protected Information is revealed, shared, or exchanged between the Parties, each Party agrees to comply with its obligations under all applicable Data Protection Law, and as required under Agreement. To the extent that any laws or regulations of the home country or region of a Party has extra-territorial application such as to impose legal obligations on the other Party or its conduct outside such home country or region, the other Party upon request will provide reasonable assistance to such other Party in satisfying such obligation as necessary to implement Agreement. Such reasonable assistance shall not include legal advice or opinion.

9.2. Protection: Company agrees to protect the privacy and security of personally identifiable information or data identifiable to an individual ("**Protected Information**"). Company shall implement, maintain and use internationally recognized commercial data security standards regarding administrative, technical and physical security measures that meet or exceed these requirements, including information access and computer system security measures, to preserve the confidentiality, integrity and availability of the Protected Information. Company shall not access, use or disclose Protected Information other than for the sole purpose granted by the University as necessary to carry out the Services, or as required by applicable U.S. law, or as

otherwise authorized in writing by University. Company shall inform University of any confirmed or suspected unauthorized access or disclosure of Protected Information immediately upon discovery, both orally and in writing, and fully cooperate with University in investigating and remedying the effects of such breach.

- 9.3. Non-Disclosure:** Neither Party shall use or disclose Protected Information for any purposes except as contemplated by Agreement or as required by applicable U.S. law (such as pursuant to a subpoena or, for the University, the California Public Records Act), or as otherwise authorized in writing by the other Party. In the event of expiration or termination of this Agreement, the requirements of this Section will continue to apply to any Protected Information which continues to be stored, processed, or used by either Party following termination of this Agreement.

10. Miscellaneous

- 10.1. Governing Law:** This Agreement will be governed by and interpreted according to the laws of the State of California, without regard to its conflict of laws provisions. Parties agree and consent 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 will be exclusively in the County of Alameda.
- 10.2. Relationship of Parties:** The relationship of the Parties under Agreement is that of independent contractors. Nothing herein will create, or be construed to be, a joint venture, association, partnership, franchise or other form of business relationship. At no time will the employees, agents or assigns of one Party be considered the employees of the other Party for any purpose, including but not limited to workers' compensation purposes.
- 10.3. Force Majeure:** If any Party fails to timely perform its obligations (other than payment obligations) under Agreement because of natural disasters, labor disputes, strikes, actions of governmental authority, acts of terrorism or war, whether actual or threatened, judicial orders, epidemics, quarantine, public health or travel restrictions or other causes beyond the reasonable control of the Party obligated to perform, then that Party's performance will be excused for the duration of such force majeure event. In the event of force majeure, the Parties may agree to alternative methods of performance that mitigate the effect of force majeure, subject to mutual agreement as to the terms thereof (including the payment of additional amounts).
- 10.4. Assignment:** Neither Party can assign or transfer Agreement without the written consent of the other Party.
- 10.5. Severability:** In the event any portion of Agreement is declared illegal, unenforceable, invalid or void by a court of competent jurisdiction, such portion will be severed from Agreement, and the remaining provisions will remain in full force and effect.
- 10.6. Integration:** This Agreement, including any exhibits, schedules, and addenda, constitutes the entire understanding and agreement between the Parties as to all matters contained herein, and supersedes all prior agreements, representations and understandings of the Parties. The Parties may utilize their standard forms of purchase orders, invoices, quotations and other such forms in administering Agreement, but any of the terms and conditions printed or otherwise appearing on such forms will not be applicable and will be void. Modifications, including additions or revision of any terms and conditions may only be made by a written agreement signed by both Parties that expressly states in the title of such document an intent to amend Agreement.

- 10.7. Waiver:** No waiver of any provision of Agreement will be effective unless made in writing and signed by the waiving Party. The failure of any Party to require the performance of any term or obligation herein, or the waiver by any Party of any breach of Agreement, will not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
- 10.8. Counterparts:** This Agreement may be executed in two or more counterparts, which may be transmitted via facsimile or electronically, each of which will be deemed an original and all of which together will constitute one instrument.
- 10.9. Headings:** Article and Section headings used in Agreement are for convenience of reference only, are not part of Agreement and will not affect the construction of, or be taken into consideration in interpreting, Agreement.

SAMPLE

SCHEDULE A
Research Infrastructure Commons
Routine Service Agreement
University Services Provided

University agrees that University staff will provide routine, non-inventive services to Company, as follows:

1. Services performed

[Includes a specific description of the services to be provided by the University and includes timelines and/or specific deadlines.]

2. Deliverables

[Includes a description of the deliverables, being provided. By the University. If there are written deliverables, these need to be specifically identified.]

Deliverables should be limited to reports of results of a use of equipment and/or, when appropriate, a designated quantity of tangible materials created in the performance of the services.]

3. Information/Materials provided by Company

4. Plan after the services are performed and deliverables, information, and/or materials are provided to Company [Specify whether or how long deliverables, information, and/or materials provided to Company as part of services performed will be saved.]

5. Non-standard confidentiality term: [Per Exhibit 1, Paragraph 6.1, the university's default, recommended confidentiality term is 1 year. However, with the authorized acknowledgement below, the term can be changed. The university advises no more than 3 years, and a maximum of 5 years. For terms over 5 years, expect a delay in contract execution.]

6. Additional Responsibilities of Company or Company User(s)

University's Authorized Acknowledgement:

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE B
Research Infrastructure Commons
Routine Service Agreement
Fees

Company will pay University the service fees posted on the Shared User Facility's Fee Schedule. Fees for the Shared User Facility may be modified from time to time by University in its sole discretion, and any modified fees will be applicable as and when provided in the Shared User Facility Fee Schedule.

1. Agreement Fees (i.e., Rates/Cost):

University's service fees are the approved recharge rates posted at <https://planning.ucsc.edu/budget/rates-and-assessments/recharge-rates/index.html> ("Shared User Facility Fee Schedule") at the time Services are performed.

2. Payment Schedule:

University will invoice Company on a monthly basis, unless otherwise agreed between the Parties.

3. Terms of Payment:

University will generate invoices in accordance with the Shared User Facility Fee Schedule posted at the time the invoiced Services are performed. Company will pay the full amount of each invoice within thirty (30) days following Company's receipt thereof.

4. Limitations of Charges (if any):

5. Company Invoicing Address:

6. Form of Payment:

SCHEDULE C
Research Infrastructure Commons
Routine Service Agreement
Notices

University's authorized representative for all notices pursuant to Agreement and for contract execution:

Name: _____

Address: _____

Phone: _____

Email: _____

University's representative for all other purposes:

Name: _____

Address: _____

Phone: _____

Email: _____

Company's authorized representative for contract execution:

Name: _____

Address: _____

Phone: _____

Email: _____

Company's representative for all other purposes:

Name: _____

Address: _____

Phone: _____

Email: _____