**Service Agreement**

**between**

**Universities Space Research Association**

**and**

**Seller**

**Service Agreement Number:**

|  |  |
| --- | --- |
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|  |  |
| USRA Address: | Seller’s Address: |
| Universities Space Research Association (USRA) |  |
| 7178 Columbia Gateway Drive |  |
| Columbia, Maryland 21046 |  |
|  |  |

The following sets forth the agreement between the Universities Space Research Association (hereinafter “USRA”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “Seller”).

WHEREAS, the USRA desires to use the services of the Seller for consideration provided herein; and the Seller has agreed to provide such services as herein stated:

1. **Period of Performance.** The period of performance for all work under this Service Agreement shall be from       thru      . USRA reserves the right to discontinue the Agreement if it deems that the work has not been performed in accordance with the terms and conditions of the Agreement.
2. **Scope of Work.** Seller agrees to provide the services described here:

Scope of Work:

The Seller shall provide the personnel, materials and facilities required to fulfill the terms of the Agreement.

Seller shall provide the required reports and deliverables to USRA. Deliverables for services provided under this Agreement should be submitted electronically to:

Attention:

Email:

1. **Agreement Award.** This       Agreement is awarded in the amount not to exceed $      and is made pursuant to the budget incorporated herein (Attachment      ). USRA is not obligated to pay Seller expenditures in excess of this amount.

This Agreement is contingent on the availability of funds, scientific progress of the project, and continued relevance to NASA programs. USRA anticipates continuing support at approximately the following levels:

The amount indicated of $      is available for payment and allotted to this award.

The Seller agrees to perform work up to the point at which the total amount paid approximates but does not exceed the total amount actually allotted to this Agreement. USRA is not obligated to reimburse the Seller for the expenditure of amounts in excess of the total funds allotted by USRA to this Agreement. The Seller is not authorized to continue performance beyond the amount allotted to this Agreement.

1. **Travel.** The Seller will undertake any travel required by the Statement of Work.

Travel to locations outside the United States (including Canada and Mexico) by Seller personnel that are to be charged as a direct charge to this Service Agreement must be approved by USRA prior to the planned travel. This approval may be granted when it is necessary for the efforts required under the program and it is otherwise in the best interest of the Government and appropriate Government officials concur in the request. Prior travel approval is required even when the Seller’s proposal anticipated a foreign travel requirement. Seller shall submit a written request to the USRA representative specified in Article VII.B of this Subagreement, including the name(s) of traveler(s), destination, proposed travel dates, purpose of travel, relation of travel to Subagreement statement of work, and estimated cost. Requests must be submitted four to six weeks prior to travel.

The Fly America Act, 49 U.S.C. 1517, requires the Seller to be ticketed though U.S. flag air carriers for international air transportation of personnel and property to the extent that service by such carriers is available. Costs of travel aboard a foreign-flag air carrier may be disallowed if U.S.-flag carrier air service is available.

1. **Non-assignment.** Responsibility for work under this agreement may not be assigned by the Seller to any other individual or company without the written approval of USRA. The terms and conditions of this Agreement shall bind any permitted successors and assigns of Seller. Any consent by USRA to assignment shall not be deemed to waive USRA’s right to recoupment and/or set off of claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or adjust matters with Seller without notice to permitted successors and assigns.
2. **Billing and Payment.** Payments under this agreement shall be disbursed within 30 working days of USRA’s receipt and approval of the invoice. Before the Seller’s invoice will be processed for payment, the Seller must certify that all payments requested are for the appropriate purposes and in accordance with the agreement.

Detailed invoices shall include current as well as cumulative costs. The following information should be included on all invoices: Seller name and address, USRA Service Agreement Number, invoice date, invoice number, dollar amount invoiced and signature of an authorized representative of Seller.

Invoices for services provided under this agreement should be submitted electronically to:

Accounts Payable

Email: accountspayable@hou.usra.edu

1. **Changes**. USRA, within the general scope of this Agreement, may, at any time, by written notice to Seller, issue additional instructions, require additional services or direct the omission of services covered by this Agreement. In such event, there will be made an equitable adjustment in price and time of performance, but any claim for such an adjustment must be made within thirty (30) days of the receipt of said written notice.

Any requests for changes by the Seller to this agreement should be submitted in writing to the Buyer listed on the faceplate of this Agreement.

1. **Notices.** Any notice or Agreement provided for in this Agreement shall be considered as having been given (i) to USRA if mailed by certified mail, postage prepaid to Universities Space Research Association,      , Attention:      , or via email to      , or (ii) to Seller if mailed by certified mail postage prepaid to      ,      , Attention:       or via email to      .
2. **Independent Contractor.** Seller will be an independent contractor and not an employee of USRA. Neither Seller nor USRA shall represent directly or indirectly that Seller is an agent or employee of USRA. Seller shall not have the authority to incur any liabilities or obligations of any kind in the name of or on behalf of USRA. Seller shall only be responsible for performing the services set forth in this Agreement and shall have no other responsibilities. In addition, Seller shall be free to arrange the time and manner of performance of the services, provided that Seller’s services are provided in a time frame and manner that meet the business needs of USRA as agreed by the Parties.

Seller agrees, as an independent contractor, that neither he nor his employees are entitled to unemployment benefits in the event this Agreement terminates, or workers' compensation benefits in the event that Seller is injured in any manner while performing obligations under this Agreement. Seller will be solely responsible to pay any and all local, state, and/or federal income, social security and unemployment taxes for Seller and his employees. USRA will not withhold any taxes or prepare W-2 Forms for Seller, but will provide Seller with a Form 1099, if required by law.

Seller acknowledges and agrees that neither he nor anyone acting on his behalf shall receive any employee benefits of any kind from USRA. Seller (and Seller's agents, employees, and subcontractors) are excluded from participating in any fringe benefit plans or programs as a result of the performance of services under this Agreement without regard to Seller’s independent contractor status. In addition, Seller (and Seller’s agents, employees, and Sellers) waives any and all rights, if any, to participation in any of USRA’s fringe benefit plans or programs including, but not limited to, health, sickness, accident or dental coverage, life insurance, disability benefits, accidental death and dismemberment coverage, unemployment insurance coverage, workers’ compensation coverage, and pension or 401(k) benefit(s) provided by USRA to its employees.

1. **Warranty & Standards.** Seller warrants that all services performed hereunder shall be performed by employees or agents of Seller who are experienced and skilled in their profession and in accordance with industry standards. Seller further warrants that all services performed under this Agreement, at the time of acceptance, shall be free from defects in workmanship and conform to the requirements of this Order. USRA shall given written notice of any defect or nonconformance to Seller within one year from the date of acceptance by USRA. USRA may, at its option, either (a) require correction or reperformance of any defective or nonconforming services, or (b) make an equitable adjustment in the price of this Order. If Seller is required to correct or reperform the services, such correction or reperformance shall be at Seller’s expense. Any services corrected or reperformed shall be subject to this article to the same extent as services initially performed. If Seller fails or refuses to correct or reperform, USRA may correct or replace with similar services and charge Seller for any cost to Buyer or make an equitable adjustment in the price of this Order.
2. **Non-Exclusivity.** USRA reserves the right to engage other Contractors to perform services, without giving Seller a right of first refusal or any other exclusive rights. SEller reserves the right to perform services for other persons or entities who may or may not have business interests that conflict with those of USRA, subject to the provisions set forth in this Agreement.
3. **Records.** USRA shall, until the expiration of three (3) years after final payment under this Order, have access to and the right to examine any directly pertinent books, documents, papers and records involving transactions related to this Order.
4. **Release of News Information and Advertising.** Seller shall not, without the prior written consent of USRA: (a) make any news release, public announcement, denial, or confirmation of all or any part of the subject matter of this Agreement, or (b) in any manner advertise or publish the fact that USRA has placed this Order.
5. **Evidence of Citizenship or Immigrant Status**. In compliance with its obligations under contracts with the United States government, USRA may be required to obtain information concerning citizenship or immigrant status of subcontractor personnel entering the premises of USRA. Seller agrees to furnish this information before commencement of work and at any time thereafter before substituting or adding new personnel to work on said premises. Information submitted by Seller shall be certified by an authorized representative of Seller as being true and correct.
6. **Intellectual Property Rights.** Seller agrees to grant and does hereby grant and assign to USRA all right, title, and interest in and to: (a) any inventions, discoveries, improvements, devices, designs, apparatus, practices, processes, methods or products (hereinafter, individually or collectively, "Inventions"), whether patentable or not, (b) trade secrets, (c) technical and other data, and (d) any copyrightable works of authorship (hereinafter, collectively, "Intellectual Property") made, developed, perfected, authored, devised, conceived or first reduced to practice hereunder by Seller (either solely or jointly with others) or Seller's employees during the term of this Agreement in the course of or in any way connected with Seller's Services under this Agreement. All such Intellectual Property will be considered "works for hire" in accordance with 17 U.S.C. Section 101. Seller shall hold all such Intellectual Property in a fiduciary capacity to USRA’s benefit. [ However, to the extent performance under this Agreement is issued under a Purchase Order(s) that is expressly subject to the NASA Grants and Cooperative Agreements Manual, paragraph 1800.908 “Patent Rights”, paragraph 1800.909 “Rights in Data”, paragraph 1800.923, “New Technology”, paragraph 1800.924, “Designation of New Technology Representative and Patent Representative” or 1800.925, “Invention Reporting and Rights”, the provisions of this paragraph I.2 are superseded by such terms and those materials and work products developed hereunder which are subject to said terms specified in the Purchase Agreement shall not be deemed “works for hire”.]

At USRA’s request during and after the term of this Agreement and without further compensation, with the exception of any reasonable expenses incurred by Seller in discharging its obligations under paragraph I.2, Intellectual Property Rights, Seller shall assist USRA and USRA’s attorneys by:

* 1. preparing and prosecuting in the United States and all foreign countries applications for patents, covering all such Inventions or copyrights of all such Services, including divisional, continuations, continuations-in-part, reissues, and reexaminations;
	2. executing, acknowledging, and delivering any and all instruments deemed by USRA and USRA's attorneys to be necessary or helpful to make, file or prosecute all such applications or in connection with continuations, divisional, renewals, interferences, reexaminations, or reissues thereof in conduct of all proceedings or litigation in regard thereto;
	3. executing any and all instruments deemed by USRA, USRA's attorneys and nominees to be necessary or helpful to transfer to USRA or confirm, evidence or protect title for USRA; and
	4. Cooperating with and assisting USRA and USRA’s attorneys in any legal proceeding or controversy or in connection with any contractual obligations relating to any and all such Intellectual Property.

Seller represents that it has no agreement with any third party that would preclude Seller’s compliance with its obligations under Article 15, Intellectual Property Rights.

1. **Infringement Indemnity**. Seller hereby indemnifies USRA, its successors, assigns, agents, customers, and users of any Work Product against loss, damage, or liability, including costs and expenses and attorneys’ fees, which may be incurred on account of any suit, claim, judgment, or demand involving infringement or alleged infringement of any intellectual property rights in the manufacture, use or disposition of any Work Product hereunder, provided USRA shall notify Seller of any suit instituted against it, and to the full extent of its ability to do so, shall permit Seller to participate in the defense of the same or to make settlement in respect thereto. USRA does not grant indemnity to Seller for infringement of any intellectual property rights, including patent, trademark, copyright, trade secret, trade mark, mask works, or data rights.
2. **Proprietary/Confidential Information**. The work done hereunder, information and data provided by USRA for this work, and the resultant reports and/or findings are considered to be proprietary and confidential information of USRA. If a separate Proprietary Information Agreement exists between the Parties, which relates to the subject matter of this Agreement, then Proprietary Information furnished by one Party to the other Party shall be protected pursuant to such Proprietary Information Agreement. If no separate Proprietary Information Agreement exists between the Parties, The Seller shall protect all such information as Seller protects his/her own proprietary and confidential information. The Seller shall not publish or otherwise disclose or make available to others the results of this effort without the expressed written consent of USRA. Seller further agrees to use Proprietary Information only for purposes necessary for performing this Agreement. Neither the existence of this Agreement nor the disclosure hereunder of Proprietary Information or any other information shall be construed as granting expressly by implication, by estoppel or otherwise, a license under any invention or patent now or hereafter owned or controlled by USRA or USRA’s customer, except as specifically set forth herein. Seller’s obligations with respect to Proprietary Information disclosed hereunder prior to the performance in full, termination or cancellation of this Agreement shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.
3. **Drug Free Workplace.** The Seller agrees by accepting award of this Agreement not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this effort.
4. **No Export**. Seller and its employees shall not disclose any information created or received hereunder in any manner contrary to the laws and regulations of the United States of America or any other country or any agency thereof, including but not limited to, the Export Administration Regulations of the United States Department of Commerce, the International Traffic in Arms Regulations of the United States Department of State. Seller further agrees that any person performing the Services on behalf of Seller hereunder shall be a United States Citizen. Seller further agrees that any exception to this provision will require the prior written consent of USRA.
5. **Compliance with Laws**. The parties hereby agree to comply with all applicable provisions of any federal, state, or local law or ordinance and all orders, rules, and regulations, issued thereunder, that are applicable to the performance of this Agreement.

Seller shall have sole responsibility for compliance with all federal export regulations as may relate to its tasking, including dealings with lower-tier Sellers. Seller shall obtain, maintain, and comply with all necessary export agreements, licenses, or other applicable documents. Federal export regulations include, but are not limited to, those contained in the NASA Export Control Program; the Department of State International Traffic in Arms Regulations (ITAR), as set forth in 22 CFR Parts 120-130; and the Department of Commerce Export Administration Regulations (EAR), as set forth in 15 CFR Parts 730-774.

1. **Ethics and Compliance.** In accepting this award, the Seller agrees to adhere to the standards established in USRA’s Ethics and Compliance policy. This policy can be reviewed and referenced via the USRA website: [www.usra.edu/dbw/ethics.cfm](http://www.usra.edu/dbw/ethics.cfm) or via hard copy obtained from the USRA representative. The Seller understands that it is against USRA policy to receive the proprietary information of any third party company without the express written consent of that company to such disclosure. The Seller hereby certifies affirmatively he/she understands this and shall not bring such third party proprietary information to USRA or use it in the performance of this Agreement.
2. **Termination.**  The Term for this Agreement will commence on the date USRA executes the Agreement and shall continue in full force and effect for the Term stated in Paragraph 1. above, unless earlier terminated by either Party upon thirty (30)-day written notification to the other Party. The Agreement may be extended by written amendment signed by both Parties. This Agreement may be terminated for cause (e.g. material breach of any material provision of this Agreement) by USRA immediately upon written notification to the Seller. The Seller shall be paid for all work completed and all non-cancellable costs incurred as of the date of termination.

If Seller fails to make delivery in accordance with the agreed delivery date or schedule or otherwise fails to observe or comply with any of the other instructions, terms, and conditions or warranties applicable to this Agreement or fails to make progress so as to endanger performance of this Agreement or in the event of any proceedings by or against Seller in bankruptcy or insolvency or appointment of receiver or trustee or an assignment of the benefit of creditors, USRA may, in addition to any other right or remedy provided by this Agreement or by law, terminate all or any part of this Agreement by telegraphic or other written notice to Seller without any liability by USRA to Seller on account thereof. USRA may require a financial statement from Seller at any time during the term of this Agreement for the purpose of determining Seller’s financial responsibility. In the event of termination for cause, USRA may produce or purchase or otherwise acquire articles elsewhere on such terms or in such manner as USRA may deem appropriate and Seller shall be liable to USRA for any excess cost or other expenses incurred by USRA.

1. **Disputes and Applicable Law.** Any dispute arising under this agreement which is not settled by the agreement of the parties will be litigated in the state or federal courts of the state from which this Agreement is issued. Pending any decision, appeal or judgment in such proceedings, or the settlement of any dispute arising under this Agreement, the Seller shall proceed diligently with performance of this Agreement unless otherwise directed by USRA.
2. **Non-Assignment.** Neither this Agreement nor the rights and obligations contained herein may be assigned by either Party without the express written permission of the other Party, which permission shall not be unreasonably withheld.
3. **Insurance.** Seller shall obtain and maintain insurance coverage as follows for the performance of this Order:
	1. Worker’s compensation and employer’s liability insurance as required by applicable Federal and State worker’s compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer’s liability section of the insurance policy, except when subagreement operations are so commingled with the Seller’s commercial operations that it would not be practical. Employer’s liability coverage shall be at least $500,000 except in states with exclusive or monopolistic funds that do not permit worker’s compensation to be written by private carriers.
	2. Bodily injury liability insurance on the comprehensive form of policy of at least $1,000,000 per occurrence.
	3. Automotive liability insurance on the comprehensive form of policy providing for bodily and property damage liability covering the operation of all automobiles used in conjunction with performing this Agreement. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $1,00,000 per occurrence for bodily injury liability and $20,000 per occurrence for property damage. The amount of liability coverage of other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

Upon instruction by the Government to do so, USRA may disapprove the purchase of any insurance coverage not in the Government’s best interest.

Policies evidencing such insurance as is required herein shall contain an endorsement to the effect that any material change in the coverage adversely affecting the Government’s or USRA’s interest shall not be effective unless the insurer of the Seller gives written notice of cancellation or change to USRA’s Buyer. When the coverage is provided by self-cancellation, the Seller shall not change or decrease the coverage without USRA’s written approval.

No Seller employee shall enter any USRA or Government installation for performance of work under this Agreement until all of these insurance requirements have been met.

The Seller’s policy shall include the following statement:

“The insurance company waives any right of subrogation against Universities Space Research Association and the United States of America which may arise by reason of any payment under the policy.”

The Seller shall be required to supply a copy of the Certificate of Insurance upon USRA’s request.

1. **Indemnification.** In the event that Seller, its employees, or agents enter premises owned or controlled by USRA during the performance of this Subcontract, the Seller agrees that it will indemnify and hold harmless USRA, its officers and employees from any loss, cost, damage, expense, or liability by reason of property damage or personal injury, including death, of whatsoever nature or kind arising out of, as a result of, or in connection with such performance caused by the negligent actions or omission of the Seller, its employees, or agents.
2. **Limitation of Liability:** Notwithstanding any contrary provision contained in this Order, USRA shall not be responsible to Seller in contract or tort (including negligence) or otherwise for any indirect, incidental, special or consequential damages of whatsoever nature, or for attorney’s fees, loss of use, loss of market share, or lost profits however these are characterized. USRA shall not be liable to Seller for an amount which in conjunction with all claims by Seller against USRA under this Agreement exceeds the value of this Agreement. In any event, the liability of USRA to Seller, whether in contract, tort (including negligence) or under any warranty, or otherwise, is exclusively limited to the remedies expressly provided under the terms of this Agreement, in lieu of any and all other remedies at law or in equity.
3. **Limitation on Contacts.** Seller agrees that it will not initiate any direct contacts with the Government's contracts and/or technical personnel concerning the Services to be performed hereunder and that any communications with the Government, will be conducted through USRA except as may expressly be agreed upon. Seller will promptly report to USRA the substance of significant discussions held at the initiation of the Government.
4. **Severability.** This Agreement shall be severable such that the invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision. If any portion or provision of this Agreement is held invalid or unenforceable, the balance of the Agreement shall be construed and enforced as if it did not contain such invalid or unenforceable portion or provision.
5. **Rights, Remedies and Waiver**. The rights and remedies provided by USRA herein shall be cumulative, and in addition to any other rights and remedies provided by law or in equity. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach.
6. **Taxes**. Seller is liable for and shall pay all taxes, impositions, charges and exactions imposed on or measured by this Agreement except those Buyer specifically agrees or is required by law to pay and which are separately stated on Seller’s invoice. Prices shall not include any taxes, impositions, charges, and exactions for which Buyer has furnished an exemption certificate.
7. **Entire Agreement.**  This Agreement constitutes the entire Agreement of the parties hereto, and all previous communications between the parties, whether written or oral with reference to the subject matter of this Agreement, are hereby canceled and superseded. No modification of this Agreement shall be binding upon the parties hereto, unless such is in writing and duly signed by the authorized representatives of the respective parties hereto. The validity, scope and performance of this Agreement shall be governed by the laws of the State of Maryland, without regard to its choice of law provisions.

**Acceptance.** Please sign below indicating acceptance of the Terms and Conditions of this Agreement as set forth herein and return to USRA before beginning performance. This Agreement is not effective until it has been fully executed.

ACCEPTANCE:

|  |  |
| --- | --- |
| Seller:  |  |
|  | Universities Space Research Association |
| By:  | By:  |
| Name:  | Name: Laurie Sandel |
| Title:  | Title: Procurement Manager |
| Date:  | Date:  |