Governmental Entity Addendum to Purchase Order

This Governmental Entity Addendum (the “Addendum”) is entered into as of this _____ day of _________, 20____ (the “Addendum Effective Date”), by and between the University of Utah, a body politic and corporate of the State of Utah, on behalf of its recharge centers (“University”), and ____________________________, [corporation][limited liability company] (“Buyer”), each a “Party” and collectively, the “Parties”.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PRELIMINARY. This Addendum amends and is an integral part of that certain Purchase Order No. ______ (the “Purchase Order”) issued by Buyer and relating to specific services (the “Services”) Buyer has engaged University to perform on a fee-for-services basis pursuant to the Purchase Order. In the event of any conflict, inconsistency or discrepancy between the Purchase Order and this Addendum, this Addendum shall govern. The Purchase Order, as amended by this Addendum, is hereinafter referred to as the “Agreement”.

2. UNIVERSITY A GOVERNMENTAL ENTITY. Buyer acknowledges that University is a governmental entity subject to the Utah Governmental Records Access and Management Act, Utah Code Ann., Section 63G-2-101 et seq., as amended (“GRAMA”); that certain records within University’s possession or control, including without limitation, the Agreement, may be subject to public disclosure; and that University’s confidentiality obligations shall be subject in all respects to compliance with GRAMA. Pursuant to Section 63G-2-309 of GRAMA, any confidential information provided to University that Buyer believes should be protected from disclosure must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, University may disclose any information or record to the extent required by GRAMA or otherwise required by law, and to University’s attorneys, accountants, consultants on a need to know basis. Buyer further acknowledges that University is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann., Section 63G-7-101 et seq., as amended (the “Act”). Nothing in the Agreement shall be construed as a waiver by University of any protections, rights, or defenses applicable to University under the Act, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. It is not the intent of University to incur by contract any liability for the operations, acts, or omissions of the other Party or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of University contained in the Agreement are subject to the Act and are further limited only to claims that arise from the negligent acts or omissions of University. Any limitation or exclusion of liability or remedies in the Purchase Order for any damages other than special, indirect or consequential damages, shall be void and unenforceable. University carries insurance through the State Risk Manager of the State of Utah up to the limits required by the State Risk Manager of the State of Utah and applicable law. Nothing in the Agreement shall require University to carry different or additional insurance, and any obligations of University contained in the Agreement to name a party as additional insured shall be limited to naming such party as additional insured with respect to University’s negligent acts or omissions. The Agreement will be governed by the laws of the State of Utah, without regard to conflicts of laws principles. Venue for any lawsuits, claims, or other proceedings between the Parties relating to or arising under the Agreement shall be exclusively in the State of Utah.

3. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY. Notwithstanding anything to the contrary in the Purchase Order, University hereby expressly disclaims any and all representations and warranties, express or implied, relating to the Services or the University’s performance of its obligations under the Agreement including, without limitation, warranties of non-infringement, fitness for a particular purpose and merchantability. Under no circumstances will University be liable, under any theory, for any special, incidental, indirect, consequential or other similar, damages in connection with the Agreement. Under no circumstances will University’s aggregate liability under the Agreement for any damages, regardless of the legal or equitable theory, exceed the fees paid by Buyer the University in exchange for the Services.

4. DELIVERABLES. Buyer shall have an unlimited right to use, for all purposes deemed appropriate by Buyer, all deliverables actually delivered or provided to Buyer as a result of the performance of the Services hereunder (the “Deliverables”), without payment to the University of any consideration in addition to that which is set forth in the Purchase Order. Buyer shall indemnify, defend and hold harmless the University and its trustees, officers, employees and other representatives against any and all third-party claims arising from or relating to Buyer’s use of the Services or the
5. MISCELLANEOUS. The Purchase Order, as amended by this Addendum, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written and all other communications relating to the subject matter hereof. The provisions of this Addendum will survive the expiration or earlier termination of the Agreement. This Addendum shall supersede and replace in their entirety, all standard terms and conditions included with, attached to or referenced in any manner in the Purchase Order, (except with respect to the payment terms applicable to the services provided hereunder. The Purchase Order, as amended by this Addendum, shall remain in full force and effect, and is enforceable in accordance with its terms.

6. EXPORT COMPLIANCE.

a. The parties hereto shall comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this contract. In the absence of available license exemptions/exceptions, each party shall be responsible for obtaining the appropriate licenses or other approvals, if required, for its own exports of (including deemed exports) hardware, technical data, and software, or for the provision of technical assistance.

b. The University, as an institution whose primary mission is to openly conduct basic/applied research and to publish results of this research, accepts only on a very limited basis equipment, material, technical data or information (Material) that is controlled under the U.S. export control regulations (e.g. Export Administration Regulations and International Traffic in Arms Regulations). In the event that Buyer wishes to provide export controlled Material to the University of Utah during the course of any activity under this Purchase Order, Buyer must first notify the University of its intention to provide such Material at least 30 days in advance of actually providing the Material, and indicate to whom at the University the Material is being provided, and provide the University the applicable Export Control Classification Numbers (ECCN) or other export control regulations applicable to the Material. The University will then determine whether it will accept or decline receipt of such Material. Notice required under this Section 6 shall be provided to Todd B. Nilsen, J.D., Associated Director, Office of Sponsored Projects, University of Utah, 1471 E Federal Way, Salt Lake City, UT 84102.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their duly authorized representatives effective as of the Addendum Effective Date.

________________________________________________________________________

UNIVERSITY OF UTAH
Name: ____________________________
Title: ____________________________
Date: ____________________________

BUYER
Name: ____________________________
Title: ____________________________
Date: ____________________________