

## DEVELOPMENT SERVICES AGREEMENT

THIS DEVELOPMENT SERVICES AGREEMENT (the “Agreement”), effective as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), is made by and between THE CHARLES STARK DRAPER LABORATORY, INC., a Massachusetts not-for-profit corporation, having a principal place of business at 555 Technology Square, Cambridge, Massachusetts 02139 (“Draper”), and [NAME OF CUSTOMER], a [State of Incorporation] corporation, having a principal place of business at [CUSTOMER ADDRESS] (“CUSTOMER”).

**WHEREAS**, Draper has rights and entitlements to various technologies and technological skills that will permit it to carry out the research and development activities on behalf of CUSTOMER; and

**WHEREAS**, the Parties wish to conclude this Agreement in order to arrange the terms and conditions to govern the Task Orders between Draper and CUSTOMER;

**NOW, THEREFORE**, the Parties hereto agree as follows:

## 1. DEFINITIONS

1.1. “Background IP” of a party means Intellectual Property Rights developed by or for a Party independent of its obligations under this Agreement.

1.2. “Deliverable” means the results of the Services performed under a Task Order that will be delivered to the Customer as a condition of that Task Order, excluding any Draper Intellectual Property contained therein.

1.3. “Foreground IP” of a party means, with respect to a Task Order, Intellectual Property Rights developed solely by a party in the conduct of the Task Order.

1.4. “Intellectual Property Rights” means all (a) patents, patent applications, divisionals, continuations, continuation-in-part applications, reissues, re-examinations or extensions, utility models, certificates of invention and design patents, (b) copyrights, and registrations and applications for registration thereof, and moral and personality rights, (c) mask work protections, (d) trade secrets, know-how, processes and methodologies, (e) data, software, information and algorithms, (f) trademarks, service marks, trade dress, logos, trade names, domain names and corporate names and registrations and applications for registration thereof, (g) all other intangible, industrial and intellectual property rights, by whatever name known, and (h) other proprietary rights relating to any of the foregoing.

1.5. “Personnel” means any employee, contractor, student, consultant or any other representative of a party bound by the terms of this Agreement.

1.6. “Purchase Order” means the Customer’s written order, if any, for Services to be delivered under each Task Order in accordance with the terms of the Task Order and this Agreement.

1.7. “Services” means the research and development services being performed under the terms of this Agreement as specifically defined in the Task Order.

1.8. “Task Order” means the agreement between the Parties in a format consistent with Exhibit A, which describes the scope of work, schedules, costs and payment terms for the Task Order and the responsibilities of each party with respect to the foregoing.

## 2. BACKGROUND

2.1. Draper will perform certain research and development services for the Customer under this Agreement (the “Services”) in exchange for Customer’s payment to Draper for the performance of these Services. All Services will be provided pursuant to one or more mutually agreed upon Task Orders, which when signed by duly authorized representatives of both Parties, will become part of this Agreement and will be understood to incorporate by reference all terms and conditions of this Agreement.

## 3. INTELLECTUAL PROPERTY RIGHTS

3.1. Background IP. Except as set forth below, each party shall retain all right, title and interest in its respective Background IP and no license or other rights to any Background IP are granted by either party. Each party hereby grants to the other party, during the term of each Task Order, a limited, worldwide, royalty-free, non-exclusive, non-transferable license under its respective Background IP solely for the purpose of enabling the other party to perform its obligations under that Task Order.

3.2. Foreground IP. Draper owns the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all Foreground IP developed solely by Draper (“Draper Foreground IP”) under this Agreement. Customer owns all interests, including all patents, copyrights, and other intellectual property rights, in and to all Foreground IP developed solely by Customer under this Agreement (“Customer Foreground IP”). Foreground IP that is jointly developed by Draper and Customer (“Joint Foreground IP”) will be jointly owned by the parties on the basis of an undivided one half interest.

3.3. Disclosure. The Customer shall be notified of any patentable or copyrightable Draper Foreground IP promptly after the decision has been made internally to file a patent application. The Customer shall retain all disclosures submitted by Draper in confidence and shall prevent their disclosure to third parties. The Customer shall be relieved of this obligation only when this information becomes publicly available through no fault of the Customer.

3.3.1. License Election. By providing written notice to Draper within three (3) months after disclosure of patentable Draper Foreground IP, Customer may elect to exercise an option to negotiate an exclusive, royalty-bearing, field-of-use license in the United States and any other

country in which Draper has obtained a patent to make, have made, use, and sell products covered by or incorporating patentable Draper Foreground IP, in exchange for Customer's agreement to diligently commercialize such products. If Customer elects to exclusively license Draper Foreground IP, then Customer shall receive (subject to any existing restrictions upon Draper's rights) a non-exclusive, royalty-free license to Draper Background IP as necessary to enjoy the licensed Draper Foreground IP. If Customer does not provide written notice to Draper within three (3) months after notice of patentable Draper Foreground IP and the notice period is not extended by mutual signature, Draper has no further obligations to the Customer and may license patentable Draper Foreground IP to third parties.

3.4. License Negotiation. Customer and Draper agree to negotiate licensing terms in good faith and in a timely manner. If Draper and Customer fail to complete license negotiations within five (5) months of written notice of election, Customer may elect by written notice to Draper to 1) forgo licensing of Draper Foreground IP, or 2) elevate to senior management, and if failing to reach agreement after elevation to senior management, Customer may continue to pursue agreement via third party mediation. If Customer chooses to forgo licensing, or if the parties fail in good faith to reach an agreement after a commercially reasonable period of third party mediation, Draper will have no further obligations to the Customer and may license patentable Draper Foreground IP to third parties.

3.5. Assignment. Each Party shall be responsible for executing an appropriate agreement with each of its Personnel working on the Task Order, including a provision requiring Personnel to assign all patentable or copyrightable Foreground IP to the relevant party.

#### 4. CONFIDENTIALITY

4.1. Obligations. Each party shall (a) hold the Proprietary Information (defined below) of the other in trust and confidence and not disclose or release such Proprietary Information to any third party by using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own Proprietary Information of a similar nature, but not less than reasonable care, and (b) not use the Proprietary Information of the other party for any purpose whatsoever except for the purpose of performing or receiving the Services. Each party shall disclose the Proprietary Information of the other only to those of its employees, contractors and agents having a need to know such Proprietary Information and who are obligated to comply with the provisions of this Section 4.

4.2. Definition. The term "Proprietary Information" shall mean any and all trade secrets or confidential or proprietary information designated as such by a party (the "disclosing party") prior to or at the time any such trade secret or confidential or proprietary information is disclosed to the other party (the "receiving party"). Information which is orally or visually disclosed to the receiving party by the disclosing party, shall constitute Proprietary Information for thirty (30) days after its disclosure, and thereafter shall remain Proprietary Information if the disclosing party has identified it as such.

4.3. Exceptions. The obligations of the receiving party under this Section 4 will not apply to information that the receiving party can demonstrate (a) was in its possession at the time of disclosure without any obligation of confidentiality with respect thereto, (b) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by the receiving party, (c) has been rightfully received from a third party without any obligation of confidentiality with respect thereto, or (d) is independently developed by the receiving party without use or reference to the Proprietary Information of the disclosing party. The receiving party may disclose Proprietary Information as required to comply with applicable law or judicial order; provided that the receiving party (i) gives the disclosing party prompt written notice to allow the disclosing party to seek a protective order or other appropriate remedy, (ii) discloses only such Proprietary Information as is required, and (iii) uses reasonable efforts to obtain confidential treatment for any Proprietary Information so disclosed.

4.4. Term. The obligations with respect to maintaining the confidentiality of the Proprietary Information shall remain in effect for five (5) years from the expiration of earlier termination of this Agreement, provided that such obligations with respect to any Proprietary Information which constitutes a trade secret shall continue with respect to that information for so long as such Proprietary Information remains a trade secret.

4.5. Publicity. Draper shall be permitted to identify Customer as a customer, to use Customer's name in connection with proposals to prospective customers, and to otherwise refer to customer in print or electronic form for marketing or reference purposes.

4.6. Publications. Subject to the limitations with respect to Proprietary Information set forth herein, neither party may publish any information, results or data relating to the work performed under any Task Order without obtaining the prior written approval of the other party, provided that such approval shall not be unreasonably withheld.

## 5. WARRANTY.

5.1. Warranties. Draper represents and warrants to Customer that all Services will be provided by Personnel having the necessary technical expertise, in a professional and workmanlike manner, using due care, consistent with prevailing industry standards.

5.2. CUSTOMER ACKNOWLEDGES THAT THE SERVICES PROVIDED ARE EXPERIMENTAL IN NATURE, AND THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN, ALL SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND DRAPER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE SERVICES OR DELIVERABLES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, RESULT, USE, OR NON-INFRINGEMENT.

## 6. INDEMNIFICATION AND LIMITATION OF LIABILITY.

6.1. Indemnification for Use of Foreground IP. Customer hereby agrees to indemnify, defend, and hold harmless Draper and its present and former officers, directors, governing board members, employees, contractors, agents and students (hereinafter “Indemnitees”) from any cost, expense, or liability of any kind, including reasonable attorney’s fees and expenses, arising out of any third party product liability or personal injury claims relating to Customer’s use of the Foreground IP. Draper shall promptly notify Customer of any such claim and shall cooperate with Customer and its insurance carrier, as reasonably requested by Customer and at Customer’s expense, in the defense of the claim. Customer shall not, without the prior written consent of Draper, agree to any settlement of any such claim that does not include a complete release of the Indemnitees from all liability with respect thereto or that imposes any liability, obligation or restriction on any Indemnitee. The Indemnitees may participate in the defense of any claim through their own counsel, and at their own expense.

6.2. Limitation of Liability. EXCEPT WITH RESPECT TO A BREACH OF SECTION 5 (CONFIDENTIALITY), DRAPER’S AND CUSTOMER’S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER INDIRECT DAMAGES OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, OR SUCH DAMAGES COULD HAVE REASONABLY FORESEEN BY SUCH PARTY.

6.3. Cap on Damages. In no event shall Draper’s liability arising out of or in connection with this Agreement exceed, in the aggregate, the five times (5x) the sum paid by the Customer to Draper under the associated Task Order, not including the value of any subsequently negotiated licensing or follow-on agreements.

## 7. TERM AND TERMINATION.

7.1. Term. This Agreement shall be effective as of the Effective Date and shall terminate as of [END DATE], unless earlier terminated as provided herein.

7.2. Termination. Either party may terminate this Agreement with or without cause upon thirty (30) days prior written notice to the other party. If the Agreement is terminated, the Customer shall reimburse Draper for the Services performed and expenses incurred up to the receipt of the termination notice by Draper. Either party may terminate this Agreement immediately upon a violation of law by the other party.

7.3. Effect of Termination. Upon any termination of this Agreement, all rights and obligations of the parties hereunder shall terminate, except that the provisions of Sections 3, 4, 6, and 8 shall survive termination of this Agreement in accordance with their terms.

## 8. MISCELLANEOUS

8.1. Successors. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns.

8.2. Modification. No amendment, modification or change may be made to this Agreement or to the Task Orders except by written instrument duly signed by each party.

8.3. Order of Precedence. Any inconsistency in the provisions of this Agreement will be resolved by giving precedence in the following order: (1) this Agreement, (2) the Task Order, (3) the Purchase Order of the Customer, if any.

8.4. Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly delivered four business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent for next business day delivery via a reputable nationwide overnight courier service, in each case to the intended recipient at the address for the party first set forth above. Either party may give any notice, request, demand, claim, or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the party for whom it is intended. Either party may change the address to which notices, requests, demands, claims, or other communications hereunder are to be delivered by giving the other party notice in the manner provided herein.

8.5. Waiver. Waiver by either party of any right hereunder or the failure to enforce at any time any of the provisions of this Agreement, or any rights with respect thereto, shall not be deemed to be a waiver of any other rights hereunder or any breach or failure of performance of the other party.

8.6. Relationship of the Parties. Each party is an independent hereunder. The relationship between the parties shall not be construed to be that of employer and employee, or to constitute a partnership, joint venture or agency of any kind. Neither party shall have the right to bind the other party to any contract or other commitment.

8.7. Assignability. The Customer shall not assign any of its rights and/or obligations under this Agreement in whole or in part without prior consent in writing by Draper, which Draper may withhold at its sole discretion.

8.8. Entire Agreement. This Agreement, together with the Task Order(s), represents the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes and cancels any previous contemporaneous or subsequent agreements or understandings, whether oral, written or implied, heretofore in effect, unless this agreement was modified pursuant to Section 8.2.

8.9. Severability. If any provision of this Agreement is declared invalid or unenforceable by a court having competent jurisdiction, it is mutually agreed that this Agreement shall endure except for the part declared invalid or unenforceable by order of such court.

8.10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.11. Governing Law. This Agreement and any disputes between the parties relating to the subject matter of this Agreement are governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflicts of laws principles. The parties irrevocably submit to the jurisdiction of the federal and state courts located in Massachusetts.

8.12. Compliance with Laws. Each party shall perform its respective obligations hereunder in compliance with all applicable federal, state or local laws, regulations and guidelines governing the conduct of such work.

8.13. Export Compliance. Each party shall comply with all applicable statutes, rules and regulations of any governmental authority and all international treaties relating to the export, import or release of materials, information, or data exchanged hereunder, including, without limitation, the United States Bureau of Export Administration's Export Administration Regulations and the United States Department of State's International Traffic and Arms Regulations.

8.14. Third Party Arbitration. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, which cannot first be settled amicably and satisfactorily between the parties, shall be settled in Boston, MA by binding arbitration in the English language in accordance with the Rules of the American Arbitration Association. The Arbitrator(s) award may include compensatory damages against either party and shall be limited by the provisions of Section 6. Notwithstanding the above, either party may seek injunctive relief in any court of competent jurisdiction against improper use or disclosure of proprietary information.

8.15. Force Majeure. Draper is not liable for any failure to perform as required by this Agreement if the failure to perform is caused by circumstances reasonably beyond Draper's control, such as labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, theft, pandemic, or other occurrences.

IN WITNESS WHEREOF, this Development Services Agreement has been executed by the duly authorized representatives of each party as of the Effective Date.

THE CHARLES STARK DRAPER LABORATORY, INC.

By: \_\_\_\_\_

Name: Elizabeth A. Mora

Title: Chief Financial Officer

[NAME OF CUSTOMER]

By: \_\_\_\_\_

Name:

Title:

EXHIBIT A

TASK ORDER – [TASK ORDER TITLE]

THIS TASK ORDER, effective as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), is made by and between THE CHARLES STARK DRAPER LABORATORY, INC., a Massachusetts not-for-profit corporation, having a principal place of business at 555 Technology Square, Cambridge, Massachusetts 02139 (“Draper”), and [NAME OF CUSTOMER], a [State of Incorporation] corporation, having a principal place of business at [CUSTOMER ADDRESS] (“CUSTOMER”).

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants hereinafter expressed, the Parties agree as follows:

1. Terms and Conditions

The terms of this Task Order shall be governed by the Development Services Agreement dates [DATE] between Draper and Customer. Terms set forth in this Task Order are intended as a supplement to the terms set forth in the Development Services Agreement. In case of conflict, the Terms of the Development Services Agreement will govern.

2. Statement of Work

[Describe Services to be provided]

3. Schedules, Milestones, and Deliverables

[Describe Schedule, Milestones and Deliverables (if any)]

4. Technical and Contractual Representatives. The following individuals are authorized to act under this Agreement, and the parties will send any communications or notices to such individuals:

<b>Draper’s Technical Leader</b>	<b>Customer’s Technical Leader</b>
Name:	Name:
Address:	Address:
Email:	Email:
Phone:	Phone:

<b>Draper’s Contractual Representative</b>	<b>Customer’s Contractual Representative</b>
Name:	Name:
Address:	Address:
Email:	Email:
Phone:	Phone:

5. Payments

5.1. Price. In consideration of the supply of the services described in Exhibit A, Customer shall pay Draper USD \$\_\_\_\_\_.

5.2. Payment Schedule. Customer will pay Draper in accordance with the payment schedule in the Payment Schedule below.

[Insert Payment Schedule]

Draper will have no obligation to perform any Services when any amount required to be paid by Customer remains due and unpaid beyond the applicable due date. Any suspension of Services by Draper as a result of Customer's failure to make payment as required will extend the due dates of Deliverables and other Services to the extent impacted by such suspension or delay.

5.3. Invoices. Unless otherwise provided on the applicable SOW, Draper shall invoice Customer on a monthly basis for all fees payable hereunder for the previous month. Customer shall pay each amount in full within thirty (30) days of invoice. Customer will pay interest, at a rate equal to the lesser of 1.5% per month (or part thereof) or the maximum legal rate permitted, on the amount shown on any invoice that is paid later than thirty (30) days after the date of the invoice.

5.4. Taxes. Customer shall be responsible for any excise, sales, use or other similar tax (other than taxes based on Draper's net income or property) as required by applicable law, based upon the Services rendered pursuant to this Agreement.

IN WITNESS WHEREOF, this Task Order has been executed by the duly authorized representatives of each party as of the Effective Date.

THE CHARLES STARK DRAPER LABORATORY, INC.

By: \_\_\_\_\_

Name: Elizabeth A. Mora

Title: Chief Financial Officer

[NAME OF CUSTOMER]

By: \_\_\_\_\_

Name:

Title: