

FACILITY USE AGREEMENT

This Facility Use Agreement (“Agreement”) is made and is effective _____, (“**Effective Date**” to be filled in by UCSD-Real Estate after both parties have signed) by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation (“University”), on behalf of the University of California, San Diego (“UCSD”) Qualcomm Institute for Telecommunications and Information Technology, the UC San Diego Division of Calit2 (“Qualcomm Institute”) and *, a * (“Licensee”), sometimes referred to below as “Parties.”

WHEREAS, the Qualcomm Institute is dedicated to the advancement of science and engineering through conducting world-class research, and to the transfer of discovery for the benefit of society; and

WHEREAS, the Qualcomm Institute was established as part of the Governor Gray Davis Institutes of Science and Innovation that were established to promote novel programmatic partnerships with industry; and

WHEREAS, the Qualcomm Institute, in order to achieve its mission, assists governmental agencies, corporations and startup companies established to speed the translation of high impact technologies to the market for the benefit of society; and

WHEREAS, University is the owner of certain real property located at the Atkinson Hall on the UCSD campus, which includes, without limitation, Room(s) * (the “Premises” as defined below), and a 21% pro-rata share of common spaces, i.e., conference rooms, alcove and kitchen (the “Shared Facilities”) and certain other rooms and spaces defined below as the “Recharge Facilities”; and

WHEREAS, Licensee seeks to enter and use the Premises and Shared Facilities [* (1) to create and implement successful strategies for innovation or (2) for educational or public service purposes], and for such other purposes as are described in Article 3, below, and as the Parties may otherwise agree in writing; *and

*WHEREAS, Licensee has secured rights to certain UC intellectual property, UC Case No. [CASE NO.], [TITLE], under a [LICENSE/OPTION] with UC Agreement Control No. [AGREEMENT CONTROL NO.] dated [DATE] (“Patent License Agreement”) and wishes to use The Premises to further develop the inventions covered in this intellectual property.

NOW, THEREFORE, Licensee and University hereby agree to the above Recitals, and as follows:

ARTICLE 1 - GRANT OF LICENSE

1.1 University hereby grants to the Licensee and to its agents, employees and invitees a revocable license to enter and use the Premises and Shared Facilities for the purposes, and at the times, set forth in Article 3, below (“License”). This License is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way with respect to the Atkinson Hall, the Premises, the Shared Facilities, and the Recharge Facilities, whether or not of record. This License is personal to the Licensee; any attempt by Licensee to enter into a sub-license without University prior written approval or to transfer or assign this License shall terminate the License (in which event the Agreement will terminate in accordance with Section 7.9, below).

ARTICLE 2 - TERM AND TERMINATION

- 2.1 Term. This Agreement shall become fully effective and binding as of the Effective Date. “Effective Date” means the earlier to occur of: (i) the date this Agreement is fully executed by University and Licensee; or (ii) the Delivery Date. “Delivery Date” means the earlier to occur of: (i) the date University tenders possession of the Premises to Licensee or (ii) the date Licensee occupies the Premises for any purpose. The term of this Agreement shall be for twelve (12) months, commencing on the Effective Date (“**Commencement Date**”) and ending twelve (12) months later (“**Expiration Date**”), unless sooner terminated pursuant to any provision hereof. The Commencement Date and Expiration Date shall be specified in Appendix E, Confirmation of Term, and Appendix E shall be signed by both parties. Either party may terminate this Agreement at any time for any reason by giving thirty (30) days’ written notice to the other. In addition, the University may terminate this Agreement pursuant to Section 7.9, below.
- 2.2 Option. Licensee shall have the option to request an extension of the Term of this Agreement for a twelve (12) month period (“Extended Term”) to begin contemporaneous with the expiration of the Term with the written approval of Licensor. Such option shall be exercised by Licensee, by written notice to Licensor, no later than one hundred twenty (120) days prior to the last day of the Term and shall be subject to all other terms and conditions of this Agreement or any subsequent amendments. License Fee for the Extended Term shall be adjusted in accordance with paragraph 4 of this Agreement. All other terms and conditions of this Agreement shall remain in full force and effect during the Extended Term. For all purposes under this Agreement, all references to the Term shall include any and all Extended Terms, if applicable.

ARTICLE 3 - USE OF PREMISES, SHARED FACILITIES AND RECHARGE FACILITIES

- 3.1 Licensee Use. Licensee shall use the Premises, Shared Facilities, and Recharge Facilities solely for the purposes set forth in Sections 3.1a and 3.1b below:
- 3.1a Scope of Use. Licensee is authorized to perform general research and development involving ***[BRIEF DESCRIPTION OF THE RESEARCH PROJECTS TO BE PERFORMED AT THE INCUBATOR]** to further the development of the technologies described in “[TITLE]” (UCSD Case No. [CASE NO.]); and “[TITLE]” (UCSD Case No. [CASE NO.]), and any other use which, in University’s sole opinion, is reasonably compatible with the foregoing purposes.
- 3.1b Ownership of Intellectual Property. Separate agreements between the Parties, including without limitation the Intellectual Property Notification Agreement with an effective date of _____, attached as Appendix C and incorporated herein by this reference, govern ownership of intellectual property discovered or developed in the Premises, Shared Facilities, and Recharge Facilities, and other related matters.
- 3.1c Restrictions on Use of University Funds and Grants. It is sometimes the case that a University employee (including without limitation a faculty member) or student has a financial interest (as defined in applicable University policies) related to a licensee. Accordingly, Licensee is reminded that it may not receive or utilize funding originating from any grants, gifts, or other funding provided to the University from any source (including, but not limited to, government, private, and corporate sponsors or donors) to perform any research and development at the Premises or elsewhere within the Atkinson Hall except in accordance with the terms of a prior written agreement between the University and Licensee.
- 3.2 Conditions of Use. Licensee’s use of the Premises shall be subject to the conditions described below:

- 3.2a Use of Premises. Licensee shall have the right of non-exclusive use of Room(s) _____ consisting of approximately _____ assignable square feet (the “Premises”), and the non-exclusive use of a 21% pro-rata share of common spaces, i.e., conference rooms, alcove and kitchen (the “Shared Facilities”) for a total of _____ assignable square feet as shown on the attached Appendix A, incorporated herein by this reference. *The Premises shall be equipped with *up to three chairs, three desks, three pedestal filing cabinets, and three shelving units. While the Premises are for the primary use of Licensee, it is acknowledged and agreed that University employees, other licensees and/or other third parties may from time to time utilize or pass through portions of the Premises. University will make reasonable efforts to prevent any such utilization of the Premises by University or third party personnel from interfering with the use of the Premises by Licensee. Please refer to Section 7.1, below.
- 3.2b Use of Recharge Facilities. In addition, Licensee shall have the right to non-exclusive use of certain other areas in the Atkinson Hall (“Recharge Facilities”), which will include other non-Shared Facilities conference rooms, presentation areas and specialized research areas (referred to as “core facilities”). Use of Recharge Facilities will involve charges to Licensee, which shall be established by University and shall be subject to change on reasonable notice. The Recharge Facilities will change over time, and no specific Recharge Facilities area is guaranteed to be available to Licensee for its use, or to be available at any given time or set cost.
- 3.2c Time of Use. Subject to the foregoing, Licensee shall have access to the Premises 24 hours, 7 days a week, with understanding that after normal Building hours (Monday through Friday from 7:00 am to 7:00 pm), during weekends, and campus closures there is reduction in service, HVAC settings and facilities support. Shared Facilities access is available during normal Building hours.
- 3.2d Building Rules. Licensee, in its use of the Premises, Shared Facilities, and Recharge Facilities, shall comply with all applicable laws and University policies, with the Building Rules set out in the attached Appendix B, incorporated herein by this reference.
- 3.2e Protection of Intellectual Property. Licensee acknowledges that the Premises, Shared Facilities, and Recharge Facilities (except for the inside of locked cabinets or desks) are not physically separated from and are therefore open to University employees, invitees and other licensees, and that Licensee (i) shall be responsible to take reasonable measures to protect its own intellectual property in any area of the Premises, Shared Facilities, and Recharge Facilities, and (ii) may be required at University’s discretion to execute reasonable secrecy and/or non-disclosure agreements pertaining to use of the Premises, Shared Facilities, and Recharge Facilities. University shall have no responsibility or liability for loss of Licensee’s intellectual property or rights therein, including, but not limited to, trade secrets, patent rights and copyrights, occurring on the Premises, Shared Facilities, Recharge Facilities, or in the Atkinson Hall, or any portion thereof, including without limitation relating to materials stored by Licensee in cabinets or desks on the Premises, whether or not equipped with locks.
- 3.2f Informed Participation of UC Employees. Prior to allowing any UC employees to use Licensee’s licensed space within the Premises or engaging in any collaboration with any UC employee at the Premises, Shared Facilities, or Recharge Facilities, Licensee will (i) require each such UC employee to sign the informed participation agreement attached hereto as Appendix D (Innovation Space Informed Participation Letter) and (ii) submit a signed original of such letter to the Qualcomm Institute Director’s Office.
- *3.2g UC Patent License in Good Standing. Licensee must maintain their Patent License Agreement, as such may be amended from time to time by mutual agreement of the Parties, during their

tenancy in the Atkinson Hall. Failure to maintain such Patent License Agreement is grounds for termination of this Agreement.

ARTICLE 4 - CONSIDERATION

- 4.1 As consideration for its use of the Premises, Licensee shall pay to University monthly rent in the amount of *per month for an annual rent in the amount of *. Monthly rent shall be due from the Commencement Date; if the Commencement Date is other than the first day of the calendar month, then the rent for that month shall be prorated on a daily basis, based on a thirty (30) day month. The monthly rent payable by Licensee shall be increased by three percent (3%) on each July 1 of each year of the Term following the Commencement Date. The monthly rent is inclusive of electricity costs; however it does not include parking or Recharge Facilities fees, or data and/or voice network services.

ARTICLE 5 - INDEMNIFICATION

- 5.1 Licensee shall indemnify, defend, and hold harmless University, its officers, agents and employees, from and against any claims, damages, costs, expenses, or liabilities (collectively "Claims") arising out of or in any way connected with this Agreement including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of Licensee, its officers, agents, partners, invitees or employees. The provisions of this Article 5 shall survive expiration or termination of this Agreement.

ARTICLE 6 - INSURANCE

- 6.1 Licensee's Insurance. Licensee, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force, and maintain insurance as follows:

6.1a Commercial Form General Liability Insurance (contractual liability included) with minimum limits as follows:

6.1(i) Each Occurrence	\$2,000,000
6.1(ii) Products/Completed Operations Aggregate	\$2,000,000
6.1(iii) Personal and Advertising Injury	\$2,000,000
6.1(iv) General Aggregate	\$5,000,000

If the above insurance is written on a claims-made form, it shall continue for three (3) 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.

- 6.1b Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single of not less than one million and no/100 dollars (\$1,000,000) per occurrence.
- 6.1c Property, Fire and Extended Coverage Insurance in an amount sufficient to reimburse Licensee for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises including leasehold improvements hereinafter constructed or installed.
- 6.1d Workers' Compensation as required by CA law.

- 6.1e. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of University and Licensee against other insurable risks relating to performance.

The coverages required herein shall not limit the liability of Licensee.

The coverages referred to under 6.1a and 6.1b of this Section 6.1 shall include The Regents of the University of California as an additional insured. Such a provision shall apply only in proportion to and to the extent of the negligent or wrongful acts or omissions of Licensee, its officers, agents, partners, invitees or employees. Licensee's 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. Licensee, upon the execution of this Agreement, shall furnish University with certificates of insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days (ten [10] days for non-payment of premium) advance written notice to University of any material modification, change or cancellation of the above insurance coverages.

In addition to the above, The Regents of the University of California shall be listed as the Certificate Holder on the certificate of insurance. The address to be used should be: The Regents of the University of California, 10280 N. Torrey Pines Rd., #0982, La Jolla,, CA 92093-0982 Attn: UCSD Real Estate.

The rights accorded Licensee pursuant to this Agreement to enter and use the Premises, Shared Facilities, or Recharge Facilities shall not take effect until and unless the Certificates (in appropriate form and confirming coverages as required hereunder) have been delivered to University.

- 6.2 Waiver of Subrogation. Licensee hereby waives any right of recovery against University due to loss of or damage to the property of Licensee when such loss of or damage to property arises out of an act of God or any of the property perils included in the classification of fire or extended perils ("all risk" as such term is used in the insurance industry) whether or not such perils have been insured, self-insured, or non-insured.
- 6.3 Exemption of University from Liability. Licensee hereby agrees that University shall not be liable for injury to Licensee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Licensee, Licensee's employees, invitees, customers, or any other person in or about the Premises, Shared Facilities, or Recharge Facilities, nor shall University be liable for injury to the person of Licensee, Licensee's employees, agents or contractors, as a result of any condition of the Premises, Shared Facilities, or Recharge Facilities, or Atkinson Hall, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause in or about the Premises, Shared Facilities, or Recharge Facilities, whether the said damage or injury results from conditions arising in the Premises, Shared Facilities, or Recharge Facilities, or in other portions of Atkinson Hall, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Licensee. University shall not be liable for any damages arising from any act or neglect of any other licensee, if any, of Atkinson Hall.
- 6.4 Survival. The provisions of this Article 6 shall survive the expiration or termination of this Agreement.

ARTICLE 7 - MISCELLANEOUS

- 7.1 Security Deposit. Licensee, upon signing of this Agreement, shall pay to University a security deposit in the amount of *(two months' rent). Said security deposit will be returned to Licensee within thirty (30) after termination or expiration of this Agreement, subject to University's right to retain some or all of the security deposit in the event of (i) unpaid rent or late charges, (ii) costs incurred by University as a result of a breach of the Agreement by Licensee, or (iii) damage to Atkinson Hall, Premises, Shared Facilities, or Recharge Facilities (normal wear and tear excepted) in proportion to and to the extent caused by the negligent or wrongful acts or omissions of Licensee, its officers, agents, partners, invitees or employees.
- 7.2 Parking. Licensee shall have the right, but not the obligation, to purchase parking permits at the prevailing parking rates charged by University to its own employees. Said rate may be changed from time to time at University's discretion. "A" level permits are limited to Executive and Managers level employees and "B" level permit for non-executive/managers. Reserved space may be requested subject to UCSD approval.
- 7.3 Data Network Services. If Licensee elects to utilize University's Data services, Licensee shall provide University with a list of employees with access to the Data Network. Licensee shall pay to University the public computer labs Next Generation Network Communication User fee ("NGN Use Fee") for each of these users, per UCSD rates (subject to change on an annual basis), at an initial (fiscal year 2015-2016) rate of \$23 per month.

Monthly NGN Use Fees currently include:

- Data services: Switched Ethernet data service, Internet access, DHCP service, line repairs, and technical support
- Wiring: Fiber optic cables between buildings and category 5 (or better) cables inside buildings
- Equipment: Upgrades for backbone and building network switches
- Wireless: Wireless data network access in selected public areas and classrooms, and in new building upgraded projects

Monthly NGN Use Fees do not include:

- Installations, moves, or changes for data lines
- Computer instruments
- UCSD electronic mail services
- Experimental networks and exceptionally high bandwidth needs
- Voice services: Basic voice service (digital or analog telephone line), voice mail, customer service, telephones, feature packages for phones, line repairs, and technical support
- Local and domestic long distance calls

Only those Licensee authorized users having UCSD faculty, staff or student appointments as well as UCSD usernames and passwords shall be recognized and have access to restricted UCSD Library web-based resources (for example, library e-journals) via the UCSD Data Network System. Such users will be required to use the UCSD VPN service to access these resources.

Security Restrictions and Appropriate Use – Users must adhere to all rules and regulations specified in UCSD Policies and Procedures Manual Section 135 (<http://adminrecords.ucsd.edu/ppm/docs/toc135.HTML>), as it stands today and as amended from time to time, and in the UC Electronic Communications Policy

(<http://www.ucop.edu/ucophome/policies/ec/>), including but not restricted to rules concerning minimum network connection standards and appropriate use.

7.4 Mail Service. The United States Postal Service currently will not deliver mail to the Premises. Licensee may use the services provided by the UCSD Postal Center as long as such operation is open for business. The UCSD Postal Center is a retail operation currently located on the UCSD La Jolla Campus at the Price Center East, Room 1502.

7.5 Notices and Emergency Contacts. Any notice required hereunder shall be in writing and shall be addressed as follows:

University: The Regents of the University of California
c/o Executive Director, Real Estate
University of California, San Diego
(If by United States mail)
10280 N. Torrey Pines Road #0982
La Jolla, CA 92093-0982
(If by overnight courier)
10280 N. Torrey Pines Road, Suite 340
La Jolla, CA 92037

with a copy to: The Regents of the University of California
c/o Director, Qualcomm Institute
University of California, San Diego
9500 Gilman Drive, #0404
La Jolla, CA 92093-0404

Licensee: *
*
*
*

Rent payments shall be sent to (need not be sent certified):
Regents of the University of California
University of California, San Diego
9500 Gilman Drive, #0436
La Jolla, CA 92093-0436
Attention: Business Office

or to such other address as either party may indicate in a written notice to the other. All notices and communications given under this Agreement shall be deemed to have been duly given and received: (i) upon personal delivery, or (ii) as of the third business day after mailing by United States certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit (for next day delivery) with Federal Express or other similar overnight courier system.

Emergency Contacts

University: UCSD Campus Police: (858) 534-4357

Licensee: *

7.6 Taxes

7.6a **Payment of Taxes.** University specifically calls to Licensee's attention the fact that this Agreement may create a possessory interest subject to property taxation, and Licensee may be subject to property tax levied on such interest. Licensee alone shall pay such tax. If the right is given to pay any of the taxes, assessments or other impositions which Licensee is herein obligated to pay either in one sum or in installments, Licensee may elect either mode of payment.

7.6b **Personal Property Taxes.** Licensee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Licensee contained in the Premises or elsewhere. Licensee shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of University.

7.7 **Late Charges.** Licensee hereby acknowledges that late payment by Licensee to University of rent and other sums due hereunder will cause University to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Licensee shall not be received by University or University's designee within ten (10) business days after such amount shall be due, then, without any requirement for notice to Licensee, Licensee shall pay to University a late charge equal to six percent (6%) of such overdue amount. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the cost University will incur by reason of late payment by Licensee. Acceptance of such late charge by University shall in no event constitute a waiver of Licensee's default with respect to such overdue amount, nor prevent University from exercising any of the other rights and remedies granted hereunder.

7.8 **Repair of Damage.** Licensee shall be responsible for the cost of repair of any damage to Atkinson Hall, Premises, Shared Facilities, or Recharge Facilities (normal wear and tear excepted) in proportion to and to the extent caused by the negligent or intentional acts or omissions of Licensee, or any agent, invitee or contractor of Licensee. Licensee shall promptly notify University of any damage to Atkinson Hall, Premises, Shared Facilities, or Recharge Facilities of which Licensee becomes aware. Without limitation, University shall have the right to enter the Premises to effect repairs deemed appropriate by University, at such times as University deems appropriate. Licensee shall not undertake any repairs without the prior express written consent of University. In the event that any repair is performed following the termination or expiration of this Agreement, the Licensee's indemnity and insurance obligations as set forth in this Agreement shall continue to apply.

7.9 **Breach and Cure.** In the event that Licensee breaches any of its obligations under this Agreement, University shall send Licensee written notice specifying the nature of such breach. Licensee shall have ten (10) days from the receipt of such notice within which to cure such breach. If more time is reasonably required for Licensee's performance, then Licensee shall notify University in writing of its proposed schedule for performance and commence performance within such ten (10) day period; thereafter, Licensee shall diligently proceed to completion. If Licensee fails to cure or to commence cure within such ten (10) day period, then University shall have the right to terminate this Agreement immediately by serving Licensee with written notice of termination. University shall have all rights and remedies available under California law including, but not limited to, actions for damages and specific performance, for any breach of Licensee's obligations under this Agreement.

- 7.10 Waivers. No waiver by University of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Licensee of the same or any other provision. University's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of University's consent to or approval of any subsequent act by Licensee. The acceptance of rent hereunder by University shall not be a waiver of any preceding breach by Licensee of any provision hereof, other than the failure of Licensee to pay the particular rent so accepted, regardless of University's knowledge of such preceding breach at the time of acceptance of such rent.
- 7.11 Incorporation of Prior Agreements and Amendments. This Agreement contains all agreements of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed by both Parties. Except as otherwise stated in this Agreement, Licensee hereby acknowledges that neither University nor any employees or agents of University have made any oral or written warranties or representations to Licensee relative to the condition or use by Licensee of the Premises, the Shared Facilities, the Recharge Facilities, or Atkinson Hall.
- 7.12 Binding Effect; Choice of Law. Subject to any provisions hereof restricting assignment or subletting by Licensee, this Agreement shall bind the Parties, their personal representatives, successors and assigns. This Agreement shall be governed by the laws of the state of California.
- 7.13 Time of Essence. Time is of the essence.
- 7.14 Severability. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.
- 7.15 Attorneys' Fees. If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to reasonable attorneys' fees to be paid by the losing party as fixed by the court.
- 7.16 Survival. The provisions of Sections 7.1, 7.3, 7.6, 7.8, 7.12, 7.14 and 7.15 shall survive the expiration or termination of this Agreement.
- 7.17 Authority. If Licensee is a limited liability company, corporation, trust, or general or limited partnership, each individual executing this Agreement on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said entity. If Licensee is a company, corporation, trust, or partnership, Licensee shall, within thirty (30) days after execution of this Agreement, deliver to University evidence of such authority satisfactory to University.
- 7.18 No Transfer or Assignment. This Agreement is personal to Licensee. Any attempt to transfer or assign this Agreement shall terminate it.

ARTICLE 8 CONSTRUCTION, INSTALLATION OF EQUIPMENT and NON-SUBORDINATION

8.1 Licensee shall not undertake any construction activity whatsoever in Atkinson Hall. Licensee shall not undertake to install any equipment or fixtures in Atkinson Hall without the prior written approval of University. Licensee shall not permit Atkinson Hall, the Premises or the University’s other property to be encumbered by any lien, including without limitation any mortgage, mechanics’ or other lien, filed by any person or entity under contract to or under the direction or control of Licensee. If any such mortgage, mechanics’ or other lien is recorded with regard to the Premises or other University property, Licensee shall immediately cause such lien to be removed or discharged. If Licensee fails to discharge any such lien after demand by the University, the University may, after written notice to Licensee, cause such lien to be discharged, including by satisfying in full the claim giving rise to such lien, without regard to the merit of such claim. If the University expends its own funds to pay such claim or otherwise discharge any lien, Licensee shall immediately upon demand reimburse the University for all funds so expended.

ARTICLE 9- COUNTERPARTS AND EXECUTION

9.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile, Portable Document Format (PDF) or photocopied signatures of the Parties will have the same legal validity as original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates specified immediately below their respective signatures.

UNIVERSITY

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____

Name: Jeff W. Graham

Title: Executive Director, Real Estate

Date: _____

LICENSEE

*

By: _____

Name (Print): _____

Title: _____

Date: _____

APPENDIX A

THE PREMISES

*[INSERT GRAPHIC SHOWING PREMISES]

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APPENDIX B

UNIVERSITY'S RULES AND REGULATIONS

1. Sidewalks, doorways, vestibules, halls, stairways and similar areas shall not be obstructed by Licensee or used for any purpose other than ingress and egress to and from the Premises, Shared Facilities, or Recharge Facilities and for going from one to another part of Atkinson Hall.
2. Plumbing fixtures and appliances shall be used only for purposes for which constructed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed therein. Damage resulting to any such fixtures or appliances from misuse by Licensee shall be paid by Licensee, and University shall not in any case be responsible therefore.
3. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or other part of Atkinson Hall, except of such color, size and style and in such places as shall be first approved in writing by University.
4. Nothing shall be swept or thrown into the corridors, halls, elevator shafts or stairways. No birds or animals shall be brought into or kept in or about the building.
5. Licensee shall not do, or permit anything to be done in or about Atkinson Hall, or bring or keep anything therein, that will in any way increase the rate of fire or other insurance on Atkinson Hall, or on property kept therein, or obstruct or interfere with the rights of, or otherwise injure or annoy, other University occupants or licensees in Atkinson Hall, or do anything in conflict with the valid pertinent laws, rules or regulations of any governmental authority.
6. University shall have the power to prescribe the weight and position of equipment, which shall in all cases, to distribute weight, stand on plank strips at least two inches thick. Any damage to Atkinson Hall caused by installation or removal of Licensee's property, or done by Licensee's property while in Atkinson Hall, shall be repaired at the expense of Licensee.
7. Licensee shall notify Atkinson Hall building manager when equipment is to be taken in or out of Atkinson Hall, and the moving shall be done under the supervision of Atkinson Hall building manager, after written permission from University. Persons employed to move such property shall be approved by University.
8. No machinery of any kind shall be operated on Premises without the prior written consent of University, nor shall Licensee use or keep in Atkinson Hall any flammable or explosive fluid or substance.
9. No furniture, packages, or bulky material of any kind will be received in Atkinson Hall or carried up or down stairs or in the elevators, except in the manner and at the times specified by University.
10. Licensee shall cooperate with University's employees in keeping Premises, Shared Facilities, and Recharge Facilities neat and clean. Licensees shall not employ persons for the purpose of such cleaning.
11. To insure orderly operation of Atkinson Hall, no ice, mineral or other water, towels, newspapers, etc., shall be delivered to the Premises, Shared Facilities, or Recharge Facilities except by persons appointed or approved in writing by University.

12. Should Licensee require telegraphic, telephonic, annunciator or other communications service, University will direct the electricians where and how wires are to be introduced and placed, and none shall be introduced or placed except as University shall direct. Electric current shall not be used for power or heating without University's prior written permission.
13. University shall, at reasonable hours, have the right to enter the Premises, to examine same or to make such alterations and repairs as may be deemed necessary.
14. Licensees shall not make or permit any improper noises in the building, or otherwise interfere in any way with other University occupants, other licensees, or persons having business with them.
15. No satellite or microwave dishes or exterior antennas, whether freestanding or affixed to a building rooftop, shall be installed upon any building without specific review and prior written approval by University.
16. As a matter of policy, University is committed to providing and maintaining a safe and healthful environment. University prohibits smoking in all UCSD facilities and anywhere on campus. This Smoke Free Policy applies to all UCSD facilities, owned, leased or licensed, regardless of location.
17. University reserves the right to rescind any of these rules and make such other and further rules and regulations as in its judgment shall from time to time be needed for the safety, protection, care and cleanliness of Atkinson Hall, the operation thereof, the preservation of good order therein, and the protection and comfort of its occupants, including University lessees, licensees, employees and invitees.

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APPENDIX C

INTELLECTUAL PROPERTY NOTIFICATION AGREEMENT

This Agreement is made and is effective this _____ day of _____ (“**Effective Date**”), between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“**The Regents**”), a California corporation having its corporate office at 1111 Franklin Street, Oakland, California 94607-5200, U.S.A. acting through The Technology Transfer Office of the University of California, San Diego (“**TTO**”), located at 10300 N Torrey Pines Rd. La Jolla, CA 92093, U.S.A. and * (“**Company**”) a *, having a principal place of business at *, each sometimes referred to hereinafter as a “**Party**” and jointly as the “**Parties**” to this Agreement.

RECITALS

WHEREAS, Company has entered into a facility use agreement (“**FUA**”) with The Regents (sometimes referred to as “**University**” or “**UC**”) for use of space (“**Premises**”, “**Shared Facilities**”, and “**Recharge Facilities**” as such terms are defined in such FUA”) in the Qualcomm Institute (“**QI**”) on the UCSD campus in which research involving both Company employees and UC employees will occur;

WHEREAS this Agreement governs ownership of Inventions and Copyright Works (defined below) conceived or reduced to practice in the case of inventions, and created in the case of copyright works, during Company’s use of the Premises, Shared Facilities, and Recharge Facilities;

WHEREAS, UC employees and others who have signed the UC Patent Agreement/Acknowledgement are required to disclose and potentially assign to The Regents all Inventions made within the course and scope of their employment or during the course of their utilization of any University research facilities or through any connection with the use of gift grant or contract research funds received through the University;

WHEREAS, rights in Inventions made by university employees (i) under permissible consulting, (ii) that do not utilize UC funds or facilities and (iii) that do not overlap the employee’s scope of work may be waived to the employee after The Regents’ review;

WHEREAS, Company and The Regents may wish in the instance of Jointly Owned Patent Rights or Jointly Owned Copyright Works to either have Company license The Regents’ interest in the jointly owned rights or have the Parties independently exploit their respective interests, frameworks for both are provided in this Agreement;

NOW, THEREFORE, the Parties agree to the foregoing Recitals, and as follows:

1. DEFINITIONS

1.1 “**Invention**” means patentable subject matter conceived or reduced to practice by employees of one or more of the Parties as such inventorship is determined in accordance with U.S. patent law. For purposes of this Agreement:

1.1a “Company Sole Inventions” means Inventions conceived and reduced to practice solely by Company employees in the Premises, Shared Facilities, or Recharge Facilities and without the use of any other university resources, funds or facilities. UC will have no ownership interest in Company Sole Inventions.

1.1b “University Sole Inventions” means Inventions conceived or reduced to practice (i) solely by UC employees, except those inventions that are disclaimed by University after disclosure to, and review by, the TTO, (ii) solely by Company employees using resources, funds, or facilities of

University other than Premises, Shared Facilities, or Recharge Facilities, or (iii) by University and Company employees fulfilling the criteria in (i) and (ii), respectively. Company hereby assigns its ownership interest in any University Sole Inventions to University. For the sake of clarity, University may claim ownership in inventions made by University employees in the Premises, Shared Facilities, or Recharge Facilities as described under UC policy: <http://invent.ucsd.edu/industry/documents/patentpolicy08.pdf>.

1.1c “Joint Inventions” means Inventions conceived and reduced to practice by University employees, to the extent such inventions are not disclaimed by University, and by Company employees without the use of University resources, funds or facilities except the Premises, Shared Facilities, or Recharge Facilities.

1.2 “**Copyright Works**” means copyright works first created under the FUA and this Agreement.

Copyright Works created by University employees/appointees will be managed according to University policy: <http://www.ucop.edu/ott/staff/copyr.html>

The university will have no ownership interest in Copyright Works created solely by Company employees without the use of any University copyrightable works, resources, funds or facilities except the Premises, Shared Facilities, or Recharge Facilities.

1.3 “**Joint Patent Rights**” means all patents and patent applications filed to claim Joint Inventions

1.4 “**Joint Copyright Works**” means any copyright works first created jointly by University employees (to the extent such copyrights are assigned to University under UC policy) and Company employees (to the extent the university has no ownership position in such copyrights through the use of previously created University copyrights, university resources, funds or facilities, except the Premises, Shared Facilities, or Recharge Facilities.

1.5 “**Joint Intellectual Property**” means Joint Patent Rights or Joint Copyright works.

2. REPORTING INTELLECTUAL PROPERTY

Joint Intellectual Property and potential University Sole Inventions naming Company employees shall be reported by Company and University employees to UCSD’s Technology Transfer Office in a timely manner using the appropriate disclosure form available at <http://invent.ucsd.edu/researchers/reporting.shtml>.

3. MANAGEMENT OF INTELLECTUAL PROPERTY

3.1 For University Sole inventions, University will file, prosecute and maintain patent applications/patents at its own discretion and cost, subject to the terms of any license agreement between the Parties.

3.2 For Company Sole Inventions, Company will file, prosecute and maintain patent applications/patents at its own discretion and cost.

3.3 For Joint Patent Rights, the Parties will confer to agree upon a filing, prosecution, maintenance and licensing strategy. If the parties fail to agree and a public disclosure of the Invention is imminent, University may file at its discretion and cost in order to avoid potential loss of patent rights.

3.4 University and Company will each register their solely owned copyrights according to their respective policies.

3.5 University and Company will confer to agree upon a registration and management strategy for Joint Copyright Works.

4. LICENSING

4.1 The Parties may agree to negotiate a letter of intent, option or license agreement so that the Company may receive a license to The Regents' interest in any University Sole Inventions or Joint Inventions or University Copyright Works or Joint Copyright Works.

4.2 If the Parties fail to reach agreement on the patenting, licensing or other exploitation of Joint Patent Rights or Joint Copyright Works the Parties may each grant a license to their interest in Joint Patent Rights or Joint Copyright Works to one or more third parties in any country of the world where such rights exist and may do so without the prior approval of the other Party, without a duty to account to the other Party and without any compensation to the other Party.

5. NOTICES

5.1 Any notice or payment required to either Party shall be deemed to have been properly given if delivered to the respective addresses given below or to such other addresses as may be designated in writing by the Parties from time to time during the term of this Agreement and to be effective i) on the date if delivered in person, ii) on the next business day if mailed by overnight mail and iii) five business days later if sent by first class US mail.

In the case of The Regents: The Regents of the University of California
University of California, San Diego
Technology Transfer Office
10300 N. Torrey Pines Road
La Jolla, CA 92037
Attention: Director

In the case of the Company: *
*
*
Attention: *

6. USE OF NAMES

6.1 Company will not use any name, trade name, trademark or other designation of The Regents' or its employees (including contraction, abbreviation or simulation of any of the foregoing) in advertising, publicity or other promotional activity. Unless required by law, Company is expressly prohibited from using the name "The Regents of the University of California" or the name of any campus of the University of California in advertising, publicity, or other promotional activity, without written permission of The Regents.

7. GOVERNING LAW

7.1 THIS AGREEMENT IS TO BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. Disputes between the parties regarding this agreement will utilize only trial courts within California for disputes that go to court.

8. NO LICENSE

8.1 NO LICENSE OR RIGHT, EXPRESS OR IMPLIED, IS HEREBY CONVEYED OR GRANTED BY EITHER PARTY TO THE OTHER PARTY FOR ANY PATENT OR COPYRIGHT WORK, WHETHER DOMINANT OR SUBORDINATE TO THE PATENT RIGHTS, UTILITY MODEL, DESIGN PATENT OR DESIGN REGISTRATION, COPYRIGHT, MASK WORK OR TRADEMARK OF EITHER PARTY.

9. MISCELLANEOUS

9.1 Except for the FUA, this Agreement contains the entire agreement and understanding between the Parties as to the subject matter hereof, and may not be amended or modified except by a writing which specifically refers to this Agreement and is signed by the authorized representatives of the Parties.

9.2 No provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than The Regents and the Company any rights, remedies or other benefits under, or by reason of, this Agreement.

9.3 Regardless of the execution date hereof, this Agreement shall become effective on the date first above written, and shall remain in force until the expiration or termination of the FUA.

10. COUNTERPARTS AND EXECUTION

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile, Portable Document Format (PDF) or photocopied signatures of the Parties will have the same legal validity as original signatures.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed in duplicate originals by its duly authorized representative as of the date below.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

*

By _____
Signature

Name: _____

Title: _____

Date: _____

By _____
Signature

Name: _____

Title: _____

Date: _____

APPENDIX D
UCSD EMPLOYEE INFORMED PARTICIPATION LETTER
Qualcomm Institute Innovation Space

We are delighted that you may be collaborating with * (“Company”) on their research at the Qualcomm Institute Innovation Space at Atkinson Hall (“Innovation Space”), and more specifically in the Premises and Shared Facilities as defined in the Facility Use Agreement, dated _____.

The Innovation Space at Atkinson Hall is set up for use by companies and their employees who have been accepted into the Innovation Space program to work on projects funded by the Company. The Innovation Space is not to be used for working on projects funded by sponsored research awards to UCSD (except as noted below), nor are University resources¹ to be utilized within the Innovation Space. There are, however, situations when a UC employee/appointee may be involved in Innovation Space activities. Given that the Innovation Space is a UCSD resource, we wanted to make you aware of how the University views your interactions with Company in the Innovation Space, so please consider the following items as you plan your activities.

All inventions you make at the Innovation Space, whether in a consulting or collaborative capacity (as described below) should be reported to UCSD’s Technology Transfer Office (“TTO”) using the standard invention report form available at <http://invent.ucsd.edu/researchers/reporting.shtml>².

Any copyright works should be disclosed to TTO when required under University Copyright Policy: <http://invent.ucsd.edu/industry/documents/Copyrightpolicy.pdf>, using the form available at: <http://invent.ucsd.edu/researchers/reporting.shtml>.

- Check here if your involvement in Leased Space is related to a UC/Company research collaboration (funded or unfunded).

The scope of work of the research collaboration must be approved in advance in writing by the Qualcomm Institute Director and the PI of the proposed research. The UCSD Office of Contract and Grant Administration must be notified in writing of the planned collaboration and an appropriate agreement executed. The source of funding for use in this research collaboration is: [LIST ALL SOURCES OF FUNDING THAT APPLY].

- Check here if your involvement in the Leased Space is related to personal consulting activities.

Personal consulting activities should not make use of University funds, facilities (except for the Leased Space) or resources (such as materials, unpublished data, etc.); and should not overlap with the scope of UC projects or create a conflict with the consultant’s responsibilities at UC.

Faculty: Faculty members are allowed approximately one day per week for personal consulting with outside companies in accordance with the Academic Personnel Manual (APM) 025. If you are accepting a role

¹ University resources may include UC gift, grant, or contract funds, UC personnel, materials or supplies, or UC facilities except for the Incubator.

² The invention will be reviewed for use of University gift, grant, and contract funds or other University resources or facilities, plus overlap with your scope of University employment to determine whether or not the University will assert an interest in the invention. More information is in the Guide to Faculty Consulting: <http://invent.ucsd.edu/industry/documents/consult.pdf>

within the Company that would qualify under Category I of APM 025, please ensure you have received any necessary approvals for the role.

Research/Project Scientists and Staff: Research/project scientists and staff employees may engage in personal consulting if it is external to their university obligations, does not create a conflict with their university responsibilities and after conferring with their supervisor on the acceptability of the consulting activities.

Post-doctoral Scholars: Post-docs, in addition to the conditions outlined for research/project scientists and staff, must ensure that, if applicable, the consulting activity (and any compensation) is permitted under their visa, if any. Also, post-doctoral scholars may not be involved in a company in which their mentor has a significant financial interest.³

Graduate Students: Grad students are governed by Graduate Council policies. Students may undertake educationally-related activities at companies as long as the faculty advisor does not have a significant financial interest in Company, Company does not place confidentiality restrictions on the student that would limit the ability to publish and any consulting agreement does not impose any obligations that conflict with responsibilities to the University³. Grad students must also ensure that the consulting activity is permitted under their visa, if any.

By signing below, you confirm your understanding of and concurrence with the items listed above.

By: _____
Signature

Name: _____

Date: _____

Qualcomm Institute Director:

By: _____
Signature

Name: _____

Date: _____

³ Additional guidance may be found at the following link: <http://blink.ucsd.edu/sponsor/coi/researchers/graduate.html>

**APPENDIX E – CONFIRMATION OF TERM
TO FACILITIES USE AGREEMENT DATED _____
BY AND BETWEEN
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
AND

This Confirmation of Term is entered into as of _____, (*date to be filled in by UCSD-Real Estate after both parties have signed*) between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“University”), and * (“Licensee”).

WHEREAS, University and Licensee entered into that certain Facilities Use Agreement dated _____, for Premises located at Atkinson Hall, situated on the UCSD campus, in the County of San Diego, State of California (the “Agreement”).

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto agree as follows:

1. Term. University and Licensee agree that the Term as defined in the Agreement commences on _____ (Commencement Date) and ends on _____ (Termination Date).
2. Consideration. University and Licensee agree that the monthly fee set for in Article 4 in the Agreement commences on the Commencement Date.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile, Portable Document Format (PDF) or photocopied signatures of the Parties will have the same legal validity as original signatures.

The parties have caused this Confirmation of Term to be executed as of the date first set forth above.

UNIVERSITY

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

By: _____

Name: Jeff W. Graham

Title: Executive Director, Real Estate

Date: _____

LICENSEE

*

By: _____

Name (Print): _____

Title: _____

Date: _____