

**BLUE ECONOMY AGREEMENT**  
**between**  
**SAN DIEGO UNIFIED PORT DISTRICT**  
**and**  
**HYPERKELP INC.**  
**for**  
**SMART BUOY PLATFORM DEMONSTRATION PROJECT**

**THIS BLUE ECONOMY AGREEMENT** (“Agreement”) is being made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by and between the **SAN DIEGO UNIFIED PORT DISTRICT**, a public corporation with a business address of 3165 Pacific Highway, Post Office Box 120488, San Diego, CA 92112-0488 (“District”), and **HYPERKELP INC.**, a Delaware corporation, with its principal place of business located at \_\_\_\_\_ (“HyperKelp”), with regards to the terms and conditions as set forth herein. The District and HyperKelp may be referred to collectively as the “Parties,” with each being a “Party.”

**RECITALS**

**WHEREAS**, the District has established the Blue Economy Incubator which seeks to encourage the implementation of innovative technologies and blue tech businesses that will benefit the local port community of San Diego and enable the District to diversify its portfolio of business lines and assets by providing resources and funding which will foster that development (the “Program”);

**WHEREAS**, using its core smart buoy technology, including hardware (the Kelp Smart Buoy) and software (Ocean Data as a Service dashboard) (the “Core Technology”), HyperKelp seeks to develop, test, and validate a tailored smart buoy platform for various port monitoring applications (the “Monitoring Applications”, together with the Core Technology, the “HyperKelp Platform”) (the “Project”);

**WHEREAS**, HyperKelp has applied to participate in the Program and has been selected by the District to participate in such program;

**WHEREAS**, the District desires to provide certain support to HyperKelp for the Project, in exchange for certain revenue share payments from HyperKelp, as further described below; and

**WHEREAS**, the Parties desire to enter into this Agreement in order to set forth their respective duties, obligations and revenue sharing arrangements in regard to HyperKelp's participation in the Program and the District's support of HyperKelp as to the Project.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements in this Agreement, the Parties agree as follows:

1. Recitals Incorporated by Reference. The recitals set forth above are incorporated herein by this reference and are made terms of this Agreement and not mere recitals.

2. Term. This Agreement shall commence on the date it is executed by the second Party to execute and shall terminate one year after the expiration of the Revenue Sharing as defined in Section 5.a.ii below. However, the obligations of HyperKelp under Section 12, Indemnity, shall survive termination of this Agreement.

3. HyperKelp to Perform the Project. HyperKelp shall perform the Project in accordance with the Scope of Work attached here to as Exhibit A (the "SOW").

4. District Support of Project. District will support the Project by providing the following (as described in detail in the SOW) and shall not be responsible for any other support or compensation for the Project.

- a. Upon execution of this Agreement and invoicing from HyperKelp, District shall pay to HyperKelp a fee in the amount of \$125,000.00.
- b. Upon completion by HyperKelp of demonstration of the accuracy of sensor payload measurements and monitoring parameters and integration of payloads into smart buoy platform (as described in detail in the SOW) invoicing from HyperKelp, District shall pay to HyperKelp a fee in the amount of \$50,000.00.
- c. Upon completion by HyperKelp of deployment of the smart buoy platform fleet, end of validation period (as described in detail in the SOW), and invoicing from HyperKelp, District shall pay to HyperKelp a fee in the amount of \$50,000.00.

- d. Upon completion by HyperKelp of the Project (as described in detail in the SOW) and submission of final report, District shall pay to HyperKelp a fee in the amount of \$25,000.00.
- e. District shall provide staff resources to conduct District's environmental review under the California Environmental Quality Act and the Coastal Act at no cost charged to HyperKelp, as well as provide reasonable assistance to HyperKelp to help obtain other necessary permits, exemptions, waivers, approvals that may be needed solely for the Project.
- f. District shall provide HyperKelp with access to District-owned location(s) at which HyperKelp may place buoys for the duration of the Project, and, if requested by HyperKelp, for the duration of the Revenue Share period described in Section 5.a.i and ii. District may change the available locations due to operational needs of the District at any time. However, District will use reasonable efforts to give HyperKelp 30 days' advanced notice of any such changes and consult with HyperKelp on available locations.
- g. District to provide HyperKelp with reasonable consultation by Port staff regarding use cases and other information based on Port staff environmental protection and conservation expertise, as well as blue tech and aquaculture expertise for the duration of the Project.
- h. District shall provide reasonable assistance with public communications regarding the Project such as press releases, approved statements, reporting of performance, and education and public outreach.
- i. For the duration of the Project, the District shall provide HyperKelp reasonable access (at no cost to HyperKelp) to Port operated boats for the maintenance, deployment and recovery of buoys that are used as part of the Project.

District will take reasonable efforts to pay HyperKelp within thirty (30) days following District's receipt of an undisputed invoice. HyperKelp shall be responsible for all other costs and expenses of the Project.

## 5. Revenue Sharing.

a. In consideration of the District providing funding, staffing resources, and other support as described in Section 4, herein, the District shall be entitled to the following amounts from HyperKelp (the “Revenue Share”):

i. Beginning upon execution of this Agreement and continuing until HyperKelp has cumulatively paid the District \$250,000:

1. 4% revenue share of any and all Gross Revenue (as defined below) of HyperKelp excluding revenue from Department of Defense contracts, and

2. 0.5% revenue share of any and all Gross Revenue of HyperKelp from Department of Defense contracts.

ii. After HyperKelp has cumulatively paid the District \$250,000 pursuant to revenue sharing set forth in 5.a.i above and then continuing until the earlier of (a) 10 years from the District's receipt of the payment which reaches \$250,000 of Revenue Share payments or (b) when the cumulative amount paid by HyperKelp to the District hereunder reaches \$1,750,000:

1. 2.5% revenue share of any and all Gross Revenue of HyperKelp excluding revenue from Department of Defense contracts, and

2. 0.5% revenue share of any and all Gross Revenue of HyperKelp from Department of Defense contracts.

iii. Gross Revenue shall include, without limitation, revenue actually received by HyperKelp from licensing, sales, leases, service, equipment, products, subscriptions, or any other type of revenue, anywhere in the world except from Japan, Bangladesh, and Bahamas, but specifically excluding the following: grants, investment capital, loans, convertible debt or other securities, Department of Defense

contracts which explicitly include terms prohibiting HyperKelp from earning less than 0.5% profit under that contract, government and not-for-profit funding which is not a payment for goods or services, accelerator contribution funding, and any amounts by District to HyperKelp.

- iv. Additionally, beginning upon execution of this Agreement and continuing until HyperKelp has cumulatively paid the District \$250,000, Gross Revenue shall also specifically exclude non-Department of Defense government contracts which explicitly include terms prohibiting HyperKelp from earning less than 4% profit under that contract.
  - v. Additionally, after HyperKelp has cumulatively paid the District \$250,000 pursuant to revenue sharing set forth in 5.a.i above and then continuing until the earlier of (a) 10 years from the District's receipt of the payment which reaches \$250,000 of Revenue Share payments or (b) when the cumulative amount paid by HyperKelp to the District hereunder reaches \$1,750,000, Gross Revenue shall also specifically exclude non-Department of Defense government contracts which explicitly include terms prohibiting HyperKelp from earning less than 2.5% profit under that contract
- b. HyperKelp shall pay the Revenue Share to the District on a quarterly calendar year basis. Each payment of Revenue Share shall be accompanied by a written report of HyperKelp's applicable Gross Revenue with sufficient information regarding each element of Revenue Share and its calculation and in a form reasonably required by the District ("Revenue Report"). Unless an alternative method of payment has been arranged in writing by the Parties, all payments to the District shall be made payable to "SAN DIEGO UNIFIED PORT DISTRICT" and be sent to 3165 Pacific Highway, Post Office Box 120488, San Diego, CA 92112-0488. HyperKelp shall make each quarterly payment within 30 days of the end of each quarter. HyperKelp's first Revenue Report and payment shall be due February 1, 2024, whether or not it has

received any applicable gross revenue and shall cover the time period from execution of this Agreement to December 31, 2023.

- c. In order to ensure that the District receives its bargained-for Revenue Share, HyperKelp agrees that all of its dealings, whether with independent third parties, HyperKelp affiliates, owners, insiders, or others, shall be the result of arms-length negotiations. If any such dealings are not the result of arms-length negotiations and result in less HyperKelp gross revenue than would have resulted from an arms-length negotiation, for the purpose of calculating the District's Revenue Share for such deals, the higher HyperKelp gross revenue that would have resulted from an arms-length negotiation shall be used in the calculation of Revenue Share.

6. Records and Audit Rights. HyperKelp shall, at all times, maintain full and complete records relating to Gross Revenue. All such records shall be kept for a minimum of five (5) years from their creation. The District shall, at all times, have the right to review such records and to audit such records, not more than once per any calendar year. Inspection of such records shall occur during business hours at HyperKelp's offices and/or facilities upon at least two (2) weeks advance written notice. HyperKelp shall, at no cost to District, furnish reasonable facilities and assistance during such review and audit. If any such inspection or audit reveals that HyperKelp has underpaid any Revenue Share payment due hereunder by more than 5%, HyperKelp shall also reimburse the District within 30 days after receipt of a copy of the inspection or audit report for all reasonable out-of-pocket costs and expenses incurred by the District for such inspection or audit. If an underpayment of the Revenue Share is determined by any such inspection or audit and HyperKelp does not dispute such finding, then HyperKelp shall pay to the District within 30 days after receipt of a copy of the inspection or audit report the amount of any such underpayment. If an overpayment of the Revenue Share for any quarterly period is determined by any such inspection or audit and the District does not dispute such finding, then the District shall pay to HyperKelp within 30 days thereafter the amount of such overpayment. Any such records or other information provided to District in connection with an audit shall be the confidential information of HyperKelp and shall subject to the confidentiality and non-use obligations of District to HyperKelp under this Agreement.

7. Representations and Warranties by HyperKelp. HyperKelp hereby represents and warrants to the best of its knowledge and belief that:

- a. HyperKelp has all requisite legal and corporate power and authority to enter into this Agreement and perform its obligations in accordance with the terms of this Agreement. The execution and delivery of this Agreement by HyperKelp and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of HyperKelp and no further action is required by HyperKelp in this regard. This Agreement has been duly executed and delivered by HyperKelp and constitutes the valid and binding obligation of HyperKelp enforceable against HyperKelp in accordance with its respective terms except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.
- b. HyperKelp is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other person, entity or party in connection with the execution, delivery and performance by HyperKelp of this Agreement in accordance with its terms.
- c. The operation of the business of HyperKelp, as it is currently conducted and as proposed to be conducted, including HyperKelp's proposed activities in connection with the Project as contemplated hereby, has not, does not and will not infringe or misappropriate in any manner the intellectual property of any third party or constitute unfair competition or trade practices under the applicable laws of any jurisdiction.

- d. HyperKelp has not received written notice from any third party or any other overt threats from any third party, that the operation of the business of HyperKelp as it is currently conducted and as proposed to be conducted, or any act, product or service of HyperKelp, infringes or misappropriates the intellectual property of any third party or constitutes unfair competition or trade practices under the applicable laws of any jurisdiction.

8. Representations and Warranties by District. District hereby represents and warrants to the best of its knowledge and belief that:

- a. District has all requisite legal and corporate power and authority to enter into this Agreement and perform its obligations in accordance with the terms of this Agreement. The execution and delivery of this Agreement by District and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of District and no further action is required by District in this regard. This Agreement has been duly executed and delivered by HyperKelp and constitutes the valid and binding obligation of District enforceable against District in accordance with its respective terms except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.
- b. District is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other person, entity or party in connection with the execution, delivery and performance by District of this Agreement in accordance with its terms.

- c. The operation of the business of District, as it is currently conducted and as proposed to be conducted, including District proposed activities in connection with the Project as contemplated hereby does not and will not violate, and has not violated, any state or federal laws, rules, or regulations applicable to the District and its business.

9. Operation of Business. HyperKelp will operate its business in a manner which will not knowingly infringe or misappropriate in any manner the intellectual property of any third party or constitute unfair competition or trade practices under the applicable laws of any jurisdiction.

10. Acknowledgement of District Support and District's Use of Project Data. In recognition of the District's support of the Project, HyperKelp agrees to acknowledge such by including the following statement in publicity, publication, marketing, reports and documentation about the Project in a manner, location, and size reasonably likely to be seen by the intended audience: "This demonstration project is made possible through the Port of San Diego's Blue Economy Incubator Program." Without the District's prior consent, which may be withheld or conditioned in each instances in its absolute discretion, HyperKelp shall not use the District's name, logo, or other intellectual property (other than the inclusion of the statement referenced in the preceding sentence, which inclusion shall not require the District's consent) or misrepresent the District's involvement or statements related to HyperKelp or the Project.

Additionally, District shall also have the right to use, reproduce, create derivative works from, publicize, and otherwise use for its benefit, all data and test results developed by, or on behalf of HyperKelp, related to the Project without cost to District, but District shall provide reasonable acknowledgement and credit to HyperKelp. Following the duration of the Project, HyperKelp shall provide the District access to any future data collected on any buoys and sensors that were deployed during the Project, subject to all other terms of this Agreement. Notwithstanding the foregoing, District shall not disclose any data or results that are deemed "Confidential" by HyperKelp, without HyperKelp's advance written consent. However, District's obligations regarding nondisclosure of "Confidential" information under

this Agreement are subject to all applicable law, including without limitation, the California Public Records Act and the Ralph M. Brown Act. If, at the request of HyperKelp, District's withholds any HyperKelp's "Confidential" information that has been requested under the California Public Records Act is challenged by a requestor or other parties, HyperKelp shall indemnify and defend the District for any legal expenses related to the withholding of such information in accordance with Section 12. If HyperKelp fails to indemnify and defend, District may disclose the information and shall not be in breach of this Agreement and shall not be otherwise liable to HyperKelp for such disclosure; provided that with respect to any information the Hyper choices to defend and subject HyperKelp's indemnification of the District with respect to such defense, District will furnish only that portion of the HyperKelp's "Confidential" information that is legally required to be disclosed. Any of HyperKelp's "Confidential" information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

11. Independent Analysis and Waiver. HyperKelp shall perform, demonstrate and operate the Project, and provide the services as contemplated by this Agreement independent of the control and direction of the District, other than normal contract monitoring provided; however, HyperKelp shall possess no authority with respect to any District decision. While HyperKelp may seek subject matter advice and information from District employees or personnel, provision of such advice is at the sole and absolute discretion of the District, and District shall not be responsible or liable for any such advice or information that it may provide, or the absence of such. HyperKelp waives any and all claims for damages in reliance of any advice and/or information provided by the District and/or its personnel and agents.

## 12. Confidentiality.

- a. Confidential Information. For the purposes of this Agreement, "Confidential Information" means any non-public information about the disclosing Party's business or activities that is proprietary and confidential, which shall include, but not be limited to, customer, subscriber or users lists, marketing plans, campaign strategies, and all business, financial, technical, and other information of either

Party, including trade secrets, whether or not it is marked or designated by such Party as “confidential” or “proprietary” at the time of disclosure.

- b. Exclusions from Confidential Information. Confidential Information does not include any information that: (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing Party; (b) becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving Party through no action or inaction of the receiving Party; (c) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party, as confirmed by the receiving Party’s files and records; (d) is obtained by the receiving Party from a third party without a breach of the third party’s obligations of confidentiality; or (e) is independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, as shown by documents and other competent evidence in the receiving Party’s possession.
  
- c. Permitted Disclosures. Except with the prior written consent of the disclosing Party or as otherwise permitted in the Agreement, a receiving Party shall not use any Confidential Information of a disclosing Party in any manner nor shall it disclose the same other than: (a) to such Party’s attorneys, accountants and financial representatives under a duty of confidentiality as may be reasonably necessary in order to receive their professional advice; (b) to such Party’s employees and contractors who have a need to know and are obligated to maintain the confidentiality of such information; (c) in connection with any legal, governmental or administrative proceeding, provided that prior written notice of such disclosure is furnished to the disclosing Party in order to afford the disclosing Party a reasonable opportunity to seek a protective order, to the extent not otherwise prohibited by law; (d) to enforce provisions of this Agreement; or (e) as part of due diligence for any joint venture, acquisition, merger or other business combination with a third party where such third party has signed a non-disclosure agreement no less restrictive than the confidentiality provisions in this Agreement.

- d. Protection of Confidential Information. Each Party shall use commercially reasonable efforts to protect the secrecy and avoid disclosure and unauthorized use of the other Party's Confidential Information, including at least those measures the Party takes to protect its own confidential information of like importance. Each Party will be deemed to have met its obligations hereunder if it treats the other Party's Confidential Information with the same degree of confidentiality it affords its own sensitive business information.

13. Assignment. HyperKelp shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of the Executive Director (President/CEO) of the District in each instance, which consent may be withheld in the sole and absolute discretion of the District provided, however, this Agreement may be assigned by HyperKelp to any successor through a merger, corporate reorganization, or sale of all or substantially all of HyperKelp's assets or business, upon written notice to the District, subject to any assignee assuming all rights and obligations of the assignor, but no assignment shall relieve an assignor of any liabilities accruing prior to the date of such assignment.

14. Indemnity. To the fullest extent provided by law, HyperKelp agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including all attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including without limitation HyperKelp's officers, agents, subcontractors, employees ("Claim"), caused by, arising out of, or related to the Project, the performance or non-performance by HyperKelp as provided for in this Agreement, any materials, products or services provided by HyperKelp or failure to act by HyperKelp, its officers, agents, subcontractors and employees. HyperKelp's duty to defend, indemnify, and hold harmless shall not include any Claim arising from (i) the negligence or willful misconduct of the District, its agents, officers, or employees. The duty to indemnify, and the duty to defend the District as set forth herein requires that HyperKelp pay all reasonable attorneys' fees and costs that the District may incur associated with or related to enforcing the indemnification provisions and defending any Claim. The District may, at its own election, conduct its defense, or participate in the defense of any Claim. If the District

chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim, HyperKelp agrees to pay all reasonable attorneys' fees and all costs incurred by the District.

HyperKelp hereby further indemnifies the District, its agents, officers or employees against, and agrees to hold each of them harmless from, any and all damages, losses and/or liability incurred or suffered by any of them:

- (i) arising out of or related in any way to any misrepresentation or breach of any representation or warranty made by HyperKelp in this Agreement;
- (ii) arising out of or related in any way to any breach of any covenant or agreement to be performed by HyperKelp pursuant to this Agreement;
- (iii) arising out of or related in any way to the infringement by HyperKelp (including without limitation through use by HyperKelp or its licensees) of the intellectual property rights of a third party; or
- (iv) arising out of violations by HyperKelp of applicable law.

Settlement of Indemnity Claims. An indemnifying party may not settle any indemnified Claim in a manner that adversely affects an indemnified party without the prior written consent of such indemnified party (which consent shall not be unreasonably withheld, conditioned or delayed). In no circumstance may the indemnified party settle any Claim for which indemnification is due without the prior written consent of the indemnifying party (which consent shall not be unreasonably withheld, conditioned or delayed).

#### 15. Insurance Requirements.

HyperKelp shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

- a. Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
  - i. The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
  - ii. (b) The Commercial General Liability policy shall be endorsed to include the District, its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit B, Certificate of Insurance, attached hereto and incorporated herein).
  - iii. (c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the Service Provider's insurance and shall not contribute to it.
  - iv. (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").

- b. Workers' Compensation, statutory limits, is required of the Service Provider and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
- i. Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.
  - ii. At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.
  - iii. Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant shall maintain at its own expense, "tail" coverage in the same minimum amount as set forth in this paragraph.
  - iv. All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.
- c. Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This policy must provide excess

insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer's Liability policies.

- d. HyperKelp shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit B and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. HyperKelp shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.
- e. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.
- f. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on HyperKelp or its sub-contractors or any tier of its sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

16. Independent Contractor. HyperKelp and any agent or employee of HyperKelp shall act in an independent capacity and not as agents, officers or employees of District. The District assumes no liability for HyperKelp's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit, by or for HyperKelp. HyperKelp shall not have authority to act as an agent on behalf of the District. HyperKelp disclaims the right to any fee or benefits except as expressly provided for in this Agreement. This Agreement does not form a legal partnership or agency relationship between HyperKelp and the District.

17. Advice of Counsel. The Parties agree that they are aware that they have the right to be advised by counsel of their choice with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.

18. Governing Law. This agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to its principles or rules of conflict of laws to the extent such principles or rules are not mandatorily applicable by statute and would require or permit the application of the laws of another jurisdiction. For purposes of any claim, suit, action or proceedings arising out of or in connection with this Agreement, each of the parties hereby irrevocably submits to the exclusive jurisdiction of the federal and state courts located in the County of San Diego in the State of California.

19. Independent Review. Each Party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each Party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other Party.

20. Ownership. As between the Parties, HyperKelp will own all right, title, and interest, including all intellectual property rights, in and to (a) the HyperKelp Platform, (b) its pre-existing software, technology, and content, (c) any trademarks, services marks, and related branding, relating to the HyperKelp Platform, (d) any improvements or modifications in or to the HyperKelp Platform or HyperKelp's pre-existing software, technology, or content, including, without limitation, any software, hardware and other technology developed by HyperKelp in connection with this Agreement or the Project, whether developed individually by HyperKelp or jointly by employees of both Parties, (e) all trade secret and related rights in the HyperKelp Platform, and (f) all data collected by HyperKelp in connection with the operation to the HyperKelp Platform or the project. (subsections (a)-(f) collectively, the "HyperKelp Rights"). As between the parties, HyperKelp will be solely responsible for the prosecution, enforcement, and defense of HyperKelp Rights.

21. Dispute Resolution.

- a) If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the Parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the Parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other Party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b) The foregoing mediation procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby.

## 22. Compliance With Prevailing Wage Laws.

HyperKelp acknowledges and agrees that

- a. any construction, alteration, demolition, installation or repair work required or performed under this Agreement constitutes "public work" under California Prevailing Wage Law, including Labor Code §§ 1720 through 1815, et seq. ("PWL"), and obligates HyperKelp to cause such work to be performed as "public work," including, but not limited to, the payment of applicable prevailing wages to all persons or entities subject to the PWL.
- b. HyperKelp shall cause all persons and/or entities performing "public work" under the Project to comply with all applicable provisions of the PWL and other applicable wage laws.
- c. District hereby notifies HyperKelp and HyperKelp hereby acknowledges that the PWL includes, without limitation, Labor Code § 1771.1(b) that provides that the requirements described in Labor Code § 1771.1(a), copied below, shall be included in all bid invitations and "public work" contracts: (a) A contractor or subcontractor shall not be qualified to bid on or be listed in a bid proposal, subject to the requirements of § 4104 of the Public Contract Code, or engage in the performance of any contract for "public work", as defined in this chapter, unless currently registered and qualified to perform "public work" pursuant to § 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by § 7029.1 of the Business and Professions Code or by § 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform "public work" pursuant to § 1725.5 at the time the contract is awarded.
- d. HyperKelp acknowledges that its obligations under the PWL include, without limitation, ensuring:
  1. Pursuant to Labor Code § 1771.1(b), a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or

subcontractor's current registration to perform "public work" pursuant to § 1725.5.

2. Pursuant to Labor Code § 1771.4(a)(1) the call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR).
  3. Pursuant to Labor Code § 1771.4(a)(2) that it post or require the prime contractor to post job site notices, as prescribed by regulation.
  4. Pursuant to Labor Code § 1773.3(a)(1) that it provide notice to the Department of Industrial Relations of any "public works" contract subject to the requirements of this chapter, within five days of the award. Pursuant to Labor Code § 1773.3(a)(2) the notice shall be transmitted electronically in a format specified by the department and shall include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information the department specifies that aids in the administration and enforcement of this chapter. PWC-100 is the name of the form currently used by the DIR for providing the notice, but HyperKelp shall determine and use whatever form the DIR requires.
- e. District is not responsible for HyperKelp's failure to comply with any applicable provisions of the PWL, and
  - f. HyperKelp's violations of the PWL shall constitute a default under this Agreement.

23. Compliance With All Applicable Laws (including Environmental Laws). HyperKelp and its sub-contractors shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation.

HyperKelp shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable. HyperKelp shall procure, at its expense, any licenses, permits, insurance, and government approvals necessary to the operation of its business. HyperKelp shall comply with all applicable District rules and policies, ordinances, and regulations applicable to the performance of any services contemplated by this Agreement as exist now or as may be added or amended, including without limitation, policies relating to safety and the handling of biohazards.

24. Captions; Headings. The captions and/or headings by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.

25. Force Majeure. Neither Party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, embargoes, floods, wars, labor stoppages, or acts of God.

26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall be one and the same instrument. This Agreement may be executed by facsimile signature or signature transmitted via scan/email.

27. Attorneys' Fees. If any dispute arises between the Parties with respect to matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing party in any such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which it may be entitled.

28. Severability. If any provision of this Agreement is inoperative or unenforceable for any reason in any jurisdiction, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more

phrases, sentences, clauses, Sections, or subsections of this Agreement in any jurisdiction shall not affect the remaining portions of this Agreement in such jurisdiction or in any other jurisdiction.

29. Amendment; Waivers. This Agreement shall not be amended, supplemented, or modified except in a writing executed by authorized representatives of the Parties. Waiver by a Party of any breach of any provision of this Agreement by the other Party shall not operate, or be construed, as a waiver of any subsequent or other breach.

30. Notice. All notices, requests, demands and other communications made in connection with this Agreement shall be in writing and shall be deemed to have been duly given (a) if sent by first-class registered or certified mail, return receipt requested, postage prepaid, on the fifth day following the date of deposit in the mail, (b) if delivered personally, when received, or (c) if transmitted by facsimile, email transmission or other telegraphic communications equipment, when confirmed, in each case addressed to the parties identified herein below. Further,

If to the District:

Jason Giffen

Vice President

Planning & Environment

San Diego Unified Port District

P.O. Box 120488

San Diego, CA 92112-0488

Tel. 619-686-6473

Email: [jgiffen@portofsandiego.org](mailto:jgiffen@portofsandiego.org)

If to HyperKelp

Graeme Rae

President & CEO

HyperKelp Inc.

1084 N. El Camino Real

Encinitas, CA 92024

Tel. 714-315-2792

Email: graeme@hyperkelp.com

31. Integration. This Agreement, along its exhibits and schedules, contains the entire Agreement between the Parties and supersedes all prior negotiations, discussion, obligations and rights of the Parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the Parties.

32. Authorization. It is an express condition of this Agreement that said Agreement shall not be effective until signed by either the Executive Director (President/CEO) or authorized designee on behalf of the District and by authorized representative of HyperKelp.

33. Further Assurances. Each of the Parties hereto agrees to execute all such further instruments and documents and to take all such further action as the other Party may reasonably require in order to effectuate the terms and purposes of this Agreement. The Parties shall act in good faith in the performance of their obligations under this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their officers thereunto duly authorized as of the day and year first written above. The Parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

“District”

“HyperKelp”

**SAN DIEGO UNIFIED PORT DISTRICT,  
A Public Corporation**

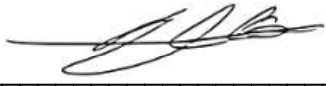
**HYPERKELP INC.  
a Delaware Corporation**

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

Name: Jason Giffen

Title: Vice President

Date: \_\_\_\_\_

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

Name: Graeme Rae

Title: CEO  
10/26/2023

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**  
GENERAL COUNSEL  
By:

\_\_\_\_\_  
Deputy/Assistant

## EXHIBIT A SCOPE OF WORK

### 1 - Introduction

Leveraging its core smart buoy technology, including hardware (Kelp Smart Buoy (KSB)) and software (Ocean Data as a Service (ODaaS) dashboard), **HyperKelp** will develop, test, and validate a tailored smart buoy platform for various Port monitoring applications. Specifically, the aim of this pilot project is to develop, validate, and deploy custom sensor data payloads that enable real time and remote monitoring of a **target set of parameters** important for Port monitoring activities: including **dissolved copper concentrations, underwater noise levels, atmospheric carbon dioxide concentrations, and water quality**. Upon successful customization and integration, the smart buoy platform will be field validated at **FIVE deployment sites** located throughout the Port of San Diego over a deployment period of **EIGHTEEN months**. During this deployment phase, through a series of remote updates, HyperKelp will continue to work with the Port's subject matter experts (SMEs) to expand and optimize the system's sensing capabilities to approach - and if possible with the selected payloads, exceed - the relevant accuracy targets set for the monitoring parameters.

### 2 - Scope and Deliverables

#### Milestones Summary:

- Phase 0: Execution of agreement (1 month)
- Phase I: Measurement of the accuracy of payload measurements and monitoring parameters (2 month)
- Phase II: Integration of payloads into smart buoy platforms (2 months)
- Phase III: Demonstration of the hardware in full use at the intended field setting (1 month)
- Phase IV: Deployment of the smart buoy fleet (1 month)
- Phase V: Validation Period (2 months)
- Phase VI: Deployment period - Monthly maintenance and remote upgrades (18 month)

Figure 1: Gantt chart describes milestones, task durations, as well as start and end dates.

Phase	Task	Duration	2023					2024				--	2025
			November	December	January	February	March	April	May	June			
0	Execution of agreement	1 Month											
I	Measurement of the accuracy of payload measurements and monitoring parameters	3 Months											
	Quarterly Progress Report 1	--											
II	Integration of payloads into smart buoy platforms	2 Months											
III	Demonstration of the hardware in full use at the intended field setting	1 Month											
IV	Deployment of the smart buoy fleet	1 Month											
V	Validation Period	2 Months											
VI	Quarterly Progress Report 2	--											
	Deployment period - Monthly maintenance and remote upgrades	18 Months											

The project work will include, but not be limited to:

- **Phase 0 Execution of Agreement:**

- HyperKelp and the Port will verify that the agreement meets or exceeds all of both parties needs and requirements.
- HyperKelp and the Port will verify and/or request all necessary permitting for buoy deployments.

- **Phase I Measurement of Accuracy:** HyperKelp will assemble 4 environmental sensing payloads to monitor dissolved copper concentrations, underwater noise levels, atmospheric carbon dioxide, and water quality.

- HyperKelp will work with Port SMEs to establish deployment site locations. The Port will provide assistance with permitting requirements and installation methods.
- HyperKelp will work with Port SMEs to establish the relevant sensors, accuracy, and range targets of the sensing payloads and monitoring parameters, and define desired customizations to ODaaS interface, API, and on-edge software. Accuracy and range targets shall not exceed the measurement accuracies and ranges published by each sensor's OEM (Original Equipment Manufacturer).
- To ensure scalability of the ultimate sensor solution, final payloads will not exceed a total cost of goods of \$14,000 USD for the entire fleet.
- HyperKelp will work with the Port's IT team to ensure seamless integration of the ODaaS system with existing Port data collection and display systems.
- HyperKelp will perform internal validation of various sensing methods to assess relevance for integration with the platform, future maintenance needs, and potential for further customization while the platforms are deployed.

- **Deliverable:** A progress report, technical report, and schematic characterizing the various tests of technical parameters and recommendations for next steps in integration of the hardware. [OBJ:OBJ]

- **Phase II Payload Integration:** HyperKelp will integrate the finalized sensor payloads into a KSB platform.
  - Based on information collected during Phase I, HyperKelp will generate software drivers for each of the sensor payloads. These represent the software payloads.
  - Each system will be tested and validated to be functional. “Functional” will be defined as a hardware system capable of measuring, recording, and displaying measurements of each parameter identified in Phase I.
  - HyperKelp will perform tests to demonstrate successful aggregation, storing, and display of the payloads data into its ODaaS dashboard.
  - **Deliverable:** A lab demonstration of the sensor payloads integrated onboard KSB units measuring concentrations of each target parameter in a controlled environment – Display reports from ODaaS dashboard and associated technical memo and progress report. If necessary, HyperKelp will provide a draft plan to increase sensor accuracies to approach the targets defined in Phase I.
  
- **Phase III Hardware Demonstration:** HyperKelp will demonstrate the hardware in full use at the intended field setting
  - A KSB unit hosting the finalized payload will be deployed by HyperKelp at one of the identified deployment sites to validate interferences and identify potential challenges to real-world monitoring.
  - A Field Monitoring Plan will be created including the comparison of in-field measurements with standard analytical lab methods.
  - Based on SME feedback in response to the Phase II Hardware demonstration, HyperKelp will optimize the hardware payload, software drivers, and ODaaS Dashboard interfaces to support further field analysis where required.
  - **Deliverable:** The delivery of a report comparing the performance of the in-field KSB platform against the analysis requirements set out throughout the sampling period.
  
- **Phase IV KSB Fleet Deployment:** HyperKelp will deploy the San Diego KSB fleet
  - HyperKelp will provide any necessary mounting points or enclosures, as well as 5 buoy-deployable sensor payloads.
  - Port will verify permits and necessary approvals for buoy deployment.
  - Each hardware and software payload will be installed on a KSB unit.
  - HyperKelp will transport each KSB unit to one of the pre-defined deployment sites
  - **Deliverable:** An operational system ready to deliver environmental data feeds directly to the Port’s management teams and datasets and through access to the ODaaS dashboard. HyperKelp will also provide an onboarding program to train SMEs to monitor and access data.

- **Phase V: Validation Period**

- Deployed buoys will be evaluated as to accuracy and time-resolution of data.
- HyperKelp will work with Port SMEs to optimize data dissemination processes through the ODaaS dashboard and customized API.
- SMEs will be invited to provide feedback on data outputs and monitoring parameters.
- HyperKelp will push a remote update to the deployed buoy fleet to demonstrate the capability in anticipation of Phase VI

- **Deliverable:** A fully functional data delivery platform with real time data feeds. HyperKelp will furnish a technical report outlining the results of the remote update demonstration

- **Phase VI: Deployment period** - Monthly maintenance and remote sensing upgrades

- KSB's will operate autonomously over a period of 18 months
- HyperKelp will return to each deployment site on a recurring, up to monthly, basis to carry out sensor calibration, hardware repairs, replacements, and diagnostic tests as needed.
- HyperKelp will continue to communicate with the Port team to identify desired customizations to ODaaS interface, API, and on-edge software hosted by the buoys.
- HyperKelp will receive feedback from the Port on success of payloads at the halfway mark of approximately 9 months. Feedback may include potential swapping of payloads to display different data collection, changes to the dashboard, or removing payloads that may not provide a value add.
- When possible, HyperKelp will push any necessary software updates - as defined by the Port and HyperKelp - to the buoy fleet remotely.

- **Deliverable:** An adaptive data delivery system that is updated in response to the Port's feedback, and a final report outlining the quality, success, and failure rates of the KSB fleet's environmental data feeds.

### 3 - Success Metrics

HyperKelp, Inc. will ensure the success of the project by tracking performance- based key metrics such as:

- Accuracy of sensing methods demonstrating that the sensors can detect throughout the desired measurement ranges for the monitoring parameters.
- Development of a smart buoy platform that can be used to measure and analyze environmental parameters (including dissolved copper, underwater noise, atmospheric carbon dioxide, and water quality).
- Field test of the prototype with results comparable to laboratory and in-field tests.
- A 5-buoy fleet deployment to support monitoring efforts throughout the Port of San Diego
- Uptime of hardware, software, data collection and dissemination products. Determine and provide sufficient uptime to provide useful and actionable information to the Port and its partners/customers.

- Other metrics and deliverables as defined in Phase I-III above.

#### **4 - Data collection and Reporting Requirements**

HyperKelp shall collect, at a minimum, the following data, and include such in its database:

- Limit of accuracy and range for each environmental measurement in laboratory setting.
- Limit of accuracy and range for each environmental measurement in a field setting
- Dissolved Copper, underwater noise, water quality, and atmospheric carbon dioxide range required.
- Time series datasets describing target environmental variables at each deployment site
  - Datasets will be stored and made accessible through HyperKelp's ODaaS Dashboard

HyperKelp will provide progress reports per each Phase's deliverable schedule. Beginning on phase IV reports can be delivered on a quarterly basis. Data will be automatically stored on HyperKelp's internal servers, but the onboarding service (Phase IV) will provide SME's access to this data, and the ability to copy all of it onto the Port's servers. The first report is due 3 months after the start of the project. The reports will include a summary of the collected data and the status of the prototype together with any problems encountered and their Resolution.

Throughout the deployment period, HyperKelp will provide the Port with ODaaS Dashboard services. This collection of data products will include historic measurements of target parameters collected on an hourly basis by each of the deployed buoys in the fleet. HyperKelp will also provide an API that enables the Port to immediately inject fleet data into its existing databases in real time. Over the course of the 18-month deployment period, we anticipate this to consist of ~118,000-197,000 samples of data including atmospheric carbon dioxide concentrations, dissolved copper concentrations, water quality parameters, and underwater sound .

The final report will summarize the entire project and include the technical specifications for the 4 sensing payloads.

### **EXHIBIT B Certificates of Insurance**



# CERTIFICATE OF LIABILITY INSURANCE

Page 30 of 34 A

DATE (MM/DD/YYYY)

09/21/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> NUTMEG INS AGENCY INC/PHS 76210775 The Hartford Business Service Center 3600 Wiseman Blvd San Antonio, TX 78251	<b>CONTACT NAME:</b> <b>PHONE</b> (888) 925-3137 <b>(A/C, No, Ext):</b> <b>FAX</b> (888) 443-6112 <b>(A/C, No):</b> <b>E-MAIL</b> <b>ADDRESS:</b> <b>INSURER(S) AFFORDING COVERAGE</b> <b>NAIC#</b>
<b>INSURED</b> HyperKelp, Inc. 1141 VIA CALLEJON SAN CLEMENTE CA 92673-6230	<b>INSURER A :</b> Hartford Underwriters Insurance Company 30104 <b>INSURER B :</b> <b>INSURER C :</b> <b>INSURER D :</b> <b>INSURER E :</b> <b>INSURER F :</b>

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY			76 SBU BA3DVR	09/21/2023	09/21/2024	EACH OCCURRENCE \$1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000
	<input checked="" type="checkbox"/> General Liability						MED EXP (Any one person) \$10,000
							PERSONAL & ADV INJURY \$1,000,000
							GENERAL AGGREGATE \$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						
	OTHER:						
A	<b>AUTOMOBILE LIABILITY</b>			76 SBU BA3DVR	09/21/2023	09/21/2024	COMBINED SINGLE LIMIT (Ea accident)
	ANY AUTO						BODILY INJURY (Per person)
	ALL OWNED AUTOS	<input type="checkbox"/>	SCHEDULED AUTOS				BODILY INJURY (Per accident)
	HIRED AUTOS	<input type="checkbox"/>	NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident)
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/>	OCCUR CLAIMS-MADE	76 SBU BA3DVR	09/21/2023	09/21/2024	EACH OCCURRENCE \$1,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/>					AGGREGATE \$1,000,000
	DED		RETENTION \$ 10,000				
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/>	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT
							E.L. DISEASE -EA EMPLOYEE
							E.L. DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The Business Liability Coverage Part includes a Blanket Additional Insured By Contract Endorsement, Form SL 30 32.

**CERTIFICATE HOLDER****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Susan L. Castaneda*

© 1988-2015 ACORD CORPORATION. All rights reserved.

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

09/01/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Hiscox Inc. d/b/a/ Hiscox Insurance Agency in CA 5 Concourse Parkway Suite 2150 Atlanta GA, 30328	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> (888) 202-3007 <b>E-MAIL ADDRESS:</b> contact@hiscox.com <b>FAX (A/C, No):</b> <b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Hiscox Insurance Company Inc <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	<b>NAIC #</b> 10200
<b>INSURED</b> HyperKelp Inc 1084 El Camino Real b173 Encinitas, CA 92024		

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / <input type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability			P102.324.887.1	09/06/2023	09/06/2024	Each Claim: \$ 1,000,000 Aggregate: \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

HyperKelp Inc  
1084 El Camino Real  
b173  
Encinitas, CA 92024

**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
09/01/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> BIBERK P.O. Box 113247 Stamford, CT 06911	<b>CONTACT NAME:</b>		
	<b>PHONE (A/C, No, Ext):</b> 844-472-0967 <b>E-MAIL ADDRESS:</b> customerservice@biBERK.com	<b>FAX (A/C, No):</b> 203-654-3613	
<b>INSURED</b> HyperKelp Inc  1084 El Camino Real b173 Encinitas, CA 92024	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	INSURER A : National Liability & Fire Insurance Company		20052
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
INSURER F :			

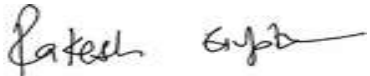
**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER						EACH OCCURRENCE \$ 0 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 0 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ 0 GENERAL AGGREGATE \$ 0 PRODUCTS - COMP/OP AGG \$ 0
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	N9WC911698	09/06/2023	09/06/2024	X PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
	Professional Liability (Errors & Omissions): Claims-Made						Per Occurrence/ Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

HyperKelp Inc 1084 El Camino Real b173 Encinitas, CA 92024	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

## Document History

SignNow E-Signature Audit Log

All dates expressed in MM/DD/YYYY (US)

**Document name:** Hyperkelp - Incubator Agreement San Diego Port 10-25\_Final  
**Document created:** 10/25/2023 23:48:11  
**Document pages:** 33  
**Document ID:** 87812a25a0344381910040193874bbef41ed58e5  
**Document Sent:** 10/25/2023 23:53:46 UTC  
**Document Status:** Signed  
10/26/2023 19:15:18UTC

**Sender:** goliva@portofsandiego.org  
**Signers:** graeme@hyperkelp.com  
**CC:** psylvia@portofsandiego.org, cwkiker@portofsandiego.org, pleblanc@portofsandiego.org

Client	Event	By	Server Time	Client Time	IP Address
SignNow SSO	Uploaded the Document	goliva@portofsandiego.org	10/25/2023 23:48:11 pm UTC	10/25/2023 23:48:06 pm UTC	207.215.153.162
SignNow SSO	Viewed the Document	goliva@portofsandiego.org	10/25/2023 23:48:15 pm UTC	10/25/2023 23:48:14 pm UTC	207.215.153.162
SignNow SSO	Document Saved	goliva@portofsandiego.org	10/25/2023 23:53:27 pm UTC	10/25/2023 23:53:27 pm UTC	207.215.153.162
SignNow SSO	Invite Sent to: graeme@hyperkelp.com	goliva@portofsandiego.org	10/25/2023 23:53:46 pm UTC	10/25/2023 23:53:45 pm UTC	207.215.153.162
SignNow SSO	Viewed the Document	graeme@hyperkelp.com	10/26/2023 19:14:05 pm UTC	10/26/2023 19:14:05 pm UTC	70.165.35.138
SignNow SSO	Electronic Consent to Sign Granted	graeme@hyperkelp.com	10/26/2023 19:14:10 pm UTC	10/26/2023 19:14:10 pm UTC	70.165.35.138
SignNow SSO	Signed the Document	graeme@hyperkelp.com	10/26/2023 19:15:17 pm UTC	10/26/2023 19:15:17 pm UTC	70.165.35.138
SignNow SSO	Added a Text	graeme@hyperkelp.com	10/26/2023 19:15:17 pm UTC	10/26/2023 19:15:17 pm UTC	70.165.35.138
SignNow SSO	Document Saved	graeme@hyperkelp.com	10/26/2023 19:15:18 pm UTC	10/26/2023 19:15:17 pm UTC	70.165.35.138