EMBEDDED**ARTISTRY**

CONSULTING AGREEMENT

Consulting Agreement (“Agreement”) is made and entered into as of **6 September 2022** (“Effective Date”) by and between MBARI (“Company”) and Embedded Artistry LLC (“EA”) a company with a primary address at 624 Wisner Rd, Mt. Shasta CA 96067. EA and Company shall each be individually referred to as “Party” and collectively referred to as the “Parties.”

1. SERVICES: Company hereby engages EA to provide services as an independent contractor in connection with certain deliverables as described in Exhibit A (“Timeline and Deliverables”). In consideration for the Deliverables, Company shall pay EA a fee as described in Exhibit A (“Fee”). The scope of work and specifications shall be defined in Exhibit A, and any deviation from the scope of this Agreement must be agreed to by EA via written addendum and will be subject to additional Fees. EA is required to refuse such additional scope of services in its sole discretion. Notwithstanding the foregoing and without limiting the rights of EA, if EA provides additional work outside the initial scope of the services described in Exhibit A at the request of Company, EA may charge Company additional fees at its then current rates even if a written addendum was not executed. In the event EA discovers, after execution of this Agreement, that the proposed specifications for the Deliverables cannot reasonably be developed, then EA may immediately terminate this Agreement by giving notice to Company and fees will be pro-rated up to the date of termination.

2. SCHEDULE AND ACCEPTANCE: EA shall commence work upon execution of this Agreement in accordance with Exhibit A “Timeline and Deliverables.” EA shall not be responsible for any delays caused by factors outside of its reasonable control, e.g., without limitation, in the event Company fails to timely provide required information or materials, or a third-party manufacturer is delayed in shipping required materials, and the timeline shall be updated accordingly to reflect any such delays. Company shall have 10 business days from the date of delivery to request any changes or modifications to the Deliverables in accordance with this section (“Acceptance Period’). If no communication is received from Company within the Acceptance Period, the Deliverables will be presumed accepted. After the Acceptance period, EA is not obligated to provide any additional services, changes, modifications, or updates unless agreed to in a separate writing. Company may only request changes or modifications to the Deliverables (a) within the Acceptance Period; (b) via a signed writing by Company; and (c) for failure of the Deliverables to meet the specifications.

3. RIGHTS:

3.1 Ownership of Deliverables. Except for any Preexisting Materials, upon final completion of the Deliverables and receipt by EA of all applicable Fees, Company shall be the owner of all intellectual property rights in the Deliverables including any copyright, trademark, trade secrets, patent or other intellectual property rights world-wide (collectively “Intellectual Property Rights”), and EA hereby assigns all right, title and interest in the Deliverables to Company.

3.2 Pre-Existing Materials. EA shall retain ownership of all Preexisting Materials, which shall be defined as all inventions, improvements, modifications, enhancements, derivatives, compositions, discoveries, know-how, processes, methodologies, formulas, designs, software, documentation, drawings, data, information and works of authorship in which EA or any of its licensors own or may acquire or assert any proprietary right anywhere in the world, and which was acquired, licensed, developed, discovered, invented, authored or first reduced to practice by EA, alone or jointly with others prior to the Effective Date. To the extent that any Preexisting Materials are contained in the Deliverables, EA grants Company a non-exclusive, worldwide, unlimited, royalty-free license to use, publish, reproduce, display, distribute copies of, and prepare derivative works based on, such Preexisting Materials.

3.3 Company Materials. Company may provide certain materials to EA for the performance of this Agreement, including any technology, information, ideas, designs, specifications, concepts, systems, techniques, work of authorships, inventions, or process of any kind (“Company Materials”). Company retains ownership in the Company Materials. Company represents and warrants that the Company Materials do not and will not infringe on any third-party rights, including any Intellectual Property Rights, contract rights, publicity/privacy rights, or otherwise breach applicable laws.

4. <u>TERM AND TERMINATION:</u> This Agreement shall commence on the Effective Date and continue until delivery of the Deliverables and payment of all Fees unless earlier terminated as provided herein.

4.1 Company may terminate this Agreement upon 30 days’ written notice of an alleged breach of this Agreement by EA if such alleged breach is not cured within the 30-day notice period.

4.2 Either party may terminate this Agreement for any reason upon 30 days’ written notice. In the event of termination under this clause, Company shall pay EA on a pro-rata basis Fees for any services provided, up to and including the date of such termination.

4.3 Late Payments: In the event that company fails to pay Fees timely in accordance with the Exhibit A, EA reserves the right to suspend services until such Fees are fully paid to EA, or otherwise terminate this Agreement. Further, in the event Company is late in paying Fees by more than 30 days, EA reserves the right to charge interest on all late payments, calculated daily and compounded monthly, at the lesser of the rate of 10% per month or the highest rate permissible under applicable law. Company shall also reimburse EA for all costs reasonably incurred in collecting any late Fees, including, without limitation, attorneys' fees.

5. <u>CONFIDENTIAL INFORMATION.</u>

5.1 Any non-public information disclosed by one party ("disclosing party") to the other party ("receiving party") in connection with this Agreement, whether disclosed in writing, orally or by inspection, and which is identified in writing as being "Confidential" or "Proprietary," or by the nature of the circumstances surrounding the disclosure should reasonably be treated as proprietary or confidential, shall be deemed "Confidential Information." Company hereby acknowledges and agrees that the terms of this Agreement, technical know-how, and any related documentation thereof, including Preexisting Materials (to the extent not incorporated into the Deliverables) is Confidential Information of EA. Receiving party shall maintain all Confidential Information in strict confidence and shall only disclose such Confidential Information to those of its agents, or employees ("Representatives") who have a need to know such Confidential Information in furtherance of the performance of obligations under this Agreement and who are bound to confidentiality obligations at least as restrictive as those herein and provided that the receiving party is responsible for any breaches of this Agreement by its Representatives. Receiving party acknowledges that any breach or violation of this Section will cause irreparable harm to the disclosing party and that damages are not an adequate remedy and shall be entitled to seek and obtain a court order enjoining continuance of any such violation, in addition to any monetary damages or any other remedies at law or in equity. Upon termination of this Agreement or upon request by the disclosing party, the receiving party will return or destroy (and provide certification thereof) all Confidential Information, all documents and media containing such Confidential Information and any and all copies thereof.

5.2 Notwithstanding the foregoing, Confidential Information shall not include information that: (i) is or has become publicly available without restriction through no fault of Company or its employees or agents; (ii) was rightfully in the possession of the Company without restriction prior to its disclosure by the disclosing Party; (iii) becomes available to the Company on a non-confidential basis from another source, provided that such source is not and was not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by contractual, legal or fiduciary obligation. Further, Company may disclose Confidential Information as required to be disclosed by court order or law, provided that it first give EA prompt notice of such request and an opportunity to seek a protective order.

6. LIMITATION OF LIABILITY AND DISCLAIMER OR WARRANTY

6.1 EA agrees at its expense to indemnify and hold Company, and its respective officers, directors, employees, consultants, subsidiaries, and agents (collectively the "**Company Indemnitees**") harmless against (or, at EA's option, settle), any loss, damage or costs (including reasonable attorney's fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against any Company Indemnitees by a third party alleging that the use of the Deliverables infringes or misappropriates any Intellectual Property Rights of a third party, and EA shall pay all costs and damages finally awarded against any Company Indemnitees by a court of competent jurisdiction as a result of any such Claim. In the event that the use of the Deliverables is, or in EA's sole opinion is likely to become, subject to such a claim, EA, at its option and expense, may (a) replace the applicable Deliverables with functionally equivalent non-infringing technology, (b) obtain a license for Company's continued use of the applicable Deliverables, or (c) terminate this Agreement and provide a pro-rata refund of the fees that have been paid for any Deliverables affected by the Claims. The foregoing indemnification obligation of EA will not apply: (1) if the Deliverables is modified by Company or its agent; (2) if the Deliverables is combined with other non-EA products, applications, or processes, but solely to the extent the alleged infringement is caused by such combination; or (3) to any unauthorized use of the Deliverables. The foregoing shall be Company's sole remedy with respect to any claim of infringement of third party Intellectual Property Rights.

6.2 Company agrees to defend, indemnify, and hold harmless, at its expense, EA and its officers, directors, employees, consultants, Affiliates, agents, suppliers and resellers (collectively the "**EA Indemnitees**") against any third party Claim to the extent such Claim arises from or is made in connection with (i) the Company Materials; (ii) Company's violation of any third party right, including without limitation, any Intellectual Property Right, publicity, confidentiality, property, or privacy right, or violation of any applicable laws; (iii) Company's breach of this Agreement; or (iv) any dispute between Company and an end user of the Deliverable.

6.3 A party's indemnity obligations are dependent on prompt notice of a claim. The indemnitor shall have the right to undertake, conduct and control, through counsel of its own choosing, the defense and settlement of any such claim, except no settlement shall be made unless the Indemnitee is released of all claims.

6.4 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, EA EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

6.5 TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EA BE LIABLE IN CONNECTION WITH ANY MATTER ARISING OUT OF THIS AGREEMENT FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS OR REVENUE, WHETHER OR NOT THE POSSIBILITY OR CAUSE OF SUCH DAMAGES WAS KNOWN, AND (II) IN NO EVENT SHALL EA'S LIABILITY (WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, TORT OR OTHERWISE) EXCEED THE AMOUNT OF MONIES PAID BY COMPANY TO EA UNDER THIS AGREEMENT IN THE THREE MONTHS IMMEDIATELY PRECEDING THE CLAIM. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE LIABILITY FOR (I) DEATH OR PERSONAL INJURY ARISING OUT OF EA'S GROSS NEGLIGENCE; (II) FRAUD; OR (III) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

7. <u>GENERAL:</u>

7.1 Injunctive Relief: In the event Company has committed a material breach of this Agreement, the damage, if any, shall be sufficient to entitle EA to injunctive or other equitable relief.

7.2 Independent Contractor: This Agreement does not constitute a hiring by either Party. It is the Parties' intention that EA shall have an independent contractor status and not be an employee. EA is or remains open to conducting similar tasks or activities for entities other than Company. EA shall retain sole discretion in the manner and means of carrying out its responsibilities under this Agreement. This Agreement shall not be considered or construed to be a partnership or joint venture.

7.3 Governing Law: This Agreement shall be construed under the laws of the State of California applicable to agreements wholly negotiated, entered into and to be performed in that jurisdiction, and both parties submit and consent to the exclusive jurisdiction of the courts located in the city and county of San Francisco in any action brought to enforce (or otherwise relating to) this Agreement.

7.4 Entire Agreement: This Agreement, constitutes the entire agreement between the Parties and supersedes any and all prior written or oral agreements between the Parties relating to the subject matter hereof and cannot be modified or amended except by written instrument signed by EA and Company.

7.5 Severability/No Waiver: To the extent any of the provisions or sub-parts of any provisions are held to be invalid, that provision or sub-part shall be binding to the maximum extent permissible so as to give effect to the original intent of the Parties, and the remainder of this Agreement shall continue in full force and effect. No waiver is enforceable unless signed in writing by the waiving Party.

7.6 Prevailing Party: In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement as of the Effective Date.

EMBEDDED ARTISTRY LLC:

Name: Phillip Johnston

Title: Managing Member

Date: 25 July 2022

COMPANY:
MBARI

Name: ________________________

Title: ________________________

Date: ________________________

EXHIBIT A

TIMELINE AND DELIVERABLES:

The timeline and the deliverables for this project are described in "CD0100 - MBARI Project Setup Proposal – v2".

FEES:

Company shall pay EA as described in “CD0100 - MBARI Project Setup Proposal – v2”.