|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **For Internal Use Only****Depts must provide:** |  |  | **For Internal Use Only****OES must provide:** |  |
| **ESAF #** |  |  | **OES Contract #** |  |
| **Chart/Field Account #** | **-****-** |  | **Analyst** |  |
| **Customer ID #** |  |  |  |  |

****

**SERVICES AGREEMENT**

**Characterization Facility**

 ***THIS SERVICES AGREEMENT*** is entered into effective as of  by and between the Regents of the University of Minnesota (“University”), a Minnesota constitutional corporation, and  (“Company”), a . This Agreement is entered into by University through its Characterization Facility center.

 **NOW, THEREFORE,** the parties agree as follows:

**1.** **Description of Services.** Characterization services utilizing analytical instruments to probe composition, structures and properties of materials and devices provided by Company, including but not limited to some or all of the following: microscopy, spectroscopy, scattering and mechanical/optical/thermal measurements.

**2.** **Compensation.** For the services rendered under section 1, Company shall pay University the hourly rates, plus any sales or use tax if applicable, specified for each service in University Laboratory Facilities and Equipment Schedule (the “Schedule”), a copy of which is attached to, made a part of, and incorporated in this Agreement as Attachment A. University reserves the right to modify the times, conditions, and fees set forth in this Agreement and on the Schedule on thirty (30) days notice.

 2.1 The compensation shall be paid in the following manner (check one of the following):

 [ ]       % upon the signing of this Agreement, with the balance payable monthly after prepayment is applied; or

 [ ]  monthly, based on any work completed in that month.

**3.** **Term.** The term of this Agreement shall commence on . The term of this Agreement shall expire on  unless terminated earlier as provided in section 4.

**4.** **Termination.** Either party may terminate this Agreement for material breach on seven (7) days written notice, during which period the breaching party may cure. Additionally, either party may terminate this Agreement for its convenience upon thirty (30) days prior written notice to the other party. University may terminate if Company’s account is more than thirty (30) days past due. Upon termination, Company shall promptly pay University for all services rendered and costs incurred up to and including the effective date of termination.

**5.** **Limitation of Damages.** EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL UNIVERSITY BE LIABLE, FOR (A) PERSONAL INJURY OR PROPERTY DAMAGES (EXCEPT TO THE EXTENT CAUSED BY UNIVERSITY’S INTENTIONAL, WILLFUL, OR WANTON ACTS) OR (B) LOST PROFITS, WORK STOPPAGE, LOST DATA, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OF ANY KIND.

**6.** **Limitation of Remedies**. IN THE EVENT OF UNIVERSITY’S BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT, UNIVERSITY’S ENTIRE LIABILITY AND COMPANY’S EXCLUSIVE REMEDY SHALL BE, AT UNIVERSITY’S OPTION, EITHER (A) RETURN OF THE MONETARY CONSIDERATION PAID TO UNIVERSITY UNDER THIS AGREEMENT OR (B) UNIVERSITY’S PERFORMANCE OF ANY OBLIGATION THAT FAILED TO SATISFY THE TERMS OF THIS AGREEMENT.

**7.** **Disclaimer of Warranties**. UNIVERSITY DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE SERVICES PROVIDED UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THE SERVICES SHALL BE PROVIDED AND ACCEPTED “AS IS.”

**8.** **No University Endorsements.** In no event shall Company (or its successors, employees, agents and contractors) state or imply in any publication, advertisement, or other medium that University has approved, endorsed or tested any product or service. In no event shall University’s performance of the services described in section 1 be considered a test of the effectiveness or the basis for any endorsement of a product or service.

**9.** **Use of University Name or Logo.** Company agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with University or the name of any representative of University in any sales promotion work or advertising, or any form of publicity, without the prior written permission of University in each instance.

**10.** **Indemnification.**

 10.1 Company shall indemnify, defend and hold University and its regents, faculty members, students, employees, agents and contractors harmless from actions, suits, claims, negligent losses, costs, judgments and expenses, including reasonable attorneys’ and investigative fees, arising out of: (i) Company’s infringement of a third party’s intellectual property rights or violation of any law, rule, or regulation in the provision of any materials to University; (ii) personal injury, death or property damages arising out of a failure to warn University of any dangerous substances or materials supplied to University by or on behalf of Company; (iii) Company’s, or any other entity’s, use of the results or deliverables, or the use of products, services or representations based on such results or deliverables; and (iv) any negligent act or omission of Company in connection with this Agreement. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, actions, suits, damages, or loss was caused by the intentional, willful, or wanton acts of University. Company shall obtain consent from University’s Office of General Counsel for any settlement to which the University would be a party.

 10.2 Each party represents that it has and will continue to have at least the following levels of insurance during the term of this Agreement: (i) as to University, Workers’ Compensation in statutory compliance with Minnesota Law and General Liability insurance in an amount not less than $1,000,000 each claim/$3,000,000 each occurrence; and (ii) as to Company, General Liability insurance, including Products and Completed Operations, in an amount not less than $1,000,000 each occurrence/$2,000,000 annual aggregate.; Automobile Liability with limits not less than $1,000,000 each occurrence. Regents of the University of Minnesota shall be added as an additional insured for General Liability and Auto Liability. Company represents that it has worker’s compensation insurance to the extent required by law. Company agrees to furnish proof of all such insurance to University upon request.

**11. Export Controls**.

11.1 Company shall not convey export-controlled technical data, technology, commodities, or software on the U.S. Munitions List, 22 C.F.R. pt. 121, or the Commerce Control List, 15 C.F.R. pt. 774, to University without the prior written consent of University’s Export Controls Officer (J. Patrick Briscoe, bris0022@umn.edu, 612-625-3860). University shall have the right to decline export controlled information or tasks requiring production of such information. If the Services cannot reasonably be performed without University access to export-controlled items, the Agreement may be terminated by either party for convenience in accordance with Section 4, except that such termination shall occur immediately upon written notice to the other instead of at the end of the 30-day period set forth in Section 4.

11.2 Company represents that the items being procured (a) are not specifically designed or modified for military purposes or specifications, and (b) will not be used in connection with the development or use of any missiles or chemical, biological, or nuclear weapons.

**12.** **General Provisions.**

 12.1 Amendment. This Agreement shall be amended only in a writing duly executed by all the parties to this Agreement.

 12.2 Assignment. Company may not assign any rights or obligations of this Agreement without the prior written consent of University. In the event of any assignment, Company shall remain responsible for its performance and that of any assignee under this Agreement. This Agreement shall be binding upon Company, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement shall be void at the sole option of University.

 12.3 Entire Agreement. This Agreement (including all attached or referenced addenda, exhibits, and schedules) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements among the parties, whether oral or written, relating to the subject matter of this Agreement. The terms and conditions of any purchase order or similar document submitted by Company in connection with the services provided under this Agreement shall not be binding upon University.

 12.4 Force Majeure. No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure the parties’ duty to perform obligations shall be suspended.

 12.5 Governing Law. The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles.

 12.6 Jurisdiction. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hennepin County, Minnesota.

 12.7 Independent Contractor. In the performance of their obligations under this Agreement, the parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, partners, joint ventures, or employees. Neither party shall have the right or power to bind the other party and any attempt to enter into an agreement in violation of this section 12.7 shall be void. Neither party shall take any actions to bind the other party to an agreement.

 12.8 Notices. All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

 If to University: University of Minnesota

 Attn: Dr. Greg Haugstad

 Room 12 Shepherd Labs

 100 Union Street S.E.

 Minneapolis, MN 55455

 Facsimile No: 612-625-5368

 E-mail: haugs001@tc.umn.edu

 With a copy to: University of Minnesota

 Office of the General Counsel

 Attn: Transactional Law Services Group

 360 McNamara Alumni Center

 200 Oak Street SE

 Minneapolis, MN 55455-2006

 Facsimile No.: (612) 626-9624

 E-mail: contracts@mail.ogc.umn.edu

 If to Company:

 Attn:

 Facsimile No.:

 E-mail:

 12.9 Taxes and similar fees. In addition to the payment obligation in section 2, Company is responsible for the payment of any and all income, sales, use, consumption, value added, excise, custom duties or other taxes and similar fees in connection with this Agreement, levied or required to be withheld from payment(s) to University by any taxing authority or any other body having jurisdiction under any present or future laws. To the extent that Company is required to withhold or deduct taxes or similar fees on any payment to be made to University, then the amount payable shall be increased by the amount that will result in University receiving a net payment in the amount it would have received absent such withholding or deduction. If University is required to pay any of such fees and/or taxes or any related penalties or interest, then any such payments shall be reimbursed to University by Company.

 12.10 Breach; Attorneys’ Fees. In the event it fails to perform any of its duties under this Agreement, Company shall reimburse University for all University’s costs and expenses (including reasonable attorneys’ fees, court costs, and costs of investigation) to enforce this Agreement, regardless of whether a suit or action had been commenced or concluded.

 12.11 Survival. Upon termination or expiration of this Agreement, Sections 2, 5, 6, 7, 8, 9, 10, 11, and 12 shall survive.

 **IN WITNESS WHEREO**F, the parties have entered into the Agreement as of the date first above written.

**Regents of the University of Minnesota**

By: By:

Name:  Name:

Title:  Title:

Date: Date:

Attachment A

University Laboratory Facilities and

Equipment Schedule of Service Hourly Rates