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



**ANIMAL SERVICES AND LABORATORY USE AGREEMENT**

 ***THIS ANIMAL SERVICES AND LABORATORY USE AGREEMENT*** (“Agreement”) is entered into effective as of , by and between the Regents of the University of Minnesota (“University”), a Minnesota constitutional corporation, and , a  (“Company”). This Agreement is entered into by University through its Research Animal Resources, a program of the Academic Health Center (“RAR”).

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

**1. Description of Services.**

 1.1. Responsibilities of University. University shall render the following veterinary services as may be mutually agreed to during the term of this Agreement: routine veterinary care, medicines and supplies; housing, bedding, laboratory animal feed; disposal of the animals; acquisition of animals; and transport of the animals.

 1.2. Responsibilities of Company. Company shall provide, at its sole cost and expense instruments, materials, and equipment necessary for any procedures performed in the Lab Space exclusively by Company personnel identified in Section 5, and complete clean-up of the Lab Space following Company’s use thereof.

**2. Company Access to Animal Facility and the Lab Space.** The laboratory animals shall be housed in RAR facilities, or such other facilities as University may decide in consultation with Company (“Animal Facility”).Company may access the animals and the Lab Space at any time during normal business hours unless reasonably restricted by University. Company agrees that in the event it damages any University facility, including the Animal Facility or Lab Space, or University equipment, Company shall bear the sole financial responsibility for such damage. University is not responsible for loss or theft of, or damage to any personal property of Company or its authorized users, located within the Animal Facility, the Lab Space or elsewhere on University property.

**3. Compensation.** For the services rendered under Section 1, Company shall pay University as follows:

 3.1. Fees. The following shall be referred to hereinafter collectively as “Fees”:

 3.1.1 Company shall pay a contract management fee in the amount of  and /100 dollars ($) per month for each month in which University is housing animals pursuant to Section 1. Company shall pay a fee of two thousand and NO/100 dollars ($2,000.00) upon the signing of the contract. All subsequent payments of the contract management fee shall be paid from the Account as described in Section 3.2 below.

 3.1.2 Company shall be charged a per diem rate for each animal housed by University for Company, the amount of which shall be one-hundred fifty-four percent (154%) of the internal University rates listed on RAR’s per diem rate schedule, a copy of which may be found at <http://www.ahc.umn.edu/rar/perdiems.html> or on file with University at the address listed in Section 14.8.

 3.1.3 For all other services, Company shall be charged an amount equal to one-hundred fifty-four percent (154%) of the internal University fees for such services, a copy of which is available upon request.

 3.1.4 University reserves the right to adjust the fees set forth in Section 3.1.2 and 3.1.3 upon thirty (30) days written notice to Company. All fees are subject to applicable sales and use tax. Submission of animal care and use protocols to the Institutional Animal Care and Use Committee (“IACUC”) will be billed at one thousand and NO/100 dollars ($1,000.00) for each instance.

 3.2. Payment.Payment shall be as follows:

 3.2.1 University shall establish and maintain an account on behalf of Company solely for the purpose of paying Fees as set forth in Section 3.1 (“Account”).

 3.2.2 Monthly, University shall provide to Company a statement providing an accounting of funds drawn from the Account for payment of Fees, which shall include (a) the details of each laboratory animal purchase order; (b) a list of every laboratory animal individually by room number and number of days billed and the associated per diem costs; and (c) the details of any other services, including costs thereof. University shall provide Company a final accounting statement regarding the Account upon termination or expiration of this Agreement.

 3.3.3 If Company believes any withdrawal of funds from the Account has been made in error, Company shall notify University of such error within thirty (30) days after Company’s receipt of the statement, and Company and University shall attempt to resolve such dispute in good faith.

 3.3.4 All funds remaining in the Account shall be returned by University to Company within thirty (30) days of termination or expiration of this Agreement.

 3.3.5 Based upon University’s estimation of the amount of services to be provided, University shall designate a certain minimum dollar amount which shall be deposited in the Account by Company prior to the provision of services and which shall be maintained by Company in the Account at all times thereafter as provided in this Section 3.3.5. University shall notify Company at least thirty (30) days before funds in the Account are expected to fall below this minimum amount. Company shall upon such notification replenish the Account within ten (10) days.

**4. Use.** The Animal Facility and Lab Space shall be used only for housing of laboratory animals and for laboratory use in connection with the following project: . Company shall make no other use of the Animal Facility or Lab Space without University’s prior written consent in each instance. During the term of this Agreement, Company shall comply with all applicable federal, state and local laws and ordinances, and applicable University policies, rules and regulations, as amended from time to time, including policies of IACUC, RAR policies regarding use and care of research animals, training requirements, access rules, and controlled substance policies.

 4.1 Company acknowledges and agrees that it shall review the applicable Laboratory Safety Plan prior to its use of University facilities and equipment and shall follow all rules and directions from University personnel regarding use of University facilities and equipment. University reserves the right to impose additional rules during the term of this Agreement and any extensions or renewals to the term.

**5. List of Persons Authorized to Use Animal Facility**. If Company is a corporation, partnership, proprietorship, or other business or non-profit entity, Company agrees to furnish University, upon execution of the Agreement, a list of Company’s officers, agents, or employees authorized to access the Animal Facility or use the Lab Space on Company’s behalf. Company understands that persons not on such list shall not be permitted to access the Animal Facility unless Company provides written authorization and an updated list reflecting Company’s authorization of such person(s). Company shall ensure that all persons authorized to access the Animal Facility or use the Lab Space comply with the terms of this Agreement.

**6. Term.** The term of this Agreement shall commence on  and shall expire on , unless terminated earlier as provided in Section 7. This Agreement may be renewed in writing for additional one-year terms upon mutual written agreement of University and Company.

**7. Termination.** University shall have the right to immediately terminate this Agreement, stop procurement, confiscate laboratory animals and restrict Company’s access to the Animal Facility or the Lab Space in the event payment is past due or Company fails to replenish the Account as provided for in Section 3 above, or if Company fails to comply with the terms or conditions contained in this Agreement. Additionally, either party may terminate this Agreement for its convenience upon sixty (60) days’ prior written notice to the other party. Upon termination, Company shall promptly pay University for all services rendered and costs incurred up to and including the effective date of termination.

**8. Limitation of Damages.** EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR (i) PERSONAL INJURY OR PROPERTY DAMAGES (EXCEPT TO THE EXTENT OF UNIVERSITY’S WILLFUL, WANTON, OR INTENTIONAL ACTS) OR (ii) LOST PROFITS, WORK STOPPAGE, LOST DATA, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OF ANY KIND; OR (iii) DIRECT DAMAGES WHICH EXCEED THE TOTAL FEES PAID BY COMPANY FOR SERVICES RENDERED DURING THE PRECEDING THIRTY (30) DAY PERIOD (REGARDLESS OF THEIR NATURE) CAUSED BY UNIVERSITY’S FAILURE TO FULFILL ITS RESPONSIBILITIES AS SET FORTH IN THIS AGREEMENT. COMPANY’S REMEDIES PROVIDED IN THIS AGREEMENT ARE EXCLUSIVE.

**9. 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 (i) RETURN OF THE MONETARY CONSIDERATION PAID TO UNIVERSITY FOR SERVICES RENDERED DURING THE PRECEDING THIRTY (30) DAY PERIOD OR (ii) UNIVERSITY’S PERFORMANCE OF ANY OBLIGATION THAT FAILED TO SATISFY THE TERMS OF THIS AGREEMENT.

**10. 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 AND ANIMAL FACILITY SHALL BE PROVIDED AND ACCEPTED “AS IS.”

**11. 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.

**12. 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.

**13. Indemnification and Insurance.**

13.1.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; (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, including, but not limited to dangerous substances or materials associated with the animals being provided to University; (iii) Company’s, or any other entity’s, use results, deliverables, or services; or the use of products, services or representations based on such results, deliverables, or services; and (iv) any negligent act or omission of Company in connection with this Agreement. In addition, Company shall release, indemnify, defend and hold harmless University from and against any injury, disability or death of Company’s employees resulting from Company’s use of or access to University facilities or equipment, except to the extent such injury, disability or death is caused by University’s willful, wanton, or intentional acts. Company shall obtain consent from University’s Office of General Counsel for any settlement to which the University would be a party.

 13.2. Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance under this Agreement, Company shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, and property damage, including products liability, with limits of not less than $1,000,000 each occurrence, and automobile coverage with limits not less than $1,000,000 each occurrence. All such certificates evidencing such insurance shall name the Regents of the University of Minnesota as an additional insured. Company represents that it has workers’ compensation insurance to the extent required by law. Company agrees to furnish proof of all such insurance to University upon request.

**14. General Provisions.**

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

 14.2. Assignment. Company may not assign its any rights or obligations under 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.

 14.3. 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 between 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 the parties.

 14.4. 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.

 14.5. 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.

 14.6. 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.

 14.7. 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 14.7 shall be void. Neither party shall take any actions to bind the other party to an agreement.

 14.8. 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:

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| If to University: | University of MinnesotaAttn: Lynn Collura Impelluso, DVM, MBA, DACLAM Director and Attending VeterinarianResearch Animal ResourcesMMC 351, University of MinnesotaMinneapolis, MN 55455E-mail: impell@umn.edu |
| With a copy to: | University of MinnesotaOffice of the General CounselAttn: Transactional Law Services Group360 McNamara Alumni Center200 Oak Street S.E.Minneapolis, MN 55455-2006E-mail: contracts@mail.ogc.umn.edu |
| If to Company: | Attn:                     Phone No.:      E-mail:       |
| With a copy to: | Attn:                     Phone No.:      E-mail:       |

 14.9. 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 has been commenced or concluded.

 14.10. Survival**.** Upon termination or expiration of this Agreement, Sections 2, 3, 4, 8, 9, 10, 11, 12, 13 and 14 shall survive.

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

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| **Regents of the University of Minnesota**By: Name: Lynn Collura Impelluso, DVM, MBA, DACLAM Title: Director and Attending Veterinarian Date:  | By: Name:      Title:      Date:  |