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| **For Internal Use Only****Depts must provide:** |  |  | **For Internal Use Only****OES must provide:** |  |
| **ESAF #** |  |  | **OES Contract #** |  |
| **Chart/Field Account No.** | **-     -** |  | **Analyst** |  |
| **Customer ID #** |  |  |  |  |



SCHULZE DIABETES INSTITUTE SERVICES AGREEMENT

 ***THIS SERVICES AGREEMENT*** (“Agreement”) is between the Regents of the University of Minnesota, through its Department of Surgery – Schulze Diabetes Institute (“University”), a Minnesota constitutional corporation, and      , a      (“Company”).

 The parties agree as follows:

**1. Term.** The term of this Agreement shall commence on the date last signed, below (“Effective Date”) and shall expire on       unless terminated earlier as provided in Section 6.

**2. Description of Services.**

 2.1 University shall obtain consent from donors to collect, process, store and provide to Company       (     ) human or other islet equivalents (collectively, “Specimens), (“Services”), along with Specimen-associated data (“University Data”). In the case of human sources, University shall also obtain consent from donors.

 2.2 Reference to Services in this Agreement shall be deemed to include any deliverables provided to Company in connection with the Services.

**3. Reimbursement and Price.**

 3.1 For the Services related to human tissue, Company shall reimburse University for University’s costs of providing the Services:       and   /100 dollars ($     ), plus any sales or use tax if applicable. Company will also reimburse University for all shipping costs. The parties agree that the amounts set out above fairly represent reimbursement for the direct and indirect costs of the Services.

 3.2 For the Services related to non-human tissue, Company shall pay:       and   /100 dollars ($     ), plus any sales or use tax if applicable.

 3.3 At Company’s expense, Company will return the ambient temperature packs and the cardboard covered Styrofoam box to University. University will provide Company no further Specimens until the packaging has been returned. If Company inadvertently disposes of the shipping materials, Company will pay University the replacement costs before being eligible to receive additional shipments.

 3.5 The reimbursement or price shall be paid in accordance with the following payment terms and schedule (check only one of the boxes):

 **[ ]**  in full upon the signing of this Agreement; or

 [ ] monthly, based on work completed; or

 **[ ]**  in installments, payable as follows:     .

 3.6 Invoices shall be sent to:

|  |  |
| --- | --- |
|  |      Attn:                     Phone No.:      E-mail:       |

**4. Company’s Use of Specimens and University Data.**

 4.1 Company will use Specimens will be used for research purposes only. Company will not use any Specimens for human transplantation or other clinical trials involving humans. If Company re-distributes Specimens and/or data to a third party, Company will ensure that the third party fulfills the obligations of this Agreement, and will hold University harmless from and against any claim arising out of such re-distribution, except to the extent any such claim arises from or is related to the gross negligence or willful misconduct of University. Under no circumstances will Specimens be used for human transplantation.

 4.2 University shall not knowingly send any personally identifiable information relating to or arising from University Data to Company, and Company shall not knowingly accept any personally identifiable information relating to or arising from University Data. In the event that Company receives personally identifiable information from University, Company shall take all reasonable steps to safeguard such information and prevent it from unauthorized disclosure, immediately destroy such information. Company shall promptly thereafter notify University of the receipt of the information and certify its destruction.

 4.3 Company shall furnish Specimens and University Data only to its employees who have a need to use the Specimens and know of University Data in connection with the Permitted Use. Company shall direct each of its employees having access to University Data or Specimens to use, hold and protect the Specimens and University Data on terms at least as restrictive as those contained in this Agreement.

 4.5 Company shall comply with any special conditions of use attached hereto as Exhibit A, and incorporated herein, and all applicable statutes, regulations, and guidelines, including without limitation, those that govern the prior, free and informed consent of donors of the human tissue Specimens and University Data, including statutes, regulations, and guidelines relating to transportation, storage, and treatment upon the conclusion of the use.

 4.6 No provision of this Agreement limits, conditions or otherwise affects University’s right (i) to use similar Specimens or University Data; (ii) to deliver the similar Specimens or University Data to a third party; or (iii) to grant a third party an exclusive or non-exclusive license or other right to similar Specimens or University Data. Notwithstanding the foregoing, in the event Company directs University to deliver Specimens or University Data to a third party, or informs University that Company has a business relationship with a third party, University will not provide Services to that third party for its own account unless University had established a contractual relationship with the third party prior to receiving information from Company regarding the third party. Company and University will treat information about third parties obtained from each other as confidential, and will not use such information for their own purposes.

**5. Intellectual Property.** For purposes of this Agreement, “Invention” shall mean any invention, discovery, work of authorship, software, information or data, patentable or unpatentable, that is conceived, developed or reduced to practice as a result of the Services. Inventions made solely by University inventors will be owned by University (“University Sole Invention”). Inventions made solely by Company inventors will be owned by Company (“Company Sole Invention”). Inventions made jointly by University inventors and Company inventors shall be jointly owned (“Joint Invention”). Inventorship will be determined in accordance with the principles of United States patent law (35 U.S.C. §§ 102 & 200-212, 37 C.F.R. Part SOl, and 38 C.F.R. §§ 1.650-1.663), as amended from time-to-time. For avoidance of doubt, the parties acknowledge that University will have no intellectual property interest arising from Specimens or University Data provided hereunder, and Company will have no intellectual property interest arising from tissue or data retained by University. University represents that it is not knowingly interfering with or infringing the rights of any third party, including the original donor of the Specimen and University Data, by performing its obligations under this Agreement.

**6. Termination.** Either party may terminate this Agreement if the other party (i) fails to perform any material obligation under this Agreement and (ii) does not correct such failure within seven (7) days after having received written notice of such failure. Additionally, either party may terminate this Agreement for its convenience upon thirty (30) days’ prior written notice to the other party. Upon any termination, Company shall promptly pay University for all Services rendered and costs incurred up to and including the effective date of termination.

**7. Disclaimer of Warranties.** University makes no warranties, express or implied, as to any matter whatsoever, including without limitation, the condition, originality or accuracy of the SERVICES PERforMED OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT. university expressly disclaims WARRANTIES OF merchantability, or fitness for a particular purpose.

**8. Limitation of Liability For Breach of Contract.** IN NO EVENT SHALL EITHER PARTY’S LIABILITY FOR BREACH OF THIS AGREEMENT INCLUDE DAMAGES FOR WORK STOPPAGE, LOST DATA, OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFIT) OF ANY KIND. EXCEPT FOR EACH PARTY’S OBLIGATIONS UNDER SECTIONS 10.1 AND 10.2. EACH PARTY’S LIABILITY TO THE OTHER FOR BREACH OF THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE MONETARY CONSIDERATION PAID TO UNIVERSITY UNDER THIS AGREEMENT.

**9. Use of University Name or Logo.** Neither Party shall use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the other Party or the name of any representative of the other Party in any sales promotion work or advertising, or in any form of publicity, without the prior written permission of the Party whose name, logo or mark is proposed for use in each instance. However, either Party may use the name of the other Party in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements; provided that each Party receives a copy of such document for their records.

**10. Indemnification.**

 10.1 Except as provided in Section 10.2, each party shall be responsible for its own acts and omissions and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Liability of University is subject to the terms and limitations of the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, as amended.

 10.2 Company shall indemnify, defend, and hold harmless University, its regents, faculty members, students, employees, agents, contractors, and authorized volunteer workers against any and all claims, costs, or liabilities, including attorneys’ fees and court costs at both trial and appellate levels, for any loss, damage, injury, or loss of life (other than that attributable to willful, wanton or intentional acts or omissions of University) arising out of (i) use by Company (or any third party acting on behalf of or under authorization from Company) of the Services or any information, reports, deliverables, materials, products or other results of University’s work under this Agreement or (ii) Company’s infringement of a third party’s intellectual property rights or Company’s violation of any law, rule, or regulation in the provision of any materials to University. Company shall obtain consent from University’s Office of General Counsel for any settlement to which the University would be a party.

 10.3 Without limiting the generality of the foregoing, Company acknowledges that Specimens may contain biohazards, including without limitation infectious agents. Some of those agents may be those for which there is no known cure, such as Human Immunodeficiency Virus and Hepatitis C among many others. University will not test patients or Specimens to determine whether or not they contain biohazards. Company represents and warrants that it is expert at the correct procedures for handling such Specimens, and will handle all Specimens assuming that they are biohazardous. At a minimum, Company’s premises and handling processes will conform to all OSHA and other applicable regulations and standards for handling biohazardous Specimens, and will inform and train all personnel in the proper techniques for handling them. In the event Company intends to distribute Specimens to a third party, Company will assure that the third party agrees to take all precautions set out above.

 10.4 Each party represents that it has and will continue to have and maintain commercially reasonable levels of insurance or self-insurance during the term of this Agreement. Certificates of all insurance detailed above shall be furnished to the other party 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 may be amended only in writing duly executed by all the parties to this Agreement.

 12.2 Assignment. The parties may not assign any rights or obligations of this Agreement without the prior written consent of the other party. Any assignment attempted to be made in violation of this Agreement shall be void. Notwithstanding the foregoing, Company may assign or transfer this Agreement, in whole or in part, pursuant to a merger, acquisition or sale of substantially all of the assets of Company.

 12.3 Entire Agreement. This Agreement (including all documents attached or referenced) is the final and binding expression of the parties’ agreement and 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, including without limitation, any non-disclosure agreements. 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 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. Each party’s employees (i) shall be regarded as the employees of such party and shall not be regarded as the employees of the other party; (ii) shall be subject to the employment policies and procedures of such party and shall not be subject to the employment practices and procedures of the other party; and (iii) shall not be entitled to any employment benefits of the other party. Neither party shall have the right or power to bind the other party. Any attempt to enter into an agreement in violation of this Section 11.6 shall be void. Neither party shall take any actions to bind the other party to an agreement.

 12.6 Notices. All notices 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 by a recognized courier service or by United States Mail (first-class, postage pre-paid, certified return receipt requested) to the other party at the following addresses. Such notices and other communications shall be deemed made when delivered; faxed; submitted to the courier service; or, with respect to U.S. mail, three (3) days after mailing.

 If to University: University of Minnesota

 Department of Surgery – Schulze Diabetes Institute

 Attn: Faith Mrutu, CFO

 MMC #280

 420 Delaware Street

 Minneapolis, MN 55455

 Phone No.: 612.626.4791

 E-mail: faith@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 S.E.

 Minneapolis, MN 55455-2006

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

 With a copy to: University of Minnesota

 Office of External Sales

 660 West Bank Office Building

 1300 South 2nd Street

 Minneapolis, MN 55454

 Email: extsales@umn.edu

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| --- | --- |
| If to Company: |      Attn:                     Phone No.:      E-mail:       |

 12.7 Neither Party shall be liable to the other for any incidental, circumstantial, equitable, or punitive damages in relation to this Agreement.

 12.8 Taxes and Similar Fees. In addition to the payment obligation in Section 3, 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.

12.9 Survival. Upon termination or expiration of this Agreement, the provisions which, by their sense must survive to give them full meaning, shall survive.

 **IN WITNESS WHEREOF**, the parties have entered into the Agreement as of the dates indicated below. Each individual signing below represents that they have the authority to bind the party on whose behalf they are signing.

|  |  |
| --- | --- |
| **Regents of the University of Minnesota**By: Name:      Title:      Date:  | By: Name:      Title:      Date:  |

**Exhibit A**

**Special Conditions of Use**