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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 #** |  |  |  |  |

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**SERVICES AGREEMENT**

**with Confidentiality Terms**

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

The parties agree as follows:

**1. Description of Services.** University shall perform the following services for Company:

(“Services”). Reference to Services in this Agreement shall be deemed to include any deliverables provided to Company in connection with the Services, including without limitation, reports, results, materials, products, and information.

**2. Compensation.** For the Services performed under Section 1, Company shall pay University       and   /100 Dollars ($     ),plus any sales or use tax if applicable.

 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.

 2.2 Invoices shall be payable net 30 days from date of service and sent to:

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

In the event the compensation is not a fixed firm price for the services, but instead is set forth on an attached schedule and contains published rates, the University reserves the right to modify the fees set forth thereon effective July 1 of each year of this Agreement.

**3. Term.**  The term of this Agreement shall commence on  (“Effective Date”) and shall expire on  unless terminated earlier as provided in Section 4.

**4. 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 under this Section 4, Company shall promptly pay University for all Services rendered and costs incurred up to and including the effective date of termination.

**5. 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.

**6.** **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 8.1 AND 8.2, 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.

**7. Use of University Name or Logo.** Companyagrees 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 in any form of publicity, without the prior written permission of University in each instance. However, Company may use the name of University 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.

**8. Indemnification.**

 8.1 Except as provided in Section 8.2, 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.

 8.2 In the event 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, then 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 grossly negligent acts or omissions of University) arising out of such events. The University shall provide Company with prompt written notice of any such claim and reasonably work with Company in any defense of such claim. Company shall obtain consent from University’s Office of General Counsel for any settlement to which the University would be a party.

 8.3 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 in an amount not less than $1,000,000 each occurrence/$2,000,000 annual aggregate. Certificates of all insurance detailed above shall be furnished to the other party upon request.

**9. Export Controls**.

9.1 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.

9.2 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.

**10. Confidentiality.**

 10.1 For purposes of this Agreement, “Confidential Information” means written or tangible information disclosed by either party to the other, which at the time of disclosure, is clearly and conspicuously labeled “Confidential” or “Proprietary”. Confidential Information shall also mean oral and visual disclosures which are identified as confidential at the time of such disclosures and which are confirmed and summarized within fifteen (15) days of the disclosure by the disclosing party in a written document that sets forth the substance of the Confidential Information disclosed. The parties agree to maintain confidentiality of the other’s Confidential Information during the term of this Agreement, including any renewal periods, and for a period of three (3) years from the effective termination or expiration date of this Agreement. Furthermore, neither party shall use said Confidential Information for any purpose other than those purposes specified in this Agreement. The parties may disclose Confidential Information to employees requiring access thereto for the purposes of this Agreement. Neither party shall be held financially liable for any inadvertent disclosure, but each will agree to use its reasonable efforts not to disclose any agreed to Confidential Information.

 10.2 Nothing contained herein will in any way restrict or impair either party’s right to use, disclose, or otherwise deal with any Confidential Information that at the time of its receipt:

 10.2.1 Is generally available in the public domain, or thereafter becomes available to the public through no act of the receiving party;

 10.2.2 Was independently known prior to receipt thereof, or made available to such receiving party as a matter of lawful right by a third party;

 10.2.3 Is received without obligation of confidentiality from a third party who was free to disclose the information; or

 10.2.4 Is required by law (including disclosures under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13), regulation, or court order to be disclosed. The University shall not be required to commence or defend any action to prohibit the inspection and copying of Confidential Information.

 10.3 The above obligations for Confidential Information shall be in effect for a period of three (3) years from the termination of the agreement.

 10.4 Prior to disclosing any Confidential Information or proprietary technical data that is subject to export controls under federal law, the Companyshall notify the University in writing of the nature and specific extent of the export controls (for example, Commerce Control List designations, reasons for control, countries for which an export license is required). The University shall have the right to decline such information or task requiring acceptance of such information.

**11. General Provisions.**

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

 11.2 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.

 11.3 Entire Agreement. This Agreement (including all documents attached or referenced) 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, 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.

 11.4 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, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, epidemic, pandemic, 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.

 11.5 Governing Law and Jurisdiction. 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. 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.

 11.6 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 and any attempt to enter into an agreement in violation of this Section 10.6 shall be void. Neither party shall take any actions to bind the other party to an agreement.

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

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

 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

 295 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:       |

 11.8 Taxes and Similar Fees. In addition to the payment obligation in Section 2, Company is responsible for the payment of any and all applicable income, sales, use, consumption, value added, excise, custom duties or other taxes and similar fees in connection with this Agreement, levied by any taxing authority or any other body having jurisdiction under any present or future laws. Company shall pay to University the amount in Section 2 without deduction of any applicable taxes. 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.

 11.9. Breach; Attorneys’ Fees. In the event it fails to perform any of its obligations 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.

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

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