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

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**SERVICES AGREEMENT**

**Minnesota Nano Center**

***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 Minnesota Nano Center.

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

**1.** **Description of Services.** University shall render the following services (reference to services in this Agreement shall be deemed to include any deliverables):

Photomask fabrication services.

Fabrication services in the areas of micro- and nanoscale processes, structures and devices, including but not limited to some or all of the following: thin film deposition, etching, lithography, bonding, test structure and device fabrication, all for the purposes of research and development only.

Other:

**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 (“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 fees are set forth on the Schedule. University shall submit an invoice to Company for payment. All invoices shall be payable net thirty (30) days from the date of invoice. In addition, Company agrees to pay all fees associated with collection costs, including court costs and reasonable attorneys’ fees.

**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 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. University may terminate if Company’s account is more than thirty (30) days past due. 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.** **Limitation of Damages; Limitation of Remedies.** 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. 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.

**6.** **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.”

**7.** **Use of University Name or Logo; No University Endorsements.** 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. 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.

**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](mailto: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 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, in which case the disclosing party shall be notified immediately. 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.

**11.** **General Provisions.**

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

11.2 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.

11.3 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.

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, 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.

11.5 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.

11.6 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.

11.7 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 11.7 shall be void. Neither party shall take any actions to bind the other party to an agreement.

11.8 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

Minnesota Nano Center

Attn: Administrator

140 PAN Bldg

115 Union Street SE

Minneapolis, MN 55455

E-mail: [mnc@umn.edu](mailto:mnc@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

E-mail: [contracts@mail.ogc.umn.edu](mailto:contracts@mail.ogc.umn.edu)

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

11.9 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.

11.10 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.

11.11 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 date first above written.

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

Attachment A

University Laboratory Facilities and

Equipment Schedule of Service Hourly Rates

*See Attached.*