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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 #** |  |  |  |  |



CTSI’s Biorepository and Laboratory Services (BLS)

AGREEMENT

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

 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 one year from the date last signed unless terminated earlier as provided in section 6.

**2. Description of Services.** University will provide to Company the human biological specimens, including without limitation, tissue, tissue derivatives, blood, blood derivatives, biofluids, tissue microarrays, proteins, and nucleic acids (collectively, “Specimens”) and associated data specified in each accepted Purchase Order or Statement of Work in exchange for reimbursement for the cost to procure, process, store, and deliver Specimens to Company (“Services”).

University shall obtain consent from donors to collect, process, and store the Specimens and specimen-associated data (“University Data”).

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, information, and University Data. Parties agree that all payments made are for Services, and are not for Specimens or University Data themselves.

**3. Reimbursement.** Please see “Exhibit A” for all service rates. Company will also reimburse University for all shipping costs, plus any applicable sales and use tax.

 3.1 The reimbursement shall be paid no later than forty-five (45) days after receipt by Company of an undisputed invoice from University; 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:      .

 3.2 Invoices shall be sent to:

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

 3.3 The parties agree that the amounts set out above fairly represent reimbursement for the direct and indirect costs of the Services.

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

 4.1 Company has submitted a proposal, a copy of which is attached hereto as **Exhibit A** (“Proposal”), to University. In the Proposal, Company has outlined its proposed use for education, research, or scientific advancement, of the Specimens and University Data. Company shall use the Specimens and University Data only for the purpose set out in the Proposal and in accordance with this Agreement. Company shall furnish Specimens and University Data only to its employees who have a need to use the Specimens and 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. 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 negligence or willful misconduct of University.

 4.2 Company shall comply with the terms of use attached hereto as **Exhibit B**, 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.

 4.3 University shall complete a standardized de-identified Case Report Form and shall deliver such Case Report Form to Company approximately four weeks after Specimens are delivered. In the event that Company receives personally identifiable information from University, in error or otherwise, Company shall immediately notify University and take all reasonable steps to ensure the personally identifiable information is not further disclosed and will destroy the personally identifiable information or arrange for a new de-identified data set in collaboration with University.

 4.4 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.

 4.5 Company may reject any Specimens or University Data that fail to conform with the Specifications set forth by Company in the applicable Purchase Order or Statement of Work. To properly reject the Specimens or University Data, Company shall provide University with written notice of Company’s intent to reject the same within sixty (60) days of receipt of the applicable Specimens or University Data. If such notice is not delivered within the specified period of time, any such Specimens and University Data will be deemed accepted by Company. For any Specimens or University Data properly rejected hereunder, Company shall be entitled to return the same (except for those Specimens or Data otherwise consumed as a result of the research uses permitted under this Agreement) in reasonable good condition and, at the sole discretion of Company, University shall arrange for (a) replacement by University within sixty (60) days post receipt of shipment if such replacement is commercially feasible; or (b) a refund in the amount Company paid for Services related to the returned Specimens or University Data.

 4.6 University shall permit Company authorized representatives to examine all facilities used for any Services during normal business hours and upon reasonable notice. During such visits or inspections, all Company authorized representatives shall adhere to all safety, security and privacy policies of University. Company shall provide University with a copy of all Company Site Audit Reports upon reasonable written request. During any such examination in accordance with this Section 4.6, Company shall ensure that third party representatives have access to any and all documents related to the Services.

**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. Company shall obtain consent from the University’s Office of General Counsel for any settlement to which the University would be a party.

 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.

 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. General Provisions.**

 11.1 Amendment. This Agreement may 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. 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.

 11.3 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.

 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 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.

 11.6 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.

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| If to University: | Regents of the University of MinnesotaCTSI’s Biorepository and Laboratory Services (BLS)MMC #76420 Delaware StreetMinneapolis, MN 55455Phone No.: 612.273.6652E-mail: bionet@umn.edu  |
| With a copy to: | Regents of the University of MinnesotaOffice of the General CounselAttn: Transactional Law Services Group360 McNamara Alumni Center200 SE Oak StreetMinneapolis, MN 55455-2006E-mail: ogcpurchasing@umn.edu |
| With a copy to: | Regents of the University of MinnesotaOffice of External Sales660 West Bank Office Building1300 South 2nd StreetMinneapolis, MN 55454Email: extsales@umn.edu |
| If to Company: |      Attn:                Phone No.:      E-mail:       |

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

 11.8 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.

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| --- | --- |
| **Regents of the University of Minnesota**By: Name: Elizabeth NunnallyTitle: CFO, Office of Academic Clinical AffairsDate:  | By: Name:      Title:      Date:  |

**Exhibit A**

**Proposal**

**Exhibit B**

**Special Conditions of Use**