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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 #** |  |  |  |  |



LAB USE AGREEMENT

(Company Use)

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

**Whereas,** Company desires to use University laboratory facilities and equipment on the terms and conditions set forth in this Agreement, and

**Whereas,** University desires to make its facilities and equipment available on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for good and valuable consideration University and Company agree as follows:

**1. Description of Facilities and Equipment Available for Company Use**.Company may use those University facilities and equipment during the times, on the conditions, and for the fees set forth in this Agreement and on the attached University Laboratory Facilities and Equipment Schedule (the “Schedule”), a copy of which is attached to, made a part of, and incorporated in this Agreement. 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. Fee.** The fees are set forth on the Schedule. University shall submit invoice to Company for payment of the fees, plus any sales or use tax if applicable. All invoices shall be payable net thirty (30) days from the date of invoice.

**3. Compliance with all Rules and Regulations**. Company acknowledges and agrees that it will review the applicable Laboratory Safety Plan prior to its use of University facilities and equipment and will follow all rules and directions from University personnel regarding use of University facilities and equipment.

**4.** **List of Persons Authorized by Company to Use the Facilities**. 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 use University facilities and equipment on Company’s behalf. Company understands that persons not on such list will not be permitted to use University facilities or equipment on behalf of Company 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 use University facilities or equipment on behalf of Company shall have reviewed the applicable Laboratory Safety Plan and follow all rules and directions from University personnel regarding use of University facilities and equipment.

**5. Term and Termination**.

 5.1 The term of this Agreement shall commence on the Effective Date and terminate upon the fiftieth (50th) day of usage of University facilities and equipment by Company; provided, however, that such term shall automatically be extended for successive terms of fifty (50) usage days unless either party provides the other with thirty (30) days’ written notice to terminate prior to the end of the then current usage term.

 5.2. Either party shall have the right to terminate this Agreement, at any time without cause, on thirty (30) days’ written notice to the other.

 5.3. University shall have the right to immediately terminate this Agreement and suspend Company’s use of University facilities and equipment in the event:

 (i) Company’s account is more than thirty (30) days past due; or

 (ii) Company fails to comply with any of the conditions or rules contained in the Safety Manual, Rules, or Release. Such determination shall be in University’s sole discretion.

**6. Care and Maintenance of Equipment and Facilities**. Company agrees that in the event it damages any University facilities or equipment, Company will bear the sole financial responsibility for such damage.

**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. Company agrees to provide University with a copy of any such document.

**8. Indemnification**. Company shall also release, indemnify, defend, and hold harmless University on demand for, from, and against any and all losses, liabilities, suits, judgments, obligations, fines, penalties, claims, costs and expenses (including reasonable attorneys’ fees) arising out of Company’s use of University facility or equipment, including but not limited to, claims relating to products liability, property damage, personal injury, negligence, or death. Company shall obtain consent from University's Office of General Counsel for any settlement to which the University would be a party.

**9. Personal Property**. Company, not University, is responsible for loss of, theft of, or damage to any personal property of Company or its authorized users, located within University facility or on University property.

**10. Limitation on Warranties.** University hereby expressly disclaims and excludes all warranties CONCERNING University equipment or facilities. University does not guarantee the accuracy of any test RESULTS Company may obtain from using University equipment or facilities.

**11.** **Limitation of Liability.** Even if Advised of the possibility of such damages, University shall not under any Circumstances be liable to Company or any other party for (a) Personal injury or property damage (except to the extent of the intentional, willful, or wanton acts of University); (B) Lost Profits, work stoppage, lost data, computer hardware or software damage, failure or malfunction, or any other special, indirect, or consequential damages of any kind.

**12. Export Controls**.

12.1 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.

12.2 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.

**13.** **General Provisions**.

 13.1. 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.

 13.2. Force Majeure. University shall not be responsible for any delays or failure to provide access to the facilities and equipment due to acts of God, strikes or other disturbances, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, or other causes of any kind beyond the control of University.

 13.3. Governing Law. This Agreement shall be governed by the laws of the state of Minnesota. Any action to enforce this Agreement shall be heard only in state court in Hennepin County, Minnesota.

 13.4. 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. The 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 University.

 13.5. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

 13.6. 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: | Attn:                     Phone No.:       E-mail Address:       |
|  With a copy to: | University of MinnesotaOffice of the General CounselAttn: Transactional Law Services Group360 McNamara Alumni Center200 Oak Street SEMinneapolis, MN 55455-2006 E-Mail: contracts@mail.ogc.umn.edu |
|  If to Company: | Attn:                Phone No.:      E-mail Address:       |

 13.7. Authority. The person(s) signing this Agreement on behalf of Company represent(s) and warrant(s) to University that they have the legal authority to sign this Agreement on behalf of Company and to bind Company to the covenants and conditions of this Agreement. If the individual(s) is/are not so authorized, they shall be personally liable for Company’s performance of its obligations under this Agreement.

 13.8. Company Includes Officers, Agents, Representatives, and Employees. Throughout this Agreement, wherever the term “Company” is used, such term shall also include, refer to, and bind Company’s officers, agents, representatives and employees.

 13.9. Insurance. At all times during the term of this Agreement, Company shall maintain (i) Commercial General Liability insurance with limits of not less than $1,000,000 each occurrence and $2,000,000 annual aggregate for bodily injury and property damage. The policy shall include coverage for products liability and include University as an additional insured; (ii) Automobile Liability with limits not less than $1,000,000 each occurrence; and (iii) Worker’s Compensation insurance to the extent required by law. Company shall provide Certificates of Insurance to University prior to its use of University equipment or facilities.

**IN WITNESS WHEREOF**, University and Company have executed this Agreement on the day and year first above written.

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

**EXHIBIT A**

**UNIVERSITY LABORATORY FACILITIES**

**AND EQUIPMENT SCHEDULE**

(Attached)