

Terms and Conditions of Service

1. Acceptance of Services

(a) These Terms and Conditions of Service ("Terms") are material to the offer made by the Arizona Board of Regents for and on behalf of Arizona State University ("ASU"), as set forth in the quotation and/or service request ("Quote/Request"), to provide services to the Client identified on the Quote/Request ("Client"). Client's acceptance of ASU's Quote/Request is expressly limited to Client's acceptance of these Terms, which will control over any proposed conflicting terms or conditions. These Terms constitute the entire agreement between the parties ("Agreement") related to the performance by ASU's

("Center") of the services ("Services") covered by the Quote/Request for the Client. Unless specifically agreed to as provided herein, ASU rejects any additional or inconsistent terms and conditions offered by Client at any time. Modifications hereof or additions hereto, to be effective, must be made in writing and signed by an authorized representative of ASU.

(b) Notwithstanding the foregoing, the parties acknowledge and agree that in the interest of time certain matters of a practical business nature, such as material and product releases, minor changes in delivery dates, shipment instructions, variances in orders and the like may be sent by Client's authorized representative to ASU's Center via electronic mail, facsimile or telephonic communication (followed by written confirmation). The parties agree that such communications and any deliveries thereunder shall constitute part of, and be subject to, these Terms.

2. Services

(a) The Center will use reasonable efforts to provide the Services requested by Client as identified on the Quote/Request. The parties agree that ASU will have discretion to involve its students in the conduct and performance of the Services. To the extent there are any conflicts between the provisions of any separate scope of work and these Terms, these Terms will control. The Center's performance of the Services and its obligations under this Agreement are subject to and governed by the regulations and policies of the Arizona Board of Regents.

(b) The scheduling of the Services will be arranged to avoid conflict with ASU's educational and research programs. ASU will control the scheduling of such Services but will try to meet the timelines established by Client.

(c) Nothing in this Agreement will be construed to limit the freedom of ASU or of its researchers from engaging in similar services made under other grants, contracts or agreements with parties other than Client.

(d) Where applicable, Services which require priority scheduling for a more rapid turn-around time will be assessed a rush fee as indicated by the Center.

3. Compensation and Invoicing

(a) Client will pay the Center for the Services performed under this Agreement in accordance with the rate schedule provided by the Center. Client acknowledges and agrees that Center's rates are subject to change from time to time but that quoted rates will not change while work thereunder is in progress. Center's invoice to Client will be due and payable within _____. Client will send checks or paper remittance advices to the payment address set forth in the invoice, or will pay by credit card or wire transfer (if acceptable to the Center). Questions regarding any invoice should be directed to the Center contact identified in the invoice.

(b) If Client does not pay Center's invoice within _____, ASU reserves the right to impose a _____ % per month late fee on the unpaid balance for any amounts not in dispute. The Center reserves the right to discontinue the Services if Client fails to make payments when due. In the event of non-payment, the Center may terminate all further work on the Services and seek full payment from Client for all work performed and all expenses incurred including allocable costs, pursuant to the termination clause of this Agreement including the collection of payment. Should it become necessary for ASU to commence collection proceedings or retain an attorney to enforce any of the terms of this Agreement, Client will pay all attorneys' fees and the costs of collection incurred by ASU.

4. No Warranty; No Endorsements

(a) ASU neither makes nor will be deemed to have made any representation or warranty whatsoever (express or implied) regarding any outcome obtained or deliverable delivered hereunder including any outcome desired by Client. Any decision regarding safety, applicability, marketability, effectiveness for any purpose, or other use or disposition of said outcome will be the sole responsibility of Client and/or its permitted assigns and licensees.

(b) In no event will Client (or its successors, employees, agents and contractors) state or imply in any publication, advertisement or other medium that ASU has approved, endorsed or tested any product or service. In no event will ASU's performance of any Services hereunder be considered a test of the effectiveness or the basis for any endorsement of a product or service.

5. Use of Names or Logos

Neither party will use any names, service marks, trademarks, trade names, logos or other identifying names, domain names or identifying marks of the other party ("Marks"), or the name of any representative or employee of the other party in any sales promotion work or advertising, or any form of publicity, without the prior written permission of the party that owns the Marks in each instance. Use of any party's Marks must comply

with the owning party's requirements, including using the "®" indication of a registered trademark where applicable.

6. Termination

(a) Either party may terminate this Agreement at any time by giving the other party not less than thirty (30) days prior written notice. If this Agreement is terminated by Client, Client will remain responsible for payment to ASU for all Services performed through the date of termination and for reimbursement to ASU of all non-cancelable commitments incurred in the performance of the Services. Upon termination, property purchased in furtherance of this Agreement will remain the property of the purchasing party, unless expressly specified otherwise.

(b) Paragraphs 4, 5, 6, 12, 17, and 18 and, to the extent applicable, 19 and 20 of these Terms will survive any expiration or termination of this Agreement.

7. Export Controls

Client will notify ASU in writing if any technological information or data provided to ASU under this Agreement is subject to export controls under U.S. law or if technological information or data that Client is requesting ASU to produce during the course of work under this Agreement is expected to be subject to such controls. Client will notify ASU of the applicable export controls (for example, Commerce Control List designations, reasons for control, countries for which an export license is required). ASU will have the right to decline export controlled information or tasks requiring production of such information.

8. Independent Contractor

Each party is an independent contractor and is independent of the other party. Under no circumstances will any employees of one party be deemed the employees of the other party for any purpose. This Agreement does not create a partnership, joint venture or agency relationship between the parties of any kind or nature. This Agreement does not create any fiduciary or other obligation between the parties, except for those obligations expressly and specifically set forth herein. Neither party will have any right, power, or authority under this Agreement to act as a legal representative of the other party, and neither party will have any power to obligate or bind the other or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever contrary to the provisions of this Agreement. Each party acknowledges that the relationship of the parties hereunder is non-exclusive.

9. Notices

All notices, requests, demands and other communications hereunder will be deemed to have been duly given if the same shall be in writing and be delivered (a) personally, (b) by registered or certified mail, postage prepaid, (c) by facsimile transmission, with a copy by regular mail or (d) by overnight delivery service and addressed to the recipient's address set

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forth in the Quote/Request. Either party may change its address for notices or other contact details by giving written notice to the other party in accordance with this Paragraph. The parties agree to acknowledge in writing the receipt of any written demand, notice, report, request or other communication under this Paragraph that is delivered in person.

10. Assignment

Neither party will assign or transfer any interest in this Agreement without the prior written approval of the other party. Any attempted assignment in violation of this Paragraph will be null and void. Subject to the foregoing, this Agreement will be binding upon the permitted successors and permitted assigns or other permitted transferees of the parties.

11. Force Majeure

(a) No liability will result from the delay in performance or nonperformance caused by force majeure or circumstances beyond the reasonable control of the party affected, including, but not limited to, acts of God, fire, flood, substantial snowstorm, war, terrorism, embargo, any United States or foreign government regulation, direction or request, accident, strike or other labor dispute or labor trouble, or any failure or delay of any transportation, power or communications system or any other or similar cause beyond that party's reasonable control.

(b) The party which is so prevented from performing will give prompt notice to the other party of the occurrence of such event of force majeure, the expected duration of such condition and the steps which it is taking to correct such condition. This Agreement may be terminated by either party by written notice upon the occurrence of such event of force majeure which results in a delay of performance hereunder exceeding thirty (30) days.

12. Applicable Law; Disputes

(a) Any dispute regarding or arising under this Agreement, or the interpretation of this Agreement, will be subject to and resolved in accordance with the laws of the State of Arizona, without regard to its conflicts of laws principles.

(b) In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto will use their reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, they will consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

13. Severability

If any provision of this Agreement shall for any reason be found invalid, illegal, unenforceable, or in conflict with any valid controlling law: (a) such provision will be separated from this Agreement; (b) such invalidity, illegality, unenforceability, or conflict will not affect any other provision hereof; and (c) this

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Agreement will be interpreted and construed as if such provision, to the extent the same shall have been held invalid, illegal, unenforceable, or in conflict, had never been contained herein.

14. Waiver

The waiver of a breach hereunder may be effected only by a writing signed by the waiving party and will not constitute, or be held to be, a waiver of any other or subsequent breach or to affect in any way the effectiveness or enforceability of the provision in question.

15. No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or will be construed to confer upon any person or entity, other than the parties and their respective successors and assigns permitted by this Agreement, any right, remedy or claim under or by reason of this Agreement.

16. Merger and Integration

This Agreement and the Quote/Request contain the entire understanding between the parties concerning the subject matter of this Agreement and supersedes any and all prior understandings, agreements, representations, and warranties, express or implied, written or oral, between the parties concerning the subject matter of this Agreement.

17. Confidential Information

(a) Client and ASU may choose, from time to time, in connection with the Services contemplated under this Agreement, to disclose confidential information to each other ("Confidential Information"). All such disclosures must be in writing and marked as Confidential Information. Each party will use reasonable efforts to prevent the disclosure to unauthorized third parties of any Confidential Information of the other party and will use such information only for the purposes of this Agreement. All obligations under this Paragraph will expire three (3) years after the date of the Quote/Request.

(b) ASU is a public institution and, as such, is subject the Arizona Public Records Act. Accordingly, notwithstanding any other provision of this Agreement to the contrary, any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law.

18. University and State Required Provisions

To the extent applicable to these Terms, the University and State Required Provisions set forth at <https://ogc.asu.edu/contracts-requirements/contracts-provisions> are incorporated herein by reference and will apply to the Center's provision of the Services to Client.

The parties agree that the following Paragraphs will apply in the event Client and its employees are present on the ASU campus or use ASU equipment.

19. Liability

Client will conduct its activities in a careful and safe manner. As a material part of the consideration to ASU, Client agrees to assume all risk of damage to and loss or theft of Client's property while at ASU, damage to ASU space, and injury or death to persons related to Client's use of property, use or occupancy of the space in, upon, or about the space from any cause, and Client waives all claims against ASU. Client further agrees to indemnify and hold harmless Arizona State University, the Arizona Board of Regents, the State of Arizona and their officers, regents, agents and employees, against all claims, suits, liabilities, costs, damages and expenses (including reasonable attorneys' fees) arising out of or in connection with: (i) Client's use of property, use or occupancy of the space, or any activity or thing done, performed or suffered by Client, its agents, its employees, licensees, invitees or persons attending or participating in Client's activities and use of property and in or about the space; or (ii) any loss, injury, death or damage to persons, property, or the space on or about the space by reason of any act, omission or negligence of Client, or any of its agents, contractors, employees, licensees, or invitees; or (iii) any breach or default in the performance of any obligation on Client's part to be performed under the terms of this Agreement. Client's indemnity obligations will not extend to any liability to the extent caused by the negligence of ASU or its agents or employees. Client's obligations and liabilities under this Paragraph will survive the expiration or early termination of this Agreement.

20. Insurance

Client, at its expense, agrees to procure and maintain during the term of this Agreement a policy of commercial general liability insurance in an amount of not less than One Million Dollars (\$1,000,000), single limit, Two Million Dollars (\$2,000,000), general aggregate, against claims for bodily injury, death and property damage occurring in connection with Client's use of property and space at ASU. All insurance required pursuant to this Paragraph must name the Arizona Board of Regents, Arizona State University, and the State of Arizona as additional insureds and must contain a waiver of subrogation against the Arizona Board of Regents, Arizona State University, and the State of Arizona. Client agrees to procure and maintain Workers' Compensation insurance with statutory limits unless exempt under A.R.S. §23-901 and executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.