#### **Florida International University**

#### SERVICE AGREEMENT\*

[INSERT NAME OF CENTER OR FACILITY]

\*This agreement may not be used for any activities with a federal agency or where FIU would be considered a subrecipient.

This agreement (“Agreement”) sets forth the agreement of the below parties regarding services to be provided by the above named center/facility of The Florida International University Board of Trustees (“FIU”) to the below named Company. FIU and Company are collectively referred to in the Agreement as the “parties” or individually, as a “party.”

|  |
| --- |
| DATE Select Date |
| COMPANY Company Name DEPT/CO Company Dept/Co |
| PHONE NO. Company Phone No. FAX NO. Fax No. |
| ADDRESS CompanyAddress |
| CONTACT PERSON AT COMPANY Contact Name PHONE NO. Phone No. |
| RETURN FORM TO Name E-MAIL e-mail |
| Project ID Project ID Project Name Project Name |

1. **Services.**  FIU will provide the lab services specifically described in Attachment I attached hereto and incorporated herein as if fully set forth (the “Services”). Company will furnish the materials, products or devices to be tested. The specifications outlined in the Services will be followed by FIU. All work carried out under this Agreement shall be subject to and contingent upon any required regulatory approvals. All changes to the Services must approved in a written amendment to this Agreement by the parties prior to initiation of those changes. In the event of a conflict between the Services and this Agreement, this Agreement shall control unless the Services expressly states that it is intended to modify the terms of this Agreement. All questions pertaining to the Services should be directed to the FIU Principal Investigator, principal investigator.
2. **Term and Termination.** This Agreement shall be effective and the Services shall be performed during the time frame beginning on start date and ending on end date unless this Agreement is terminated early as set forth below. Upon expiration or termination of this Agreement, all terms of this Agreement that by their nature or as expressly stated shall continue after expiration or termination shall so survive. COMPANY and FIU shall each have the right to terminate this Agreement at any time upon seven (7) days’ prior written notice. Upon early termination, FIU shall immediately be due payment for all Services performed and costs incurred prior to the effective date of termination.
3. **Payment.** In consideration of the Services, Company shall pay FIU the total amount of $0.00. The fees are calculated in accordance with the FIU rate schedule in effect at the time the Services are provided. The rate schedule may be amended by FIU with sixty (60) days’ prior written notice to Company. The payment to FIU shall be made by Company within thirty (30) days of FIU’s invoice to Company. If Company fails to provide timely payment to FIU for any invoice FIU may cease all further work on the Services and shall not be liable for any resulting loss, damage or expense related thereto.
4. **Terms and Conditions.** The parties agree to the Research Recharge Center Terms and Conditions set forth in Attachment 2 which are incorporated herein as if fully set forth.
5. **Confidentiality Agreement.** Attached hereto as Attachment 3 is a Non-Disclosure/Proprietary Information Agreement executed by the parties which is incorporated herein by this reference.

The duly authorized representatives of the parties execute this Agreement on the dates set forth below.

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| --- | --- |
| Company | The Florida International University Board of Trustees |
| By: | By: |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |

Industry Contact for Billing

|  |
| --- |
| NAME: Billing Contact Name CONTACT PHONE NUMBER: Contact Phone Number |
| TITLE: Contact Title |
| BILLING ADDRESS: Billing Address |
| BILLING EMAIL: Billing E-mail |
| EFFECTIVE DATE: Effective Date END DATE: End Date |

Office Use Only – Do Not Write Below This Line

|  |
| --- |
| WORK ORDER #: |
| DATE RECEIVED: |
| RECEIVED BY: |

**ATTACHMENT 1**

The Services to be performed by FIU and the materials, products or devices to be provided by Company are as follows:

Include a list of all services to be provided with quantity and approved external rates. Include due dates, if any.

**ATTACHMENT 2**

**RESEARCH RECHARGE CENTER TERMS AND CONDITIONS**

1. **Services.** FIU has developed research and analysis expertise and related technologies, equipment, or facilities necessary for the performance of work pursuant to this Agreement. Such services are available as set forth in this Agreement, are of mutual interest and benefit to FIU and Company and will further the instructional, research, and public service mission of FIU and may provide benefits for both FIU and Company through the advancement of knowledge. All equipment, tools, supplies or other property acquired by FIU for the conduct of this Agreement will be the property of FIU. Results and/or reports shall be provided to Company as outlined in the Services. This Agreement is non-exclusive and nothing in the Agreement shall be construed to limit the freedom of FIU personnel, whether paid under this Agreement or not, to engage in similar inquiries or work independently or under other grants, contracts or agreements with parties other than Company.

2. **No Name Use/No Endorsement.** Each party agrees not to use the name, trademarks or logos of the other party or the name of any of the other party’s employees, officers, board members, students, agents or research facilities in any way whatsoever, including, but not limited to, in sales literature or promotion or advertising or fundraising materials or in any other form of publicity or promotion without the prior written express permission of the other party. Without limiting the generality of the above, COMPANY shall not use or in any way promote or assert, the work conducted by FIU or the deliverables provided by FIU, as an endorsement or promotion of any product or services of COMPANY. If COMPANY wishes to publish any document, video or any other media format (all collectively, a “publication”) regarding the services provided by FIU pursuant to this Agreement, including but not limited to, publishing the results of the tests and findings resulting from the Services, COMPANY shall provide a draft of each such proposed publication to the FIU Principal Investigator at least sixty (60) days prior to the proposed publication date for FIU's prior review and approval. Should the publication include any information not permissible pursuant to this Agreement or inconsistent with the Services or the report issued by FIU, COMPANY shall remove the information as directed by FIU from the publication.

3. **Independent Contractors**. For the purposes of the Agreement, the Company and FIU are independent contractors and neither is an employee of the other. Nothing contained herein shall be construed or implied to create any agency or partnership between the parties and neither party is authorized to act as agent for the other for any purpose.

1. **Standard of Performance.** FIU will use its reasonable efforts to accomplish the Services. The Services will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of the science professions currently practicing under similar conditions subject to the time limits and financial, physical and any other constraints applicable to the Services to be provided hereunder. FIU agrees to use all reasonable efforts to provide the Services in accordance with accepted professional standards; however, FIU cannot guarantee any specific results. FIU MAKES NO WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE DELIVERY OR OPERATIONS OF THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT SHALL BE ERROR-FREE.  NO ADVICE OR INFORMATION GIVEN BY FIU, ITS EMPLOYEES, STUDENTS, AFFILIATES, AGENTS OR REPRESENTATIVES SHALL CREATE A WARRANTY. FIU SHALL NOT BE LIABLE TO COMPANY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES WHATSOEVER ARISING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT. FIU WILL EXERCISE REASONABLE CARE WITH COMPANY’S PROPERTY ENTRUSTED TO FIU BUT CANNOT BE RESPONSIBLE IN CASE OF LOSS OR DAMAGE.
2. **Indemnification.** COMPANY shall indemnify, defend and hold harmless FIU, the Florida Board of Governors and the State of Florida and their respective officers, agents and employees, from all liability for any claims, demands, loss, liability, damages, penalties and costs of any nature (including court costs and attorneys’ fees) arising in connection with, but not limited to, any personal injury, economic loss, product liability and/or property damage in any way caused by or alleged to arise out of, in whole or in part, the negligence or willful misconduct of COMPANY. The terms of this paragraph shall survive the expiration or termination of this Agreement.
3. **No Third Party Beneficiaries**. All Services provided by FIU pursuant to this Agreement are personal to, and intended solely for the benefit of, Company and do not extend to any third party in any way whatsoever.Nothing herein shall be construed to create rights or interests in any third parties, nor may any third party rely in any way upon the services provided by FIU.
4. **Assignment/Successors**. This Agreement may not be assigned by either party without the prior written consent of the other party and any such attempted assignment without the other party’s written consent shall be null and void. This Agreement shall be binding upon the parties’ successors and assigns.
5. **Applicable Law.** This Agreement is governed by the laws of the State of Florida and venue of any actions arising out of this Agreement shall be in the state courts in Miami-Dade County, Florida.
6. **Export Control**.   FIU will not accept export-controlled materials or technical information under the Agreement. COMPANY warrants that materials and technical information provided to FIU are not controlled pursuant to any U.S. export control laws, regulations or executive orders including but not limited to the Export Administration Regulations (15 CFR Parts 730-774), the International Traffic in Arms Regulations (22 CFR Parts 120-130) and any regulations or executive orders issued related thereto.
7. **Animal Studies**. If the Services involve any animal studies or the handling of animals at FIU facilities, the Services shall only be performed after approval by FIU Institutional Animal Care and Use Committee (IACUC) and only in accordance with such approval.
8. **Force Majeure**. “Force Majeure” shall mean a circumstance outside the reasonable control of FIU which may include without limitation an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that FIU is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that FIU is delayed by such Force Majeure. FIU shall give notice to COMPANY as promptly as is practicable under the particular circumstances specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as the Force Majeure delay continues.
9. **Intellectual Property**. Background Intellectual Property. Intellectual property that either party owned prior to execution of this Agreement or that either party develops independently of the Services (“Background Intellectual Property”) is that party’s separate property and is not affected by this Agreement. Neither party has any claim to or rights in the other party’s Background Intellectual Property. For purposes of this Agreement, “Invention” shall mean individually and collectively all inventions, improvements and/or discoveries patentable or unpatentable, which are conceived and or made by one or more of the parties in the performance of this Agreement. FIU shall not obtain or attempt to obtain patent coverage on Company-provided materials or information, without the express written consent of Company. The following shall apply to all Inventions that include at least one FIU employee as an inventor: Inventions which involve the use of, composition of, or improvement to Company-provided materials or information shall belong to Company. Inventions which cover a scientific process, technique, procedure, medium, device or other process which is not unique to processing Company’s proprietary materials or does not derive from the use-of, composition of or improvement to Company-provided materials or information shall be owned by FIU.
10. **Complete Agreement.**  This Agreement and all attachments comprises the complete and exclusive statement of the agreement between the parties relating to the subject matter herein.  Parole or extrinsic evidence shall not be used to vary or contradict the express terms of this Agreement, and recourse may not be had to alleged dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Agreement.  If COMPANY issues a Purchase Order or other document to FIU (collectively, “PO”) relating to this Agreement, nothing in the PO shall be construed to contravene the terms of this Agreement. Modifications to the terms of the Agreement are not valid unless made in writing and signed by authorized representatives of both parties. This Agreement may not be assigned by Company in whole or in part without the prior written permission of FIU.

# ATTACHMENT 3

# FLORIDA INTERNATIONAL UNIVERSITY

# MUTUAL NON-DISCLOSURE/PROPRIETARY INFORMATION AGREEMENT

It is understood that it is the mutual desire of both The Florida International University Board of Trustees (hereinafter referred to as “FIU”) and Enter Company Name (hereinafter referred to as “Company”) for the parties to disclose certain confidential information to each other pursuant to the terms of this Agreement.

The specific purpose of the disclosure of confidential information is related to the Service Agreement to which this Agreement is attached.

“Confidential Information” includes any and all information, whether oral, written, in a physical embodiment or otherwise, which is disclosed for the purpose as set forth above and which is identified by the disclosing party (the “Discloser”) at the time of disclosure to the receiving party (the “Recipient”) as being proprietary or confidential. Confidential Information transmitted in writing must be marked “Proprietary,” or “Confidential” or other similar designation by the Discloser at the time of disclosure in order for it to be covered under this Agreement. Confidential Information transmitted orally or visually shall be Confidential Information covered under this Agreement if it is identified by the Discloser at the time of disclosure as being confidential or proprietary and thereafter is reduced to writing by the Discloser, confirming in the writing that the information is confidential or proprietary, and such writing is transmitted to the Recipient within ten (10) days after the oral or visual disclosure of the information. To the extent permitted by law, the execution of this Agreement and the Agreement and the work performed by FIU pursuant thereto shall be Confidential Information covered by this Agreement.

1. The Recipient Agrees:

a. To use the Confidential Information only for the purpose set forth above.

b. To treat the Confidential Information as being confidential and to protect it with no less standard of care than the Recipient uses to protect its own confidential information.

c. To restrict circulation and disclosure of the Confidential Information within its own organization to employees who have a need to know in connection with the purpose of the disclosure as set forth above, and to ensure that such employees are informed of the confidential nature hereof and agree to and are required to observe the provisions of confidentiality set forth herein.

d. To hold such Confidential Information in confidence, and not to disclose the information to any other party without the written authorization of the Discloser.

1. To return or destroy the Confidential Information promptly upon request of the Discloser, or, in any event, upon termination or completion of this Agreement, together with any and all copies, negatives, or reproductions thereof.

1. The Recipient shall not be liable for disclosure or use of the Confidential Information which:

a. Was in the public domain at the time of its disclosure or becomes part of the public domain subsequent to time of disclosure under this Agreement through no fault of the Recipient; or

b. Was known to the Recipient at the time of disclosure; or

c. Is disclosed with the written approval of the Discloser; or

d. Is independently developed by the Recipient without the use of the Confidential Information; or

e. Is rightfully furnished to the Recipient by a third party; or

f. Is disclosed by the Discloser to others on a non-restricted basis; or

g. Is disclosed as required by law or judicial action.

1. This Agreement shall come into force as of the date of signature of the last party to sign the Agreement and shall be for a term current to the term of the Agreement to which this Agreement is attached. The Recipient agrees that during the term of this Agreement and for a period of three (3) years after its expiration or termination, the Recipient shall not disclose the Confidential Information to any third party nor use such Confidential Information for any purpose other than as permitted by this Agreement.
2. No license, express or implied, in the information is granted to the Recipient other than to use the Confidential Information in the manner and to the extent authorized by this Agreement.
3. This Agreement shall be deemed to be a contract made under the laws of the State of Florida and for all purposes it shall be construed in accordance with and governed by the laws of Florida.
4. This Agreement constitutes and expresses the entire Agreement and understanding between the parties in reference to all matters herein referred to: all previous discussions, promises, representations, and understandings relative thereto, if any, between the parties is hereby merged.
5. Nothing in this Agreement will prevent FIU from complying with the requirements of Chapter 119 and Section 1004.22(2) of the Florida Statutes regarding disclosure of public documents.
6. The undersigned individuals executing this Agreement hereby represent and warrant that they have the authority to enter into this Agreement on behalf of their respective entity.
7. The Parties intend that the Confidential Information to be disclosed to FIU does not contain export control-listed technology or technical data identified on any US export control list, including the Commerce Control List (CCL) at 15 CFR 774 and the US Munitions List (USML) at 22 CFR 121.  In the event Company intends to provide FIU with export control-listed information, Company will inform FIU Assistant Vice President for Research, Office of Research and Economic Development, beforehand in writing to Florida International University, Modesto Maidique Campus, 11200 SW 8 St., MARC 430, Miami, FL 33199 or [guterrr@fiu.edu](mailto:guterrr@fiu.edu), and shall identify this Agreement and the information intended to be provided. Company agrees not to provide any export control-listed information to FIU without the prior written authorization of FIU Assistant Vice President for Research.

In witness whereof, the parties hereto have caused this Agreement to be duly executed on the dates set forth under their names, effective as of the date last signed below.

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| The Florida International University  Board of Trustees | |  | Company | |
|  | |  |  | |
| By |  |  | By |  |
| Name |  |  | Name |  |
| Title |  |  | Title |  |
| Date |  |  | Date |  |
|  | |  |  | |
| |  | | --- | | Read and Acknowledged: | |  | | [INSERT FIU PI NAME] |   Date: | | |  | |