**RESEARCH SERVICE AGREEMENT**

THIS RESEARCH SERVICE AGREEMENT (Agreement), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ (Effective Date), is by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Company), a corporation duly organized under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_ with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and The City University of New York (CUNY), on behalf of the Graduate School & University Center Advanced Science Research Center (ASRC), located at 85 Saint Nicholas Terrace, New York, New York 10031. Company and CUNY are each a party and collectively, the parties.

1. Research Services.
2. Company engages CUNY to provide the research services set forth in the statement of work attached as Exhibit A to this Agreement (Services).
3. CUNY’s contact at Company for purposes of notice and to coordinate the Services shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
4. Company’s contact at CUNY for purposes of notice and to coordinate the Services shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
5. CUNY shall deliver the Services in a manner consistent with The City University of New York’s educational, research and public service mission, in conformance with generally accepted industry standards of care and in strict compliance with applicable laws, regulations and guidance. CUNY shall devote the time and effort necessary to perform the Services in this manner. Company shall promptly provide CUNY with materials, data and information in whatever form as may reasonably be required to perform the requested Services.
6. On conclusion of the Services (or on a more frequent basis as set forth in Exhibit A), CUNY shall provide Company with a written report describing the Services, the data generated thereby and any other deliverables required by the statement of work.
7. CUNY shall at all times be and act solely as an independent contractor. Nothing in this Agreement shall operate or be construed to create the relationship of principal-agent, employer-employee, partners, joint venturers or any other relationship between CUNY and Company, other than an independent contractor relationship.
8. CUNY shall have sole and exclusive responsibility for (i) withholding and paying any and all federal, state and local income, social security and other taxes arising out of monies received for the performance of Services; (ii) maintaining unemployment, disability, workers’ compensation, liability and other coverages required by federal, state or local law, and (iii) ensuring that its personnel are fully trained, certified and/or licensed in accordance with any federal, state or local requirements.

2. Compensation.

1. In consideration for Services to be performed, Company shall pay CUNY the hourly rate of $\_\_\_\_\_\_\_\_\_, in accordance with the fee schedule set forth in Exhibit A. CUNY may increase its rates for services annually after the first year of the term, and shall provide at least 30 days written notice thereof.
2. CUNY shall submit all invoices for Services performed and costs incurred directly to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Accounts Payable, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

C. Payment to the “Graduate Center Auxiliary Enterprise Corporation” within 30 days of receipt of ASRC’s invoice shall be by credit card, money order, certified or bank check, or via ACH payment sent to

The Graduate Center Auxiliary Enterprise Corporation

The Graduate School and University Center

365 Fifth Avenue, New York New York 10016-4309

Reference: \_\_\_\_\_\_\_\_\_\_ Facility / \_\_\_\_\_[User]\_\_\_\_\_\_\_\_\_\_\_.

Attn: Auxiliary Enterprises, OSEEP Room 9113

|  |  |
| --- | --- |
| ABA Routing #: | 021000089 |
| Bank Name: | Citibank |
| Bank Address: | 1065 Avenue of Americas, NY NY 10018 |
| Bank Telephone: | 917.746.4468 |
| Bank Fax: | 646.374.3708 |
| Account Name: | CUNY Graduate School and University Center Auxiliary Enterprises Corp. |
| Account Number: | 6797888429 |

Any amounts due and owing by Company to ASRC shall bear interest at the rate of 1.5% per month or portion thereof, until such amount is paid.

3. Term.

1. The term of this Agreement shall commence on the Effective Date and shall continue in force until completion of the Services as mutually agreed on by the parties, unless terminated earlier as set forth below or extended by their mutual written agreement.

B. Either party may terminate this Agreement for any or no reason on 60 days prior written notice to the other party without further liability other than payment for Services duly rendered by CUNY. All outstanding deliverables due prior to the date of termination being worked on for delivery shall be completed and submitted by CUNY no later than 30 days after the effective date of termination. Services may be terminated without notice and at CUNY’s sole discretion in the event of continued nonpayment.

4. Materials.

1. All documents, data, information, biological, chemical or other materials controlled by Company and furnished to CUNY and all associated intellectual property rights shall remain the exclusive property of Company. CUNY shall use materials provided by Company only as necessary to perform the Services, unless subsequently specifically agreed to in writing.
2. CUNY shall retain ownership of any pre-existing materials, products, tools, methodologies, technologies or intellectual property rights of CUNY embodied in the Service deliverables and of any improvements made to those items as a result of rendering the Services.
3. ASRC may make available to Company biological, chemical or other resources supplied to the ASRC by third party manufacturers, at cost. Materials supplied in this fashion may have hazardous properties. ASRC IS SUPPLYING THOSE MATERIALS TO COMPANY WITH NO REPESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS.

5. Confidential Information.

1. The phrase ‘confidential information’ includes all information that Company or ASRC treats as confidential or proprietary, whether or not labeled confidential. Confidential information of a disclosing party shall not include information that is (i) known to the receiving party at the Effective Date and not subject to prior confidentiality obligation of the receiving party; (ii) publicly known at the Effective Date or later publicly known under circumstances involving no breach of this Agreement; (iii) disclosed to others by disclosing party without restriction as to disclosure and/or commercial use; (iv) disclosed to the receiving party by a third party as a matter of right and without restriction on such disclosure, or (v) independently developed by the receiving party, as evidenced by its written records.
2. Each party shall take reasonable measures to avoid disclosure and unauthorized use of the other party’s confidential information. Without limiting the foregoing, each party shall take at least those measures it employs to protect its own confidential information. If one party becomes legally compelled to disclose any confidential information that it received from the other party, the receiving party shall provide the disclosing party prompt written notice, cooperate with the disclosing party in seeking an appropriate remedy and furnish only that portion of the confidential information that is legally required to be disclosed.
3. CUNY may publish results generated under this Agreement only with the written approval of Company, not to be unreasonably withheld, provided that CUNY (i) provides Company with a copy of any publication, presentation or poster relating to the Services at least 45 days prior to submission, and, if requested by Company, (ii) delays the submission or presentation for an additional 45 days to permit filing by Company of patent applications or deletion by Company of any confidential information. If Company does not provide a written response within 45 days, CUNY may proceed with publication and/or release of the research results as proposed. In accordance with scientific custom, the contribution of Company shall be expressly noted in any such publication by appropriate acknowledgement.

6. Intellectual Property.

1. Consistent with Section 4 above, each party shall retain all right, title and interest in any patent, patent application, trade secret, know-how and other intellectual property that was owned by that party before the Effective Date, and no implied license grant or assignment, by estoppel or otherwise, shall be inferred from this Agreement.

1. All materials prepared or developed by CUNY in the performance of the Services, to the extent relating to materials or information provided by Company, shall be and remain the sole and exclusive property of Company, without exception. Subject to Section 4.B above with respect to improvements, CUNY further acknowledges and agrees that on payment, Company shall be the sole and exclusive owner of all right, title and interest in and to any material or product conceived or made by CUNY as a result of the Services, to the maximum extent permitted by applicable law.
2. CUNY warrants and represents that it has the right to use, without liability to others, the ideas, inventions, works, processes, designs and methods that CUNY will use in the performance of Services under this Agreement, and further warrants in connection with performance of the Services it will not knowingly infringe any patent, copyright, trade secret, or other proprietary right of any third party.
3. CUNY warrants that the Services provided under this Agreement will conform to the Exhibit A statements of work and shall be in compliance with all applicable local, state and federal laws, rules, regulations and guidance. The results of the Services, reports and other materials supplied by CUNY under this Agreement are provided on an “as is” basis. Except as set forth in Paragraph 1 and this subparagraph D, CUNY makes no warranties of any kind, express or implied, about the Services, reports or other materials, including, without limitation, warranties with respect to merchantability or fitness for a particular purpose of the Service results, reports or other materials.

7. Indemnification.

1. Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, CUNY shall hold Company harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence or willful misconduct of CUNY or of its officers or employees when acting within the course and scope of their employment.
2. Company shall indemnify, defend and hold harmless CUNY from and against any and all claims by third parties for losses, injuries, fees, costs or expenses incurred by CUNY as a result of (i) the manufacture, distribution, or sale by Company of any product or any other substance which was tested, purified, or produced by CUNY in compliance with this Agreement, the Service statements of work, and applicable local, state and federal laws, rules or regulations; (ii) any alleged infringement of third party patent rights, based on or arising out of CUNY's use of materials provided by Company to perform the Services, or (iii) Company’s negligence or willful misconduct in connection with this Agreement.
3. The party seeking indemnification shall promptly alert the other Party about the potential claim and permit the indemnifying party to assume the defense / disposition of the claim, provided that counsel is reasonably acceptable to the Party seeking indemnification, and subject to the right of the Attorney General of the State of New York or designee to also participate, if that is determined to be in the public interest. The party seeking indemnification shall cooperate with the indemnifying party in all reasonable respects with respect to the defense of any such claim.
4. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOST PROFITS, LOST OPPORTUNITIES OR ANY OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES IRRESPECTIVE OF THE THEORY UNDER WHICH SUCH ACTION IS BOUGHT.

8. Insurance.

Company maintains or shall procure and maintain the following minimum insurance coverage with companies satisfactory to CUNY, at no cost to CUNY:

A. Workers' Compensation Insurance: New York State Workers' Compensation coverage meeting all statutory requirements for all Company employees on CUNY’s premises or using CUNY’s materials or equipment during the course of Company’s receipt of Services.

B. Employer's Liability Insurance: $1,000,000 per accident on behalf of all Company employees entering CUNY's premises or using CUNY’s materials or equipment during the course of Company’s receipt of Services, for whom Workers' Compensation coverage is not a statutory requirement.

C. Commercial General Liability (for onsite Company materials or employees): $1,000,000 combined single limit for bodily injury and property damage, with an aggregate minimum of $3,000,000. Such insurance shall name The City University of New York, the City of New York and the State of New York, and those additional persons or entities required by CUNY from time to time, as additional insureds.

D. Umbrella or Excess Liability Insurance: Coverage of not less than $5,000,000.00. Such insurance shall name The City University of New York, the City of New York and the State of New York, and those additional persons or entities required by CUNY from time to time, as additional insureds.

Company shall furnish a certificate of insurance to CUNY immediately on request. All endorsements shall be provided as soon as practicable. Such policies must provide that insurance coverage may not be cancelled or modified without advance written notice to CUNY. Failure to provide insurance as required in this Paragraph 8 is a material breach of contract entitling CUNY to immediately terminate this Agreement.

9. Safety and Return of Compounds

Company shall provide Material Safety Data Sheets, labeled (content and safeguards) material, other hazard information and appropriate shipping papers, permits and notifications in accordance with OSHA and DOT regulations, sufficient to enable the reasonable safe handling and use of materials to be tested and the proper interpretation of test results. ASRC shall return unused material within six months of the conclusion of testing and Company shall take back any unused material returned within this time frame. All costs and risks of transporting material to and from ASRC shall be borne by Company and are not included in the Agreement compensation / fee and cost amount.

10. Miscellaneous.

1. This Agreement shall be governed by the laws of the State of New York, without regard to its choice of law rules, and the parties hereby unconditionally submit to the exclusive jurisdiction of New York courts, state and/or federal, in all matters relating to this Agreement.
2. Neither party shall assign its rights or obligations under this Agreement, in whole or in part, by operation of law or otherwise, without the prior express written consent of the other party. Any purported assignment in violation of this section shall be null and void.

## This Agreement and attached Exhibit A sets forth the entire agreement between the parties with respect to its subject matter and is intended to supersede all prior written or oral negotiations, understandings and agreements. No change, modification, extension or termination of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the parties. The failure of either party to enforce at any time any provision of this Agreement shall in no way be construed to be a waiver of that provision or affect the validity of this Agreement or affect the right of either party to enforce each provision in accordance with the terms of this Agreement.

## The provisions of this Agreement which by their nature or intent are to survive the termination or expiration of this Agreement shall so survive and continue in effect.

1. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. The Agreement may be delivered electronically or by facsimile transmission, and the parties agree that electronic or facsimile signatures are legal, valid and enforceable as originals.

IN WITNESS WHEREOF, the parties by their authorized representatives have executed this Agreement on the dates set forth below.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ THE CITY UNIVERSITY OF NEW YORK

GRADUATE SCHOOL & UNIVERSITY CENTER

ADVANCED SCIENCE RESEARCH CENTER

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Title: Title: Vice President

Finance & Administration

Dated: Dated:

**EXHIBIT A**

I. Schedule of fees and costs

* website link (if available & updated)
* hourly rates
* equipment / supply costs
* budget for project and payment schedule

II. Detail statement of work (Services)

* specific facilities and equipment required to conduct Services
* chemicals / biologics / other resources required
* authorization to purchase additional resources if required for Services
* activities to be performed
* protocols
* timetable for performance

III. Deliverables

* Sample / data production
* Scope / frequency of reports
* Special instructions or handling requirements

IV. Disposition of data / samples / specimens

* End of term
* Achievement of critical data end points
* Accomplishment of specific research objectives
* Depletion of materials