**Template Click-Through Agreement for Recharge Centers / Service Centers**

**Instructions for Using Click-Through Agreements**

[**NOTE WELL:** These instructions are not to be posted on any external ASU websites or given to external clients. Any substantive changes to this form of agreement must be cleared with the Office of General Counsel.]

Click-through agreements are generally upheld if certain “rules” are followed:

- The Client should not have the option of assenting to the terms of the Agreement without having first been presented with the terms of the Agreement, which should either appear automatically or appear when the Client clicks on an icon or hyperlink that is clearly labeled and easily found. Place the means of assent at the end of the Agreement terms, requiring the Client at least to navigate past the terms before assenting.

- The Program operating the click-through Agreement should give the Client sufficient opportunity to review the Agreement terms before proceeding. The Client should be able to read the terms at his or her own pace; if the terms occupy more than one computer screen, the Client should be able to navigate forwards and backwards within the terms by scrolling or changing pages.

- The terms of the Agreement should be clear and readable, in legible font. Similar to the foregoing bullet, the Agreement should not be cumbersome or needlessly difficult for the Client. In short, the harder you make it on the Client, the less likely the Agreement will be enforceable.

- Information provided to the Client elsewhere (such as on the Center’s website) should not contradict the Agreement terms or render the Agreement ambiguous.

- The Client should be given a clear choice between assenting to the terms or rejecting them. That choice should occur at the end of the process when the Client’s assent is requested.

- The Client’s words of assent or rejection should be clear and unambiguous. Examples of clear words of assent include: “Yes”, “I agree”, “I accept”, “I consent” or “I assent.” Do not use vague or ambiguous phrases such as “Process my order”, “Continue”, “Next page”, “Submit” or “Enter.” Examples of clear words of rejection include “No”, “I disagree”, “I do not agree”, “Not agreed” or “I decline.”

- The Client’s method of signifying assent or rejection should be clear and unambiguous. Examples include clicking a button or icon containing the words of assent or rejection.

Last Updated: January 15, 2015
• If the Client rejects the Agreement terms, that action should have the consequence of preventing the Client from getting whatever the Agreement is granting the Client. The Client should not be able to complete the transaction without agreeing to the terms. For example, if the Agreement would grant the Client use of a website, software, or particular data, the consequence of the Client’s rejection of the terms should be to bar the Client from that use. Likewise, if the Agreement would give the Client rights to goods or services, the consequence of the Client’s rejection of the terms should be to eject the Client out of the ordering process. On the other hand, if the Client assents to the Agreement terms, the Client should be granted access to whatever is promised in the Agreement without having to assent to additional terms (aside from those that the Client specifies in the ordering process).

• Immediately preceding the place where the Client signifies assent or rejection, a statement should draw the Client’s attention to the consequences of assent and rejection. Examples of notice of assent consequences include: “By clicking ‘Yes’ below you acknowledge that you have read, understand, and agree to be bound by the terms above” or “These terms are a legal contract that will bind both of us as soon as you click the following assent button.” Examples of notice of rejection consequences include: “If you reject the proposed terms above, you will be denied access to the [website, software, product, services] that we are offering to you.”

• Maintain accurate records of the content and format of the electronic agreement process, documenting what steps the Client had to take in order to gain access to particular items and what version of the agreement was in effect at the time. If necessary, for proof of performance, link the Client’s identity to his or her assent by maintaining accurate records of the Client’s identifying information, the Client’s electronic assent to the terms, and the version of the terms to which the Client assented. Be sure to comply with applicable privacy laws.

• To meet any legal requirement that a record of the Agreement be provided, sent, or delivered, the sender must ensure that any electronic record is capable of retention by the recipient. In addition, for an electronic record to be enforceable against the recipient, the sender cannot inhibit the recipient’s ability to print or store the electronic record.
This Agreement ("Agreement") between you ("Client") and The Arizona Board of Regents for and on behalf of Arizona State University ("ASU") and its [Name of Recharge Center/Lab/Institute/Service Center] ("Center") governs Center’s performance of all services requested of Center by Client (the "Services") and Client’s obligations to Center. Client acknowledges that its engagement of Center constitutes Client’s agreement to the terms and conditions of this entire Agreement.

1. **Mission of ASU and Center.** The parties agree that the performance of the Services is consistent, compatible, and beneficial to the role and mission of ASU to provide educational experiences for students and to encourage and support research and related educational activities.

2. **Scope of Work.** Center will use reasonable efforts to provide the Services requested by Client. The Services will be provided under the direction and supervision of a Center employee. The parties agree that Center shall have discretion to involve its students in the conduct and performance of the Services. ASU’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.

3. **Scheduling Services.** The scheduling of the Services shall be arranged to avoid conflict with ASU’s educational and research programs. Center shall control the scheduling of such Services but will try to meet reasonable timelines established by Client.

4. **Term and Termination.**
   4.1 This Agreement shall begin on the date Client executes this Agreement by clicking below and shall terminate as provided herein.

   4.2 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 Center for all work performed through the date of termination and for reimbursement to Center of all non-cancelable commitments incurred in the performance of the Services. Upon termination, property purchased in furtherance of this Agreement (if any) will remain the property of the purchasing party, unless expressly specified otherwise.

5. **Compensation and Invoicing.**
   5.1 Client will pay Center for the Services performed under this Agreement in accordance with Center’s rate schedule set forth at [hyperlink]. All amounts due under this Agreement shall be paid upon receipt of invoices from Center issued monthly for the duration of the period of performance of the Services. Invoices are due and payable within 30 days. Questions regarding invoices should be directed to the Center at the contact address indicated on the Center’s website.

   ASU will mail invoices to the Client contact identified below.

   5.2 Center reserves the right to subject invoices not paid within thirty (30) days of the invoice date to a 4% per month late fee on the unpaid balance for any amounts not in dispute. Center reserves the right to discontinue the Services if Client fails to make payments when due. In the event of
non-payment, 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 Center to commence collection proceedings or retain an attorney to enforce any of the terms of this Agreement, Client shall pay all attorneys' fees and the costs of collection incurred by Center.

5.3 Client will send checks or paper remittance advices to:

<Address for payments>
Arizona State University
P.O. Box [_______]
Tempe, Arizona 85287-[____

6. **No Warranty.** Center neither makes nor shall 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 shall be the sole responsibility of Client and/or its permitted assigns and licensees.

7. **No University Endorsements.** In no event shall 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 shall Center’s performance of the Services described herein be considered a test of the effectiveness or the basis for any endorsement of a product or service.

8. **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.

9. **Similar Research.** Nothing in this Agreement shall 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.

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

11. **Independent Contractor.** Each party is an independent contractor and is independent of the other party. Under no circumstances shall 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 shall have any right, power, or authority under this Agreement to act as a legal representative of the other party, and neither party shall 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.

12. **Force Majeure.**

12.1 No liability shall 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.

12.2 The party which is so prevented from performing shall 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.

13. **Applicable Law.** Any dispute regarding or arising under this Agreement shall be subjected to and resolved in accordance with the laws of the State of Arizona, without regard to its conflicts of laws principles.

14. **Dispute Resolution.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall 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. In the event of litigation, as required by Arizona Revised Statutes (“A.R.S.”) §12-1518, the parties agree to make use of arbitration in all contracts that are subject to mandatory arbitration pursuant to rules adopted under A.R.S. §12-133.

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

16. **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 shall be separated from this Agreement; (b) such invalidity, illegality, unenforceability, or conflict shall not affect any other provision hereof; and (c) this Agreement shall 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.
17. **Waiver.** The waiver of a breach hereunder may be effected only by a writing signed by the waiving party and shall 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.

18. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall 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.

19. **Merger and Integration.** This Agreement contains 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.

20. **Nondiscrimination.** The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration and nondiscrimination, including the Americans with Disabilities Act. If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

21. **Conflict of Interest.** In accordance with A.R.S. §38-511, ASU may cancel this Agreement within three years after the execution of this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of ASU, at any time while this Agreement or any extension thereof is in effect, is an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

22. **Failure of Legislature to Appropriate.** In accordance with A.R.S. § 35-154, if Center’s performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then Center may provide written notice of this to Client and cancel this Agreement without further obligation of Center. Appropriation is a legislative act and is beyond the control of Center.

The parties agree that Sections 23, 24, 25 and 26 will apply in the event Client and its employees are present on the ASU campus or use ASU equipment.

23. **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 Section will survive the expiration or early termination of this Agreement.

24. **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 Section 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.

25. **Tobacco-Free University.** ASU is a tobacco-free university. For details, visit [www.asu.edu/tobaccofree](http://www.asu.edu/tobaccofree).

26. **Weapons, Explosive Devices and Fireworks.** ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated or related entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in A.R.S. §12-781 or unless written permission is given by the Chief of the ASU Police Department or a designated representative. Notification by Client to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Client (“Client Parties”) of this policy is a condition and requirement of this Agreement. Client further agrees to enforce this contractual requirement against all Client Parties. ASU’s policy may be accessed through the following web page: [http://www.asu.edu/aad/manuals/pdp/pdp201-05.html](http://www.asu.edu/aad/manuals/pdp/pdp201-05.html).
BY PLACING AN “X” IN THE BOX, I CERTIFY THAT I HAVE READ AND UNDERSTAND THE FOREGOING TERMS AND CONDITIONS AND THAT I AM LEGALLY AUTHORIZED ON BEHALF OF CLIENT TO EXECUTE THIS AGREEMENT BETWEEN CLIENT AND THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY.

BY CLICKING “I AGREE”, I HEREBY EXECUTE THIS AGREEMENT ON BEHALF OF CLIENT AND AGREE THAT CLIENT SHALL BE LEGALLY BOUND BY THE ABOVE TERMS AND CONDITIONS.

BY CLICKING “I DO NOT AGREE” I HAVE DETERMINED THAT CLIENT IS NOT WILLING TO ENTER INTO THE FOREGOING AGREEMENT AT THIS TIME. I UNDERSTAND AND ACKNOWLEDGE THAT SUCH ACTION DOES NOT AFFECT ANY PRIOR AGREEMENT ENTERED INTO BY CLIENT AND THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY.

☐ I AGREE ☐ I DO NOT AGREE

CONGRATULATIONS. YOU HAVE SIGNED AND ENTERED INTO THE [ARIZONA STATE UNIVERSITY SERVICES AGREEMENT]. TO PRINT A COPY OF THE AGREEMENT, PLEASE CLICK ON “PRINT” BELOW. YOU MAY EXIT THE SYSTEM BY CLICKING “EXIT”. THANK YOU.

AT THIS TIME YOU HAVE DECIDED NOT TO ENTER INTO THE [ARIZONA STATE UNIVERSITY SERVICES AGREEMENT]. PLEASE NOTE, THAT YOUR SELECTION, “I DO NOT AGREE,” DOES NOT AFFECT ANY PRIOR AGREEMENTS THAT CLIENT HAS ENTERED INTO WITH THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY. YOU MAY EXIT THE SYSTEM BY CLICKING “EXIT”.

Comment [A4]: This text and the corresponding buttons (i.e., the I Agree button and the I Do Not Agree button), should appear only after the Client places an “X” in the above box affirming that Client has read and understands the terms and conditions. If at any time the “X” is removed prior to clicking I Agree, then this text and the corresponding buttons should disappear such that the Client is not able to proceed.

Comment [A5]: This text should appear only after the Client has placed an “X” in the above box and clicked “I Agree”. At this point, the ability of Client to uncheck entries previously checked must be disabled.

Comment [A6]: The text should appear after the Client has clicked “I Do Not Agree”. The ability of Client to uncheck entries previously checked must be disabled.