Template Services Agreement

[NOTE: Modify all bracketed text as appropriate and delete these instructions before sending to the Client. ASU Recharge Centers or Service Centers utilizing this services agreement should feel free to tailor those sections of the Agreement that address business terms to meet their needs and to fit the business deal that has been made with the Client. Apart from modifying the business terms, this services agreement should remain unchanged. Questions regarding changes should be directed to the Office of General Counsel.]

**ARIZONA STATE UNIVERSITY**

**Services Agreement**

This services agreement “Agreement” is entered into this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_ the “Effective Date” by and between [Name], [insert type of entity and jurisdiction of organization] “Client,” having its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and The Arizona Board of Regents for and on behalf of Arizona State University and its [Name of Recharge Center / Service Center] “ASU.”

**RECITALS**

1. Client desires to engage ASU to perform the services and provide the deliverables described in the scope of work (the “Services”) attached as Exhibit A (the “Scope of Work”), which is incorporated herein by this reference.
2. ASU’s [Name of Recharge Center / Service Center] has the capability, facilities and equipment to provide the Services to Client.
3. 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.

**AGREEMENT**

1. **Scope of Work**. ASU’s [Name of Recharge Center / Service Center] will use reasonable efforts to provide the Services set forth in the Scope of Work. The Parties agree that they may amend this agreement to include other work by executing additional scopes of work mutually agreed upon by the Parties. The Services will be provided under the direction and supervision of the ASU contact named in the Scope of Work. 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 Scope of Work and this Agreement, the terms of this Agreement will control. 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.
2. **Scheduling Services**. 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.
3. **Term and Termination**.
	1. The term of this Agreement will begin on the Effective Date and will terminate on the date set forth in the Scope of Work. The parties may modify or extend this Agreement at any time by mutual written consent.
	2. Either party may terminate this Agreement for convenience at any time by giving the other party not less than 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. Subject to the immediately preceding sentence, upon termination, Client will be entitled to receive the deliverables, if any, produced as a result of the Services performed through the date of termination but will have no rights to any intellectual property therein. Any equipment purchased in furtherance of this Agreement will remain the property of the purchasing party, unless expressly specified otherwise.
4. **Compensation and Invoicing.**
	1. Client will pay ASU for the Services performed under this Agreement in accordance with the rate schedule set forth in the Scope of Work. Client will remit the amount of the contract price due for Services rendered under this Agreement upon receipt of invoices from ASU issued monthly for the duration of the period of performance. Invoices are due and payable within 30 days. ASU will send invoices to the Client contact identified in the Scope of Work. Client will send checks or paper remittance advices to the payment address set forth in the Scope of Work. Questions regarding invoices should be directed to the ASU contact identified in the Scope of Work.
	2. ASU reserves the right to subject invoices not paid within 30 days of the invoice date to a 1.5% per month late fee on the unpaid balance. In the event of non-payment, ASU may stop 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.
5. **No Warranty**. 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.
6. **No University Endorsements**. In no event will Client (or its successors, employees, agents and contractors) state or imply in any publication, press release, 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.
7. **Use of Names or Logos**.
	1. 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, press release or any form of publicity, without the prior written permission of an authorized representative of the party that owns the Marks in each instance. A party may withhold such consent in that party’s absolute discretion. Any permitted use of a party’s Marks must comply with the owning party’s requirements, including but not limited to using the “®” indication of a registered trademark.
	2. With regard to the use of ASU’s Marks, all requests for approval pursuant to this Section must be submitted to the ASU Marketing Hub at the following email address at least 10 business days prior to the date on which a response is needed: marketinghub@asu.edu.
	3. With regard to any sales promotion work or advertising, press release or any form of publicity, all requests for approval pursuant to this Section must be submitted to ASU Media Relations at the following email address at least 10 business days prior to the date on which a response is needed: mediarelations@asu.edu.
	4. Each party acknowledges and agrees that violation of this Section 7 is a material breach of contract. In the event of any breach or threatened breach of this Section 7, the parties agree that the non-breaching party will suffer irreparable harm for which there is no adequate remedy at law and shall be entitled to seek immediate injunctive relief, in addition to any other remedies available under this Agreement, at law or in equity. If the non-breaching party is successful in obtaining an injunction, the breaching party will pay all costs, including all reasonable attorneys’ fees and costs and court costs, incurred by the non-breaching party in prosecuting such injunction, together with all costs necessary to cure the breach, which was the subject of the proceeding, to the reasonable satisfaction of the non-breaching party.
8. **Similar Research**. 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.
9. **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.
10. **Intellectual Property**. ASU will retain ownership of its pre-existing intellectual property, including any that may be incorporated into the Services and/or deliverables under this Agreement. The parties understand and agree that ASU owns any and all right, title and interest in and to any and all intellectual property developed, created or invented solely by ASU in its performance under this Agreement, including the Services and/or any deliverables, and that ASU will have the exclusive right to patent, copyright, publish, distribute, disclose, use or disseminate in whole or in part any such intellectual property. In no event is any ASU intellectual property considered a “work for hire” and, except as provided in this Section 10, in no way does the provision of Services under this Agreement confer any license, right, title or interest in any ASU intellectual property to Client. Solely to the extent to allow Client to make use of any deliverables for their intended purpose as contemplated by this Agreement, ASU hereby grants to Client a fully paid up, perpetual, irrevocable, royalty-free, worldwide right and license to ASU’s pre-existing intellectual property incorporated into the deliverables, if any.
11. **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. 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.
12. **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 forth in the Scope of Work. Either party may change its address for notices or other contact details by giving written notice to the other party in accordance with this Section. The parties agree to acknowledge in writing the receipt of any written demand, notice, report, request or other communication under this Section that is delivered in person.
13. **Force Majeure.**
	1. With the exception of Client’s payment obligations hereunder, neither party will be liable for failure to perform any obligation under this Agreement if such failure is directly caused by a Force Majeure Event. A “Force Majeure Event” shall mean an event or circumstance that is beyond the reasonable control and without the fault or negligence of the party impacted, and that could not have been prevented by the reasonable diligence of the party. Without in any way limiting the foregoing, a Force Majeure Event may include, but is not restricted to, acts of God or of a public enemy, acts of the Government in either its sovereign or contractual capacity, war, riots, fires, floods, epidemics or pandemics, mass health issues or disease, quarantine restrictions, strikes or labor difficulties, civil tumult, freight embargoes, natural disasters, unusually severe weather, a failure or disruption of utilities or critical electronic systems, acts of terrorism, mass shootings or other emergencies that may disrupt a party’s operations.
	2. 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 30 days.
14. **Applicable Law**. 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.
15. **Dispute Resolution**. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach, termination or validity thereof, the parties will first attempt to resolve the matter over a period of at least 30 days before resorting to formal dispute resolution, except that equitable remedies may be sought immediately. 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. The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to Arizona Revised Statutes A.R.S. § 12-133. A.R.S. § 12-1518 requires this provision in all ASU contracts.
16. **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 provision 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.
17. **Recitals and Exhibits**. All recitals herein, and all exhibits attached hereto (including all Scopes of Work hereunder) and referred to herein, are integral and material parts of this Agreement.
18. **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 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.
19. **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.
20. **Modification**. Any modification or amendment of this Agreement or any Scope of Work hereunder will be effective only if made in writing and signed by both parties.
21. **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.
22. **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.
23. **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.
24. **Conflict of Interest.** If within three years after the execution of this Agreement, Client hires as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in A.R.S. § 38 511.
25. **Failure of Legislature to Appropriate**. In accordance with A.R.S. § 35-154, if ASU’s performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to Client and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.
26. **Responsibility**. Each party is responsible for the negligent or willful acts or omissions of its employees and agents when acting under such party’s direction and supervision. ASU recognizes an obligation to pay attorneys’ fees or costs only when assessed by a court of competent jurisdiction. Notwithstanding the terms of this Agreement or any other document: (i) other than for employees and agents acting under ASU’s direction and supervision, ASU is not responsible for any actions of any third parties, including its students; and (ii) no person may bind ASU unless they are an authorized signatory in PUR 107, which is located at the following link: https://www.asu.edu/aad/manuals/pur/pur107.html.

The parties agree that Sections 27, 28 and 29 will apply in the event Client and its employees are present on the ASU campus or use ASU equipment.

1. **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.
2. **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.
3. **Weapons, Explosive Devices and Fireworks; Tobacco**. ASU’s Weapons, Explosives, and Fireworks Policy 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 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 ASU’s Police Chief or a designated representative. Client will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees, or licensees of Client of this policy, and Client will enforce this policy against all such persons and entities. ASU’s Weapons, Explosives, and Fireworks Policy is located at the following link: http://www.asu.edu/aad/manuals/pdp/pdp201-05.html. ASU is a tobacco-free university. For details, visit www.asu.edu/tobaccofree.
4. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument, and photocopy, facsimile, electronic and other copies will have the same effect for all purposes as an ink-signed original.

**[SIGNATURES ON NEXT PAGE.]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the respective dates entered below.

**THE ARIZONA BOARD OF REGENTS [CLIENT NAME]**

**FOR AND ON BEHALF OF**

**ARIZONA STATE UNIVERSITY**

By: By:

Name: Name:

Title: Title:

Date: Date:

**EXHIBIT A**

Scope of Work

This Scope of Work, dated \_\_\_\_\_\_\_\_\_\_, 20\_\_, is issued pursuant to, made part of, and governed by the Services Agreement, dated \_\_\_\_\_\_\_\_\_\_, 20\_\_ “Agreement,” by and between [Name], [insert type of entity and jurisdiction of organization] “Client,” and The Arizona Board of Regents for and on behalf of Arizona State University “ASU.”

**1. Contact Details.**

Point of Contact for ASU: Point of Contact for Client:

Attention: [Contact Name] Attention: [Contact Name]

[Address] [Address]

Arizona State University [Address]

PO Box [\_\_\_\_\_\_] [Address]

Tempe, AZ 85287-[\_\_\_\_] [Address]

Fax: [\_\_\_\_\_\_\_\_\_\_\_\_\_] Fax: [\_\_\_\_\_\_\_\_\_\_\_\_\_]

**2. Scope of Work.**

Description of Services:

Deliverable(s), if any:

**3. Rate Schedule.**

ASU Payment Address (if different than above address)

Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

[Address]

Arizona State University

PO Box [\_\_\_\_\_\_]

Tempe, AZ 85287-[\_\_\_\_]

Fax: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

The following Sections 4 and 5 will apply in the event Client and its employees are present on the ASU campus or use ASU equipment.

**4.** **Required Training.** Client understands that a person must be certified to use [Name of Recharge Center / Service Center] equipment. Training of any employee or agent of a Client who does not meet certification requirements may be arranged through the [Name of Recharge Center / Service Center] Manager. [Name of Recharge Center / Service Center] reserves the right to charge an additional fee for training services.

**5.** **Data Processing.** Client will be given access to data processing facilities and reasonable amounts of data processing may be carried out by ASU personnel. Client will be provided with network access to data processing facility including workstations and full use of legally accessible software. Remote operation may be arranged for some projects allowing the results to be delivered by e-mail. Personalized instruction in advanced characterization techniques can be made available for a fee at ASU and, in some cases, at the Client’s site. Project reports can be made available on request. [Modify as appropriate.]

IN WITNESS WHEREOF, the parties have executed this Scope of Work as of the date first set forth above.

**THE ARIZONA BOARD OF REGENTS [CLIENT NAME]**

**FOR AND ON BEHALF OF**

**ARIZONA STATE UNIVERSITY**

By: [Form – Not for Execution] By: [Form – Not for Execution]

Name: Name:

Title: Title:

Date: Date: