

Access Sciences Technical Services Agreement

This Technical Services Agreement (this "Agreement") is made effective on _____ (date) _____, by and between _____ *Company U.S.A.*, having a place of business at _____, (hereinafter "CUSTOMER"), and Access Sciences Corporation, a Texas corporation, having a place of business at 1900 West Loop South, Suite 250, Houston, Texas 77027 (hereinafter "ACCESS"). CUSTOMER and ACCESS are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, ACCESS is in the business of providing Technical and Managed Services to Customers in support of delivering Products, and independent of such Products (the "Services"); and

WHEREAS, CUSTOMER desires to contract with ACCESS for Services as more fully described in Exhibit 1D, "Statement of Work" attached hereto and incorporated herein by reference;

NOW, THEREFORE, in consideration of the mutual promises and agreements set out herein, the Parties, intending to be legally bound, hereby agree as follows:

1. **SERVICES**. ACCESS shall perform the Services described on the attached **Exhibit 1D Statement of Work**, on any subsequent **Exhibit 1D-
Additional Statement of Work**, and on any subsequent **Exhibit 1E – Change Order** attachments in accordance with the terms of DIR Contract No. DIR-TSO-3401 and this Agreement, at CUSTOMER facilities and at ACCESS facilities.
2. **INVOICING AND PAYMENT**. Invoicing will be handled in accordance to Appendix A, Section 8I of DIR Contract No. DIR-TSO-3401. Payment will be handled in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3401.
3. **TERM AND TERMINATION**. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code. Termination will be handled in accordance to Appendix A, Section 11B of DIR Contract No. DIR-TSO-3401.
4. **INTELLECTUAL PROPERTY AND OWNERSHIP**. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code. Intellectual Property will be handled in accordance to Appendix A, Section 5 of DIR Contract No. DIR-TSO-3401.
5. **CONFIDENTIALITY**. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code. Confidentiality will be handled in accordance to Appendix A, Section 10H of DIR Contract No. DIR-TSO-3401.
6. **WARRANTY AND LIMITATION**. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for

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Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

To the extent that the following does not conflict with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, or Chapter 2251 of the Texas Government Code, then:

The Warranty and Limitation Policy as of Contract date is: ACCESS warrants that the Services provided under this Agreement shall perform in accordance with the specifications thereof set forth in the **Exhibit 1D – Statement of Work**, on any subsequent **Exhibits 1D-<n> Additional Statement of Work** and any related **Exhibits 1E – Change Order**. ACCESS further represents and warrants that the services performed do not infringe any valid rights of any third party. **THE WARRANTY PROVIDED FOR HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, THAT MAY ARISE EITHER BY AGREEMENT BETWEEN THE PARTIES OR BY OPERATION OF LAW, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

7. **INDEMNIFICATION AND LIABILITY LIMITATION.** These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code. Indemnification will be handled in accordance to Appendix A, Section 10A of DIR Contract No. DIR-TSO-3401. Limitation of Liability will be handled in accordance to Appendix A, Section 10K of DIR Contract No. DIR-TSO-3401.
8. **ASSIGNMENT.** Assignments will be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-TSO-3401.
9. **FORCE MAJEURE.** Force Majeure will be handled in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-3401.
10. **NON-SOLICITATION.** Each Party acknowledges that the other Party has expended considerable effort, expense and resources developing its business, and that the other Party's customer base, employees, consultants, and line of business are unique assets of such Party. In consideration of the mutual promises and the other consideration being provided pursuant to this Agreement, the Parties agree that during the term of this Agreement, and for a period of twelve (12) months after termination of this Agreement, neither Party shall directly or indirectly solicit for employment, employ or engage as a consultant any person who (1) is or was employed or engaged as a consultant then or within the preceding one (1) year by the other Party, and (2) came in contact with such Party directly or indirectly in the performance of this Agreement.

The Parties further agree that the covenants contained in this Article are ancillary to an otherwise enforceable agreement, and that the scope of protection contained in this agreement is reasonable to protect the good will and legitimate business interests of each Party. If any of the provisions relating to the scope of protection in this Agreement are more extensive than is enforceable under applicable laws or are broader than necessary to protect the goodwill and legitimate business interests of the Parties, then they will reduce the degree and extent of such provisions by whatever minimal amount is necessary to make this agreement enforceable under applicable law. Such prohibition shall not apply to hiring as a result of general public solicitations of employment publicly advertised.

11. **NOTICES.**

Notices will be handled in accordance to Appendix A, Section 12 of DIR Contract No. DIR-TSO-3401.

12. **TAXES**. Notices will be handled in accordance to Appendix A, Section 8E of DIR Contract No. DIR-TSO-3401.

13. **AMENDMENTS**. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

14. **GOVERNING LAW**. Governing Law will be handled in accordance to Appendix A, Section 4F of DIR Contract No. DIR-TSO-3401. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

15. **NON-WAIVER, DISPUTE RESOLUTION, JURISDICTION AND VENUE**. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

To the extent that the following does not conflict with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, or Chapter 2251 of the Texas Government Code, then:

- a) The parties shall comply with applicable dispute resolution procedures as promulgated under Chapter 2260 of the Texas Government Code.
- b) If any dispute arises out of or in connection with this Agreement or the termination thereof, or the relationship created by or described in this Agreement, the Parties agree to bring suit upon all such matters then in dispute only in the state courts located in Travis County, Texas.
- c) Nothing herein shall waive the sovereign immunity of the State of Texas or any sovereign or official immunity of the Customer or its officers or employees.

16. **INVALIDITY**. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

To the extent that the following does not conflict with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, or Chapter 2251 of the Texas Government Code, then:

In the event that any provision of DIR Contract No. DIR-TSO-3401 or this Agreement is found to be prohibited by law and invalid, or for any other reason such provision is held unenforceable, in whole or in part, such provision shall be ineffective only to the extent of such prohibition or unenforceability without invalidating any other provision of the Agreement, unless the absence of such ineffective provision adversely affects the obligation of ACCESS to perform the Services.

17. **STATUS**. . These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

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To the extent that the following does not conflict with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, or Chapter 2251 of the Texas Government Code, then:

The Parties will perform all services and duties hereunder as independent contractors. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant between the Parties.

18. COMPLIANCE WITH LAWS. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

To the extent that the following does not conflict with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, or Chapter 2251 of the Texas Government Code, then:

ACCESS agrees to comply with all local, state or federal laws applicable to employment of ACCESS' employees or pertaining to ACCESS' performance of work contracted for hereunder. ACCESS shall comply with all such laws; including, without limitation, laws requiring payment of taxes and contributions arising from such employment of ACCESS employees and any laws protecting copyrights, trade secrets or patents of third parties.

19. INSURANCE. Insurance will be handled in accordance to Appendix A, Section 10N of DIR Contract No. DIR-TSO-3401.

20. WORKSPACE AND EQUIPMENT. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

To the extent that the following does not conflict with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, or Chapter 2251 of the Texas Government Code, then:

As needed and upon request by ACCESS, CUSTOMER will provide adequate workspace for ACCESS team members at those locations for the scheduled work period, including access to telephone, fax machine, and other requested information and data as requested. As appropriate per CUSTOMER safety protocol and at CUSTOMER's discretion, CUSTOMER will provide ACCESS all required safety training, equipment and clothing.

21. OUT OF SCOPE. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

To the extent that the following does not conflict with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, or Chapter 2251 of the Texas Government Code, then:

Any modification requested by CUSTOMER in the Services described herein which results in a change in the period of performance of ACCESS' obligations, or the nature of the work to be performed, or an increase in ACCESS labor time and/or materials or other direct or indirect costs, shall be deemed to be "out of scope" work. If CUSTOMER requests ACCESS to provide "out of scope" services, and ACCESS

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agrees to provide said services, the Parties will enter into a Change Order under the Change Order Process or a new Statement of Work, as applicable. CUSTOMER and ACCESS shall prepare and execute an addendum to this Agreement, including **Exhibit 1D-<n> Additional Statement of Work** or **Exhibit 1E – Change Order**, which shall be subject to all of the terms and conditions of DIR Contract No. DIR-TSO-3401 and contained in this Agreement with each incorporated herein by reference. ACCESS will commence work on such “out of scope” work upon CUSTOMER’s execution of **Exhibit 1D-<n> Additional Statement of Work** or **Exhibit 1E – Change Order**, as applicable, which shall include sufficient information about the additional work, the fees for and terms of such work, and invoice procedures.

22. ARTICLE HEADINGS. The articles headings of this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

23. EXHIBITS. The following documents are attached hereto as exhibits, the terms of which are incorporated by reference in their entirety: **Exhibit 1D Statement of Work**, any **Exhibits 1D-<n> Additional Statement of Work**, **Exhibits 1E – Change Order**, and **Exhibit 1C – Pricing and Payment**.

24. PRECEDENCE. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code. In the event conflict should arise DIR Contract No. DIR-TSO-3401 shall prevail.

25. ENTIRE AGREEMENT. These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of the Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement.

Access Sciences Corporation _____,
“ACCESS” “CUSTOMER”
1900 West Loop South, Suite 250 (Insert Customer address information)
Houston, TX 77027

Authorized Representative Signature

Authorized Representative Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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EXHIBIT 1D: STATEMENT OF WORK

This Statement of Work is an exhibit to the Technical Services Agreement, dated _____ by and between ACCESS and _____ (“CUSTOMER”), which is incorporated herein by reference. By executing the Agreement the Parties agree to be bound by the terms and conditions DIR Contract No. DIR-TSO-3401 and the Technical Services Agreement. This Statement of Work contains descriptions of work segments, deliverables and associated estimated fees and expenses for the work to be completed under this Agreement. In consideration for compensation as detailed in this Statement of Work, ACCESS agrees to provide Technical services to CUSTOMER, as follows:

(Attach additional pages as needed.)

These rates are valid through December 31st of the first year in which work is delivered and is subject to Appendix C Pricing Index of DIR Contract No. DIR-TSO-3401.

STATEMENT OF WORK APPROVED AND ACCEPTED

By ACCESS:

By CUSTOMER:

Authorized Representative Signature

Authorized Representative Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**EXHIBIT 1D: STATEMENT OF WORK (Continued)
CHANGE ORDER MANAGEMENT**

- a. **Change Management.** Any changes to this Statement of Work, or the documents incorporated herein, must be mutually agreed upon by both ACCESS and CUSTOMER in writing through a Change Order. If there is a Project change that:
1. impacts the performance, functionality, cost, delivery date, or other technical parameter of a deliverable; or
 2. if CUSTOMER delays the project schedule for any reason; or
 3. if CUSTOMER is unable to fulfill its responsibilities defined in this Statement of Work,

and if such a change results in increased cost to ACCESS, then a change order will be submitted and processed in accordance with the Change Order Procedures, below. If ACCESS and CUSTOMER are unable to resolve the disposition of the Change Order, the project Statement of Work will remain as defined in this document.

- b. **"Change Order"** means an agreed upon change or modification to the Deliverables, Services or other material aspect of this Statement of Work. Requests by CUSTOMER and recommendations by ACCESS for Change Orders are subject to the procedures set forth below, and will be made in writing in the form attached to the Change Order Form (Exhibit 1E).

c. Change Order Procedures.

1. Either Party may request a Change Order but all Change Orders must be in writing and prepared by ACCESS. ACCESS may, at the discretion of ACCESS, charge a reasonable fee for investigating, preparing or initiating a Change Order at CUSTOMER's request.
2. Change Order requests will be processed as soon as is reasonably possible. The change will be evaluated and any project impact will be identified. The cost, scope, and schedule impact, if any, of the change will be analyzed and documented. The change impact will then be processed for CUSTOMER authorization or closure.
3. All Change Orders will be in the form attached hereto as Exhibit 1E, and will be signed by the appointed representative for each Party
4. Change Orders will include the following:
 - (a) A description of any additional work to be performed and/or any changes to the performance required of either Party.
 - (b) A statement of the impact of the work or changes on the Services, the Deliverables, or other requirements of the Agreement.
 - (c) The estimated timetable to complete the work specified in the Change Order and the impact, if any, on the delivery schedule, pricing and payments.
 - (d) Specific individuals with management or coordination responsibilities.
 - (e) The documentation to be modified or supplied as part of the work.
5. All Change Orders must be mutually agreed by the Parties. ACCESS will not commence or perform work on any such modification prior to execution and receipt of a Change Order in the form of Exhibit 1E. If either Party proposes a Change Order which, in ACCESS' judgment, represents a material change in the Services or Deliverables and such Change Order remains outstanding for thirty (30) days or is rejected by CUSTOMER, ACCESS will have the right to terminate the affected Statement of Work pursuant to the termination provisions set forth in the Technical Services Agreement, and reserves the right to bill CUSTOMER for fees and expenses incurred in good faith.
 6. If applicable, a new Statement of Work may be issued in lieu of a Change Order.

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EXHIBIT 1D – ADDITIONAL STATEMENT OF WORK

An Additional Statement of Work for additional work falling under this Agreement beyond the initial Statement of Work in Exhibit 1D is as follows:

ADDITIONAL STATEMENT OF WORK APPROVED AND ACCEPTED

By ACCESS:

By CUSTOMER:

Authorized Representative Signature

Authorized Representative Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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EXHIBIT 1E
CHANGE ORDER
FOR
TECHNICAL SERVICES AGREEMENT BETWEEN ACCESS AND _____,
DATED _____

CHANGE ORDER NUMBER _____

This Change Order Form is an exhibit to the Technical Services Agreement, dated _____ by and between ACCESS and _____ ("CUSTOMER"), which is incorporated herein by reference. By executing the Agreement the Parties agree to be bound by the terms and conditions of DIR Contract No. DIR-TSO-3401 and the Technical Services Agreement. This Change Order describes the work that shall be completed under this Agreement, and the relevant fees and expenses related thereto. In consideration for compensation as detailed in this Agreement, ACCESS agrees to provide Technical services to CUSTOMER, as follows:

1. Describe services or changes requested [*attach additional pages if necessary*].
2. Modifications, clarifications or supplements to description of services or changes requested in paragraph 1 above, if any [*attach additional pages if necessary*]:
3. Assignment of necessary ACCESS personnel and resources [*attach additional pages if necessary*]:
4. Impact on price, delivery schedule, payment schedule, Deliverables, and Services [*attach additional pages if necessary*]:
 - a) Price:
 - b) Delivery Schedule and Payment Schedule:
 - c) Deliverables:
 - d) Services:

REQUEST INITIATION

By ACCESS:

By CUSTOMER:

Authorized Representative Signature

Authorized Representative Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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CHANGE ORDER APPROVED AND ACCEPTED

By ACCESS:

By CUSTOMER:

Authorized Representative Signature

Authorized Representative Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____