

Lehigh University Testing Services Agreement

This Testing Services Agreement (this "Agreement") effective as of the last date set forth on the signature page (the "Effective Date") is made by and between Lehigh University, a Pennsylvania non-profit corporation ("University"), through [enter name of institute, department, etc.] and _____, a _____ ("Sponsor").

1. **Scope.** The University will perform the services and provide the deliverables (the "Deliverables") described in Section 1 of Exhibit A to this Agreement upon the terms and conditions set forth herein.

2. **Payment.** Sponsor agrees to pay for the services and Deliverables in the amount set forth in Exhibit A upon receipt of an invoice. Payment will be made in lawful money of the United States of America. Payments not made in full within thirty (30) days of the date of the invoice shall bear interest at a rate of eighteen percent (18%) per annum from the date due until paid. Sponsor shall be liable for any and all costs and expenses incurred by University in enforcing this Section.

3. **Confidentiality.** "Confidential Information" shall mean any nonpublic materials, written information, and data marked "Confidential" by Sponsor or non-written information and data disclosed by Sponsor that is clearly and conspicuously identified at the time of its disclosure to the University as confidential and is reduced to writing and transmitted to the University within thirty (30) days of such non-written disclosure. University agrees to use the same degree of care it uses to protect its own confidential information and, to the extent permitted by law, to maintain as confidential for a period of two (2) years from the date of disclosure the Confidential Information that Sponsor discloses to University under this Agreement. University's obligations hereunder do not apply to information in the public domain or independently known or obtained by University.

4. **Ownership.** Sponsor shall own the Deliverables. University shall own all equipment purchased and/or fabricated by it under this Agreement.

5. **Publicity.** Sponsor shall not use the service mark, trademark, or abbreviation thereof, or the name of the University, its faculty, students, or employees, in any publicity, advertising, or news release without the prior written approval of the University. University shall be permitted to use images and a general description of the test in laboratory brochures, literature, website, etc., without attribution. University shall not publish any Confidential Information without the written permission of Sponsor.

6. **Term and Termination.** This Agreement is effective on the Effective Date and shall continue in effect for one year thereafter unless sooner terminated or extended in accordance with the provisions of this Section. The parties may extend the term by written amendment in accordance with Section 11. Either party may terminate this Agreement upon written notice to the other at the addresses set forth in Exhibit A. In the event of early termination of this Agreement, by either party, Sponsor shall reimburse University for all reasonable costs and non-cancelable obligations incurred by the University at the time of termination. At Sponsor's request and expense, University will return to Sponsor or destroy all unused materials provided by Sponsor. Notwithstanding the forgoing, Sponsor acknowledges and understands that materials provided by Sponsor may be damaged, destroyed or otherwise consumed in the ordinary course of the services, and that University shall have no liability with respect thereto. Termination of this Agreement shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement. Provisions hereof that by their nature or context should survive termination of this Agreement shall so survive.

7. **Independent Contractor.** The parties are independent contractors and not partners, joint venturers, or principal and agent.

8. **LIABILITY.** IN NO EVENT WILL THE UNIVERSITY BE RESPONSIBLE FOR ANY DAMAGES OR PENALTIES RESULTING FROM UNIVERSITY'S FAILURE TO PROVIDE OR DELAY IN PROVIDING THE SERVICES OR DELIVERABLES. IF A SERVICE OR DELIVERABLE IS FOUND, WITHIN SIX MONTHS OF INVOICE THEREFOR, TO BE DEFECTIVE OR INACCURATE, THE UNIVERSITY WILL PROVIDE THE SERVICE

OR DELIVERABLE AGAIN AT NO COST TO SPONSOR. THIS IS SPONSOR'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND UNIVERSITY EXPRESSLY DISCLAIMS ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICES, DELIVERABLES, PROJECT RESULTS, REPORTS, OR ANY OTHER MATERIALS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SPONSOR ACKNOWLEDGES AND UNDERSTANDS THAT NO GUARANTEE OR WARRANTY IS MADE THAT THE UNIVERSITY WILL BE ABLE TO PREPARE ANY PARTICULAR SAMPLE OR SPECIMEN FOR TESTING, AND THAT, NOTWITHSTANDING SUCH INABILITY, SPONSOR SHALL REMAIN RESPONSIBLE FOR ANY AMOUNTS INVOICED FOR SERVICES RENDERED WITH RESPECT TO SUCH ATTEMPTED PREPARATION. IN NO EVENT WILL UNIVERSITY BE LIABLE HEREUNDER FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, NOR WILL THE UNIVERSITY'S AGGREGATE LIABILITY TO SPONSOR HEREUNDER EVER EXCEED THE AMOUNT PAID BY SPONSOR UNDER THIS AGREEMENT. SPONSOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS UNIVERSITY AGAINST ANY CLAIMS, CAUSES OF ACTION, LOSSES OR LIABILITIES ARISING OUT OF SPONSOR'S USE, COMMERCIAL SALE, OR DISTRIBUTION OF THE DELIVERABLES OR RESULTS HEREUNDER OR PRODUCTS OR PROCESSES RESULTING THEREFROM OR SPONSOR'S RELIANCE UPON THE SERVICES, DELIVERABLES OR RESULTS.

9. **Insurance.** If requested, Sponsor will provide University with evidence of satisfactory insurance coverages to support its obligations under Section 8 and other applicable provisions of this Agreement. Sponsor agrees that in the event of loss or damage to the materials submitted for testing, the value of such materials will be considered to be zero unless the parties agree to assign a value in writing on or before this Agreement is signed.

10. **Export Control.** Sponsor acknowledges and agrees that, as an institution of higher education, University has many employees, students and visitors who are foreign nationals. Sponsor does not anticipate the need to disclose to University technical data, computer software, laboratory prototypes, documentation, equipment and/or other commodities that are subject to control (other than to the extent designated as EAR99) ("controlled technology") under applicable export control laws and regulations including without limitation, those established by the Department of Commerce through its Export Administration Regulations ("EAR"), the Department of State through its International Traffic in Arms Regulations ("ITAR"), and the Department of Treasury through its Office of Foreign Assets Control regulations ("OFAC") (collectively, "export controls regulations"). In the event Sponsor believes it is necessary to disclose controlled technology that are regulated under export controls regulations, Sponsor will inform University, in writing, prior to disclosing any such controlled technology, of its intention to disclose to the receiving party controlled technology and provide sufficient information (e.g., ECCNs, USML categories/articles) to allow University to comply with any applicable export controls. Sponsor shall not disclose any controlled technology to University unless University agrees in writing to accept such controlled technology, which agreement may be conditioned upon the execution of a contract and the making of other specific arrangements with respect thereto. The parties acknowledge that they are subject to and agree to comply with export controls regulations and shall not export, re-export, release, disclose, or transfer any such controlled technology in connection with this Agreement directly or indirectly without complying with the export control regulations (including by obtaining a license or other approval from the United States government where required) and any other applicable laws and regulations.

Sponsor represents and warrants that, as of the Effective Date and continuously throughout the term, (i) neither it, nor any of its affiliates, nor any of their respective agents, employees, officers, directors or managers is listed in any list of designated or restricted persons or entities maintained by sanction authorities or with whom a U.S. entity is otherwise restricted from doing business under any regulation, statute, or executive order or similar legal requirement imposed those authorities; (ii) it is not operating, organized, or residing in a country or region or territory which is itself the subject or target of any sanctions applicable to the agreement's scope of work, and (iii) it is not owned or controlled by any person or entity described in subsection (i) or (ii) above. Sponsor shall promptly notify University in writing when any of the foregoing representations and warranties ceases to be true.

11. **General.** This Agreement shall not be assigned by either party without the prior written consent of the other party hereto. This Agreement shall be governed by and construed in accordance with the laws of the

Commonwealth of Pennsylvania, without regard to the conflicts of laws doctrine of such state. Any legal proceeding instituted by either party shall be in the federal or state courts located in Northampton County, Pennsylvania. Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and signed by a duly authorized representative of each party hereto. This Agreement constitutes and expresses the entire agreement of the parties hereto with reference to the subject matter hereof, with all prior promises, undertakings, representations, agreements, understandings and arrangements relative thereto having been herein merged into this Agreement.

IN WITNESS WHEREOF the parties, intending to be legally bound, have caused this Agreement to be executed, each by its duly authorized representative, as of the Effective Date.

SPONSOR:

LEHIGH UNIVERSITY:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A - Scope of Work

1. DESCRIPTION OF SERVICES AND DELIVERABLES

2. EQUIPMENT, INSTRUMENTS, OR FACILITIES REQUESTED

3. REPORTING OR MEETING REQUESTS, IF ANY

4. PAYMENT AMOUNT

5. OTHER COMMENTS OR REQUESTS

6. CAN PROJECT ACTIVITIES EXPOSE PERSONNEL TO THE FOLLOWING?

		<u>SPECIFY OR COMMENT</u>
Radioactive material?	<input type="checkbox"/> No <input type="checkbox"/> Yes	<hr/>
Infectious agents, including human blood or tissue?	<input type="checkbox"/> No <input type="checkbox"/> Yes	<hr/>
Human carcinogens?	<input type="checkbox"/> No <input type="checkbox"/> Yes	<hr/>
In-vitro formation of recombinant DNA?	<input type="checkbox"/> No <input type="checkbox"/> Yes	<hr/>
Other potentially hazardous materials?	<input type="checkbox"/> No <input type="checkbox"/> Yes	<hr/>

Lehigh Contact:

Office of Research and Sponsored Programs
Att'n: Assistant Vice Provost
Lehigh University
526 Brodhead Avenue
Bethlehem, PA 18015

Sponsor Contact:
