

## TESTING AND EVALUATION SERVICES AGREEMENT

This AGREEMENT is entered into this (Day, Month & Year) by and between (Name and Complete Address of Sponsor) (hereinafter referred to as "Sponsor") and Kansas State University, 2 Fairchild Hall, 1601 Vattier St., Manhattan, KS, 66506-1103 (hereinafter referred to as the "University"). The parties may be referred to individually as "Party" and collectively as the "Parties". Work will be performed at University in the Department of (Dept. Name).

WHEREAS, Sponsor is desirous of obtaining "Technical Tests," herein defined as testing and evaluation services of University that (a) require use of unique or special University facilities, specifically (Principal Investigator)'s laboratory, that either do not exist elsewhere or are not readily accessible; and (b) involve established, pre-existing methods of a primarily technical nature; and (c) do not require original, creative research; and

WHEREAS, the project contemplated by this Agreement is of mutual interest and benefit to University and to Sponsor and will further the research, education and/or outreach mission of University in a manner consistent with its status as a non-profit, tax-exempt educational institution.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **STATEMENT OF WORK.** The University agrees to use all reasonable efforts to perform the Technical Tests, the "Project", as described in Appendix A hereof. Sponsor and University acknowledge that the selection of Project procedures, sites, and equipment, and the assignment and supervision of personnel to be used in the conduct of the Technical Tests hereunder rest under the sole and exclusive direction of University.
2. **PRINCIPAL INVESTIGATOR/PROJECT DIRECTOR.** The Project will be directed by (PI/PD Name). If, for any reason, (s)he is unable to continue to serve as principal investigator/project director and a mutually acceptable successor is not available, University and/or Sponsor shall have the option to terminate said program in accordance with Clause 16 - TERMINATION.
3. **PERIOD OF PERFORMANCE.** The Project shall be conducted during the period of (Start Date and End Date) and will be subject to renewal only by mutual agreement of the Parties.
4. **COMPENSATION.** Compensation shall be on a firm-fixed-price basis. In consideration of the foregoing, Sponsor shall pay University the amount of \$(Enter Amount) USD, without an itemized accounting. Sponsor shall pay 50% of the total Project amount upon execution of this Agreement, and the remaining 50% upon Sponsor's receipt of the final report. University will email event invoices in PDF format to (Insert Sponsor contact person for receiving invoices and his/her email address).
5. **REPORTS.** Brief progress reports of the Project will be made periodically by University to Sponsor and a final report will be rendered on completion of the Project. During the term of this Agreement, representatives of University will consult and/or meet with representatives of Sponsor to discuss progress and results, as well as on going plans of the Project and University will provide Project information to Sponsor as reasonably requested.
6. **FACILITIES.** The University will provide the utilities and office, laboratory and field space needed for the Project.
7. **PROPERTY.** All equipment purchased by University under this Agreement shall be the property of

the University.

8. **PUBLICITY.** Neither Party will use the name of the other Party, nor of any member of the other Party's Project staff, in any publicity, advertising, or news release without the prior written approval of an authorized representative of such Party. Any use of the Test Results (as defined below) by Sponsor in its promotional materials shall not be used in a way that could be interpreted as an endorsement by University of any claims made by Sponsor.
9. **TEST RESULTS.** University will deliver to Sponsor the test results from the Technical Tests performed as set forth in Appendix A ("Test Results"). Test Results will be the property of Sponsor. Sponsor grants to University a non-exclusive license to use the Test Results for scholarly research, teaching, and analysis within the University, subject to the external publication limitations in Clause 12 - CONFIDENTIALITY/PUBLICATIONS. University retains ownership of all analytical and/or processing procedures or methodologies utilized or developed in the performance of the Project under this Agreement.

In no event will University provide expert interpretation or analysis of Test Results under this Agreement. Sponsor will secure by separate research agreement, with University or other third party, the related expert/consultant services that it may require.

10. **LIABILITY & DISCLAIMER OF WARRANTIES.** The Kansas Tort Claims Act (K.S.A. 75-6101 et seq.) sets forth the liability limits of University as an agency of the State of Kansas for the negligent or wrongful acts or omissions of its employees while acting within the scope of their employment by University. UNIVERSITY SHALL NOT BE LIABLE TO SPONSOR FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR OTHER DAMAGES (INCLUDING LOST REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC LOSS OR DAMAGE) HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY ARISING FROM OR RELATED TO SPONSOR'S USE OF THE TEST RESULTS, EVEN IF UNIVERSITY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

Sponsor, to the extent allowed by applicable law, will hold University and its trustees, officers, employees and agents harmless from all liability, including costs, damages, and expenses, including attorney fees, it incurs, arising from any claims or demands asserted by third parties in connection with Sponsor's use of the Test Results.

UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS PERFORMANCE UNDER THIS AGREEMENT. UNIVERSITY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, USE OR FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO THE TEST RESULTS.

11. **TEST MATERIALS.** The Project requires Sponsor to furnish materials to University to be tested ("Test Materials"):  Yes  No

- (a) The Test Materials to be furnished by Sponsor consist of the following: [Insert Description of Materials]
- (b) All Test Materials provided by Sponsor must be accompanied by the appropriate environmental and safety information as required by law.
- (c) University shall use the Test Materials only for its conduct of the Project.
- (d) Nothing in this Agreement grants University either any rights under any patents or any rights to use any products or processes derived from or with Test Materials for profit-making or commercial purposes. Sponsor has no obligation to grant such a commercial

license to University, and may grant exclusive or nonexclusive licenses to others who may be investigating uses of the Test Materials.

- (e) University will not transfer the Test Materials to any third party for any reason, and will direct any third party requests to Sponsor.
- (f) University will exercise reasonable care in the handling and storage of Test Materials but will not be liable to Sponsor for any loss of or damage to Test Materials.
- (g) The responsibility for and costs of disposal of all Test Materials remaining at the termination of the Technical Tests will rest with the Sponsor. Sponsor shall arrange for disposal or removal of any remaining Test Materials prior to receipt of any final Project report. The University may decline to accept Test Materials that impose undue risk.

12. **CONFIDENTIALITY/PUBLICATIONS.** During the term of this Agreement, and for a period of five (5) years thereafter, each Party will maintain in confidence all confidential intellectual property of a Party, as well as all other proprietary or confidential information of a Party (hereinafter “Confidential Information”) that is disclosed by that Party to the other in connection with this Project. For written disclosures, the disclosing Party will mark the Confidential Information as “confidential” at the time of disclosure. For oral or visual disclosures, the disclosing Party will designate the Confidential Information as “confidential” at the time of disclosure and confirm such designation in writing within thirty (30) days of such initial disclosure. Neither Party will use, disclose or grant use of such Confidential Information except as required to perform under this Agreement. Each Party will use at least the same standard of care as it uses to protect its own Confidential Information to ensure that students, interns, employees, agents and consultants do not disclose or make any unauthorized use of such Confidential Information. Any student, intern, employee, agent or consultant of the receiving Party must be notified of the restrictions on the use of the disclosing Party’s Confidential Information and must agree with those restrictions before being allowed access to the Confidential Information. Each Party will promptly notify the other upon discovery of any unauthorized use or disclosure of the Confidential Information.

Either Party may publish its results from this Project. However, the publishing Party will provide the other Party a thirty (30) day period in which to review proposed publications, identify Confidential Information, and submit comments. The publishing Party will not publish or otherwise disclose Confidential Information in accordance with the procedures described in this clause and the publishing Party will give full consideration to all comments before publication. Furthermore, upon request of the reviewing Party, publication will be deferred for up to sixty (60) additional days for preparation and filing of a patent application which the reviewing Party has the right to file or to have filed at its request by the publishing Party.

13. **MODIFICATION.** Any agreement to change the terms of this Agreement in any way shall be valid when the change is made in writing and approved by authorized representatives of the Parties hereto.

14. **REPRESENTATIVES.** Designated representatives for the Parties are:

	Sponsor:	University:
If Technical	Insert Technical Contact Name	Insert Principal Investigator’s Name
	Insert Address	Kansas State University
	Insert Phone	Address
	Email:	Manhattan, KS 66506
		(785) 532-XXXX
		Email:

If Contractual	Insert Contractual Contact Name Insert Address Insert Phone Email:	Paul R. Lowe Associate Vice President for Research Kansas State University 2 Fairchild Hall, 1601 Vattier St. Manhattan, KS 66506-1103 (785) 532-6804 Email: <a href="mailto:plowe@ksu.edu">plowe@ksu.edu</a>
If Financial	Insert Financial Contact Name Insert Address Insert Phone Email:	Shannon Fisher Director, Sponsored Programs Accounting Kansas State University Division of Financial Services 2323 Anderson Avenue, Suite 600 Manhattan, KS 66502 (785) 532-6207 Email: <a href="mailto:fisher@ksu.edu">fisher@ksu.edu</a>

NOTE: If Sponsor is another university and the financial contact listed here and/or in Clause 4 is not the university's central grant office, their grant office handling payments needs listed here as an additional contact.

15. EXPORT CONTROL. Each Party acknowledges that performance of all obligations under this Agreement is contingent on compliance with applicable United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States government and/or written assurances by Sponsor that Sponsor will not re-export data or commodities to certain foreign countries or nationals thereof without prior approval of the cognizant government agency.
16. TERMINATION. Performance under this Agreement may be terminated by Sponsor upon a thirty (30) day advance, written notice. In the event of early termination of this Agreement by Sponsor, Sponsor shall remain responsible for payment to University for all work performed through the date of termination and for reimbursement to University of all non-cancelable commitments incurred in the conduct of the Project. Non-cancelable commitments shall include employment commitments to University personnel through the end of the semester following any such termination by Sponsor, and all other reasonable costs incurred by the University during the time period between the notification date and the termination date, which are necessary to terminate the Project. In no event will payment to University for incurred costs and obligations exceed the total Project amount as shown in Clause 4 – COMPENSATION.
- Performance may be terminated by University upon a thirty (30) day advance, written notice if circumstances beyond its control preclude continuation of the Project. In the event of termination by University, any unused funds from any advance payment will be returned to Sponsor.
17. INDEPENDENT PARTIES. For purposes of this Agreement, the Parties are independent contractors and neither may be considered an agent or an employee of the other. No joint venture, partnership or like relationship is created between the Parties by this Agreement.
18. ASSIGNMENT. This Agreement is binding upon and enures to the benefit of the Parties and may be assigned only to the successors to substantially the entire business and assets of the respective Parties. Any other assignment by either Party without the prior written consent of the other Party is void (such consent shall not be unreasonably withheld).

19. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas of the United States of America.
20. **ORDER OF PRECEDENCE.** If any provisions stated in this Agreement, and/or Appendix A are in conflict, the order of precedence, beginning with the first to last, shall be (1) this Agreement and (2) Appendix A.
21. **ENTIRE AGREEMENT.** Unless otherwise specified, this Agreement and Appendix A embody the entire understanding between the University and the Sponsor for the Project, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement, including without limitation, changes in the statement of work, total estimated cost and period of performance, shall be effective unless made in writing and signed by authorized representatives of the Parties.
22. **WAIVER.** Failure of either Party to insist upon strict compliance with any of the terms, covenants and conditions of this Agreement should not be deemed a waiver or relinquishment of such terms, covenants and conditions or of any similar right or power hereunder at any subsequent time.
23. **COUNTERPARTS.** This Agreement may be executed in counterpart copies, and, in the absence of an original signature, faxed or scanned signatures will be considered the equivalent of an original signature, all of which, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed in duplicate as of the day and year first written above.

SPONSOR:

KANSAS STATE UNIVERSITY:

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

\_\_\_\_\_  
 By: Paul R. Lowe  
 Title: Associate Vice President for Research

Date:\_\_\_\_\_

Date:\_\_\_\_\_

FEIN:\_\_\_\_\_

**APPENDIX A**  
*Statement of Work for Technical Tests*