

MASTER AGREEMENT FOR RESEARCH AND TESTING/EVALUATION PROJECTS

This Master Agreement for Research and Testing/Evaluation Projects (“Agreement”) is entered into this (Day, Month & Year) (“Effective Date”) by and between (Name and Complete Address of Sponsor) (hereinafter referred to as “Sponsor”), Kansas State University, 2 Fairchild Hall, 1601 Vattier St., Manhattan, KS, 66506-1103 (hereinafter referred to as “University”) and the Kansas State University Research Foundation, 2005 Research Park Circle, Suite 105, Manhattan, KS 66502 (hereinafter referred to as “KSURF”). The parties may be referred to individually as “Party” and collectively as the “Parties”. University and KSURF may collectively be referred to as “K-State”.

WHEREAS, the research and testing/evaluation program contemplated by this Agreement is of mutual interest and benefit to K-State and Sponsor and will further instructional and research project objectives of University in a manner consistent with its status as a non-profit, tax-exempt educational institution.

WHEREAS, KSURF is the assignee of all right, title, and interest in inventions developed by employees of University and is responsible for the protection and commercial development of such inventions.

NOW, THEREFORE, the Parties hereto agree as follows:

1. STATEMENT OF WORK. University shall exercise reasonable efforts to carry out each research and/or testing and evaluation project contemplated herein in accordance with the referenced statement of work as set forth in subsequent task orders (“Task Orders”) issued under this Agreement, which may be classified as “Research Task Orders” or “Testing/Evaluation Task Orders”.
 - a) “Research Task Orders” are detailed work tasks developed by University in collaboration with Sponsor for research to be conducted by University or by University and Sponsor. Research Task Orders include projects that University conducts to uncover new and/or different trends or facts leading to a discovery. The pathway to discovery and the creativity of new ideas is in the hands of a University Principal Investigator, described below in Clause 2.
 - b) “Testing/Evaluation Task Orders” are detailed work tasks developed for testing and/or evaluation services to be performed by University which may or may not utilize Sponsor’s testing materials/devices (“Test Material”). Testing/Evaluation Task Orders include projects requiring an agreement for testing, measurement, composition, fabrication, analysis expertise and/or similar use of unique University resources, equipment, and/or facilities that University is willing to extend to offer support to outside entities as part of its role as a Land Grant University. Such services exclude commercially available services.

The terms and conditions of this Agreement shall apply to any Task Order entered into prior to the expiration of this Agreement. Each Task Order is incorporated into this Agreement by reference. Unless specifically noted otherwise in a Task Order, the terms of this Agreement shall govern any inconsistency between this Agreement and the Task Order. Changes in a Task Order may be made only through prior written agreement of the Parties. University will complete each research or testing/evaluation project in a professional and diligent manner, on a schedule agreed to by the Parties, and at the price set forth in each Task Order. University agrees to conduct the projects in accordance with appropriate regulations and guidelines as may be specified in each Task Order.

2. PRINCIPAL INVESTIGATOR/PROJECT DIRECTOR. University’s Principal Investigator(s) identified in each Task Order will be responsible for the direction of the applicable research or testing/evaluation project in accordance with the Task Order. If, for any reason, (s)he is unable to continue to serve as Principal Investigator and a mutually acceptable successor is not available, K-

State and/or Sponsor shall have the option to terminate this Agreement or the applicable Task Order in accordance with Clause 3 – TERM AND TERMINATION.

3. TERM AND TERMINATION. Unless earlier terminated, the term of this Agreement is five (5) years from the Effective Date; provided, however, that the term of this Agreement will automatically extend beyond such period until the completion or termination of any outstanding Task Order entered into prior to the termination date of the Agreement. The Agreement will be subject to renewal by mutual agreement of the Parties.

Sponsor may terminate performance under this Agreement or any Task Order upon a thirty (30) day advance, written notice. In the event of early termination by Sponsor, Sponsor shall pay all costs accrued by University (during its performance of a Task Order) as of the date of the notice of termination, including non-cancelable obligations, which shall include all non-cancelable contracts and fellowships or postdoctoral associate appointments called for in a Task Order. In addition, Sponsor will pay 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 terminated project(s). Any obligation of Sponsor for fellowships or postdoctoral associates shall end no later than the end of University's academic year following termination. Reimbursement for incurred costs and obligations will not exceed the total estimated project cost shown in the applicable Task Order budget.

University may terminate performance upon a thirty (30) day advance, written notice if circumstances beyond its control preclude continuation of this Agreement or any Task Order. In the event of early termination by University, University will refund to Sponsor the unused portion of any advance payment made to University by Sponsor.

In the event of any termination or expiration of this Agreement, any provisions that impose an obligation or right after the termination or expiration date will survive the termination or expiration of this Agreement and will be binding on the Parties to this Agreement.

4. PROJECT COSTS AND PAYMENT. Sponsor will pay University for the performance of each Task Order, as set forth in the Task Order budget. The Task Order will specify whether the project is cost-reimbursement or fixed price. Payment shall not exceed the total estimated cost outlined in the applicable Task Order. Sponsor shall make all payments within thirty (30) days of the receipt of an invoice from University. University will email invoices in PDF format to (Insert Sponsor contact person for receiving invoices and his/her email address).
5. REPORTS/DELIVERABLES. Brief progress reports of the Task Order projects will be made periodically by University to Sponsor and a final report will be rendered on completion of each project. "Deliverables" mean the report(s) submitted to Sponsor by University that contain the resulting data generated from the Task Order project evaluation. The Parties agree that Sponsor owns any such Deliverables provided in accordance with the applicable Task Order and thus may use such for any purpose without any further remuneration to University. Notwithstanding the foregoing, the Parties understand and agree that University retains the right to (a) utilize the Deliverables for its academic, educational and research purposes, subject to the confidentiality provisions outlined herein, and (b) publish project results as permitted per Clause 14 – CONFIDENTIALITY/PUBLICATIONS. During the term of each applicable Task Order, representatives of University will consult and/or meet with representatives of Sponsor to discuss progress and results, as well as ongoing plans of the applicable project and University will provide project information to Sponsor as reasonably requested.
6. FACILITIES. University will provide the utilities and office, laboratory and field space needed for the projects unless otherwise stated in the Task Order.

7. PROPERTY. All equipment detailed in any Task Order budget and purchased from this fund shall be the property of University.
8. PUBLICITY. The Parties will not use the name of the other Parties, 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 the other Party.
9. LIABILITY.
 - a) As between the Parties, each Party acknowledges that it will be responsible for claims or damages arising from personal injury or damages to persons or tangible property to the extent they result from the negligent acts or omissions of its employees. 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.
 - b) Sponsor agrees to defend, indemnify, and hold harmless K-State, including its officers, employees and agents from and against any and all claims, demands, loss, liability, expense, or damage (including investigative costs, court costs and attorneys' fees) K-State may suffer, pay, or incur as a result of claims, demands or actions against K-State or its Affiliates arising or alleged to arise by reason of, or in connection with, any and all personal injury (including death) and property damage caused or contributed to, in whole or in part, by Sponsor's or Sponsor's Affiliates, contractors or agents manufacture, testing, design, use, sale, or labeling of any licensed product or practice of the patent rights and technology. Sponsor's obligations under this Clause shall survive the expiration or termination of this Agreement for any reason.
10. BACKGROUND INTELLECTUAL PROPERTY. "Background Intellectual Property" means property and the legal right therein of a Party or the Parties developed before or independent of the projects contemplated under this Agreement including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets and any information embodying proprietary data such as technical data and computer software.

The Parties agree to provide the Background Intellectual Property necessary to complete the objectives of the projects contemplated herein, and such will be stated in each Task Order, as applicable. The Parties shall retain all rights to their respective Background Intellectual Property provided for this purpose. A Party shall not assume any rights in the other Party's Background Intellectual Property provided for the projects other than the right to use said Background Intellectual Property to achieve the objectives of the applicable project.

11. RESEARCH INTELLECTUAL PROPERTY. "Research Intellectual Property" means the legal rights relating to inventions (including Subject Inventions as defined in 37 CFR 401), patent applications, patents, copyrights, trademarks, mask works, trade secrets and any other legally protectable information, including computer software, first made or generated during the performance of a Research Task Order.
 - a) The Parties mutually agree that any Research Intellectual Property made or conceived in the performance of a Research Task Order shall be owned in accordance with the following criteria:
 - i) Sponsor exclusively owns title to any Research Intellectual Property made or conceived solely by Sponsor employees in the performance of a Research Task Order. For the avoidance of doubt, ownership of any of University's Confidential Information (as defined

herein) contained in Sponsor owned Research Intellectual Property is retained by University.

- ii) KSURF exclusively owns title to any Research Intellectual Property made or conceived solely by University employees in the performance of a Research Task Order. For the avoidance of doubt, ownership of any of Sponsor's Confidential Information (as defined herein) contained in KSURF owned Research Intellectual Property is retained by Sponsor.
 - iii) KSURF and Sponsor shall jointly own title to any Research Intellectual Property that is made or conceived by one or more employees of University and one or more employees of Sponsor in the performance of a Research Task Order.
- b) K-State and Sponsor shall notify the other Party of any Research Intellectual Property it develops promptly after an invention disclosure regarding such Intellectual Property. For the purpose of clarity, these invention disclosures shall be considered Confidential Information of the disclosing Party.
 - c) KSURF and Sponsor have the right to file and prosecute intellectual property applications on any Research Intellectual Property to which it holds exclusive title and/or jointly owned Research Intellectual Property so long as such filing and prosecution does not conflict with the confidentiality obligations of Clause 14 – CONFIDENTIALITY/ PUBLICATIONS of this Agreement.
 - d) Each Party shall have the independent, unrestricted right to license any jointly owned Research Intellectual Property to third parties without accounting to the other Party, except that Sponsor shall be entitled to an exclusive first option to negotiate for an exclusive commercial license to KSURF's interest in jointly owned Research Intellectual Property and KSURF owned Research Intellectual Property as described under Clause 12 – LICENSE TO RESEARCH INTELLECTUAL PROPERTY below, subject to any rights of the U.S. Government therein.

12. LICENSE TO RESEARCH INTELLECTUAL PROPERTY.

- a) In consideration for sponsoring the applicable Research Task Order, KSURF hereby grants to Sponsor:
 - i) a fully paid-up, non-exclusive, non-transferable, royalty-free license (without the right to sublicense except to Sponsor's affiliates worldwide) to use, make or have made any products or processes containing KSURF owned Research Intellectual Property and jointly owned Research Intellectual Property, exclusively for Sponsor's own internal, research and development purposes, and
 - ii) should Sponsor so elect (in its sole discretion and at any time), a fully paid-up, non-exclusive, non-transferable, royalty-free license to make, use, offer for sale, sell or have sold any products or processes containing KSURF owned Research Intellectual Property and jointly owned Research Intellectual Property (provided that, in the event Sponsor elects to receive the license pursuant to this Clause (ii), Sponsor shall:
 - (1) pay a pro-rata share of all reasonable patent/patent application and prosecution costs, and
 - (2) contact KSURF to execute a confirmatory commercial non-exclusive, royalty-free license.
- b) Furthermore, Sponsor shall have an exclusive option to negotiate an exclusive commercial license with KSURF for KSURF owned Research Intellectual Property and/or KSURF's

interest in jointly owned Research Intellectual Property, subject to any rights of the U.S. Government therein, provided that Sponsor pays all costs for the preparation, filing, prosecution and maintenance of any patents on such Intellectual Property. KSURF shall promptly disclose to Sponsor all KSURF owned and/or jointly owned Research Intellectual Property, and Sponsor agrees to notify K-State in writing within ninety (90) days of such disclosure to Sponsor as to whether or not it wishes to exercise its option to secure an exclusive commercial license with respect thereto (the "Option Period"). The Parties will mutually agree on any extensions of the Option Period. During the Option Period, Sponsor shall advise KSURF whether it requests KSURF to file and prosecute patent applications related to any such Intellectual Property at Sponsor's expense. Sponsor shall have ninety (90) days from the date it exercises its option to conclude an exclusive license agreement with KSURF for KSURF owned Research Intellectual Property and/or KSURF's interest in jointly owned Research Intellectual Property (the "Negotiation Period"). The Parties will mutually agree upon any extensions of the Negotiation Period.

- c) The Parties shall negotiate all exclusive licenses in good faith, with such licenses containing reasonable business terms common to Sponsor's field of commercial interest and proposed application of the inventions. During the Option Period and, if any, the Negotiation Period, KSURF shall not disclose or offer for sale or license to any third party any KSURF owned Research Intellectual Property and/or KSURF's interest in jointly owned Research Intellectual Property; and if Sponsor elects not to secure an exclusive license or fails to notify KSURF within the Option Period, or if the Parties fail to enter into an exclusive license during the Negotiation Period without mutual agreement to extend such period, rights to KSURF owned Research Intellectual Property and/or KSURF's interest in jointly owned Research Intellectual Property disclosed hereunder shall be disposed of in accordance with KSURF's policies with no further obligation to Sponsor; provided, however, that for a period of one year from the end of the Negotiation Period, if any, KSURF agrees that it shall not grant, or offer to grant, identical or substantially comparable rights to a third party on terms or at a price more favorable than offered to Sponsor during the course of negotiations. Any violation of the foregoing provision shall automatically grant Sponsor the right and option to acquire such rights on terms offered to any such third party.

13. TESTING/EVALUATION INTELLECTUAL PROPERTY. "Testing/Evaluation Intellectual Property" means the legal rights relating to inventions (including Subject Inventions as defined in 37 CFR 401), patent applications, patents, copyrights, trademarks, mask works, trade secrets and any other legally protectable information, including computer software, first made or generated during the performance of a Testing/Evaluation Task Order. Testing/Evaluation Intellectual Property does not include analytical and/or processing procedures or methodologies utilized or developed by University in the performance of a Testing/Evaluation Task Order.

The Parties mutually agree that any Testing/Evaluation Intellectual Property made or conceived in the performance of a Testing/Evaluation Task Order shall be owned in accordance with the following criteria:

- a) Sponsor exclusively owns title to any Testing/Evaluation Intellectual Property made or conceived by Sponsor employees, University employees, or Sponsor and University employees jointly, in the performance of a Testing/Evaluation Task Order.
- b) K-State retains ownership of all analytical and/or processing procedures or methodologies utilized or developed by University employees in the performance of a Testing/Evaluation Task Order and such shall not be considered Testing/Evaluation Intellectual Property of Sponsor.
- c) Sponsor grants to K-State a non-exclusive license to use the Testing/Evaluation Intellectual Property for scholarly research, teaching, and analysis within the University, subject to the

confidentiality obligations and publication limitations contained in Clause 14 – CONFIDENTIALITY/PUBLICATIONS of this Agreement.

14. CONFIDENTIALITY/PUBLICATIONS. In the performance of a Task Order, it may be necessary for one Party to disclose information that is proprietary and confidential (“Confidential Information”) to the other Party. All such Confidential Information must be disclosed in writing and designated as confidential or, if disclosed orally, must be identified as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such oral disclosure. During the term of the applicable Task Order under which Confidential Information is disclosed, and for a period of five (5) years thereafter, each Party will maintain in confidence all confidential Background Intellectual Property, Research or Testing/Evaluation Intellectual Property, and all other Confidential Information of a Party disclosed by that Party to the other in connection with the applicable project. Neither Party will use, disclose or grant use of such Confidential Information except as required to perform under the applicable Task Order. 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 the projects contemplated herein. However, the publishing Party will provide the other Party a thirty (30) day period in which to review proposed publications, identify proprietary or Confidential Information, and submit comments. The publishing Party will not publish or otherwise disclose proprietary or 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.

15. 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.
16. REPRESENTATIVES. Designated representatives for the Parties are:

	Sponsor:	University:
If Technical	Insert Technical Contact Name Insert Address Insert Phone Email:	University Principal Investigator Kansas State University (as stated in the applicable Task Order)
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: plowe@ksu.edu

- e) ENTIRE AGREEMENT. Unless otherwise specified, this Agreement and any Task Orders embody the entire understanding between K-State and the Sponsor regarding the subject matter contemplated herein, and any prior or contemporaneous representations, either oral or written, are hereby superseded.
- f) WAIVER. Failure of either Party to insist upon strict compliance with any of the terms, covenants and/or conditions of this Agreement should not be deemed a waiver or relinquishment of such terms, covenants and/or conditions or of any similar right or power hereunder at any subsequent time.
- g) 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 hereto have executed this Agreement by proper persons thereunto duly authorized as of the Effective Date.

SPONSOR:

KANSAS STATE UNIVERSITY:

 By:
 Title:

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

Date: _____

Date: _____

FEIN: _____

KANSAS STATE UNIVERSITY RESEARCH
 FOUNDATION

 By: Christopher D. Brandt
 Title: CEO/President

Date: _____

[Insert RESEARCH or TESTING/EVALUATION, as applicable] TASK ORDER

(Sample Template)

This Task Order is entered into by and between (Name and Complete Address of Sponsor) (hereinafter referred to as "Sponsor"), Kansas State University, 2 Fairchild Hall, 1601 Vattier St., Manhattan, KS, 66506-1103 (hereinafter referred to as "University"), and the Kansas State University Research Foundation, 2005 Research Park Circle, Suite 105, Manhattan, KS 66502 (Hereinafter referred to as "KSURF"). It is subject to the terms of the Master Agreement for Research and Testing/Evaluation Projects ("Agreement") between the Parties dated (Insert Effective Date of Master Agreement). Capitalized terms used but not defined herein shall have the same meanings given to them as provided in the Agreement.

1. PROJECT INFORMATION

Period of Performance: _____

Principal Investigator(s): _____

Project Title: _____

Background Intellectual Property to be Provided and Name of Providing Party (Note: If Testing/Evaluation Task Order, identify Sponsor Test Material here if applicable):

Work Plan: (may be included here or attached as separate document)

2. BUDGET

Total Budget: \$_____ USD

Check one: Cost-Reimbursement Fixed Price

If cost-reimbursement, insert or attach a budget.

If fixed price, insert a payment schedule.

3. MODIFICATIONS AND ADDITIONAL TERMS FOR THIS PROJECT

The provisions of this clause supersede any conflicting provisions of the Agreement.

4. NOTICES

Any notice shall be sent to the following addresses and shall be effective on the date of receipt.

	Sponsor:	K-State:
If Technical	Insert Technical Contact Name Insert Address Insert Phone Email:	University Principal Investigator (Insert Name) Kansas State University Insert Address Insert Phone 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: plowe@ksu.edu
If Financial	Insert Financial Contact Name Insert Address Insert Phone Email:	Shannon Fisher Director, Sponsored Programs Accounting Kansas State University Division of Financial Services Unger Complex 2323 Anderson Ave., Suite 600 Manhattan, KS 66502 (785) 532-6207 Email: fisher@ksu.edu
Tech Transfer Office:		Christopher D. Brandt President/CEO Kansas State University Research Foundation 2005 Research Park Circle, Ste. 105 Manhattan, KS 66502-5020 (785) 532-5720 Email: tech.transfer@k-state.edu

IN WITNESS WHEREOF, the Parties hereto have executed this Task Order by proper persons thereunto duly authorized as of the date of last signature.

SPONSOR:

KANSAS STATE UNIVERSITY:

[SAMPLE TEMPLATE]

[SAMPLE TEMPLATE]

By:
Title:

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

Date: _____

Date: _____

FEIN: _____

KANSAS STATE UNIVERSITY RESEARCH
FOUNDATION

[SAMPLE TEMPLATE]

By: Christopher D. Brandt
Title: CEO/President

Date: _____