

WAKE COUNTY

TESTING SERVICES AGREEMENT

This Testing Services Agreement (hereinafter referred to as "AGREEMENT") entered into by and between the North Carolina State University, c/o _____ (*College or Department*) _____, Campus Box _____, Raleigh, North Carolina, 27695-_____, (hereinafter referred to as "UNIVERSITY"), and _____, with a principal place of business at _____, (hereinafter referred to as "CLIENT").

WHEREAS, the project contemplated by this AGREEMENT is of mutual interest and benefit to the UNIVERSITY and the CLIENT, and will further the instructional, research, and public service objectives of the UNIVERSITY in a manner consistent with its status as a public educational institution, the parties; agree as follows:

(1.) **SCOPE OF PROJECT:** The UNIVERSITY will undertake the testing protocol as described in Attachment "A", hereby made a part of this AGREEMENT, and (hereafter referred to as "PROJECT"). CLIENT will provide proprietary materials (hereinafter referred to as "MATERIALS") for use by UNIVERSITY in performance of the PROJECT.

(2.) **PROJECT COORDINATOR:** The project shall be under the supervision of _____, from the (*Department/Laboratory/Unit*) of _____ who shall serve as University Project Coordinator. If for any reason the Project Coordinator shall be unable to continue to serve, and a successor acceptable to both parties is not available, this AGREEMENT shall be terminated as hereafter provided.

(3.) **PERIOD OF PERFORMANCE:** The activities of this PROJECT shall be conducted during the period beginning _____ through _____. This period will be subject to modification or renewal only by mutual written agreement of the parties hereto.

(4.) **PAYMENT OF COSTS:** In consideration of the UNIVERSITY'S performance hereunder, CLIENT agrees to support the UNIVERSITY'S costs incurred conducting the activities as stated in Attachment "A", in the amount of _____ Dollars (\$_____). This amount shall not be exceeded by the UNIVERSITY without the written authorization of the CLIENT.

Payments shall be made by the CLIENT NET 30. Invoice will be issued within 30 days after work has been completed.

(5.) **DATA RIGHTS:** UNIVERSITY shall deliver to the CLIENT the raw data generated by the analysis or testing activity performed within ninety (90) days of completion of the PROJECT. University and CLIENT understand and agree that the work to be

performed pursuant to this Agreement does not include analyzing or interpreting data generated by performing the work specified in Attachment A. In the event that CLIENT desires further investigation or analysis of test results, CLIENT may initiate a separate sponsored research agreement through the Office of Sponsored Programs.

UNIVERSITY shall retain a non-exclusive, royalty free, non-transferable license to use the data for its own internal educational purposes.

(6.) WARRANTY: UNIVERSITY MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY GOODS OR SERVICES PROVIDED. The UNIVERSITY makes no representation or warranty regarding the actual or potential infringement of patents or copyrights of third parties, and CLIENT acknowledges that the avoidance of such infringement in the use of the services related to this AGREEMENT shall remain the responsibility of CLIENT. **The very nature of testing is experimental and the University makes no warranties or guarantees, either expressed or implied, as to the outcome of any test, although all reasonable efforts, consistent with the standards of a research university, will be made to achieve a successful outcome.**

(7.) TERMINATION: Performance under this AGREEMENT may be terminated by either party upon sixty (60) days written notice. Upon termination by either party, UNIVERSITY will be reimbursed for all costs and non-cancelable commitments incurred in performance of the PROJECT prior to the date of termination in an amount not to exceed the total commitment set forth in Paragraph (4).

(8.) LIABILITY: The CLIENT will defend, indemnify and hold harmless UNIVERSITY, its trustees, officers, employees and agents from and against all claims, demands, loss, liability, expense or damage, (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person as a result of a defect in the product tested under this Agreement or from CLIENT's use or possession of the results produced hereunder.

(9.) HAZARDOUS MATERIALS: All materials provided by CLIENT must be accompanied by the appropriate environmental and safety information for those materials as required by law.

The responsibility for and costs of disposal of all CLIENT provided materials remaining at the termination of the PROJECT will rest with the CLIENT. CLIENT shall arrange for disposal or removal of any remaining CLIENT provided materials prior to receipt of any final report of the PROJECT. The UNIVERSITY may decline to accept projects that impose undue risk.

UNIVERSITY will observe all applicable safety precautions and governmental requirements concerning handling of test materials. CLIENT 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 PROJECT hereunder rest under the sole and exclusive direction of UNIVERSITY.

(10.) EXPORT CONTROLS AND PROPRIETARY INFORMATION:

A. The CLIENT does not anticipate exchanging any information, data, software or materials that are Export Controlled under the Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations (CFR) or the International Traffic in Arms Regulations (ITAR), 22 CFR §§ 120-130. CLIENT agrees that in addition to the requirements of paragraph B, CLIENT will provide the UNIVERSITY at least five (5) business days advance written notice of their intention to deliver any information, data, software, technology, or materials that are Export Controlled. UNIVERSITY and CLIENT each agree to take such measures as may be necessary to ensure that any controlled information, data, software or materials it receives in the performance of this Agreement shall not be exported from the United States or re-exported from any other country without first complying with applicable Export Control laws and regulations.

B. Any proprietary information disclosed by CLIENT to the UNIVERSITY (hereinafter referred to as "INFORMATION"), shall be disclosed in writing and designated as proprietary, or if disclosed orally, shall be confirmed in writing and designated proprietary within thirty (30) days of such disclosure. UNIVERSITY agrees to use the INFORMATION only for the purpose of this AGREEMENT and further agrees that it will not disclose or publish such information except that foregoing restrictions shall not apply to:

- (i) INFORMATION which is or becomes publicly known through no fault of UNIVERSITY;
- (ii) INFORMATION learned from a third party entitled to disclose such information;
- (iii) INFORMATION already known to or developed by UNIVERSITY prior to receipt hereunder, or information independently developed, at any time, by UNIVERSITY personnel not privy to the proprietary information, as shown by UNIVERSITY'S written records;
- (iv) information required to be disclosed by operation of law (including, but not limited to, the NC Public Records Act) or court order.

The obligation of confidentiality imposed by this provision shall expire three (3) years following the expiration or termination of this AGREEMENT. UNIVERSITY will use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of INFORMATION disclosed hereunder. For avoidance of doubt, MATERIALS and RESULTS shall be considered INFORMATION for the purposes of this AGREEMENT and treated as provided in this paragraph 10(B)

(11.) NON-ANALYSIS: Other than as specifically set forth in Attachment A, UNIVERSITY agrees not to perform or permit others to perform any test analyses, or other evaluation of MATERIALS for the purpose of determining the chemical character, components, or physical characteristics or the method of manufacture thereof, without the prior written consent of CLIENT. UNIVERSITY will not share samples, or any portion thereof, with any third party, without the express permission of CLIENT.

(12.) **USE OF NAMES:** Neither party will use the name, marks, or symbols of the other for any commercial purpose without the express written permission of the other party.

(13.) **NOTICES:** Any notices required to be given or which shall be given under this AGREEMENT shall be in writing, delivered by first-class mail or facsimile, addressed to the parties as follows:

for CLIENT

for UNIVERSITY

(14.) **INDEPENDENT PARTIES:** For purposes of this AGREEMENT, the parties hereto shall be independent contractors and neither shall at any time be considered an agent or employee of the other. No joint venture, partnership, or like relationship is created between the parties by this AGREEMENT.

(15.) **ASSIGNMENT:** This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and may be assigned only to the successors of these parties. Any other assignment by either party without prior written consent of the other party shall be void.

(16.) **GOVERNING LAW:** This AGREEMENT is acknowledged to have been made and shall be construed and interpreted in accordance with the laws of the State of North Carolina without regard to conflicts of laws provisions. .

(17.) **ACCESS TO PERSONS AND RECORDS:** The State or University auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.

(18.) **ENTIRE AGREEMENT:** Unless otherwise specified herein, this AGREEMENT embodies the entire understanding of the parties for this 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 activities of the program, total estimated cost, and period of performance, shall be effective unless made in writing and signed by authorized representatives of both parties. If any provisions stated in this AGREEMENT, resulting purchase orders, and the project proposal are in conflict, the order of precedence, beginning with the first to last shall be (1) this AGREEMENT with attachments, (2) the project proposal, and (3) the purchase order, it being understood and agreed that any purchase order or similar document issued by CLIENT will be for the sole purpose of establishing a mechanism for payment of any sums due and owing hereunder. Notwithstanding any terms and conditions contained in said purchase order, the purchase order will in no way modify, or add, or take precedence to the terms of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT effective as of the date last hereinafter written.

**CLIENT:
Authorization**

By: _____

Title: _____

Date: _____

I, as Project Coordinator, certify that my laboratory is an active service center, the work to be undertaken in this agreement does not have a research component, that I am not working as a consultant for this CLIENT for the purpose of analyzing the data delivered under this TSA, and that I will not in the future work as a consultant for this CLIENT for the purpose of analyzing the data delivered under this TSA.

Project Coordinator

ASSOCIATE DEAN FOR RESEARCH (Recommended by)	DEPARTMENT HEAD (Recommended by)	North Carolina State University c/o (Department) Authorization
Date:	Date:	Date: