



TECHNICAL TESTING SERVICES AGREEMENT

This Technical Testing Services Agreement is between Grand Valley State University, 1 Campus Dr. Allendale, Michigan, 49401 ("UNIVERSITY"), and [REDACTED], with its principal office at [REDACTED] ("COMPANY").

INTRODUCTION

COMPANY has identified a need to conduct certain tests that: (a) require use of unique or special UNIVERSITY facilities 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 ("Technical Tests"); and

UNIVERSITY, through its **(Insert Department)**, has determined that UNIVERSITY's performance of the Technical Tests is provided as a service to COMPANY.

TERMS OF AGREEMENT

1. PERFORMANCE OF TECHNICAL TESTING SERVICES

1.1. TECHNICAL TESTING SERVICES. UNIVERSITY, through its faculty and staff, will perform the specific Technical Tests prescribed in the statement of work titled **(Insert Project Title)** and attached as Exhibit A, which identifies the specific testing methods and UNIVERSITY equipment/facilities to be used and the objectives to be achieved ("Services"). UNIVERSITY will perform the Services in accordance with standards appropriate to an institution of higher education.

1.2. TEST RESULTS. UNIVERSITY will deliver to COMPANY all observational data, measurements and other results required under the statement of work ("Test Results"). Test Results will be the property of COMPANY.

1.3. INTERPRETATION AND ANALYSIS. UNIVERSITY shall not provide consulting services or interpretation or analysis of Test Results under this agreement.

1.4. TECHNICAL CONTACTS. Each party appoints the following individual to serve as its technical contact during performance of Services. Each party will notify the other of any change in the technical contact in accordance with the notice requirements of this agreement.

For UNIVERSITY:

Insert Name

Address

Email



For COMPANY:

Insert Name

Address

Email

1.5 TEST MATERIALS. COMPANY will furnish the following materials to UNIVERSITY in connection with the Services ("Test Materials"): _____ . If not applicable, the remainder of this Article 1.5 shall not apply.

1.5.1 UNIVERSITY shall use the Test Materials only for the Services.

1.5.2 Nothing in this agreement grants UNIVERSITY any rights to use Test Materials or any products or processes derived from Test Materials for profit-making or commercial purposes. COMPANY has no obligation to grant UNIVERSITY a license to use Test Materials. UNIVERSITY will not transfer the Test Materials to any third party for any reason and will direct any third party requests for Test Materials to COMPANY.

1.5.3 UNIVERSITY will exercise reasonable care in the handling and storage of Test Materials but will not be liable to COMPANY for any loss of or damage to Test Materials.

1.5.4 At COMPANY's direction, UNIVERSITY either will (a) destroy all unused Test Materials; or (b) return to COMPANY, at COMPANY's expense and to a location within the U.S., all unused Test Materials.

1.6. INDEPENDENT CONTRACTOR STATUS. UNIVERSITY will at all times control the manner in which the Services are performed, including the scheduling of the Technical Tests. UNIVERSITY will furnish the tools, equipment and materials (other than the Test Materials) necessary for its performance of the Services.

2. PROPRIETARY/CONFIDENTIAL INFORMATION

2.1. "Confidential Information" means trade secrets and commercial or financial information furnished by COMPANY to UNIVERSITY under a claim that the trade secrets and information are proprietary, privileged or confidential and that unauthorized disclosure to a third party would cause COMPANY competitive harm.

2.2. The Services require disclosure of COMPANY's Confidential Information to UNIVERSITY personnel: Yes No

2.3. UNIVERSITY will advise its employees to use reasonable efforts to hold in confidence all Confidential Information received from COMPANY in connection with the Services. UNIVERSITY may share Confidential Information with third parties to the extent necessary to perform the Services under terms consistent with this agreement. For written disclosures, COMPANY will mark the information "Confidential" at the time of disclosure. For oral or visual disclosures, COMPANY will designate the information "Confidential" at the time of disclosure and confirm such designation in writing to the UNIVERSITY no later than 30 days after disclosure.

2.4. UNIVERSITY'S obligation of confidentiality shall extend for one (1) year from disclosure and shall not apply to information: (a) in UNIVERSITY'S possession on a non-confidential basis prior to receipt from COMPANY; (b) in the public domain or is general or public knowledge prior to disclosure, or after disclosure, enters the public domain or becomes general or public knowledge through no fault of



UNIVERSITY; (c) lawfully obtained by UNIVERSITY from a third party without any known or apparent confidentiality obligation to COMPANY; (d) explicitly approved for release by written authorization of COMPANY; (e) developed by UNIVERSITY independent of UNIVERSITY'S access to COMPANY'S Confidential Information; or (f) required by law or by a court or administrative order to be disclosed.

3. INVENTIONS

"Inventions" means those potentially patentable discoveries, including pending patent applications and issued patents, first conceived and actually reduced to practice in performance of the Services. The parties do not anticipate that Inventions will result from UNIVERSITY'S performance of the Services. However, if UNIVERSITY conceives any Inventions during its performance of this agreement, then:

3.1. COMPANY INVENTIONS. Title to Inventions conceived through UNIVERSITY'S access to Confidential Information provided in connection with this agreement and that are intrinsic to or derived directly from COMPANY Confidential Information shall vest in COMPANY.

3.2. OTHER INVENTIONS. Title to Inventions other than those described in 3.1 shall vest as follows: Inventions of UNIVERSITY employees shall vest in UNIVERSITY; Inventions of COMPANY'S employees shall vest in COMPANY; and the parties shall jointly own all Inventions of employees of both UNIVERSITY and COMPANY.

3.3. DISCLOSURE. UNIVERSITY shall promptly notify COMPANY of any Invention disclosure received by its Technology Commercialization Office and in which COMPANY would have an ownership interest.

3.4. LICENSE OPTION. For any Invention in which UNIVERSITY has an ownership interest, UNIVERSITY grants to COMPANY a first option to negotiate a license on reasonable commercial terms. The option period will be six months, beginning on the date the UNIVERSITY discloses the Invention to COMPANY.

4. PUBLICATION

Any public disclosure of the Test Results by UNIVERSITY will be done in collaboration with COMPANY, as scientifically appropriate and in accordance with this Article 4.

UNIVERSITY may not publish the Test Results. (If checked, the remainder of this Article 4 shall not apply.)

4.1. REVIEW PERIOD. At least sixty (60) days prior to any publication, UNIVERSITY shall submit the manuscript or presentation material to COMPANY for review. If COMPANY determines that the manuscript or presentation material improperly discloses Confidential Information, or contains potentially patentable subject matter, COMPANY will notify UNIVERSITY of its determination in writing no later than 30 days from its receipt of the manuscript or presentation material.

4.2. NOTIFICATION BY COMPANY. After notification by COMPANY and prior to publication, UNIVERSITY will delete Confidential Information from the manuscript or presentation material. In the case of potentially patentable subject matter, UNIVERSITY may delay enabling disclosure of the subject matter for no more than ninety (90) days from the date of submission of the manuscript or presentation material to COMPANY in order to provide adequate time to file for statutory protection. Alternatively, UNIVERSITY may either delete the potentially patentable subject matter or modify the manuscript or presentation material to avoid enabling disclosure and proceed with publication without delay.



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4.3. COMPANY'S SILENCE. If UNIVERSITY does not receive written notice from COMPANY within the prescribed review period, UNIVERSITY may proceed with publication as proposed.

5. COMPENSATION

5.1. FACILITIES AND ADMINISTRATIVE COSTS (F&A). The UNIVERSITY shall be entitled to recover overhead costs using its federally negotiated F&A rates for Other Sponsored Activity (OSA). Rate escalations shall be effective with the start of each fiscal year (July 1). Any supplemental funds for Services to be performed under this agreement shall be assessed the effective rate for that time period.

5.2 PAYMENT SCHEDULE. In consideration for UNIVERSITY's performance of Services, COMPANY will pay to UNIVERSITY compensation in the amount and manner indicated below:

COST-REIMBURSEMENT. No more frequently than monthly, UNIVERSITY will invoice COMPANY based upon the budget set forth in Exhibit B. Within 30 days from receipt of invoice, COMPANY will pay UNIVERSITY the full amount then due.

BILLABLE-RATE-BASIS. No more frequently than monthly, UNIVERSITY will invoice COMPANY based upon the rates set forth in Exhibit B. The rates and charges expressed in Exhibit B are subject to change upon 30 days' prior written notice to COMPANY. Within 30 days from receipt of invoice, COMPANY will pay UNIVERSITY the full amount then due.

FIXED-PRICE. COMPANY will pay UNIVERSITY in accordance with the payment schedule set forth in Exhibit B.

5.3. FEDERAL FUNDS. If the U.S. government is the source of any of the funds paid by COMPANY under this Agreement, then COMPANY represents the following:

Percent of federal funds: _____ % CFDA #: _____

Federal agency providing funds: _____

Are the funds subject to audit? Yes No

Audit standards: OMB Circular A-133 Other (attach pertinent information)

5.4. BILLING ADDRESS. UNIVERSITY will send all invoices to COMPANY at the following address:

Insert Address

5.5. REMITTANCE. COMPANY will promptly pay UNIVERSITY in U.S. currency to the following:

(a) By check made payable to the "Grand Valley State University" and mailed to:

Grand Valley State University
Contracts Accounting
1 Campus Dr. 2015 JHZ
Allendale, MI 49401
U.S.A.

6. TERM AND TERMINATION



6.1. TERM. This agreement is effective on the date signed by the last of the parties to sign, or otherwise on the following date: **Insert Start Date**, and will expire on **Insert End Date**.

6.2. TERMINATION. (a) Either party may terminate this agreement prior to its expiration date by providing written notice to the other party at least 30 days in advance of termination. (b) If COMPANY terminates this agreement, then COMPANY will promptly pay UNIVERSITY for Services performed, including non-cancellable obligations made by UNIVERSITY prior to UNIVERSITY's receipt of termination notice. (c) If UNIVERSITY terminates this agreement, UNIVERSITY will complete, to the extent practicable, any Services in progress when notice is received.

7. DISCLAIMER OF WARRANTIES

UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING ITS PERFORMANCE UNDER THIS AGREEMENT. UNIVERSITY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO THE TEST RESULTS.

8. LIMITATION OF DAMAGES/LIABILITY TO THIRDPARTIES

UNIVERSITY SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL (INCLUDING LOST REVENUE, LOST PROFITS, LOSS OF USE OR DATA, BUSINESS INTERRUPTION OR OTHER ECONOMIC LOSS) HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, ARISING FROM OR RELATED TO COMPANY'S USE OF THE TEST RESULTS, EVEN IF UNIVERSITY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY, AND NOT UNIVERSITY, SHALL BE RESPONSIBLE FOR THIRD-PARTY LIABILITIES ARISING FROM OR RELATED TO COMPANY'S USE OF THE TEST RESULTS.

9. GENERAL PROVISIONS

9.1 USE OF NAMES. Neither party will use the name of the other in any form of advertising or publicity without the express written permission of the other party. COMPANY shall seek permission from UNIVERSITY by submitting the proposed use, well in advance of any deadline, to the Vice President Institutional Marketing, Grand Valley State University, 2090 James H Zumberge Hall, Allendale, Michigan, 49401.

9.2 RELATIONSHIP OF THE PARTIES. Neither party is agent, employee, legal representative, partner or joint venturer of the other. Neither party has the authority to bind the other party to any contract.

9.3 CHOICE OF LAW. This agreement will be governed by and construed in accordance with the laws of the State of Michigan, U.S.A.

9.4 THIRD PARTY BENEFICIARIES. This agreement does not create any third party rights.

9.5 SEVERABILITY. If a court of competent jurisdiction finds any provision of this agreement unenforceable, such finding will not affect the validity of any other provision of this agreement and the parties will continue to perform. If this agreement cannot be performed in the absence of the provision, this agreement will terminate upon 30 days' written notice by one party to the other party.

9.6 INTEGRATION. This agreement embodies the entire understanding of the parties and supersedes all previous or contemporaneous communications, either oral or written, between the parties relating to the subject matter of this agreement. UNIVERSITY will accept purchase orders or other similar payment instruments issued by COMPANY pursuant to this agreement for payment purposes only. No



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such payment instruments will be construed to modify this agreement.

- 9.7 AMENDMENTS.** No modification to this agreement will be effective unless confirmed in a written amendment signed by each party's authorized signatory.
- 9.8 COUNTERPARTS.** The parties may sign this agreement in counterparts, each of which constitutes an original and all of which together constitute the agreement. Facsimile and scanned PDF signatures constitute original signatures for all purposes.
- 9.9 ASSIGNMENTS.** This agreement shall bind, and inure to the benefit of, the parties and any successors in interest to substantially the entire assets of the respective party. Neither party may assign this agreement without first obtaining the prior written consent of the other party, and any attempted assignment without such consent is void.
- 9.10 FORCE MAJEURE.** A party will be excused from performance of this Agreement only to the extent that performance is prevented by conditions beyond its reasonable control. The party claiming excuse for delay will promptly notify the other party and will resume its performance as soon as performance is possible.
- 9.11 EXPORT CONTROL.** Each party acknowledges that performance of all obligations under this Agreement is contingent on compliance with applicable United States export and trade laws and regulations (collectively, "U.S. Export Control Laws") and foreign export and import laws and regulations. COMPANY shall not directly or indirectly furnish any Confidential Information, Test Materials, or other items to the UNIVERSITY that are (1) subject to the International Traffic in Arms Regulations, to be found here: http://www.pmdtdc.state.gov/regulations_laws/itar.html; or (2) are described on the Commerce Control List of the U.S. Export Administration Regulations, to be found here: <http://www.bis.doc.gov/policiesandregulations/ear/index.htm>. COMPANY certifies that (a) COMPANY is not identified on the Consolidated Screening List found at: http://export.gov/ecr/eq_main_023148.asp, nor are any COMPANY personnel who will access the Test Results; and (b) COMPANY is not located in any country, or acting on behalf of any person, entity, or country, that is prohibited pursuant to U.S. Export Control laws from accessing the Test Results without a license.
- 9.12 RESOLUTION OF DISPUTES.** The parties will enter into good faith negotiations to resolve any disputes arising from this agreement. Resolution will be confirmed by written amendment. If the parties cannot resolve any dispute amicably through negotiation, either party may terminate this agreement with notice and pursue all other available remedies.
- 9.13 SURVIVAL.** All terms of this agreement that are intended to survive termination or expiration in order to be effective shall survive termination or expiration.
- 9.14 NOTICES.** Any notice given under this agreement will be in writing and will be effective upon receipt evidenced by: (a) personal delivery; (b) confirmed facsimile transmission; (c) return receipt of postage prepaid registered or certified mail; or (d) delivery confirmation by commercial overnight carrier. All communications will be sent to the addresses set forth below or to such other address designated by a party by written notice to the other party in accordance with this section:



UNIVERSITY: For matters related to this agreement:

Grand Valley State University
Director, Technology Commercialization Office
1 Campus Dr. JHZ 049
Allendale, MI 49401
Telephone: (616) 331-9528
Fax: (616) 331-6040

COMPANY: For matters related to this agreement:

[address for notices to COMPANY if different than address in first paragraph]

Property of GVSU
Technology
Commercialization Office



AUTHORIZED SIGNATORIES. Each party represents that the individuals signing this agreement on its behalf are authorized, and intend, to bind the organization in contract.

Grand Valley State University

By: _____
Dr. Robert Smart Date
Vice Provost for Research Administration and
Executive Director, Center for Scholarly and
Creative Excellence

University technical contact (responsible faculty member)

Name, Title Date

Company Name

Name, Title Date

Company technical contact (responsible technical member)

Name, Title Date



Exhibit A
Testing Methods and Equipment/Facilities

Insert description of the specific testing methods and unique UNIVERSITY equipment/facilities to be used and the objectives to be achieved.

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Exhibit B
Budget Details and Payment Schedule

Insert budget details and payment schedule

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