## 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”), and , a (“Client”).

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**. Client 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. Client 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 Client or non-written information and data disclosed by Client 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 Client 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**. Client shall own the Deliverables. University shall own all equipment purchased and/or fabricated by it under this Agreement.

5. **Publicity**. Client 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 Client.

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, Client shall reimburse University for all reasonable costs and non-cancelable obligations incurred by the University at the time of termination. At Client’s request and expense, University will return to Client or destroy all unused materials provided by Client. Notwithstanding the forgoing, Client acknowledges and understands that materials provided by Client 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 CLIENT. THIS IS CLIENT’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, CLIENT 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, CLIENT 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 CLIENT HEREUNDER EVER EXCEED THE AMOUNT PAID BY CLIENT UNDER THIS AGREEMENT. CLIENT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS UNIVERSITY AGAINST ANY CLAIMS, CAUSES OF ACTION, LOSSES OR LIABILITIES ARISING OUT OF CLIENT’S USE, COMMERCIAL SALE, OR DISTRIBUTION OF THE DELIVERABLES OR RESULTS HEREUNDER OR PRODUCTS OR PROCESSES RESULTING THEREFROM OR CLIENT’S RELIANCE UPON THE SERVICES, DELIVERABLES OR RESULTS.

9. **Insurance**. If requested, Client will provide University with evidence of satisfactory insurance coverages to support its obligations under Section 8 and other applicable provisions of this Agreement. Client 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**. In the event the Client intends to disclose to the University technology or technical data subject to control under the Commerce Control List of the Export Administration Regulations, 15 CFR 730-774, or the U.S. Munitions List of the International Traffic in Arms Regulations, 22 CFR 120-130, (collectively, “export controls regulations”), the Client shall inform the University, in writing, prior to disclosing any such technology or data of its intention to do so and provide sufficient information (e.g., ECCNs, USML categories/articles) to allow the University to comply with any applicable export controls, provided the University agrees to accept any such technology or data.

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.

**CLIENT:** **LEHIGH** **UNIVERSITY:**

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

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

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

Exhibit A

to Lehigh University Testing Services Agreement

1. DESCRIPTION OF SERVICES AND DELIVERABLES

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1. EQUIPMENT, INSTRUMENTS, OR FACILITIES REQUESTED \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. REPORTING OR MEETING REQUESTS, IF ANY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. PAYMENT AMOUNT

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1. OTHER COMMENTS OR REQUESTS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. CAN PROJECT ACTIVITIES EXPOSE PERSONNEL TO THE FOLLOWING?

 SPECIFY OR COMMENT

 Radioactive material? x\_\_No \_\_\_Yes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Infectious agents, including human blood or tissue? x\_\_No \_\_\_Yes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Human carcinogens? x\_\_No \_\_\_Yes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 In-vitro formation of recombinant DNA? x\_\_No \_\_\_Yes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Other potentially hazardous materials? x\_\_No \_\_\_Yes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lehigh Contact: Client Contact:

Office of Research and Sponsored Programs

Att’n: Director

Lehigh University

526 Brodhead Avenue

Bethlehem, PA 18015