

MASTER TESTING SERVICES AGREEMENT

This Testing Services Agreement (“Agreement”) entered into by and between North Carolina State University, on behalf of its Biomanufacturing Training and Education Center, 850 Oval Dr., CB 7928, Raleigh, NC 27695 (“University”), and _____ [*insert company name of client*] with a principal place of business at _____ [*insert client’s address*] (“Client”).

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

1. **SERVICES:** University will perform the services (“Services”) described in one or more service orders (each a “Service Order”) signed by the parties, each such Service Order to be substantially in the form attached as Attachment A hereto. Client acknowledges and agrees that the Services do not constitute University research. In the event that Client wishes to have University perform research, the parties may enter in a separate research agreement administered through University’s Office of Sponsored Programs.

2. **MATERIALS:**

(a) Client may provide materials and information described in a Service Order (the “Materials”) for use by University in performance of the Services. Client will retain all right, title and interest in and to the Materials.

(b) Client represents and warrants that it owns or has the rights to provide such Material and that University’s use of the Material in connection with the Services will not violate any law, breach any contract, or infringe any right.

(c) All Materials provided by Client must be accompanied by the appropriate environmental and safety information, as required by law.

(d) Client shall notify University if any Material is controlled under Export Control Classification Number (ECCN) EAR99 of the Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations (CFR), such notification to be given prior to the provision of such Material. University shall have the right to refuse to accept controlled Material. If such Material is accepted by University, University and Client shall take such measures as may be necessary to ensure compliance with applicable Export Control laws and regulations.

(e) Client shall bear all costs arising from providing, returning and/or destroying Material.

3. **DELIVERABLES:** University shall deliver to Client the results obtained from performance of the Services and any other deliverables described in the Service Order (the “Deliverables”). Client shall own all right, title and interest in and to the Deliverables.

4. **PROJECT COORDINATOR:** The Services shall be performed under the supervision of _____ who will serve as University’s “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.

5. **PAYMENT:** In consideration of University's performance of the Services, Client shall pay to University the amount(s) specified in each Service Order in accordance with the terms of this Agreement. Payments shall be made by Client within thirty (30) days of Client's receipt of an invoice from University. Payment not received within thirty (30) days of invoice shall be deemed late and may be subject to late payment penalty and interest in accordance with applicable law, as well as collections and attorneys' fees. Payment may be made by check or wire transfer. Checks should be made out to "North Carolina State University" and sent to the following address:

North Carolina State University
Biomanufacturing Training and Education Center
850 Oval Dr.
Campus Box 7928
Raleigh, NC 27592-7928
Phone: 919-513-8095
Email: melody_woodyard@ncsu.edu

Client should contact Melody Woodyard for information regarding wire transfer. Invoices will be issued by University to Client at the following address:

[insert Client's address for invoices]

6. **NO 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.** 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 the Client.

7. **TERM:** This Agreement shall be effective as of _____ *[insert effective date]* and shall expire, unless terminated earlier as hereinafter provided, on _____ *[insert expiration date]*. This term may be modified or extended only by mutual written agreement of the parties.

8. **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 SERVICES prior to the date of termination. University will provide Client with any and all DELIVERABLES existing at the time of termination.

9. **LIABILITY:**

(a) Client will defend, indemnify and hold harmless University, its trustees, officers, employees and agents from and against all third party claims, demands, loss, liability, expense or damage, (including reasonable attorneys' fees) arising out of injuries (including death) or property damage suffered by any person as a result of a defect in the MATERIALS as provided by Client under this AGREEMENT or from Client's use or possession of the Deliverables produced hereunder except to the extent resulting from University's negligence or willful misconduct. Client acknowledges that University is an agency of the State of North Carolina and its liability for any injury or damage arising out of this

AGREEMENT or University's performance of the Services is subject, as applicable, to the immunities, procedures and limitations of the North Carolina Tort Claims Act, GS §143- 291 et seq. University does not waive any rights or defenses under this Act.

(b) NOTWITHSTANDING ANYTHING ELSE SET FORTH HEREIN OTHER THAN CLIENT'S INDEMNIFICATION OBLIGATIONS, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS OR LOSS OF USE, ARISING OUT OF THE BREACH BY A PARTY OF ITS OBLIGATIONS AND COVENANTS SET FORTH IN THIS AGREEMENT, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT A PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **PROPRIETARY INFORMATION:** Any confidential or proprietary information disclosed by Client to University ("Information"), shall be disclosed in writing and designated as confidential or proprietary, or if disclosed orally, shall be confirmed in writing and designated as confidential or proprietary within thirty (30) days of such disclosure. University agrees to use the Information and confidential or proprietary information related to Materials created by University in the performance of the Services ("Results") only for the purpose of this Agreement and further agrees that it will not disclose or publish such information or Results except that foregoing restrictions shall not apply to Information or Results that:

- (i) Are or become publicly known through no fault of University;
- (ii) Are Learned from a third party entitled to disclose such information;
- (iii) Are 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 Information or Results, as shown by University's written records; or
- (iv) Are required to be disclosed by operation of law (including, but not limited to, the NC Public Records Act) or court order.

The obligation of nondisclosure of Information or Results of this Section 10 shall expire five (5) years from the date on which such Information or Results is provided. University will use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of Information or Results.

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

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

For Client:
[insert appropriate Client contact]

For University:
Melody Woodyard
850 Oval Dr.
Campus Box 7928
Raleigh, NC 27592-7928
Phone: 919-513-8095
Email: melody_woodyard@ncsu.edu

13. **INDEPENDENT PARTIES:** For purposes of this Agreement, the parties 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.

14. **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.

15. **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 conflict of laws provisions.

16. **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, including University, in accordance with N.C. General Statute 147-64.7.

17. **ENTIRE AGREEMENT:** Unless otherwise specified herein, this Agreement, including Attachment A incorporated herein, embodies the entire understanding of the parties 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, shall be effective unless made in writing and signed by authorized representatives of both parties. If any provision of 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.

17. **COUNTERPARTS:** This Agreement may be signed in counterparts, each of which shall be deemed to be an original but all of which together constitute one and the same document. Further, each party may execute upon a separate counterpart and signature pages may be detached and reattached from any counterpart in order to create one or more fully executed original counterparts. Counterparts delivered by a party by facsimile or other electronic transmission (including PDF) shall have the same effect as an original executed counterpart that was delivered in person by such party.

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

[insert company name]

**North Carolina State University on behalf of its
Biomufacturing Teaching and Education Center**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A

[Insert form for Service Order]

1. Services.

[Insert description of the Services]

2. Materials.

[Insert description of the Materials, if any, provided by Client.]

3. Deliverables

(a) [Raw data]

(b) [manufactured Material]