**MASTER AGREEMENT FOR TESTING/SPECIAL SERVICES**

This Master Agreement for Testing/Special Services (“Agreement”), with an effective date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between The Ohio State University (“Ohio State”) whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Columbus, Ohio 43210 and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Company") whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_.

For good and valuable consideration, Ohio State and Company hereby agree as follows:

**1. COMPLETE AGREEMENT**

All work performed under this Agreement shall be governed by a Statement of Work (“SOW”) like the one provided in Appendix A that is accepted in writing by both Company and Ohio State that describes the work that shall be performed, the costs that shall be charged for the work, any deliverables associated with that work, and the payment terms and timing. Any such mutually accepted SOW is incorporated herein by reference and will be attached herein as a separate Appendix. This Agreement, including the SOW that has been signed by both parties, supersedes all prior oral or written understandings, representations, negotiations and correspondence between the parties, and constitutes the entire agreement between them with respect to the matters described and shall not be modified or affected by any course of dealing, course of performance, or usage of trade. Neither this Agreement nor the SOW shall be modified except by written agreement signed on behalf of Ohio State and Company by their respective authorized representatives. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

**2. PERIOD OF PERFORMANCE AND TERMINATION**

The term of this Agreement will commence on the Effective Date and extend for five (5) years thereafter, unless terminated as provided herein or extended by written agreement of the parties. Either party may terminate this Agreement and the SOW in their entirety upon thirty (30) days prior written notice to the other party. If any project work is terminated by Company, Ohio State is entitled to full payment for all costs and non-cancelable commitments incurred as of the effective date of the termination. Non-cancelable commitments shall include stipends to cover graduate student appointments for the balance of an academic year.

**3. PAYMENT FOR SERVICES**

Company shall pay for Ohio State services as follows:

(a) Company shall pay for Ohio State services as dictated by the terms of the SOW accepted by both Ohio State and Company; and

(b) Terms are net cash, without discount, payable within forty-five (45) days after date of invoice.

**4. LIMITATION OF LIABILITY; NO WARRANTIES**

Ohio State shall not be liable to Company for any damage arising from any event that is out of the control of Ohio State or is not caused by Ohio State. In no event shall Ohio State’s liability exceed the amounts paid for the applicable SOW to Ohio State by Company. Beyond such amounts actually paid in the previous quarter for the particular SOW, Ohio State shall not be liable to Company for direct, indirect, special, incidental, exemplary, consequential, or any other form of money damages, including, but not limited to, lost profits, or for the loss of data or information of any kind, however caused, and arising out of or in connection with the use of or performance of a system or supercomputer computational resource, or the provision of services or performance hereunder, whether based in contract, tort, or any other legal theory, and whether or not Ohio State has been made aware of the possibility of those damages. OTHER THAN AS EXPLICITLY SET FORTH HEREIN, OHIO STATE MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

**5. INDEMNIFICATION**

Company will indemnify, defend, and hold harmless Ohio State, its respective trustees, directors, employees, agents, contractors, subcontractors, and students (“Indemnitees”) from any liability, damage, loss, or expense (including attorneys’ fees and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands, or judgments arising out of or connected with: (a) Company’s use of any results, work product and deliverables under this Agreement, except to the extent that the liability is due to the gross negligence or willful misconduct of Ohio State; and (b) for personal injuries occurring during the Services provided hereunder that arise directly from Ohio State carrying out its obligations under this Agreement where such personal injury is caused by Company’s negligent or willful acts or omissions (collectively, the “Claims”). Ohio State will notify Company of any Claims and will cooperate with Company in the defense of the Claims. Company will, at its own expense, provide attorneys reasonably acceptable to the Ohio Attorney General to defend against any Claims with respect to which COMPANY has agreed to indemnify, defend and hold harmless Indemnities. Company will not settle a Claim admitting fault on the part of the Indemnitees without Ohio State’s written consent, which will not be unreasonably withheld. This indemnity will not be deemed excess coverage to any insurance or self-insurance Ohio State may have covering a Claim.

**6. RESPONSIBILITY FOR COMPANY-FURNISHED PROPERTY AND MATERIAL**

Ohio State shall be responsible for the loss, destruction or damage, beyond normal wear and tear, to any property furnished by Company that directly results from and is caused by the sole negligence of Ohio State or its agents, representatives or employees. Company may, as part of work performed under the SOW, provide Ohio State with proprietary and/or experimental material for testing (the “Material” or “Materials”). Any such Material transferred by Company to Ohio State shall be specified in Exhibit 3 of the SOW. Before transferring any Material, Company agrees to notify Ohio State of any known hazardous and/or special properties of such Material. Company represents and warrants, to the best of its knowledge, that use of the Material for testing and/or special services conducted pursuant to this Agreement and the SOW will not infringe any third party patent, copyright, trademark or any other proprietary rights.

**7. USE OF NAME AND TRADEMARKS**

Neither Party shall use, directly or by implication, the name, trademarks or logos of the other Party or the name of any member of the staffs thereof in any publicity or advertising without prior written approval, which at Ohio State shall be provided by the Office of Trademark and Licensing Services.

**8. CONFIDENTIAL DISCLOSURE**

When requested by Company, Ohio State shall use reasonable efforts to maintain the confidentiality of proprietary information supplied and identified in writing by Company as being confidential (collectively the “Confidential Information”) and will not disclose such Confidential Information to others. This obligation of confidence upon Ohio State shall not apply to information that is known to Ohio State prior to its receipt from the Company, which is or becomes available to the public, which is received from a third party not deriving the information from Company, or which is independently developed by Ohio State. Company agrees that Ohio State’s obligation of confidence does not prevent the Ohio State from disclosing any Confidential Information that it is legally compelled to disclose under applicable law (e.g., Ohio Public Records Laws), subpoena, other legal process, or requests pursuant to investigation by a government agency.

All obligations of Ohio State with respect to the use and disclosure of Confidential Information hereunder shall terminate three (3) years from the date of Ohio State’s receipt of the Confidential Information from Company under the SOW.

**9. Export Controls**

Company shall not disclose or provide to Ohio State or any employee or agent of Ohio State any items, materials, software, technology, or information subject to the licensing provisions of International Traffic In Arms Regulations (ITAR) under 22 CFR §§ 120-130, and Export Administration Regulations (EAR) under 15 CFR §§ 730-774, without limitation, without the prior written notice to and advance approval by the Ohio State Export Control Officer, unless those items are classifiable as EAR99.  Company agrees to provide Ohio State with the U.S. Munitions List (“USML”) designation or Export Control Classification Number (“ECCN”) of any items, materials, software, technology, or information provided by Company to Ohio State.  Company agrees to assist Ohio State in making any export control determinations Ohio State deems necessary.

**10. FORCE MAJEURE**

If Ohio State is unable to carry out any of the testing and services to be conducted under this Agreement or a SOW, either in whole or in part by a Force Majeure, and if Ohio State gives timely notice to the Company thereof, then Ohio State’s obligation to conduct the testing and services shall be suspended for a reasonable period of time, or to the extent made necessary by such Force Majeure.  A "Force Majeure" as used herein shall mean any cause beyond the control of Ohio State, including but not limited to, acts of God; acts of public enemy; insurrections; riots; explosions; acts of nature; pandemics; floods; fires; interruption to transportation and commerce; breakdown of or damage to plants, equipment, pipelines or facilities; federal, state or municipal interference; quarantine or lockdown; governmental regulation, campus closures or legislation; acts of civil or military authority; embargoes; border closures; or travel restrictions that directly and materially impair Ohio State’s performance of this Agreement or a SOW.

**11. ASSIGNMENT**

This Agreement shall not be assigned or otherwise transferred by Company or Ohio State without the prior written consent of the other party.

**12. INDEPENDENT CONTRACTOR**

The relationship of Ohio State to Company, under this Agreement, is that of an independent contractor and nothing herein shall be construed as creating any other relationship.

**13. APPLICABLE LAW**

This Agreement shall be governed by the laws of the State of Ohio.

**14. COUNTERPARTS**

This Agreement and any SOW may be executed in a number of counterparts and all of which together constitute one and the same agreement, which shall supersede and control over any Company terms and conditions, form(s) or part(s) thereof included in, or attached to, any SOW.

**AGREED AND ACCEPTED**

**Company The Ohio State University**

Signed By: Signed By:

Printed Name: Printed Name: \_\_\_

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

Date: Date:

**APPENDIX A**

STATEMENT OF WORK (“SOW”)

This Statement of Work is issued under the Master Agreement for Testing/Special Services(the “Agreement”) between \_\_\_\_\_\_\_\_\_\_\_\_\_ (“Company”)and The Ohio State University (“Ohio State”) with an effective date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Together with the Agreement, this SOW governs the conduct of the Company-sponsored testing and special services (“Services”) described below.

**1. Term**. When signed by all parties, this SOW has an effective date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and will continue until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**2. Principal Investigator or Project Manager**. The Services will be conducted by Ohio State faculty member \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Principal Investigator”) or research employee \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Project Manager”).

**3. Payee Information**. Company will make all payments under this SOW payable to the following:

 The Ohio State University

 Tax ID 316025986

 Columbus, OH 43210

 ATTN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**4. Exhibits**. The Exhibits included in this SOW are identified below.

Exhibit 1 Testing and Special Services to be conducted by Ohio State, including any anticipated Deliverables to be provided to Company by Ohio State.

Exhibit 2 Budget and Payment Terms.

Exhibit 3 Equipment and Materials *(included only if applicable)*.

Exhibit 4 Required Compliance Management Plans *(included only if applicable).*

**5. Conflicts**. If any Exhibits to this SOW conflict with the terms of the SOW, the SOW will control. If this SOW or any Exhibit conflicts with the terms of the Agreement, the Agreement will control except as specified in Section 6 (Additional Terms) below, which will supersede the relevant terms of the Agreement for the testing and services provided by Ohio State to Company under this SOW.

**6. Additional Terms**. [*If additional terms are needed for a particular SOW, they will be inserted here. If an additional term is intended to override an inconsistent provision of the Agreement, that will be indicated and the inconsistent Agreement provision will be identified.]*

**AGREED TO AND ACCEPTED BY:**

**Company** **The Ohio State University**

Signed By: Signed By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name Printed Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title Title

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

I confirm that I have received a copy of the Agreement under which this SOW is issued, I have read and understand the Agreement and this SOW, and I accept the terms as they relate to my activities as Principal Investigator or Project Manager.

**Principal Investigator/Project Manager**

Signed By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

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

**EXHIBIT 1**

**EXHIBIT 2**

**EXHIBIT 3**

**EXHIBIT 4**