**Testing Agreement**

This Testing Agreement executed on \_\_\_\_\_\_\_\_\_ (the “Effective Date”) is by and between the Ohio University, a non-profit corporation organized under the laws of the State of Ohio, with offices at 105 Research and Technology Center, Athens, Ohio 45701, (hereinafter referred to as “OHIO”), and \_\_\_\_\_\_\_\_\_, a for-profit corporation organized under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_ and having offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “Company”).

**1 - Definitions**

**1.1** "Services" shall mean experimental/technical services provided by OHIO to industry through its College Centers concerning the compounding and testing of materials and any other experimental service OHIO offers industry on a price-per-job basis.

**1.2** “Intellectual Property” means all discoveries, copyrightable works, and inventions made by OHIO within the scope of the agreement and developed as a direct result of the Services provided herein.

**1.3** “Technical Information” means technical data and information generated by the OHIO in performance of the Services provided herein and as embodied in reports and correspondence.

**2 - Order**

Any order for Services which Company places with OHIO and OHIO accepts shall be strictly in compliance with the terms and conditions of this Agreement. OHIO shall provide reasonable efforts to perform Services within the projected costs and time period indicated in this Agreement. In the event OHIO’s costs exceed the projected price or in the event the services cannot be performed within the time desired, OHIO will notify Company as soon as reasonably possible. Company shall have the option of terminating this Agreement with reimbursement to OHIO for its reasonable cost to the date of termination or continuing the Services for the additional cost or extension of time.

**3 – Scope of Work**

Service (experiments/technical services) to be conducted: \_

Objective:

Service:

Deliverable:

**4 – Service Period**

The Agreement will be effective for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ commencing \_\_\_\_\_\_\_\_\_\_\_\_ (the “Service Period”). This period may be amended by mutual written agreement by authorized representatives of OHIO and Company.

**5 – Cost and Payment Schedule**

**Cost: $ \_\_\_\_\_\_\_\_\_ per \_\_\_\_\_\_\_\_x # of samples = $ \_\_\_\_\_\_\_\_\_ total cost.**

Company shall submit payment on to OHIO as follows:

$\_\_\_\_\_\_ upon signing

$\_\_\_\_\_\_ upon acceptance of deliverable(s).

-or-

Company agrees that all payments for these experimental/technical services will be made by Company to OHIO net 30 days from date of invoice.

Checks from SPONSOR should be mailed to:

Ohio University

 Office of the Bursar

 PO Box 960

 Athens, Ohio 45701

For electronic payment:

 Institution: Ohio University

 Bank Name: JP Morgan / Chase

 Bank Branch: 2 South Court Street

 Athens, OH 45701

 Routing Number: Within US 044000037

 Outside US 021000021

 Account Number: 480343099

 Foreign Swift Code: CHASUS33

**6 – Intellectual Property**

**6.1** Due to the nature of this work, the Parties do not anticipate the creation of any Intellectual Property. However, in the unlikely event that Intellectual Property is developed, inventorship shall be determined in accordance with United States Patent and Copyright laws and ownership shall follow inventorship.

**6.2** Company shall own all Technical Information subject, however, to any Intellectual Property Rights of OHIO as to copyrightable works and patentable inventions.

**6.3** OHIO shall not analyze, reverse engineer, synthesize or use any COMPANY Materials provided under this Agreement. OHIO will restrict its employees’ access to Company Materials on a “strictly need to know” basis, and will provide Company Materials only to those employees who require access to carry out the Research Project. OHIO acknowledges that Company Materials are provided “as is” and without any representation or warranty, express or implied, as to the accuracy or completeness of Company Materials. Company Materials will not be used in humans for any purpose.

OHIO will not sell or transfer Company Materials to any other person or entity without Company’s prior written consent. OHIO will comply with all applicable U.S. state and federal laws and regulations in the receipt, use, storage and disposal of Company Materials.

Unless otherwise instructed by Company in writing, within thirty (30) days after the earlier completion of the Research Project or termination of this Agreement, OHIO will return or destroy, at Company’s cost, any remaining Company Materials in its possession or control.

**7 – Product Liability**

**7.1** The results of the Services under this Agreement are believed to be reliable, but no representations, guarantees or warranties of any kind are made as to the accuracy, suitability for particular applications or the results to be obtained therefrom. The results are based on laboratory work with small scale equipment, and such results do not necessarily indicate or reflect commercial or scale-up end product performance. The results obtained and data furnished are intended as guides and do not reflect product specifications for any particular property. Because of variations in methods, conditions and equipment used in processing these materials, no warranties or guarantees are made as to the suitability of the products for the application disclosed. Full-scale testing and end product performance are the responsibility of Company. OHIO shall not be liable for any use or handling of any material beyond OHIO's direct control. Further, OHIO shall not be liable for any losses or damages, direct or indirect, incidental or consequential, arising out of or in any manner connected with its research results or its manner of research. Company expressly assumes all risk and liability for the foregoing.

**7.2 OHIO does not make any warranties, express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.**

**7.3** Nothing contained herein is to be construed as permission, a recommendation or an inducement to use or practice any product, process, equipment or formulation in conflict with any patent without the permission of the patent owner. OHIO does not make any representation or warranty, express or implied, that the use thereof will not infringe any patent.

**7.4** Company agrees to defend, indemnify and hold OHIO harmless with respect to all actions, causes of actions, claims, damages and losses, liabilities, and attorneys fees whatsoever arising out of the research and test results provided to Company or any other matter directly or indirectly arising out of or in connection with this Agreement.

**8 – Non-use of Names**

In relation to Services, Company shall not use the name of OHIO nor of any of its employees, nor any adaptation of either thereof, in any advertising, promotional or sales literature without prior written consent obtained from the authorized OHIO official in each case, except that Company may state that it obtained the service from OHIO under a services contract.

**9 - Assignment**

This Agreement is not assignable or transferable and any attempt to do so shall be void, *ab initio* and of no legal effect.

**10 - Confidentiality**

OHIO shall, to the extent permitted by law and for a period of not more than three (3) years from date of OHIO signature, hold in confidence all information disclosed to it by Company and identified at the time of disclosure as being confidential and relating to Services as defined in Article 1.1, except: information which at the time of disclosure is in the public domain, information which after disclosure is published or otherwise becomes part of the public domain through no fault of the OHIO, information required to be disclosed by law or court order, or information which is disclosed to OHIO by a third party not under terms of confidentiality. The results of the Services are confidential information.

**11 - Disclosure**

Company shall notify OHIO of any special precautions, toxicities, flammability, other hazardous propensities or requirements on any existing materials, chemical, new chemical or newly synthesized chemical or chemical compound or polymer or any other substances or minerals and including living substances and electronic data or media [e.g. computer viruses, etc.], submitted to OHIO under this Agreement and shall indemnify OHIO and/or its employees for any damages directly or indirectly attributable to any breach of this Article.

**12 – Hazardous Materials**

All materials provided by Company 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 Company provided materials remaining at the termination of the Services will rest with the Company. Company shall arrange for disposal or removal of any remaining Company provided materials prior to receipt of any final report of the Services. OHIO will observe all applicable safety precautions and governmental requirements concerning handling of test materials. Company and OHIO acknowledge that the selection of procedures, sites, and equipment, and the assignment and supervision of personnel to be used in the conduct of Services hereunder rest under the sole and exclusive direction of OHIO.

**13 - Termination**

OHIO may terminate this Agreement in the event it determines that it cannot perform the Services herein specified due to circumstances beyond its control. In such event, OHIO shall so notify Company and equitably resolve any issues respecting return of monies paid by Company to OHIO. Company may terminate this Agreement for any reason provided that it pays for all Services performed and all costs incurred by OHIO up to the date of termination.

**14 – Miscellaneous Provisions**

14.1 Use of Names. OHIO and COMPANY each agree that they will not use the name, trademark, or other identifier of the other for any advertising, promotion, or other commercially related purpose except with advance written approval. Notwithstanding the forgoing the parties may satisfy any reporting requirements of their respective organizations.

14.2 Force Majeure. Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order.

14.3 Government Compliance. COMPANY and OHIO agree to comply with all federal, state and local laws, Executive Orders, rules, regulations and ordinances which may be applicable to such party’s performance of its obligations under this AGREEMENT.

14.4 No Implied Waiver. The failure of either party at any time to require performance of any provision of this AGREEMENT shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision constitute a waiver of any succeeding breach of the same or any other provision.

14.5 Relationship of Parties. OHIO and COMPANY are independent contracting parties and nothing in this AGREEMENT shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

14.6 Assignment. Unless otherwise indicated elsewhere in this AGREEMENT, neither party may assign nor transfer any rights or obligations arising from this AGREEMENT without prior written consent of the other party.

14.7 Severability. If any term of this AGREEMENT is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this AGREEMENT shall remain in full force and effect.

14.8 Modifications. Any modification, alteration or amendment to this AGREEMENT must be in writing and signed by both parties hereto.

14.9 Governing Law. This AGREEMENT shall be governed by the laws of the State of Ohio.

14.10 Ethics Law. In accordance with Executive Order 2011-03K, COMPANY, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2011-03K, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, including, without limitation, Ohio Revised Code 102.01 et seq., 2921.01, 2921.42, 2921.421 and 2921.43, and 3517.13 (I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time.

14.11 Entire Agreement. This AGREEMENT constitutes the entire understanding between COMPANY and OHIO, and any previous discussion, negotiations, agreements or the like, except for the RESEARCH AGREEMENT, are superseded by this AGREEMENT.

**15 – Export Administrative Regulations**

Company acknowledges OHIO, in the performance of services under this Agreement, may utilize the personal services of OHIO employees, visiting professionals and students who may not be U.S. citizens or permanent resident aliens. Company assumes all responsibility for compliance with the provisions of the International Traffic In Arms Regulations (“ITAR”) under 22 CFR §§ 120-130 and Export Administration Regulations (15 C.F.R. 768 et seq) (“EAR”). Further, Company shall not disclose or provide to the OHIO or any employee or agent of OHIO any item or information subject to the licensing provisions of ITAR and/or EAR without the prior written notice to and advance approval by an authorized OHIO official.

**This agreement is subject to the terms and conditions set forth in articles 1-15 above, to the OHIO's consent to perform these experimental/technical services, and to Company's acceptance of the terms herein contained. Acceptance is limited to the terms stated herein. Any additional or different terms and conditions proposed by Company are rejected unless expressly agreed to in writing by an authorized representative of OHIO.**

**This document comprises OHIO’s offer to perform experimental/technical services and, upon acceptance, contains the complete and exclusive agreement between the parties, and supersedes all other prior, contemporaneous or subsequent written or oral communications, including terms and conditions of any purchase orders or other documents issued at any time by Company, between the parties and their employees and agents relating to the subject matter hereof. Acceptance of this agreement and all terms and conditions must be evidenced by authorized Company signature. This agreement may be executed in one or more counterparts including signing a facsimile or scanned electronic version. Each counterpart shall be deemed an original and all counterparts together shall constitute one and the same instrument.**

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| **OHIO** | **Company** |
| **By:**  | **By:**  |
| **Name:**  | **Name:**  |
| **Title:**  | **Title:**  |
| **Date:**   | **Date:**  |