

WAYNE STATE UNIVERSITY

SPECIALIZED SERVICES AGREEMENT FOR INDUSTRY RESEARCH AND TECHNOLOGY DEVELOPMENT

THIS AGREEMENT is made by and between **WAYNE STATE UNIVERSITY**, a Michigan public university, having a principal office at 5057 Woodward Avenue, Suite 13001, Detroit MI 48202 (hereinafter known as “WAYNE STATE”) and [REDACTED], a [REDACTED] corporation, having an office and place of business at [REDACTED] (hereinafter known as “COMPANY”) to establish the terms and conditions for the provision of certain services by WAYNE STATE to COMPANY.

Section 1. Conduct and Contract Period

WAYNE STATE will use reasonable efforts to perform the specialized services (“Services”), described in Attachment A (incorporated herein by reference), beginning on [REDACTED] and continuing for a period of [REDACTED] months (“Contract Period”). The Specialized Services will be performed by employees, independent contractors, visiting scholars, consultants, and/or student assistants of Wayne State at its sole discretion (“Staff Members”).

Section 2. Price and Payment

2.1 COMPANY agrees to pay WAYNE STATE \$ [REDACTED] (“Fixed Price Amount”) for the Specialized Services [Alternative - COMPANY agrees to pay WAYNE STATE \$ [REDACTED] per test performed not to exceed [REDACTED] tests during the Contract Period.] COMPANY agrees to make an advance payment of twenty-five percent (25%) of the [maximum] Fixed Price Amount to WAYNE STATE upon signing this Agreement. The advance payment will be applied against the final invoice.

2.2 WAYNE STATE will submit monthly invoices for equal amounts of the balance of the Fixed Price Amount less the advance payment to COMPANY on or about the **twentieth (20th)** day of each month. COMPANY will pay each invoice within thirty (30) days of the invoice date.

2.3 COMPANY will make payments to:

Wayne State University
5057 Woodward, Suite 13001
Detroit, MI 48202
Attn: SPA

2.3 WAYNE STATE may discontinue performance of the Services if COMPANY fails to pay any WAYNE STATE invoice within the time specified in Section 2.2

Section 3. Reports.

WAYNE STATE will provide COMPANY with reports summarizing the results of the Services as described in Attachment A (“Report”).

Section 4. Publicity.

Each Party agrees not to use the name, logos, or trademarks of the other Party in any publicity or advertising without the prior approval of the other Party, provided however that WAYNE STATE may include COMPANY's name and project title in listings of sponsors. The provisions of this Section shall survive termination of this Agreement.

Section 5. Intellectual Property.

- 5.1 WAYNE STATE hereby grants to COMPANY the right to use data and information contained in Reports that are prepared by WAYNE STATE in performance of the Services in any manner COMPANY deems appropriate.
- 5.2 Subject to Sections 7 and 8, hereunder and notwithstanding anything to the contrary contained herein, COMPANY hereby grants to WAYNE STATE and WAYNE STATE reserves for itself an irrevocable, fully paid-up, worldwide, non-exclusive, royalty-free license to use the data and results developed hereunder for educational, research, and development purposes.

Section 6. Publication.

- 6.1 COMPANY recognizes that under its policies and consistent with its tax exempt status, WAYNE STATE must be free to publish results of Services and agrees that Staff Members may present such results at symposia, national, or regional professional meetings, and publish in journals, theses or dissertations, or otherwise of their own choosing, provided, however, that WAYNE STATE provides a copy of any proposed publication or presentation at least one month in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party.
- 6.2 During the one month period COMPANY may review the proposed presentation or publication and, if necessary, request WAYNE STATE to delete any reference to COMPANY's Proprietary Information or COMPANY Material included in the publication.

Section 7. Proprietary Information and Confidentiality.

- 7.1 In the course of performing the Services, COMPANY may disclose to WAYNE STATE COMPANY Proprietary Information. "COMPANY Proprietary Information" means any data or information having commercial value that may include data, databases, product plans, strategies, forecasts, research procedures, marketing techniques and materials, customer names and other information related to customers, price-lists, pricing policies, and financial information that COMPANY treats as sensitive and that is provided to WAYNE STATE as provided in section 7.3 below.
- 7.2 WAYNE STATE agrees to hold in confidence and not disclose COMPANY Proprietary Information received from COMPANY hereunder. The confidentiality obligations of WAYNE STATE shall extend for three (3) years from the end of the Contract Period. Unless otherwise permitted by separate written agreement, WAYNE STATE shall use the COMPANY Proprietary Information only for and to the extent required to perform the Services. WAYNE STATE shall only disclose the Proprietary Information to those Staff Members that have a legitimate need for such information and only for and to the extent required to perform the Services.
- 7.3. COMPANY Proprietary Information provided in writing will be clearly marked as proprietary at the time of disclosure. Non-written information shall only be considered COMPANY Proprietary

Information if, at the time of disclosure, it is identified as proprietary and the COMPANY subsequently provides WAYNE STATE with a written notice that clearly identifies the nature and content of the disclosed information within ten (10) days after such disclosure.

- 7.4 WAYNE STATE will not be liable to the COMPANY for the disclosure of COMPANY Proprietary Information that:
- a. is published or otherwise available the public through no breach of this Agreement by WAYNE STATE;
 - b. can be demonstrated by WAYNE STATE to have been in its possession prior to receipt under this Agreement;
 - c. is obtained by WAYNE STATE without restriction from a third party;
 - d. is independently developed by WAYNE STATE by individuals who have not had access to such information;
 - e. is disclosed by WAYNE STATE to a third party with the written approval of the COMPANY without any restriction; or
 - f. is disclosed by WAYNE STATE pursuant to law or court order after providing notice to COMPANY of the need to make such disclosure.
- 7.5 WAYNE STATE shall, at COMPANY's written request or upon expiration or termination of this Agreement, promptly return or destroy all materials and/or samples furnished under this Agreement, including all copies thereof. WAYNE STATE shall have the right to retain one (1) copy of such written information in its files for record purposes only.

Section 8. COMPANY Material

- 8.1 COMPANY may transfer to WAYNE STATE tangible material described in Attachment A ("COMPANY Material") to be used by WAYNE STATE in performance of the Services.
- 8.2 The COMPANY Material will remain the exclusive property of the COMPANY. This Agreement will not be deemed to grant to WAYNE STATE any rights in such COMPANY Material.
- 8.3 COMPANY assumes all risk associated with the provision of COMPANY Materials and the use by WAYNE STATE in performance of the Services, including compliance with applicable laws and regulations.

Section 9. Indemnity

COMPANY agrees to and does hereby indemnify, hold harmless, and save from liability WAYNE STATE, Staff Members of WAYNE STATE, and their officers and employees, from and against any and all claims, demands and actions arising out of or relating to the performance of the Services or COMPANY's commercial use of the Report or the results of the Services. The obligations of this Section shall survive any expiration or termination of this Agreement.

Section 10. Disclaimer.

WAYNE STATE DISCLAIMS ANY AND ALL WARRANTIES BOTH EXPRESS AND IMPLIED WITH RESPECT TO THE SERVICES TO BE PERFORMED HEREUNDER AND ANY DELIVERABLES (INCLUDING COPYRIGHTABLE DELIVERABLES) RESULTING

THEREFROM, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, OR NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

Section 11. Limitation of Liability.

The cumulative liability of WAYNE STATE to COMPANY for all claims, demands, or actions arising out of or relating to this Agreement, the Specialized Services to be performed hereunder, and any deliverables resulting therefrom will not exceed the total amount paid to WAYNE STATE hereunder during the twelve (12) months immediately preceding such claim, demand, or action. Without limiting the foregoing, in no event shall WAYNE STATE be liable for any business expense; machine down time; loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against COMPANY or COMPANY's customers even if WAYNE STATE has been advised of the possibility of such claims and demands. The foregoing limitation of liability will survive any termination of this Agreement and will apply without regard to any other provision of this Agreement which may have been breached or have been proven ineffective.

Section 12. Termination.

- 12.1 Either Party may terminate this Agreement for any reason upon thirty (30) days' prior written notice to the other Party.
- 12.2 COMPANY will pay WAYNE STATE any costs which have accrued or been encumbered for Services performed to the actual date of termination under this Section and COMPANY will not be relieved of the obligation to pay those costs because of a termination under this Section.

Section 13. Export Control.

- 13.1 COMPANY understands and agrees that any and all WAYNE STATE information provided or exchanged shall be in compliance with all applicable United States export control laws (EAR/ITAR) including "deemed exports". The transfer of certain technical data and commodities may require a license from a government agency or written assurances by COMPANY that COMPANY will not re-export data or commodities to foreign countries without prior approval of the appropriate U.S. Government Agency. WAYNE STATE agrees to cooperate with COMPANY in securing any such license necessary in connection with this Agreement. In the event COMPANY provides to WAYNE STATE technical data or an article that is controlled by the U.S. International Traffic in Arms Regulations (ITAR) or the U.S. Export Administration Regulations (EAR) (the "Controlled Information"), COMPANY will mark such information and provide the appropriate EAR or ITAR classification to enable WAYNE STATE to properly manage such Controlled Information.
- 13.2 "Deemed export" means any release of technology to a foreign national within the United States. Technology is released for export when it is (i) made available to foreign nationals for visual inspection, (ii) exchanged orally, or (iii) made available by practice or application under the guidance of persons with knowledge of the technology. The obligations of this Section shall survive any expiration or termination of this Agreement.

Section 14. Notices

All notices and other communication given under this Agreement will be effective five (5) days following deposit in the United States mail, postage prepaid, and addressed to the parties at their respective addresses set forth below unless by a previous notice a different person or address has been designated or upon confirmation of receipt by email or fax.

**To WAYNE STATE
for administrative matters**

**To COMPANY
for administrative matters:**

**To WAYNE STATE
for technical matters**

**To COMPANY
for technical matters:**

Section 15. Miscellaneous

- 15.1 WAYNE STATE and COMPANY are and will remain independent contractors and nothing herein will be construed to create a partnership, agency, or joint venture between the Parties for federal and state law purposes. Each Party will be responsible for wages, hours, and conditions of employment of its respective personnel during the term of, and under, this Agreement.
- 15.2 All questions concerning the validity, operation, interpretation, and construction of this Agreement will be governed by and determined in accordance with the laws of the State of Michigan.
- 15.3 No waiver by either Party of any breach of any provision hereof will constitute a waiver of any other breach of that provision or of any other provision hereof.
- 15.4 Except with respect to internal business communications and academic reporting, communications with governmental agencies, or as required by law, WAYNE STATE and COMPANY shall not use each other's name or trademarks in publicity or advertising without first receiving written consent.
- 15.5 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.
- 15.6 This Agreement sets forth the entire agreement and understanding between WAYNE STATE and COMPANY and merges all prior discussions between the Parties pertaining to the subject matter hereof; and neither Party will be bound by any conditions, definitions, warranties,

understandings, or representations with respect to the subject matter hereof except as expressly provided herein. This Agreement may not be modified or altered except by a written document executed by authorized representatives of both Parties. No provision contained in any standard form document issued by COMPANY, including but not limited to any purchase order or confirmation order, will be applicable, even if signed by the Parties, unless the Parties also execute a separate document expressly modifying this Agreement to include such provisions.

IN WITNESS WHEREOF, this Agreement has been duly executed by our duly authorized representatives on the day and year set forth below.

WAYNE STATE UNIVERSITY

By: _____

Typed Name: _____

Title: _____

Date: _____

COMPANY

By: _____

Typed Name: _____

Title: _____

Date: _____

Dean's Approval:

By: _____

Typed Name: _____

ATTACHMENT A

Services to be Performed

WAYNE STATE Project #

Principal Investigator(s) Name:

Principal Investigator(s) Campus Address:

Principal Investigator(s) Campus Phone Number:

Principal Investigator(s) Campus email address:

Description of Services:

Reports – Type and Frequency

COMPANY Materials to be provided by COMPANY:

Staff Members: