

University of Vermont and State Agricultural College

Service Agreement

This Agreement, made and entered into this ____ day of _____, 20____, by and between the University of Vermont and State Agricultural College (hereafter "UVM") a Vermont non-profit corporation having an office at 340 Waterman Building, 85 South Prospect Street, Burlington, VT 05405, and _____ (hereafter "Sponsor") a corporation organized under the laws of _____ having principal offices at _____.

WITNESSETH:

WHEREAS, UVM has developed measurement, composition, fabrication, and analysis expertise; and related technologies, equipment, and facilities (hereinafter referred to as "Academic Research Services" and defined specifically below), in the area of _____, which UVM intends to utilize in fulfillment of its role as an educational institution by providing special research services to its various constituencies, including private companies, for the ultimate benefit of the public at large;

WHEREAS, Sponsor desires specialized academic research assistance requiring these Academic Research Services;

WHEREAS, such Academic Research Services are currently available on a limited basis from UVM;

WHEREAS, Academic Research Services contemplated by this Agreement are of mutual interest and benefit to UVM and Sponsor, will further the instructional, research and public service missions of UVM in a manner consistent with its status as a nonprofit, tax-exempt, educational institution, and may derive benefits for both UVM and Sponsor through the advancement of knowledge;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to the following:

1. UVM shall provide the Academic Research Services described in the Statement of Work attached hereto as Appendix A under the supervision of <<Faculty Member Name>> of <<Faculty Member's Department>> (the "Investigator") during the period from _____ (the "Starting Date") to _____ (the "Completion Date") (the "Contract Period").
2. Sponsor will provide funding in the amount of <<>>dollars (US\$<<>>). Payment of <<>>dollars (US\$<<>>) is due upon execution of this Agreement. <<Thereafter, payment of <<>> dollars (US\$<<>>) is due at the beginning of each calendar quarter beginning three (3) months after the Effective Date. >>

OR

In consideration of the foregoing, Sponsor will reimburse UVM for all direct and indirect costs incurred in the performance of the Academic Research Services, which shall not exceed the total estimated project cost of <<>> (US\$<<>>) without written authorization from the Sponsor. Sponsor will make actual payments to UVM upon receipt of monthly invoices. A final financial accounting of all costs incurred and all funds received by UVM shall be submitted to Sponsor within ninety (90) days of the close of the Completion Date.

3. UVM reserves the right to suspend work on the Academic Research Services or to terminate this Agreement by delivering notice of same to Sponsor if the Sponsor fails to pay an invoice within thirty (30) days after the date of invoice. In the event of early termination of this Agreement by the Sponsor or due to a breach of this Agreement by the Sponsor, the Sponsor shall pay UVM for all work done on

the Academic Research Services to date, including any work in progress as at the receipt of the notice of such termination.

4. Analytical and test results from the work performed under this Agreement (hereinafter "Service Results") shall be delivered by UVM to Sponsor in a final report and/or as provided under Appendix A. Service Results shall become the property of the Sponsor, however, UVM shall have the right to retain copies of said results and shall have a non-exclusive, perpetual, royalty-free license to use Service Results for UVM's academic and research purposes.
5. Sponsor recognizes that Service Results which do not disclose Confidential Information (as defined below) provided hereunder may be deemed publishable by UVM, and that the Investigator engaged in the Academic Research Services shall be free to publish Service Results, consistent with the obligations imposed in Article 6 of this Agreement. Publications will be limited to new scientific information regarding Service Results and Academic Research Services performed, and UVM will use reasonable efforts not to disclose any Confidential Information. UVM will provide Sponsor with sixty (60) days to review any manuscripts or proposed publications arising out of Academic Research Services.
6. "Confidential Information" shall mean any materials, written information, and data marked "Confidential" or non-written information and data disclosed which is identified at the time of disclosure as confidential and is reduced to writing and transmitted to the other party within sixty (60) days of such non-written disclosure. Sponsor and UVM may disclose Confidential Information to each other to facilitate work under this Agreement. Neither party shall use Confidential Information for any purpose other than as specifically set forth in this Agreement and shall use reasonable efforts to protect the Confidential Information from disclosure to third parties. Notwithstanding the foregoing, the obligation to maintain confidentiality shall not apply to information which:
 - (a) is made subject to an order by judicial or administrative process requiring it to be disclosed;
 - (b) is published or becomes available to the general public other than through a breach of this Agreement;
 - (c) is obtained by the recipient from a third party with a valid right to disclose it, provided that said third party is not under a confidentiality obligation to the disclosing party;
 - (d) is independently developed by employees, agents or consultants of the recipient who had no knowledge of or access to the Confidential Information; or
 - (e) was possessed by the recipient prior to its receipt from the disclosing party.
7. Upon the expiration or termination of this Agreement, the proprietary or Confidential Information disclosed including all copies thereof shall be returned to the disclosing parties, or destroyed with a written certificate of destruction provided to the disclosing parties, or be disposed of as otherwise mutually agreed; except that recipient may keep one copy of the proprietary or Confidential Information for archival purposes only.
8. In providing the Academic Research Services, UVM may utilize techniques, processes and/or tools which are proprietary to UVM. Notwithstanding anything else in this Agreement, UVM retains all right and title to same and any improvements and/or modifications thereto.
9. The Sponsor may provide UVM with access to intellectual property which is proprietary to the Sponsor (hereinafter "Sponsor Intellectual Property"). All rights and title to Sponsor Intellectual Property shall belong to Sponsor.
10. All inventions arising out of the Academic Research Services described in Appendix A will be promptly disclosed to Sponsor. During the Contract Period in the performance of providing the

Academic Research Services, UVM may, either solely, or jointly with one or more employees of the Sponsor, conceive and/or make inventions, improvements, and/or discoveries related to the Sponsor Intellectual Property (the "Foreground Intellectual Property"). All rights and title to Sponsor Intellectual Property and Foreground Intellectual Property shall belong to the Sponsor. All other inventions, improvements, and/or discoveries made during the Academic Research Services and made solely by employee(s) or consultant(s) of UVM shall be the property of UVM.

11. This Agreement shall be deemed to have come into force upon the beginning of the Contract Period and shall continue in effect for the full duration of the Contract Period unless sooner terminated in accordance with the provisions of this Article. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other.
12. Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to termination hereof. The provisions of Articles 2, 3, 4, 5, 6, 7, 10 and 12 shall survive such termination.
13. Sponsor agrees to indemnify and hold UVM, the Investigator, and any of UVM's faculty, students, employees, trustees, officers, affiliates or agents and their respective successors, heirs or assigns, including the Investigator (collectively the "Indemnitees") harmless from liability of any nature or kind including defense costs or expenses, from, or on account of, any and all suits or damages, of any kind, resulting from injuries or damages sustained by any person or persons or property by virtue of Sponsor's negligence or the receipt or use by the Sponsor of any data or other results arising from the Services, unless such liability results from UVM's sole negligence or misconduct.
14. Each party agrees to maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence, combined single limit, for third party bodily injury and property damage liability, including products, completed operations and contractual liability.
15. UVM makes no representations or warranties of any kind, express or implied, concerning the research or any intellectual property rights, including, without limitation, warranties of merchantability, validity of any intellectual property rights or claims, whether issued or pending, or the absence of latent or other defects, whether or not discoverable. Specifically, and not to limit the foregoing, UVM makes no warranty or representation (i) regarding the validity or scope of the Research Program or any intellectual property rights optioned or granted hereunder and (ii) that the exploitation of the Research Program or any intellectual property rights will not infringe any patents or other intellectual property rights of UVM or of a third party.
16. UVM and Sponsor 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. UVM's obligations to transfer technology to Sponsor, provide technical information and reports to Sponsor, and otherwise perform under this Agreement are contingent upon compliance with applicable United States export control laws and regulations. The transfer of certain technical data and commodities may require a license from a cognizant agency of the United States Government or written assurances by Sponsor that Sponsor shall not export technical data, computer software or certain commodities to specified foreign countries without prior approval of an appropriate agency of the United States Government. UVM does not represent that a license shall not be required, nor that, if required, it shall be issued. In addition, Sponsor certifies that no information or materials that it discloses or transfers to UVM are controlled by US export control laws. If Sponsor wishes to disclose information or materials controlled by US export control laws, Sponsor shall notify UVM prior to disclosure and shall not disclose or transfer said information or materials until Sponsor receives notice from UVM that it intends to accept said information or materials.

17. Any notices required to be given or which shall be given under this Agreement shall be in writing and be addressed to the parties as shown below. Notices shall be delivered by certified or registered first class mail (air mail if not domestic) or by commercial courier service and shall be deemed to have been given or made as of the date received.

If to UVM:
Program Director, Pre-Award Services
Office of Sponsored Programs
University of Vermont
231 Rowell Building
106 Carrigan Drive
Burlington, VT 05405
Tel: 802-656-4067
Fax: 802-656-3190

If to Sponsor:
PLEASE ADVISE

Inquiries relating to billing and payment under this Agreement shall be addressed to the parties as shown below.

If to UVM:
Marcy Whittle, Director
University of Vermont
Grant Contract Administration Services
85 South Prospect Street
223 Waterman Building
Burlington, VT 05405

If to Sponsor:
PLEASE ADVISE

18. In the event any part, section, clause, paragraph or subparagraph of this Agreement shall be held to be indefinite, invalid, illegal or otherwise voidable or unenforceable, the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.
19. A waiver by either party of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this Agreement.
20. No exercise of a specific right or remedy by any party precludes it from or prejudices it in exercising another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.
21. For the purposes of this Agreement, the parties shall be independent contractors. Nothing contained herein shall be deemed or construed to create between the parties hereto a partnership or joint venture or the relationship of agent and principal.
22. This agreement shall be governed and construed in accordance with the laws of the State of Vermont without giving effect to conflict of laws provisions.
23. The appendices to this Agreement together with the terms and conditions contained in this Agreement constitute the entire understanding between the parties and all prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties. The appendices will be binding upon the parties hereto except to the extent they may conflict with the terms and conditions contained within this Agreement, in which case the terms and conditions of this Agreement will govern.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by those duly authorized officers this day and year first above written.

UNIVERSITY OF VERMONT AND STATE
AGRICULTURAL COLLEGE

{SPONSOR NAME}

by its duly authorized representative:

by its duly authorized representative:

Signatory's Name

Signatory's Name

Printed Name

Printed Name

Title

Title

Date

Date

Investigator, while not a party to this Agreement, by his/her signature acknowledges that he/she: has read and agrees to abide by the terms and conditions that apply to the Investigator and agrees to conduct/perform the services as outlined in the Statement of Work.

Investigator's Name: _____

Investigator's Signature: _____

Date: _____

**APPENDIX A
Statement of Work**

Description of Services to be provided by UVM