



## SMARTLAB TESTING AND SERVICES AGREEMENT

This SMARTLab Testing and Services Agreement (“Agreement”) is entered into as of \_\_\_\_\_ by and between \_\_\_\_\_ (“Sponsor”) and Utah Valley University, a body corporate and politic of the State of Utah with its principal business location at 800 West University Parkway, Orem, Utah 84058 (“University”). The parties may be referred to individually as “Party” and collectively as the “Parties.”

WHEREAS, Sponsor is desirous of obtaining testing and evaluation services that (a) require use of unique or special University facilities, including the SMARTLab, that either do not exist elsewhere or are not readily accessible; and (b) involve established, pre-existing methods of a primarily technical nature; and

WHEREAS, the project contemplated by this Agreement is of mutual interest and benefit to University and to Sponsor and will further the research, education, and/or mission of University in a manner consistent with its status as a public institution of higher education.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **STATEMENT OF WORK.** University agrees to use all reasonable efforts to perform the testing and services as described in Attachment A hereof (the “Project”). Sponsor and University acknowledge that the selection of procedures, sites, equipment, and personnel to be used in the Project rest under the sole and exclusive direction of University.
2. **PRINCIPAL INVESTIGATOR/PROJECT DIRECTOR.** The Project will be directed by the individual set forth in Attachment A. If, for any reason, this person is unable to continue to serve as principal investigator/project director and a mutually acceptable successor is not available, University and/or Sponsor shall have the option to terminate the Project in accordance with Section 16 (Termination).
3. **PERIOD OF PERFORMANCE.** The Project is to be conducted during the period set forth in Attachment A. This Agreement may be extended for additional periods of performance upon written approval by Sponsor and University.
4. **PAYMENT.** Sponsor shall pay University for the Project according to the terms set forth in Attachment A. Unless stated otherwise, Sponsor shall pay the amounts payable to University within thirty (30) days of receipt of invoices submitted by University. Late payment shall accrue interest from the due date to the date of payment at the rate of eighteen percent (18%) per year, or the maximum amount allowed by law, whichever is less.
5. **REPORTS.** During the term of this Agreement, representatives of University may consult and/or meet with representatives of Sponsor to discuss progress and results as well as on going plans of the Project. A final report will be rendered by University upon completion of the Project.
6. **FACILITIES.** University will provide the utilities and office, laboratory, and field space needed for the Project.
7. **PROPERTY.** All equipment purchased by University under this Agreement shall be the property of University.

8. PUBLICITY. Neither Party will use the name of the other Party, nor of any member of the other Party's staff, in any publicity, advertising, or news release without the prior written approval of an authorized representative of such Party. Any use of the Test Results (as defined below) by Sponsor in its promotional materials shall not be used in a way that could be interpreted as an endorsement by University of any claims made by Sponsor. Notwithstanding the foregoing, University shall have the right to use and publish the name of Sponsor as a SMARTLab program participant.
9. TEST RESULTS. University will deliver to Sponsor the test results from the Project ("Test Results"). Upon final payment, Sponsor shall have a perpetual, nontransferable, paid-up right and license to use, copy and prepare derivative works of the Test Results. All other rights in the Test Results (excluding Confidential Information of Sponsor) remain with University. University may use the Test Results for scholarly research, teaching, and analysis, subject to the external publication limitations in Section 12 (Confidentiality) and Section 13 (Publication). University retains ownership of all analytical and processing procedures, tools, and methodologies utilized or developed in the performance of the Project under this Agreement. Intellectual property developed by either Party prior to or outside the scope of this Agreement shall remain with the developing Party.
10. DISCLAIMER. UNIVERSITY IS A GOVERNMENTAL ENTITY UNDER THE GOVERNMENTAL IMMUNITY ACT OF UTAH, UTAH CODE §§ 63G-7-101 ET SEQ., AS AMENDED (THE "ACT"). NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WAIVER BY UNIVERSITY OF ANY PROTECTIONS, RIGHTS, OR DEFENSES APPLICABLE TO UNIVERSITY UNDER THE ACT, INCLUDING WITHOUT LIMITATION, THE PROVISIONS OF SECTION 63G-7-604 REGARDING LIMITATION OF JUDGMENTS. IT IS NOT THE INTENT OF UNIVERSITY TO INCUR BY CONTRACT ANY LIABILITY FOR THE OPERATIONS, ACTS, OR OMISSIONS OF THE OTHER PARTY OR ANY THIRD PARTY AND NOTHING IN THIS AGREEMENT SHALL BE SO INTERPRETED OR CONSTRUED. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, DAMAGES FOR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE, OR OTHER INTANGIBLE PROPERTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL UNIVERSITY'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED UPON CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE) EXCEED TEN THOUSAND DOLLARS. UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS PERFORMANCE UNDER THIS AGREEMENT. UNIVERSITY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, USE OR FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO THE TEST RESULTS.
11. TEST MATERIALS. If the Project requires Sponsor to furnish materials to University for testing, these materials are identified in Attachment A ("Test Materials").
  - (a) All Test Materials provided by Sponsor must be accompanied by the appropriate environmental and safety information as required by law.
  - (b) University shall use the Test Materials only for its performance of the Project.
  - (c) University will not transfer the Test Materials to any third party for any reason.
  - (d) University will exercise reasonable care in the handling and storage of Test Materials but will not be liable to Sponsor for any loss of or damage to Test Materials.
  - (e) The responsibility for and costs of disposal of all Test Materials remaining at the termination of the Project will rest with Sponsor. Sponsor shall arrange for disposal or removal of any remaining Test Materials prior to receipt of the Test Results. University may decline to accept Test Materials that impose undue risk.

12. CONFIDENTIALITY. During the term of this Agreement, and for a period of three (3) years thereafter, each Party will maintain in confidence all confidential intellectual property of a Party, as well as all other proprietary or confidential information of a Party (hereinafter “Confidential Information”) that is disclosed by that Party to the other in connection with this Project. Confidential Information includes only information which is clearly marked as proprietary or confidential at the time of disclosure. For oral disclosures to constitute Confidential Information, such disclosures must be identified at the time as confidential, and the disclosing Party must provide a written summary of the Confidential Information to the receiving Party within ten (10) days of disclosure. Each Party will use at least the same standard of care as it uses to protect its own Confidential Information to ensure that students, interns, employees, agents, and consultants do not disclose or make any unauthorized use of such Confidential Information. Any student, intern, employee, agent, or consultant of the receiving Party must be notified of the restrictions on the use of the disclosing Party’s Confidential Information and must agree with those restrictions before being allowed access to the Confidential Information. Notwithstanding anything herein to the contrary, the obligations of the Parties under this Section 12 shall not apply with respect to any Confidential Information that (i) was in the public domain at the time of disclosure or subsequently entered the public domain other than through a breach of Section 12; (ii) was in the possession of receiving Party free of any obligation of confidentiality at the time of communication to receiving Party; (iii) was rightfully communicated to receiving Party free of any obligation of confidentiality subsequent to the time of communication to receiving Party; or (iv) receiving Party can demonstrate by its records that it independently developed without the use of or reference to the Confidential Information of disclosing Party.
13. PUBLICATION. The basic objective of research activities at University is the generation of new knowledge and its expeditious dissemination for the public’s benefit. Sponsor will provide all reasonable cooperation with University in meeting this objective. As a matter of basic academic policy, University retains the right at its discretion to publish freely any results of the Project excluding Confidential Information of Sponsor. Principal Investigator agrees to provide Sponsor a copy of any manuscript that includes results of the Project prior to being submitted for publication. Sponsor shall have thirty (30) days after receipt of the manuscript to request in writing the removal of portions deemed by Sponsor to contain Confidential Information. Pursuant to Section 12, Confidential Information shall not be included in any material published by University without prior written consent of Sponsor.
14. GRAMA. Sponsor acknowledges that University is a governmental entity and thus subject to the Government Records Access and Management Act of the Utah Code, Section 63G-2-101 et seq., 1953, as may be amended (“GRAMA”). Pursuant to GRAMA, certain records within University’s possession or control, including this Agreement, may be subject to public disclosure. University hereby informs Sponsor that any person or entity that provides University with records that such person or entity believes should be protected from disclosure for business reasons must, pursuant to Section 63G-2-309 of GRAMA, provide to University, with the record, a written claim of business confidentiality and a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, University: (a) is not required to provide notice to Sponsor regarding any third party GRAMA request, and (b) may disclose any information or record to the extent required by GRAMA or otherwise required by law.
15. MODIFICATION. Any agreement to change the terms of this Agreement in any way shall be valid when the change is made in writing and approved by authorized representatives of the Parties hereto.
16. EXPORT CONTROL. Each Party acknowledges that performance of all obligations under this Agreement is contingent on compliance with applicable United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities. The transfer of certain technical data and commodities may require a license from the

cognizant agency of the United States government and/or written assurances by Sponsor that Sponsor will not re-export data or commodities to certain foreign countries or nationals thereof without prior approval of the cognizant government agency.

17. **TERMINATION.** Performance under this Agreement may be terminated by either Party upon a thirty (30) day advance, written notice to the other Party. In the event of early termination, Sponsor shall remain responsible for payment to University for all work performed through the date of termination. In the event of termination by Sponsor hereunder, Sponsor shall also pay University for all non-cancelable commitments incurred under the Project. Non-cancelable commitments shall include employment commitments to University personnel through the end of the semester following any such termination by Sponsor, and all other reasonable costs incurred by University during the time period between the notification date and the termination date, which are necessary to terminate the Project. In no event will payment to University for incurred costs and obligations exceed the total Project amount as set forth in Section 4 (Payment). Performance may be terminated by University upon a thirty (30) day advance, written notice if circumstances beyond its control preclude continuation of the Project. In the event of termination by University, any unused funds from any advance payment will be returned to Sponsor.
18. **INDEPENDENT PARTIES.** For purposes of this Agreement, the Parties are independent contractors, and neither may be considered an agent or an employee of the other. No joint venture, partnership or like relationship is created between the Parties by this Agreement.
19. **INSURANCE.** Both Parties shall maintain insurance coverage sufficient to meet their obligations hereunder and consistent with applicable law.
20. **ASSIGNMENT.** This Agreement is binding upon and enures to the benefit of the Parties and may be assigned only to the successors to substantially the entire business and assets of the respective Parties. Any other assignment by either Party without the prior written consent of the other Party is void (such consent shall not be unreasonably withheld).
21. **GOVERNING LAW.** This Agreement shall be governed by and construed under the laws of the State of Utah, without reference to conflicts of laws provisions. Any dispute arising between the Parties related to this Agreement shall be resolved exclusively in the state or federal courts located in Salt Lake County, Utah.
22. **FORCE MAJEURE.** Without affecting any right of cancellation or termination set forth in this Agreement, and except for obligations to make payments, either Party may suspend its performance under this Agreement at any time because of a labor dispute or disruption of its personnel, war, the declaration of a state of national emergency, acts of God or the public enemy, or other cause beyond the control of such Party, by giving the other Party written notice of such suspension and the reason for the same. Services to be provided hereunder shall be made and performed to the date of such suspension and shall thenceforth cease until the period of such suspension has ended.
23. **ENTIRE AGREEMENT.** Unless otherwise specified, this Agreement and Attachment A embody the entire understanding between University and Sponsor for the Project, 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 statement of work, total estimated cost, and period of performance, shall be effective unless made in writing and signed by authorized representatives of the Parties.
24. **WAIVER.** Failure of either Party to insist upon strict compliance with any of the terms, covenants and conditions of this Agreement should not be deemed a waiver or relinquishment of such terms, covenants and conditions or of any similar right or power hereunder at any subsequent time.

25. COUNTERPARTS. This Agreement may be executed in counterpart copies, and, in the absence of an original signature, faxed or scanned signatures will be considered the equivalent of an original signature, all of which, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

SPONSOR

UTAH VALLEY UNIVERSITY

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

**ATTACHMENT A**  
**Statement of Work**