



### SERVICES AGREEMENT

THIS AGREEMENT is between \_\_\_\_\_, with offices at \_\_\_\_\_ (hereinafter referred to as “COMPANY”), and the University of Delaware, a nonprofit institution of postsecondary education chartered under the laws of the State of Delaware, with its principal place of business in Newark, Delaware (hereinafter referred to as “UNIVERSITY”).

In consideration of the rights and obligations herein set forth, the parties do hereby agree as follows:

1. **Description of Services.** UNIVERSITY shall render the following services:

2. **Compensation.** This is a firm fixed price agreement. COMPANY understands and expressly agrees that this is a “fixed price” agreement. UNIVERSITY is under no obligation to provide COMPANY with any kind of financial reporting, supporting documentation, or justification of expenditures made in the performance of the project as a condition of payment. It is agreed and understood by the parties hereto that the fixed price for performing the services and providing the deliverables shall be xxxxxxxxx dollars (\$xxxxxx). COMPANY will pay UNIVERSITY a total of \_\_\_\_\_ dollars (\$) within thirty (30) days of execution of this Agreement for services rendered pursuant to Section 1. COMPANY will have no obligation to pay UNIVERSITY for any costs beyond the amount specified in this Article unless there are costs associated with export control licenses as specified in Article 12. All payments shall be made to UNIVERSITY in United States Dollars. For converting payments into United States Dollars COMPANY shall use the average of the closing buying rates of the Morgan Guaranty Trust Company of New York applicable to transactions under exchange regulations for the particular currency on the date payment is due. Please include Reference No. \_\_\_\_\_ with your payment.

Invoices shall be sent to \_\_\_\_\_.

3. **Term.** The period of performance of this Agreement will be from \_\_\_\_\_, 20\_\_, until \_\_\_\_\_, 20\_\_, unless terminated earlier as hereinafter provided. During or at the end of that time, it may be extended as mutually agreed upon in writing.

4. **Alternative Dispute Resolution.** In the event of any controversy or claim arising out of or relating to any provision of this Agreement or the breach thereof, the parties shall try to settle those conflicts amicably between themselves. Within five business days of receiving written notice from a party that a dispute exists, the parties shall meet and negotiate in good faith for a period not to exceed one business day to resolve such dispute. If good faith negotiation between the representatives does not result in resolution, each party shall nominate one representative, having a position not less than vice president or his/her designee, to participate in additional good faith negotiations (“High Level Negotiations”) within ten business days after the first negotiation. If within thirty (30) days of the start of such High-Level Negotiations there is no resolution of the dispute, the parties shall each submit a written statement within five (5) business days to a third party mediator utilizing the services of the Delaware Chancery Court for voluntary mediation of technology, licensing, and contract issues. The parties and the mediator shall meet within five (5) business days of the written submission for a non-binding mediation session. The cost of mediation shall be shared equally by the parties.

Should the parties not resolve their issues by mediation within one hundred twenty (120) days of initiation of the mediation process, the dispute shall be subject to arbitration. All disputes arising in connection with this Agreement shall be finally settled under the Rules of the American Arbitration Association by three (3) arbitrators appointed in accordance with said Rules. All documents and correspondence in relation to those disputes shall be drafted in English and the arbitration shall be conducted in English. The arbitrators to be appointed shall have a good working knowledge of the English language. The place of arbitration shall be Philadelphia, Pennsylvania, USA. The arbitration award shall be final, binding and not subject to appeal and shall be enforceable in any court of competent jurisdiction. The party in whose favor the arbitration award is rendered shall be entitled to recover the cost and expenses of the arbitration panel. However, the parties own internal management time and costs (including the costs of the in-house counsel) and the costs of outside lawyers shall be borne by each party.

5. **Termination.** Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. Upon termination, the Company is responsible for prompt payment to the University for all services rendered and for reasonable expenses and noncancellable commitments incurred in the performance of this Agreement up to and including the date of termination.

6. **Limitation of Damages.** Even if advised of the possibility of such damages, in no event shall UNIVERSITY be liable for (a) personal injury or property damages or (b) lost profits, work stoppage, lost data, or any other special, indirect, or consequential damages of any kind.

**7. Limitation of Remedies.** In the event of UNIVERSITY's breach or failure to perform any obligation under this Agreement, UNIVERSITY's entire liability and COMPANY's exclusive remedy shall be, at UNIVERSITY's option, either (a) return of the monetary consideration paid to UNIVERSITY under this Agreement or (b) UNIVERSITY's performance of any obligation that failed to satisfy the terms of this agreement.

**8. Disclaimer of Warranties.** UNIVERSITY makes no representations extends no warranties, express or implied, concerning the services provided under this Agreement and any resulting information thereof. Further, UNIVERSITY makes no representations, extends no warranties, and assumes no responsibilities that the manufacture, use, or sale of services and products based in whole or in part on the services provided under this Agreement will not infringe the claims of any patents or other third party rights. The parties acknowledge and agree the services shall be provided and accepted "as is."

**9. UNIVERSITY Endorsements.** In no event shall COMPANY (or its successors, employees, agents, or contractors) state or imply in any publication, advertisement, or other medium that UNIVERSITY has approved, endorsed, or tested any product or service. In no event shall UNIVERSITY's performance of the services described in Section 1 be considered a test of the effectiveness or the basis for any endorsement of a product or service. COMPANY shall have no right to use, and shall not use, the name of UNIVERSITY (or the names of any UNIVERSITY faculty member, student, employee, or agent), in any publicity, advertising, or news release without UNIVERSITY's prior written approval. UNIVERSITY may publish information on this Agreement in its internal publications.

**10. Indemnification.** UNIVERSITY and COMPANY are separate and independent entities, and neither is the agent of the other. Subject to the limitations of damages and remedies set forth in this Agreement, UNIVERSITY and COMPANY hereby each agree to indemnify and hold the other party and their personnel free and harmless from any and all loss, cost, damage, claim, action, or liability on account of the death of or injury to any person or persons or damage to or destruction of any property resulting from or growing out of any alleged negligence on the part of the indemnifying party or their personnel in the implementation of this Agreement.

**11. Publications.** UNIVERSITY shall have the right to publish the data gathered, if any, analytical methods, and results and conclusions. No less than 60 calendar days prior to the publication of any such information, UNIVERSITY shall notify COMPANY, in writing, of UNIVERSITY's or its faculty member's, student's, employee's or contractor's intention to publish and shall deliver to COMPANY a copy of the information to be published. COMPANY shall have the right, exercisable within 30 calendar days of its receipt of UNIVERSITY's notice of intent to publish, to object to the publication of information owned by COMPANY. COMPANY may so object only on the grounds that the intended publication discloses (A) information concerning an unpatented invention and COMPANY reasonably and in good faith intends promptly thereafter to take all steps necessary to obtain enforceable patent rights or (B) information for which COMPANY has and can claim confidential, trade secret status. In the event COMPANY duly makes such an objection, COMPANY and UNIVERSITY Principal Investigator shall enter into good faith negotiations with a view towards agreeing upon the portion of the objectionable information that may be published by UNIVERSITY.

**12. Export Control.** UNIVERSITY and COMPANY agree that the performance of this Agreement will be in compliance with U.S. Export Control and Trade Sanction regulations and

agree to confer and consult with each other regarding export control regulations as they relate to physical, deemed, and electronic transmission exports. Additionally, UNIVERSITY and COMPANY agree to consult with one another prior to publication or other disclosure of work performed pursuant to this Agreement to ensure compliance with export control regulations.

The COMPANY will not re-export any technical data, materials, or software developed by the UNIVERSITY under this agreement without prior written authorization. In the event that export licenses are required for the performance of this work, the UNIVERSITY shall be responsible for applying for those licenses and COMPANY will be responsible for paying for those licenses. If licenses cannot be obtained, this agreement will be terminated.

**13. Amendment.** No modification of this Agreement will be effective unless signed by authorized representatives of both parties.

**14. Assignability.** This Agreement is personal to the parties and may not be assigned or otherwise transferred, in whole or in part, voluntarily, involuntarily, or by operation of law, by either party without the prior written consent of the other party. Any assignment attempted to be made in violation of this Agreement shall be void.

**15. Force Majeure.** Neither party shall be liable to the other for any delays, suspensions, damages, or failure to perform any of the obligations under this Agreement due to, caused by, or occasioned by reason of Force Majeure. Force Majeure shall mean any circumstance or event beyond the reasonable control and foresight of the party unable to perform and which could not have been prevented or avoided by the exercise of due diligence, prudence, or the adoption of reasonable precautions. During an event of Force Majeure the parties' duty to perform obligations shall be suspended.

**16. Governing Law and Consent to Jurisdiction.** The construction, validity, performance, and enforcement of this Agreement shall be governed by the laws of the State of Delaware (without giving effect to its conflicts of laws principles). COMPANY hereby submits to the jurisdiction of the federal and state courts of the State of Delaware with respect to any proceeding arising out of or relating to this Agreement or any transaction in connection herewith. COMPANY hereby consents to the service of process by the mailing to COMPANY of copies thereof by certified mail to the address of COMPANY as it appears on the books and records of UNIVERSITY, such service to be effective ten (10) days after the mailing. COMPANY hereby waives irrevocably (i) any objection to the jurisdiction of any such court which it might otherwise be entitled to assert in any proceeding arising out of or relating to this Agreement or any transaction in connection therewith; and (ii) any defense of sovereign immunity or other immunity from suit or enforcement, whether before or after judgment.

**17. Independent Contractor.** In the performance of their obligations under this Agreement, the parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, partners, joint venturers, or employees. Neither party shall have the right or power to bind the other party, and any attempt to enter into an agreement in violation of this section shall be void. Neither party shall take any actions to bind the other party to an agreement.

**18. Notices.** Each notice, request, or demand given or required to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if deposited in the United

States mail, first class, postage pre-paid, and addressed to the intended recipient or to such other address as may be specified in writing by the parties. The following individuals shall be noticed:

UNIVERSITY: Charles Riordan, Ph.D.  
Vice President for Research, Scholarship and Innovation  
Research Office  
124 Hullahen Hall  
University of Delaware  
Newark, DE 19716  
[riordan@udel.edu](mailto:riordan@udel.edu)  
Phone No. 302-831-4007  
Fax No. 302-831-2828

COMPANY:

**19. Breach and Attorneys' Fees.** In the event COMPANY fails to perform any of its duties under this Agreement, COMPANY shall reimburse UNIVERSITY for all of UNIVERSITY's costs and expenses (including reasonable attorneys' fees, court costs, and costs of investigation) to enforce this Agreement, regardless of whether a suit or action has been commenced or concluded.

**20. Interpretation.** The parties acknowledge that each party has reviewed and revised, and has been given the opportunity to have counsel review and revise, this agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits thereto.

**21. Entire Agreement.** This Agreement and Attachments represent the entire Agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings of the parties as to such subject matter.

**IN WITNESS WHEREOF**, the parties have entered into this Agreement. The signatories hereto warrant and represent that they have the competent authority to enter into the obligations of this Agreement.

**University of Delaware**

**Company**

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

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

Name:

Name:

University Principal Investigator

Title:

Date:

Date:

**Concurrence**

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

Name:

Title: [DEPARTMENT CHAIR / CENTER DIRECTOR]

Date:

**Research Office**

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

Name:

Title:

Date: