

Lehigh University Testing Services Agreement

This Agreement is to formalize the request of _____ (“Company”) for testing services from the Center for Advanced Materials and Nanotechnology (“CAMN”) at Lehigh University (collectively “University”). All services are provided on the terms and conditions set forth in this Agreement.

1. Purpose. The University, through CAMN, will perform the services and provide the deliverables described in Section 1 of Exhibit A to this Agreement.
2. Payment. Company agrees to pay upon receipt of an invoice the sum described in Section 2 of Exhibit A. Payment will be made in lawful money of the United States of America. Payments not made in full within thirty (30) days of the date of the invoice will bear interest at a rate of eighteen percent (18%) per annum. Company will be liable for any and all costs and expenses incurred by University in enforcing this Agreement.
3. Confidentiality. “Confidential Information” shall mean any materials, written information, and data marked “Confidential” by Company or non-written information and data disclosed by Company that is clearly and conspicuously identified at the time of its disclosure to the University as confidential and is reduced to writing and transmitted to the University within thirty (30) days of such non-written disclosure. University agrees to use the same degree of care it uses to protect its own confidential information and, to the extent permitted by law, to maintain as confidential for a period of two (2) years the Confidential Information that Company discloses to University under this Agreement. University’s obligations hereunder do not apply to information in the public domain or independently known or obtained by University.
4. Intellectual Property. As the University will be conducting testing only (no research), University has no interest in the Deliverables provided under this Agreement.
5. Publicity. Neither party will use the name, service mark, trademark, or abbreviation thereof of the other party in any publicity, advertising, or news release without the prior written approval of the authorized representatives of the other party.
6. Termination. Either party may terminate this Agreement upon written notice to the other at the address set forth in Section 3 of Exhibit A. Company shall reimburse University for all reasonable costs and non-cancelable obligations incurred by the University at the time of termination. At Company’s request and expense, University will return to Company or destroy all unused materials provided by Company.
7. Independent Contractor. The parties are independent contractors and not partners, joint venturers, or principal and agent.
8. LIABILITY. IN NO EVENT WILL THE UNIVERSITY BE RESPONSIBLE FOR ANY DAMAGES OR PENALTIES RESULTING FROM UNIVERSITY’S FAILURE TO PROVIDE OR DELAY IN PROVIDING THE SERVICES OR DELIVERABLES. IF A SERVICE OR DELIVERABLE IS FOUND, WITHIN SIX MONTHS OF INVOICE THEREFOR, TO BE DEFECTIVE OR INACCURATE, THE UNIVERSITY WILL PROVIDE THE SERVICE OR DELIVERABLE AGAIN AT NO COST TO COMPANY. THIS IS COMPANY’S SOLE AND

EXCLUSIVE REMEDY UNDER THIS AGREEMENT. THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND UNIVERSITY EXPRESSLY DISCLAIMS ANY WARRANTIES EXISTING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO THOSE WHICH ARE EXPRESS OR IMPLIED. IN NO EVENT WILL UNIVERSITY BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, NOR WILL THE UNIVERSITY'S AGGREGATE LIABILITY TO COMPANY EVER EXCEED THE AMOUNT PAID BY COMPANY UNDER THIS AGREEMENT. COMPANY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS UNIVERSITY AGAINST ANY CLAIMS ARISING OUT OF COMPANY'S USE, COMMERCIAL SALE, OR DISTRIBUTION OF THE DELIVERABLES OR PRODUCTS OR PROCESSES RESULTING THEREFROM OR COMPANY'S RELIANCE UPON THE DELIVERABLES.

9. Insurance. If requested, Company will provide University with evidence of satisfactory insurance coverages to support its obligations under paragraph 8 and other applicable provisions of this Agreement. Company agrees that in the event of loss or damage to the materials submitted for testing, the value of such materials will be considered to be zero unless the parties agree to assign a value in writing on or before this Agreement is signed.

10. General. This Agreement is non-assignable and non-transferable. Any legal proceeding instituted by Company shall be in the courts in Northampton County, Pennsylvania or the Eastern District of Pennsylvania. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Company certifies that it is duly authorized to enter into this Agreement and that this Agreement is binding upon it.

The Company, intending to be legally bound, has caused this Agreement to be executed by its duly authorized representative on the date set forth below.

Company/University: _____

Signature: _____

Name and Title: _____

Date: _____

LEHIGH UNIVERSITY:

Signature: _____

Name and Title: _____

Date: _____

Exhibit A to Lehigh University Testing Services Agreement

1. Services and Deliverables

2. Amount Payable

In accordance with attached Equipment and Labor Rates Sheet (External Rates), including overhead charges.

3. Contact Information

CAMN

Gene Lucadamo, Industrial Liaison Officer, 610-758-4855; ea17@lehigh.edu

Deanne Hoenscheid, Administrative Manager, 610-758-3863, dlh3@lehigh.edu

Center for Advanced Materials and Nanotechnology

Lehigh University

15 E. Packer Ave.

Bethlehem, PA 18015

Company