

**LEHIGH UNIVERSITY
RESEARCH AND TESTING AGREEMENT**

THIS RESEARCH AND TESTING AGREEMENT (the "Agreement"), effective as of the ____ day of _____, 2007 (the "Effective Date"), is by and between _____ [Company Name] a _____ [Company's state of incorporation] business corporation (hereinafter referred to as "Sponsor") and LEHIGH UNIVERSITY, a Pennsylvania non-profit corporation (hereinafter referred to as "University").

WITNESSETH:

WHEREAS, the research and testing project contemplated by this Agreement is of mutual interest and benefit to University and to Sponsor, will further the educational and research objectives of University in a manner consistent with its status as a non-profit, tax-exempt educational institution, and may derive benefits for both Sponsor and University through research findings, inventions, and/or discoveries;

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

Article 1 - Definitions

As used herein, the following terms shall have the following meanings:

- 1.1 "Project" shall mean the project titled _____ as described in Appendix A attached hereto and incorporated by reference as a material part of this Agreement, under the direction of the Project Manager.
- 1.2 "Agreement Term" is from the Effective Date through _____ [date], and automatically extendable per Article 7.1.
- 1.3 "Project Manager" shall mean the individual(s) identified as such on Appendix A hereto, who is/are the University faculty and/or staff member(s) responsible for supervision and administration of the Project.

Article 2 – Conduct of Project

- 2.1 University shall use reasonable efforts to commence the Project promptly after the Effective Date and to conduct the Project substantially in accordance with the terms and conditions of this Agreement. Sponsor acknowledges that University and the Project Manager must conduct the Project in a manner consistent with University's educational and research missions. Anything in this Agreement to the contrary notwithstanding, Sponsor and University may at any time amend the Project by mutual written agreement signed by their authorized representatives.
- 2.2 In the event that the Project Manager becomes unable or unwilling to continue Project, and a mutually acceptable substitution is not available, University and/or Sponsor shall have the option to terminate said Project, subject to the provisions of Article 7, by giving written notice to the other party of such termination.

- 2.3 Sponsor shall promptly provide University with such information or documents of whatever form or nature, or undertake such actions, as University may reasonably require in order to conduct the Project.

Article 3 - Reports and Conferences

- 3.1 Project reports will be provided by University to Sponsor as may be set forth on Appendix A, and a final report will be submitted by University at the conclusion of the Agreement Term or earlier termination of this Agreement.
- 3.2 During the Agreement Term, representatives of University will meet with representatives of Sponsor at such reasonable times and places as may be set forth in Appendix A to discuss the progress and results of, as well as ongoing plans or changes for, the Project.

Article 4 - Costs, Billings and Other Support

- 4.1 It is agreed to and understood by the parties hereto that except as may be otherwise agreed by the parties in writing, total costs to Sponsor for the Project hereunder shall not exceed the sum of ____ thousand dollars (\$_____), which consists of \$_____ for the membership fee plus \$_____ for program activity. Sponsor shall be invoiced quarterly from the Effective Date for project activities, with payment due 30 days after receipt of invoices.
- 4.2 Anything herein to the contrary notwithstanding, in the event of early termination of this Agreement by either party, Sponsor shall pay all costs and noncancellable commitments incurred by University through and including the date of termination as provided in Article 7.3.
- 4.3 University shall retain title to all equipment, materials, and supplies purchased and/or fabricated by it with funds provided by Sponsor under this Agreement. University shall also retain all rights and title to all inventions, improvements and/or discoveries which, in performance of the Project, are conceived and/or made by faculty, staff or students of University, whether patentable, copyrightable or not.
- 4.4 Any sums due and owing by Sponsor to University shall bear interest at the rate of 18% per annum from the date due until paid. Sponsor shall be liable for any and all costs and expenses incurred by University in enforcing this Agreement.

Article 5 – Publicity and Use of Name

Sponsor shall not use the name of University, the Project Manager, or any member of University's Project staff, in any publicity, advertising or news release without the prior written approval of the University's Director of the Office of Research and Sponsored Programs and the Vice President for University Relations or their authorized designees.

Article 6 - Publications

Sponsor recognizes that under University policy, the results of University projects, including the Project, must be publishable and agrees that the Project Manager and the researchers engaged in the Project shall be permitted to present at symposia, national or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Project, provided however, that Sponsor shall have been furnished copies of any proposed publication or presentation at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor or other third party.

Article 7 – Agreement Term and Termination

- 7.1 This Agreement shall become effective upon the Effective Date and shall continue in effect for the Agreement Term unless sooner terminated in accordance with the provisions of this Article. The parties hereto may, however, extend the Agreement Term for additional periods as desired under mutually agreeable terms and conditions which the parties shall reduce to writing and sign. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.
- 7.2 In the event that either party hereto shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy such default or breach within twenty (20) days (except with respect to a default or breach relating to the insurance requirements of Article 9 hereof, for which the cure period shall be one (1) business day) after receipt of written notice thereof from the other party hereto, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect, and such termination shall be effective as of the date of the receipt of such notice.
- 7.3 In the event of termination of this Agreement prior to the completion of the Agreement Term, whether for breach or for any other reason whatsoever, University shall be entitled to retain from the payments made by Sponsor prior to termination University's reasonable costs of concluding work in progress on the Project. Allowable costs include, without limitation, all costs or noncancellable commitments incurred prior to the receipt, or issuance, by University of the notice of termination. In the event of termination, University shall submit a final report of all costs incurred and all funds received under this Agreement within sixty (60) days after the effective termination date. The report shall be accompanied by a check in the amount of any excess of funds advanced over costs and allowable commitments incurred. In case of a deficit of funds, Sponsor shall pay University the amount needed to cover costs and allowable commitments incurred by University under this Agreement.
- 7.4 Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement. Furthermore, no termination or expiration of this Agreement, however effectuated, shall release the parties hereto from their respective rights and obligations under Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 17, which such Articles shall survive in their entirety any termination or expiration of this Agreement.

Article 8 - Disclaimer of Warranties; Indemnification

- 8.1 ANY AND ALL RESULTS OF THE PROJECT, REPORTS, OR OTHER MATERIALS PROVIDED BY UNIVERSITY UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS. UNIVERSITY MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT RESULTS, REPORTS, OR ANY OTHER MATERIALS. UNIVERSITY MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO FREEDOM FROM PATENT, TRADEMARK, COPYRIGHT OR TRADE SECRET INFRINGEMENT ARISING FROM THE USE OF THE PROJECT RESULTS, REPORTS, OR OTHER MATERIALS PROVIDED HEREUNDER. UNIVERSITY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY SPONSOR OR ANY OTHER PARTY RESULTING FROM THE PROJECT OR THE USE OF ANY PROJECT RESULTS, REPORTS, OR OTHER MATERIALS.
- 8.2 Except to the extent caused by the sole negligence of any of the Indemnified Persons (as hereinafter defined), Sponsor shall defend, indemnify and hold harmless University, its trustees, officers, faculty, students, employees, subsidiaries, affiliates and agents (hereinafter referred to collectively as the "Indemnified Persons") from and against any and all liability, claims, lawsuits, losses, damages, costs or expenses (including without limitation attorneys' fees), which the Indemnified Persons may hereafter incur or be required to pay as a result of: (a) Sponsor's use of the results of Project or any reports or other materials; or (b) any breach of this Agreement; or (c) any act or omission of Sponsor, its employees, subsidiaries, affiliates, contractors, licensees or agents. University shall notify Sponsor upon learning of the institution or threatened institution of any such liability, claims, lawsuits, losses, damages, costs and expenses and University shall cooperate with Sponsor as reasonable in the defense or settlement thereof at Sponsor's request and expense.

Article 9 - Insurance

- 9.1 Sponsor shall carry the following insurance coverage with companies licensed to do insurance business in the Commonwealth of Pennsylvania and acceptable to University:
- **Commercial General Liability**, including Contractual Liability and Completed Operations/Products Liability coverage, at the minimum limit of \$1,000,000 per project/ per occurrence (depending on degree of risk, other limits may be appropriate) and \$2,000,000 aggregate;
 - **Automobile Liability** at \$1,000,000 each accident.
 - **Workers' Compensation** at statutory limits and Employer's Liability coverage at a minimum limit of \$1,000,000;
 - **Professional Liability** – Whenever work under this Agreement involves professional services excluded from the SPONSOR'S Commercial General Liability Insurance and/or it is standard practice in SPONSORS'S profession to do so (e.g., Architectural, Engineering, Medical, Internet/Information Technology, etc.), SPONSOR shall carry Professional Liability Insurance and/or Technology Errors and Omissions Insurance to protect the University from any liability arising out of the professional obligations performed pursuant to the requirement of the

Agreement. SPONSOR shall evidence Professional Liability Insurance and/or Technology Errors and Omissions Insurance with a limit of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate (retroactive date prior to work; extended reporting period of 36 months).

- **Pollution Liability** – The University may require this coverage whenever work under this Agreement involves pollution risk to the environment. This coverage is to include sudden and gradual coverage for third-party liability including defense costs and completed operations.

All policies of insurance described above shall be on a primary basis non-contributory with any other insurance coverages and/or self-insurance carried by the University.

If the nature and/or scope of the Project justify it, University may require Sponsor to provide evidence of higher coverage limits. The procuring of insurance required under this Article shall not relieve Sponsor of any obligation or liability assumed under this Agreement nor of any obligation or liability imposed by operation of law.

- 9.2 Prior to the University's commencement of the Project pursuant to this Agreement, Sponsor shall furnish University with proof of insurance, satisfactory to University in its sole discretion, evidenced by duly authenticated certificates of insurance, delivered to University, which certificates shall show the insurance type, amount, class of operations covered, effective dates, and dates of expiration of policies. **Such certificates shall evidence that University has been named as an Additional Insured** on all such policies except Workers' Compensation and Professional Liability and shall also contain the following statement or its substantial equivalent:

"The insurance covered by this certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by Lehigh University."

Article 10 – Independent Contractor

In the conduct of the Project hereunder, University shall be deemed to be and shall be an independent contractor. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty or representation as to any matter. Neither party shall be bound by the acts or conduct of the other.

Article 11 – Compliance with Laws

Sponsor shall comply with all laws, regulations and other legal requirements applicable to Sponsor in connection with this Agreement, including but not limited to any legal requirements applicable to Sponsor's use of the results of the Project or any reports or other materials and laws controlling the export of technical data, computer software, laboratory prototypes, and all other export controlled commodities.

Article 12 - Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of laws doctrine of such state.

Article 13 - Arbitration

In the event of any conflict or claim arising out of or relating to any provision of this Agreement or breach thereof, the parties shall make a good faith effort to settle such conflict amicably between themselves. Any such conflict which the parties are unable to resolve shall be settled in accordance with the rules of the American Arbitration Association with the provision that any issues pertaining to patent validity shall be determined in a court of competent jurisdiction. The award or decision shall be rendered by a majority of an arbitration panel consisting of three members, one of whom shall be appointed by University, one of whom shall be appointed by Sponsor and the third of whom shall be the chairperson of the panel and appointed by mutual agreement of said two party-appointed arbitrators. Such arbitration proceedings shall be conducted in Bethlehem, Pennsylvania. The award or decision through arbitration shall be binding upon the parties and may be incorporated into and thereupon enforced as an order of a court of competent jurisdiction.

Article 14 - Notices, Invoices, and Payments

Notices, invoices, communications and payments hereunder shall be deemed made if given in writing and addressed to the party to receive such notice, invoice, communication or payment at the address given below, or such other address as may hereafter be designated by notice in writing:

If to Sponsor:

If to University:

Office of Research and Sponsored Programs
Att'n: Director
Lehigh University
526 Brodhead Avenue
Bethlehem, PA 18015

With a copy to:
Office of the General Counsel
Lehigh University
27 Memorial Drive West
Bethlehem, PA 18015

Article 15 - Force Majeure

In the event that either party is unable, wholly or in part, to carry out its obligations under this Agreement by reason of acts of God or public enemy, wars, insurrections, civil disturbances, epidemics, labor disputes, failure of government approval, accidents, failure of utilities, material shortages, fires, storms, floods and any other causes, whether of the kind enumerated herein or otherwise, not within the control of the party unable to perform, then the obligations of this Agreement shall be suspended during the reasonable continuance of any inability so caused.

Article 16 – Non-Discrimination

University and Sponsor shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual preference, age, religion, national origin, disability, or because he or she is a disabled veteran or veteran of the Vietnam Era.

Article 17 - Assignment

This Agreement shall not be assigned by either party without the prior written consent of the other party hereto. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties.

Article 18 - Agreement Modification

Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and signed by a duly authorized representative of each party hereto.

Article 19 - Entire Agreement

This Agreement constitutes and expresses the entire agreement of the parties hereto with reference to the subject matter hereof, with all prior promises, undertakings, representations, agreements, understandings and arrangements relative thereto having been herein merged into this Agreement

IN WITNESS WHEREOF the parties have caused this Agreement to be executed, each by its duly authorized representative, to be effective as of the Effective Date defined herein.

SPONSOR:

LEHIGH UNIVERSITY:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A
to
Research and Testing Agreement

PROJECT DESCRIPTION
&
ADDITIONAL INFORMATION ON CONDUCT OF PROJECT