



RADIATION SCIENCE & ENGINEERING SERVICES AGREEMENT

AGREEMENT # _____

That **THIS RADIATION SCIENCE AND ENGINEERING SERVICES AGREEMENT** (“Agreement”) by and between **THE PENNSYLVANIA STATE UNIVERSITY**, a state-related institution and instrumentality of the Commonwealth of Pennsylvania subject to the Pennsylvania nonprofit corporation laws (“Penn State”), and _____, a _____ (“Sponsor”) pursuant to which Penn State has agreed to make certain facilities and equipment available to Sponsor for the purpose of research.

WHEREAS, Penn State has developed research and analysis expertise and related technologies, equipment, and facilities (“RSEC Services”) which Penn State intends to utilize in fulfillment of its role as Pennsylvania’s land grant university by providing specialized RSEC Services to its various constituents, including without limitation private companies, for the benefit of the Commonwealth and Penn State; and

WHEREAS, Sponsor desires specialized assistance requiring the RSEC Services which Penn State makes available on a non-commercial, limited basis through Penn State’s Radiation Science and Engineering Center (“RSEC”), and Penn State desires to provide such RSEC Services; and

WHEREAS, the RSEC Services provided pursuant to this Agreement are of mutual interest and benefit to the Penn State and Sponsor and will further the instructional, research, and public service missions of the Penn State and may derive benefits for both Penn State and the Sponsor through the advancement of knowledge.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties hereto agree to the following:

1. RSEC Services. As used herein, "Project" shall mean the research services described in Appendix A hereof, under the direction of _____ (hereinafter referred to as "Principal Investigator").

2. Term and Termination. The term of this Agreement shall be from _____ to _____. Either party may terminate this Agreement upon 30 days prior written notice to the other. All reasonable costs and non-cancelable obligations incurred by Penn State on the effective date of termination shall be reimbursed by the Sponsor. At Sponsor’s request, all unused Sponsor provided materials still in Penn State’s possession on the effective date of termination shall be destroyed by Penn State at Sponsor’s expense.

3. Reports. Penn State shall provide Sponsor with a written report regarding the data obtained in the course of the RSEC Services.

4. Fiscal Considerations. This is a cost reimbursable Agreement. Total cost to Sponsor shall not exceed _____ dollars (\$ _____). Payments shall be made by Sponsor within 30 days of receipt of an invoice. Sponsor shall be responsible for all collection costs associated with non-payment. Penn State may immediately discontinue performance of Project if Sponsor fails to pay any invoice within the time specified above. Late payments are subject to a penalty of one percent (1%) on all balances which are 90 days or more past due. Invoices shall be sent to the following email address _____.

5. Equipment. Penn State shall retain title to any equipment purchased by Penn State using Sponsor funds.

6. Publicity. Neither party will use the name, logos, or marks of the other party in any publicity, advertising, or news releases without the prior written approval of an authorized representative of the other party.

7. Confidentiality. "Confidential Information" shall mean any Sponsor-provided 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 30 days of such non-written disclosure. Said Confidential Information shall be sent only to Principal Investigator named in Article 1(a). Penn State hereby agrees to use the same degree of care it uses to protect its own confidential information to maintain for a period of 3 years from the date of termination of this agreement, the Confidential Information obtained from Sponsor. Penn State's obligations hereunder do not apply to information in the public domain, independently known or obtained by Penn State or required by valid legal authority to be disclosed.

8. Publication. Sponsor acknowledges that Penn State, subject to prior review by Sponsor, shall have the right to publish any results of the Project that do not disclose Proprietary Information. Penn State will use reasonable efforts not to disclose proprietary processes or methods of Sponsor, or the nature or composition of materials provided by Sponsor. Penn State will provide Sponsor with 30 days to review any manuscripts or proposed publications arising out of the RSEC Services. Authorship of any publication resulting from the research shall be determined in accordance with academic standards for authorship in the relevant field of study.

9. Intellectual Property. All inventions arising out of the RSEC Services will be promptly disclosed to Sponsor. Penn State shall not obtain or attempt to obtain patent coverage on Sponsor-provided materials or information, without the express written consent of Sponsor. Subject to any government license rights, all inventions, patent applications, or patents made during RSEC Services which name as an inventor at least one employee of Penn State shall be owned as follows: i) inventions which involve the use of, composition of, or improvement to Sponsor-provided materials or information, or a derivative, analogue thereof shall belong to Sponsor; and ii) inventions which cover a scientific process, technique, procedure, medium, device or other process which is not unique to processing Sponsor's proprietary materials or does not derive from Sponsor-provided materials or information, or any software or code developed by Penn State in the course of performing the RSEC Services, shall be owned by Penn State.

10. Indemnity. Sponsor agrees to indemnify and hold harmless Penn State from and against any claims and costs (including without limitation reasonable attorneys' fees) arising out of Sponsor's commercial sale or distribution of products or processes developed under this Order, or its reliance upon any reports provided in connection with this Agreement.

11. No Warranties. PENN STATE IN NO WAY GUARANTEES THE RSEC SERVICES PERFORMED PURSUANT TO THIS AGREEMENT OR ANY RESULTS OR REPORTS GENERATED BY OR PROVIDED IN CONNECTION THEREWITH, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SUITABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. The Sponsor accepts full responsibility for the progress and results of its project.

12. Institutional Review Board. In the event any project or portion thereof funded under this agreement requires the use of human research subjects, the then current IRB project terms, which are available online at <http://www.research.psu.edu/osp/negotiate-agreements/industry-other/t-csra>, shall apply and be incorporated herein by reference.

13. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania without reference to its conflicts of laws principles.

14. Disclosure of Controlled Content. Both parties are subject to applicable U.S. export laws and regulations and shall use their reasonable best efforts to comply with any and all reporting or licensing requirements contained therein. Prior to delivery to Penn State of any export-controlled information, materials, technology, or know-how (collectively “Controlled Content”), unless and solely to the extent that such Controlled Content is appropriately designated as EAR99, Sponsor shall notify Penn State’s Office of Sponsored Programs (OSP), to inform of the Sponsor’s intention to disclose or deliver the Controlled Content. At such time, Penn State’s OSP shall have a reasonable period, not to exceed 10 business days, to evaluate the request for disclosure or delivery of the Controlled Content. Penn State’s OSP shall have, in its sole discretion, the right to accept or decline receipt of such Controlled Content. Upon receipt of written notification from Penn State of its acceptance of delivery of the identified Controlled Content, in a manner consistent with this provision, Sponsor may disclose and/or deliver the Controlled Content only to the attention of the named Principal Investigator as identified in Article 1.

15. Independent Contractor. In performing the RSEC Services, Penn State is an independent contractor of Sponsor. This Agreement does not, and shall not be construed to, create a partnership, joint venture, or agency relationship between the parties.

16. Non-Assignability. Neither party may assign this Agreement without the prior written consent of the other party, and any such attempted assignment shall have no force and effect.

17. External Users. If Sponsor’s employees will be performing work on site at Penn State Facilities related to a Project, then the External User Term Sheet, attached hereto and incorporated herein as Exhibit 1, must be completed, specifically including a list of authorized users, and the additional terms and conditions contained therein shall apply.

18. Entire Agreement; Amendment. This Agreement contains the entire agreement between the parties, and supersedes all prior and contemporaneous understandings, whether written or oral, with respect to the subject matter hereof. If payment of an invoice requires the Sponsor to issue a purchase order which contains terms and conditions attached, those purchase order terms and conditions shall be null and void, and the terms of this Agreement shall prevail. This Agreement may not be modified or amended except in writing duly authorized official of each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto set their hands as of the date last written below.

By an Authorized Official of Penn State

By an Authorized Official of Sponsor

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____