**LABORATORY TESTING SERVICES AGREEMENT**

This Laboratory Testing Services Agreement (“Agreement”) is entered into by and between Northeastern University a non-profit educational institution organized under the laws of the Commonwealth of Massachusetts (“University”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Applicant”) as of the \_\_\_ day \_\_\_\_\_\_\_\_, 20\_\_\_\_.

The parties may be referred to individually as “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS,** Applicant has identified a need to engage a party to conduct Laboratory Tests (defined below) for Applicant;

**WHEREAS,** Applicant has determined that it cannot obtain equivalent Laboratory Tests from a commercial entity;

**WHEREAS,** Applicant desires University through its College \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to conduct for Applicant the Laboratory Tests via the Services (defined below) in accordance with and subject to this Agreement; and

**WHEREAS,** University through its College \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,has determined that University’s performance of the Laboratory Tests is appropriate under the policies and procedures of the University and wishes to provide the Services to Applicant in accordance with and subject to this Agreement.

**NOW THEREFORE,** in consideration of the premises and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **PERFORMANCE OF LABORATORY TESTING SERVICES**

**1.1. LABORATORY TESTING SERVICES.** Applicant has identified a need to conduct certain tests that: (a) require use of a unique or special University facility (the “Laboratory”) that either does not exist elsewhere or is not readily accessible; and (b) involve established, pre-existing methods of a primarily technical nature; and (c) do not constitute original, creative research (clauses (a) – (c) are collectively referred in this Agreement as “Laboratory Tests”). University, through its faculty and staff, will use reasonable efforts to perform the Laboratory Tests identified in one or more SOWs (defined below) which identify the specific testing methods and unique University equipment/facilities to be used and the objectives to be achieved (“Services”), in accordance with and subject to this Agreement. The Services shall be described in one (1) or more properly authorized and executed Statement of Work (each, an “SOW”), which is set forth in substantial form and substance in Exhibit A to this Agreement (“Exhibit A”) and is attached hereto and incorporated in this Agreement by this reference. If a conflict exists between the terms of this Agreement and any SOW, the terms of this Agreement shall govern. University shall not be legally obligated to perform any Services (including, the Laboratory Tests) not set forth in the applicable SOW.

**1.2. TEST RESULTS.** University will deliver to Applicant all observational data, measurements and other results required under the statement of work (“Test Results”). Test Results will be the property of Applicant. Applicant hereby certifies to University that the Test Results will not be used in commercial production. Subject to Section 2 of this Agreement, Test Results may be published by University in accordance with its educational, non-profit and research missions.

**1.3. ANALYSIS OF TEST RESULTS.** In no event will University provide expert interpretation of Test Results under this Agreement. If desired, Applicant will secure by separate agreement the related expert/consultant services that it may require.

**1.4. LABORATORY CONTACTS.** Each Party appoints the following individual to serve as its laboratory contact during performance of Services. Each Party will notify the other of any change in the laboratory contact.

For University: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Principal Office (contact information) for University laboratory contact:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For Applicant:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Principal Office (contact information) for Applicant laboratory contact:

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**1.5. TEST MATERIALS.** Applicant must deliver to University all materials to be tested (“Test Materials”) for Laboratory to perform the Services. University will exercise reasonable care in the handling and storage of Test Materials but will not be liable to Applicant for any loss of or damage to Test Materials. Applicant shall be solely responsible for all aspects relating to obtaining and providing Test Materials to Laboratory, including without limitation, compliance with the requirements of all applicable Institutional Review Boards (“IRBs”), comparable ethical oversight bodies and/or any entity from which Test Materials are obtained. All Test Materials provided to Laboratory by Applicant will be fully de-identified. For purposes of this provision, the term “de-identified” means that all Test Materials and other information provided to the Laboratory by Applicant shall exclude all identifiers set forth in 45 CFR 164.514(b)(2) and shall otherwise adhere to any privacy standard required by applicable laws and requirements. If Test Materials are provided to Laboratory with a code for which a link to donor information exists, Applicant shall not under any circumstances provide Laboratory with a link between the code and any donor information.

**1.6. MANNER OF SERVICES.** University will at all times control the manner in which the Services are performed, including, without limitation, the scheduling of the Laboratory Tests. University will furnish the tools, equipment and materials (other than the Test Materials) necessary for its performance of this Agreement.

**1.7 SERVICES PROVIDED BY THE LABORATORY.**

(A) University shall conduct the Services within the Laboratory only for covered research purposes only. In no event shall University use the Laboratory for non-research-related, commercial activities. Whether an activity is considered to be commercial and therefore prohibited is determined by University.

(B) Receipt of the Services of the Laboratory is made available on an “as requested, as available” basis for covered research purposes only. Requests for Services must be submitted in writing by Applicant to Laboratory personnel in accordance with University policies and procedures.

(C) Notwithstanding any provision in this Agreement, University reserves the right to interrupt, curtail, stop or suspend the furnishing of Services provided for in this Agreement when necessary by reason of accident or emergency, change in applicable law or regulation, or of repairs, alterations, replacements or improvements in the reasonable judgment of University desirable or necessary to be made, or of difficulty or inability in securing supplies or labor, or of strikes, or of any other cause beyond the reasonable control of University, until said cause has been removed. University shall have no responsibility or liability for any such interruption, curtailment, stoppage, or suspension of possession or use of Services.

**2. CONFIDENTIAL INFORMATION.** If Applicant determines that University cannot perform the Services without disclosure of Applicant’s propriety or confidential information (collectively, “Confidential Information”) to University, then prior to any such disclosure the Parties may enter into a separate nondisclosure agreement using only the University’s standard nondisclosure agreement that clearly defines Confidential Information and the University’s confidential obligations to Applicant. All information provided to University by or on behalf of Applicant in the absence of the NDA shall be treated as publically available, non-confidential and non-proprietary information.

**3. INTELLECTUAL PROPERTY.** The Parties do not anticipate that any Inventions will result from the performance by the University of the Services. However, if the University conceives and reduces to practice any Inventions during its performance of the Services then: (a) all rights, title and interest in and to Inventions conceived and reduced to practice through the University’s access to the Confidential Information of Applicant provided in connection with this Agreement shall vest in the Applicant, provided however, that Applicant hereby grants to University an irrevocable, non-exclusive, fully-paid up license to use such Inventions for the nonprofit, educational and/or research purposes of University; and (b) all rights, title and interest in and to all other Inventions shall vest in University. For purposes of this Agreement, the term “Inventions” means inventions or discoveries conceived and actually reduced to practice as a direct result of the performance of the Services, and resulting patents thereof, and patent applications thereof (and divisions, continuations, continuations-in-part, or substitutions of such applications).

**4. COMPENSATION**

**4.1. PAYMENT SCHEDULE.** In consideration for University’s performance of Services, Applicant will pay to University compensation in accordance with the fee and/or payment schedule **Exhibit B**, attached hereto and incorporated herein. Except as otherwise provided on Exhibit B or any invoices, all payments are due within thirty (30) days from the date of the invoice. In the event University is required to institute legal action for the collection of past due payments, University shall be entitled to recover from Applicant court costs and reasonable attorneys’ fees.

**4.2. BILLING ADDRESS.** University will send all invoices to Applicant at the following address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Applicant will send all payments to University at the following address:

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Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**5. TERM AND TERMINATION**

**5.1. TERM.** This Agreement shall commence on the date first written above and if not terminated earlier as provided in this Agreement, shall expire on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**5.2. TERMINATION.** Either Party may terminate this Agreement at any time by providing thirty (30) days prior written notice to the other Party. University may immediately terminate this Agreement upon breach of this Agreement by Applicant provided, however, no termination or expiration of this Agreement shall relieve any unpaid payment obligation of Applicant to University under this Agreement. If Applicant terminates this Agreement, Applicant shall promptly pay to University all amounts for Services performed by University up to and including the effective date of such termination. If University terminates this Agreement other than for breach of this Agreement by Applicant, University shall use reasonable efforts to complete all Services in process at the time the notice of termination is provided to Applicant.

**6. DISCLAIMER OF WARRANTIES.** Except as expressly stated in this paragraph, University hereby makes no representations and disclaims any and all warranties, whether express or implied, including, without limitation, the warranties of merchantability, non-infringement and fitness for a particular purpose regarding the Services and/or the performance of University under this Agreement. University will perform the Services in accordance with standards appropriate to an institution of higher education on an “AS IS, AS PROVIDED” BASIS WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND AND ANY AND ALL INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY AND OTHER PROPERTY AND RIGHTS PROVIDED AND/OR MADE AVAILABLE BY UNIVERSITY PURSUANT TO THIS AGREEMENT ARE PROVIDED AND /OR MADE AVAILABLE ON NO OTHER BASIS.

**7. INDEMNIFICATION; LIMITATION OF DAMAGES; RELEASE.** Applicant shall defend, indemnify and hold harmless University from and against any and all claims, demands, suits, actions, causes of action, liabilities, damages, losses, costs and/or expenses including, without limitation reasonable attorneys’ fees, asserted against, incurred by or paid by the University, its trustees, officers, employees, faculty, staff, students, agents, successors and assigns (collectively, the “University Parties”) arising under or relating to or in connection with this Agreement, including without limitation, the use of the Test Materials or any use by a third party of the Test Results. In no event shall the University Parties have any liability to Applicant or any other party arising under or in connection with this Agreement for any consequential, incidental, special or other indirect damages of any kind whatsoever, including without limitation lost profits, revenue or other economic loss or damage even if the University was advised of the possibility of such damages. Notwithstanding any provision in this Agreement, the maximum liability of the University Parties under this Agreement shall not exceed an amount equal to the amount paid by Applicant to University under this Agreement. The Applicant is responsible and liable for insuring the Test Materials and other property (for example, materials, data and/or information) of the Applicant and the Applicant’s personnel, including for losses due to fire, smoke, water, malfunctions, error, theft or disclosure. The University Parties are not responsible or liable for any loss or damage to the property of the Applicant or its personnel and does not provide any property or liability insurance coverage for the benefit of Applicant or its personnel. The University reserves the right to discard or donate the property of Applicant and/or its personnel remaining at the Laboratory without any liability therefor upon termination of this Agreement and/or thirty (30) days following completion of any Services. Applicant, on behalf of itself and its personnel and their respective heirs, executors, administrators, personal representatives, beneficiaries, agents, successors and assigns, hereby irrevocably and unconditionally remises, releases and forever waives any and all manner of Claims (defined below) asserted against, incurred by or imposed upon the University Parties in connection with any claim, suit, action or demand (each a “Claim”) arising out of, relating to or in connection with the Services and/or this Agreement. “Claims” include but are not limited to those involving (a) any bodily injury, death and/or property damages arising under this Agreement.

**8. GENERAL PROVISIONS**

**8.1. USE OF NAMES.** Except as expressly provided in this this Section 8.1 neither Party will use the name of the other in any form of advertising or publicity without the express written permission of the other Party. Applicant shall identify and acknowledge the receipt of Services of the Laboratory in any publication resulting from Research using the Test Results, unless the Laboratory requests otherwise. In any such resulting publication, the Applicant may not identify the Laboratory, the College of Engineering, the University or any personnel providing Services as co-authors or collaborators by virtue of their roles in providing Services. Notwithstanding the foregoing, individuals who are co-authors by virtue of scientific collaboration may be so identified.

**8.2. RELATIONSHIP OF THE PARTIES.** Neither Party is an agent, employee, legal representative, partner or joint venturer of the other. Neither Party has the power or right to bind or commit the other.

**8.3. GOVERNING LAW.** This Agreement and any dispute arising under this Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its conflicts of law principles.

**8.4. THIRD PARTY BENEFICIARIES.** This Agreement does not create any rights, or rights of enforcement, in third parties.

**8.5. SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Agreement legally invalid or unenforceable, such finding will not affect the validity or enforceability of any other provision of this Agreement and the Parties will continue to perform. If the Agreement cannot be performed in the absence of the provision, this Agreement will terminate upon 30 days prior written notice by one Party to the other Party.

**8.6. ENTIRE AGREEMENT; CAPTIONS.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all previous or contemporaneous communications, understandings and agreements, whether oral or written, between the Parties relating to the subject matter of this Agreement. All terms and conditions of any other instruments, including purchase orders, issued by Applicant at any time to facilitate payment under this Agreement are void. All captions are for convenience only and shall not affect the meaning of any provision of this Agreement. In the event of any inconsistency or conflict between the terms, conditions and provisions of this Agreement and any other agreements between the parties hereto relating to or arising from the subject matter of this Agreement, the terms, conditions and provisions of this Agreement shall govern and control. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.

**8.7. AMENDMENTS; WAIVER.** This Agreement may not be modified, amended, revised, supplemented or otherwise changed except by a writing signed by an authorized representative of each Party. Any waiver of any rights or failure to act in a specific instance shall relate only to such instance and shall not be construed as an agreement to waive any rights or fail to act in any other instance, whether or not similar.

**8.8. ASSIGNMENTS.** Neither Party may assign or transfer, in whole or in part, this Agreement without the prior written consent of the other Party and any attempted assignment or transfer is hereby void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

**8.9 FORCE MAJUERE.** Neither Party will be responsible for delays resulting from causes beyond the reasonable control of such Party, including without limitation fire, explosion, flood, war, strike and natural disasters, provided that the nonperforming Party uses reasonable efforts to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.

**8.10. EXPORT CONTROL.** Applicant shall comply with all applicable import and export control laws and regulations of the United States of America. Applicant shall not provide to University any export controlled information, data, technology, equipment, materials or other items without the prior, authorized written consent of University to accept such controlled information, data, technology, equipment, materials or other items. The University reserves the right, in its sole discretion, to refuse or accept such information or other item or use it in performance of the Services. In accordance with this Agreement, Applicant shall indemnify and hold harmless the University against any and all claims, damages, losses or other costs and expenses including without limitation, reasonable attorneys’ fees, arising out of or relating to or in connection with Applicant’s breach or alleged breach of this Section.

**8.11. RESOLUTION OF DISPUTES.** The Parties will enter into good faith negotiations to resolve any disputes arising from this Agreement. Resolution will be confirmed by written amendment to this Agreement. If the Parties cannot resolve any dispute amicably through negotiation, either Party may terminate this Agreement in accordance with Section 5.

**8.12. NOTICES.** All notices, materials, demands and other communications required or permitted hereunder or in connection herewith shall be in writing and delivered in person or sent electronically, by facsimile, nationally recognized overnight courier or registered or certified mail, return receipt requested and postage prepaid to the applicable party at its address or facsimile number set forth below or at such other address or facsimile number as any party hereto may designate as its address or facsimile number for communications under this Agreement by notice so given. Such communications shall be deemed effective on the (i) day on which delivered or sent if delivered in person, electronically (with confirmatory response electronically sent), or by facsimile (with answered back confirmation received in the case of email or fax); (ii) first (1st) business day after the day on which sent, if sent by a nationally recognized overnight courier; or (iii) third (3rd) business day after the day on which mailed, if sent by registered or certified mail to:

If to Northeastern University:

Northeastern University

Attn:

360 Huntington Avenue

Boston, MA 02115

(email)

(fax)

If to Applicant:

(email)

(fax)

**8.13. NO ENDORSEMENT.** The Services (including without limitation any services requiring the use of the Laboratory and/or the Test Results) do not constitute any endorsement, recommendation or favor by the University or any of its employees, or agents of Applicant or its products or services and Applicant may not state or imply any thing in any communications to the contrary.

**8.14 SURVIVAL.** All provisions, terms and conditions of this Agreement that are intended to survive termination or expiration, including without limitation, Sections 3 – 4 and Sections 6 – 8, to be effective shall survive such termination or expiration.

**IN WITNESS HEREOF,** the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above:

**NORTHEASTERN UNIVERSITY [NAME OF APPLICANT]**

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

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**Printed Name Printed Name**

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**Date Date**

**EXHIBIT A**

**STATEMENT OF WORK**

**(DESCRIPTION OF SERVICES)**

**EXHIBIT B**

**FEE and PAYMENT SCHEDULE**

**Northeastern University**

**College of Science**

**Procedure for the Provision of Lab Services to Non-NU Researchers**

I. Preamble: Northeastern University’s College of Science has the ability to conduct certain laboratory services, from time to time, (collectively, the “Services”) to researchers who are not employees of the University. The performance of Services for persons other than faculty, students or staff (referred to as “Non-NU Researchers”) is permissible subject to applicable federal and state laws. This procedure is established to assist the University in complying with those applicable laws and providing for the services to Non-NU Researchers. This procedure provides the minimum steps that the relevant Laboratory Director (or his or her designee) must undertake prior to providing the Services to a Non-NU Researcher. Questions regarding these procedures should be directed to Sam Inman, Associate Dean of Administration and Finance, College of Science.

II. Definition of Non-NU Researcher: The following is a comprehensive list of Non-NU Researchers for whom the University may provide certain Services:

1. Researchers at other non-profit academic institutions;
2. Researchers with whom Northeastern University has (or has the strong potential to have) an agreement to conduct sponsored research;
3. Researchers with whom Northeastern University has a co-op relationship;
4. Researchers who have a letter of sponsorship or support from a Northeastern University faculty member (which identifies how the provision of the services would benefit Northeastern University); and/or
5. Researchers whose use has been authorized in writing (including e-mail) by the Dean or the Dean’s designee.

III. The Provision of Services Using the College of Engineering Laboratory Equipment. Equipment in the College’s labs is available for use by faculty and students who have received training for lab equipment and/or who are appropriately supervised by a qualified individual. When such equipment is unused by the faculty and students, the College may provide Services to Non-NU Researchers. The Laboratory Director or his or her designee is responsible for ensuring each of the following requirements are met prior to the provision of the services to the Non-NU Researcher. The Laboratory Director shall keep a record or other centralized document that demonstrates compliance with these requirements. The Laboratory Director will develop and maintain a system for scheduling the use of the lab equipment for these purposes.

1. The person or entity seeking the Services of the College must qualify as a Non-NU Researcher as identified above.
2. The services provided by the University through the College of Science must be to a Non-NU Researcher and must be related to research and not for commercial production. The Laboratory Director will determine in writing (alone or in connection with others) whether there is a benefit to the University by conducting the services for the Non-NU Researcher. No production of manufactured products for sale is allowed using any University equipment or in any University facilities or by any University employee, student or Non-NU Researcher.
3. A complete and fully signed copy of University’s standard form of Laboratory Testing Services Agreement must be received by the University prior the provision of Services by the University to the Non-NU Researcher. This agreement must be completed and signed by the University and the Non-NU Researcher. Alterations or changes to this form of agreement are not permitted.
4. The Non-NU Researcher must be screened against governmental lists of debarred parties and other specially designated nationals in accordance with University procedures and/or policies for the same. The Laboratory Director shall promptly notify the Compliance Department (in accordance with its instructions) of any required screenings and provide to the Compliance Department the information necessary to conduct the screening and resolve the results of the screening. The Compliance Department or other designate shall conduct the screening and report the results to the Laboratory Director.
5. With the assistance of the Compliance Department, the Laboratory Director shall determine whether any restrictions or prohibitions under U.S. Export Control laws and regulations are associated with the lab equipment.
6. The provision of the Services by the University personnel shall be in accordance with all applicable University policies and procedures.
7. The Laboratory Director will provide upon request notice for tax and other purposes to the University Controller of the provision of Services. The frequency of such notice (e.g., quarterly, annually, etc.) shall be as the Controller shall direct. The notice shall include the information the Controller requires such as (i) an identification of the Non-NU Researcher, his or her employer’s name, equipment used to provide the services and the campus building in which the equipment is located; (ii) the date of the use; (ii) the amount of fees paid to the University; and (iv) the length of the use.
8. Prior to submitting for signature by the University any Laboratory Testing Services Agreement, Laboratory Directors must receive confirmation from the Associate Dean for Administration and Finance that the use of the equipment has been coordinated with the Controller’s office for purposes of ensuring compliance with private business use rules.
9. All University personnel using laboratory equipment to provide services to Non-NU Researchers must receive adequate training on such lab equipment. This training shall include and be consistent lab safety training policies established by the College of Science as well as all applicable University policies and procedures.
10. None Non-NU Researchers shall not be permitted in any University laboratory without appropriate permission and in accordance with applicable University’s policies and procedures.

IV. Private Business Use/Coordination by the Associate Dean for Administration and Finance. Facilities financed with tax-exempt financing and/or government or foundational grants or awards must be monitored on a consistent and regular basis throughout the life of the financing to ensure compliance with the tax-exempt private business use rules and federal regulation. With respect to each person who is a Non-NU Researcher, the Associate Dean for Administration and Finance or his or her designee shall coordinate with the University Controller or his or her designee to ensure compliance with the tax-exempt private business use rules and federal or other limitations on laboratory equipment and items finance via federal, foundational and/or tax-exempt financings, grants and/or awards.