**AGREEMENT FOR TESTING/SPECIAL SERVICES**

This Agreement for Testing/Special Services (“Agreement”)**,**  made effective this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”), by and between The Ohio State University, located at 1960 Kenny Road, Columbus, Ohio 43210 (hereinafter called ”Ohio State”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(hereinafter called the “Company”).

WHEREAS, Ohio State has valuable experience, skill, and ability to perform the services described in Exhibit 1 (the “Project”), which is incorporated and made part of this Agreement,

WHEREAS, the performance of the Project is of mutual interest to Company and Ohio State, and is consistent with the objectives of Ohio State and with its status as a public educational institution, and

WHEREAS, Ohio State will use reasonable efforts to perform the Project.

NOW THEREFORE, the parties mutually agree as follows:

1. **SCOPE OF WORK**

Ohio State will undertake the Project, as more fully described in Exhibit 1. Exhibit 1 shall set forth all deliverables required pursuant to this Project. It is agreed that Exhibit 1 will govern the direction of the Project until amended by authorized representatives of the Company and Ohio State. The Project shall be under the direction of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Ohio State's principal director. In the event of the departure, disability, or death of the principal director, Ohio State shall have the right to appoint a new principal director acceptable to the Company. Company’s acceptance of the new principal director shall not be unreasonably withheld.

**2.TERM AND TERMINATION**

**2.1** **TERM**

The Project covered by this Agreement shall start on the Effective Date and end on \_\_\_\_\_\_\_\_\_.

**2.2** **TERMINATION**

Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. If terminated by Company, Ohio State is entitled to full payment for all costs and non-cancelable commitments incurred as of the effective date of the termination. Non-cancelable commitments include stipends to cover graduate student appointments for the balance of an academic year.

1. **FIXED-PRICE AGREEMENT**

Company will pay Ohio State $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as detailed in the Project Budget attached hereto as Exhibit 2. The parties estimate that this amount is sufficient to support the Project. Ohio State may submit to Company a revised budget requesting additional funds if Company requests a change in the Project scope of work. Company will not be liable for any payment in excess of the fixed price amount except on Company’s written agreement.

1. **SCHEDULE/PAYMENT**

Company will pay Ohio State in the amount and manner set forth on the Payment Schedule attached hereto as Exhibit 3.

**5. LIMITATION OF LIABILITY; NO WARRANTIES**

Ohio State shall not be liable to Company for any damage arising from any event that is out of the control of Ohio State or is not caused by Ohio State. In no event shall liability exceed the amounts paid to Ohio State by Company. Beyond such amounts actually paid , Ohio State shall not be liable to Company for direct, indirect, special, incidental, exemplary, consequential, or any other form of money damages, including, but not limited to, lost profits, or for the loss of data or information of any kind, however caused, and arising out of or in connection with the use of or performance of a system or supercomputer computational resource, or the provision of services or performance hereunder, whether based in contract, tort, or any other legal theory, and whether or not Ohio State has been made aware of the possibility of those damages. OTHER THAN AS EXPLICITLY SET FORTH HEREIN, OHIO STATE MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

**6. INDEMNIFICATION**

Company will indemnify, defend, and hold harmless Ohio State, its respective trustees, directors, employees, agents, contractors, subcontractors, and students (“Indemnitees”) from any liability, damage, loss, or expense (including attorneys’ fees and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands, or judgments arising out of or connected with: (a) Sponsor’s use of any results, work product and deliverables under this Agreement, except to the extent that the liability is due to the gross negligence or willful misconduct of Ohio State; and (b) for personal injuries occurring during the Services provided hereunder that arise directly from Ohio State carrying out its obligations under this Agreement where such personal injury is caused by Company’s negligent or willful acts or omissions (collectively, the “Claims”). Ohio State will notify Company of any Claims and will cooperate with Company in the defense of the Claims. Company will, at its own expense, provide attorneys reasonably acceptable to the Ohio Attorney General to defend against any Claims with respect to which COMPANY has agreed to indemnify, defend and hold harmless Indemnities. Company will not settle a Claim admitting fault on the part of the Indemnitees without Ohio State’s written consent, which will not be unreasonably withheld. This indemnity will not be deemed excess coverage to any insurance or self-insurance Ohio State may have covering a Claim.

**7. RESPONSIBILITY FOR COMPANY-FURNISHED PROPERTY AND MATERIAL**

Ohio State shall be responsible for the loss, destruction or damage, beyond normal wear and tear, to any property furnished by Company that directly results from and is caused by the sole negligence of Ohio State or its agents, representatives or employees. Company may, as part of work performed under the Project, provide Ohio State with proprietary and/or experimental material for testing (the “Material” or “Materials”). Any such Material transferred by Company to Ohio State shall be specified in Exhibit 1. Before transferring any Material, Company agrees to notify Ohio State of any known hazardous and/or special properties of such Material. Company represents and warrants, to the best of its knowledge, that use of the Material for testing and/or special services conducted pursuant to this Agreement will not infringe any third party patent, copyright, trademark or any other proprietary rights.

**8. USE OF NAME AND TRADEMARKS**

Neither Party shall use, directly or by implication, the name, trademarks or logos of the other Party or the name of any member of the staffs thereof in any publicity or advertising without prior written approval, which at Ohio State shall be provided by the Office of Trademark and Licensing Services.

**9. CONFIDENTIAL DISCLOSURE**

When requested by Company, Ohio State shall use reasonable efforts to maintain the confidentiality of proprietary information supplied and identified in writing by Company as being confidential (collectively the “Confidential Information”) and will not disclose such Confidential Information to others. This obligation of confidence upon Ohio State shall not apply to information that is known to Ohio State prior to its receipt from the Company, which is or becomes available to the public, which is received from a third party not deriving the information from Company, or which is independently developed by Ohio State. Company agrees that Ohio State’s obligation of confidence does not prevent the Ohio State from disclosing any Confidential Information that it is legally compelled to disclose under applicable law (e.g., Ohio Public Records Laws), subpoena, other legal process, or requests pursuant to investigation by a government agency.

All obligations of Ohio State with respect to the use and disclosure of Confidential Information hereunder shall terminate three (3) years from the date of Ohio State’s receipt of the Confidential Information from Company under the Agreement.

**10. EXPORT CONTROLS**

Company shall not disclose or provide to Ohio State or any employee or agent of Ohio State any items, materials, software, technology, or information subject to the licensing provisions of International Traffic In Arms Regulations (ITAR) under 22 CFR §§ 120-130, and Export Administration Regulations (EAR) under 15 CFR §§ 730-774, without limitation, without the prior written notice to and advance approval by the Ohio State Export Control Officer, unless those items are classifiable as EAR99.  Company agrees to provide Ohio State with the U.S. Munitions List (“USML”) designation or Export Control Classification Number (“ECCN”) of any items, materials, software, technology, or information provided by Company to Ohio State.  Company agrees to assist Ohio State in making any export control determinations Ohio State deems necessary.

**11. FORCE MAJEURE**

If Ohio State is unable to carry out any of the testing and services to be conducted under this Agreement or a SOW, either in whole or in part by a Force Majeure, and if Ohio State gives timely notice to the Company thereof, then Ohio State’s obligation to conduct the testing and services shall be suspended for a reasonable period of time, or to the extent made necessary by such Force Majeure.  A "Force Majeure" as used herein shall mean any cause beyond the control of Ohio State, including but not limited to, acts of God; acts of public enemy; insurrections; riots; explosions; acts of nature; epidemics; pandemics, including conditions caused by COVID-19; floods; fires; interruption to transportation and commerce; breakdown of or damage to plants, equipment, pipelines or facilities; federal, state or municipal interference; quarantine or lockdown; governmental regulation, campus closures or legislation; acts of civil or military authority; embargoes; border closures; or travel restrictions that directly and materially impair Ohio State’s performance of this Agreement or a SOW.

**12. NOTICES**

Any notices required to be given or which shall be given under this Agreement shall be in writing and delivered by first-class mail, e-mail or facsimile transmission addressed to the parties as follows:

For Company:

 Contractual Matters Technical Matters

For Ohio State:

 Contractual Matters Technical Matters

**13. ASSIGNMENT**

Neither this Agreement nor any rights or obligations under this Agreement shall be assigned or otherwise transferred by Company or Ohio State without the prior written consent of the other party.

**14. INDEPENDENT CONTRACTOR**

The relationship of Ohio State to Company, under this Agreement, is that of an independent contractor and nothing herein shall be construed as creating any other relationship.

**15. APPLICABLE LAW**

This Agreement shall be governed by the laws of the State of Ohio.

**16. COUNTERPARTS**

This Agreement may be executed in a number of counterparts and all of which together constitute one and the same agreement between the parties with respect to its subject matter. It supersedes all prior or contemporaneous discussions, representations, or agreements, whether written or oral, of the parties regarding this subject matter.

**AGREED AND ACCEPTED**

**Company The Ohio State University**

Signed By: Signed By:

Printed Name: Printed Name:

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: Date:

**I have read this Agreement and understand my obligations hereunder:**

By:

Title: Principal Director

**EXHIBIT 1**

**PROJECT**

**EXHIBIT 2**

**PROJECT BUDGET**

**EXHIBIT 3**

**PAYMENT SCHEDULE**