

**TESTING AGREEMENT
BETWEEN THE
DEPARTMENT OF CHEMISTRY
AT TEXAS A&M UNIVERSITY
AND
[SPONSOR]**

This Testing Agreement (“Agreement”) is between Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas, on behalf of its Department of Chemistry (“TAMU”), and _____ (“Sponsor”).

The testing program contemplated by this Agreement is of mutual interest and benefit to TAMU and Sponsor, and will further the instructional and investigative objectives of TAMU in a manner consistent with its status as an agency of the State of Texas. The parties agree as follows:

1. **STATEMENT OF WORK.** TAMU shall use its reasonable efforts to perform a testing program described as follows: _____ (the “ANALYSIS”). The Analysis will be performed as requested by Sponsor on various materials (the “Samples”) supplied by Sponsor. TAMU shall provide a written report of such Analysis.
2. **DURATION OF PERFORMANCE.** This Agreement begins _____ and terminates on _____ unless sooner terminated as provided in Article 7.
3. **PRICE AND PAYMENT.** Sponsor shall pay TAMU as provided in TAMU’s current Elemental Analysis Laboratory Charge Schedule. Payments shall be made to TAMU within 30 days of receipt of invoice. TAMU shall invoice Sponsor at the following address:

4. **SAMPLES.** The Samples provided by Sponsor for the Analysis will remain the property of Sponsor. TAMU may use the Samples only for the Analysis and for no other purpose. TAMU may not furnish the Samples to any party other than Sponsor except as required by law. At the conclusion of the Analysis, TAMU shall either dispose of the Samples according to applicable law and regulation, or, upon the written request of Sponsor, return any remaining Samples to Sponsor at Sponsor’s expense.
5. **CONFIDENTIALITY.** TAMU may not disclose the final report of the Analysis and any other documents created by TAMU as part of the Analysis (collectively, the “Results”) to any party other than Sponsor except with the written permission of Sponsor or as required by law. If TAMU is legally required to disclose the Results, TAMU shall, to the extent allowed by law, promptly give Sponsor written notice of the requirement so as to provide Sponsor a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If TAMU complies with the terms of this Section 5, disclosure by TAMU of that portion of the Results which TAMU is legally required to disclose will not constitute a breach of this Agreement.
6. **INTELLECTUAL PROPERTY.** TAMU shall not make any claim to rights in the Results or in Sponsor’s know-how, trade secrets, or patents.
7. **TERMINATION.** Sponsor may terminate this Agreement upon 60 days’ advance written notice to TAMU. TAMU may terminate this Agreement upon written notice to Sponsor if circumstances beyond its reasonable control preclude continuation of the Analysis. Either party may terminate this Agreement effective upon written notice if the other party breaches any material term of this Agreement and fails to cure such breach within 30 days after receiving written notice of the breach. Upon termination by either party, Sponsor shall reimburse TAMU for all costs and non-cancelable commitments incurred by TAMU in the performance of this Agreement up to the date of termination, not to exceed the total price of this Agreement, or if Sponsor has paid in full then TAMU shall refund the price to Sponsor less all costs and non-cancelable commitments incurred by TAMU in the performance of this Agreement up to the date of termination.

8. **DISCLAIMER OF LIABILITY.** Sponsor acknowledges that the outcome of the Analysis is inherently uncertain and unpredictable. TAMU makes no warranties, express or implied, as to particular results of the Analysis, the merchantability or fitness for a particular purpose of the Results, or as to any other matter related to the Analysis.
9. **PUBLICITY.** Neither party may make reference to the other in connection with the Analysis or the Results in a press release or any other oral or written statement intended for the public media except with the advance written permission of the other party or as required by law. In any permitted statements, the party shall describe the scope and nature of the parties' participation accurately and appropriately and may not imply any endorsement by the other party.
10. **EXPORT CONTROLS.** Sponsor acknowledges that TAMU is subject to United States laws and regulations controlling the export of technical data, software, laboratory prototypes, and other commodities, and that its obligations under this Agreement are contingent upon compliance with such laws and regulations. If Sponsor intends to provide TAMU with any Samples or information that is subject to export control, Sponsor shall notify TAMU in writing in advance of the disclosure, and TAMU shall advise Sponsor if it desires to take receipt of the export-controlled materials. Neither party may export or re-export any United States-origin technology, software, or products, or the direct products of that technology, software, or products under this Agreement, in violation of United States export control regulations.
11. **FORCE MAJUERE.** Sponsor shall excuse any breach of this Agreement by TAMU which is proximately caused by government regulation, war, strike, act of God, or other similar circumstance normally outside the control of well-managed university, provided that TAMU makes diligent efforts to expeditiously remedy the breach.
12. **COMPLIANCE WITH LAWS.** Each party shall comply with all federal, state, and local laws, ordinances and regulations in relation to this Agreement.
13. **ENTIRE REPRESENTATION.** This Agreement contains the full representation among the parties and supersedes any prior oral or written agreements, commitments, understandings, or communications with respect to the subject matter of this Agreement. No amendment or modification of this Agreement will be effective unless set forth in writing executed by authorized representatives of each party. Each party hereby objects to any different or additional terms on any purchase order, invoice, acknowledgement, or other form.
14. **DISPUTE RESOLUTION.** Sponsor shall use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve any claim of breach of contract related to this Agreement that cannot be resolved in the ordinary course of business, and acknowledges that this process is a required prerequisite to suit under Chapter 107, Texas Civil Practices and Remedies Code. Sponsor shall submit written notice of a claim of breach of contract to the University Contracts Officer, TAMU.
15. **GOVERNING LAW.** The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates. Venue for any claim arising out of or relating to this Agreement and all of the transactions it contemplates must be in Brazos County, Texas.

The parties have executed this Agreement on the date(s) indicated below.

TEXAS A&M UNIVERSITY

SPONSOR

By: _____
 Printed Name: _____
 Title: _____
 Date: _____

By: _____
 Printed Name: _____
 Title: _____
 Date: _____