

**TESTING AGREEMENT
BETWEEN
[[NAME (PRIMARY FIRST PARTY)]]
AND
[[SECOND PARTY NAME]]**

This Testing Agreement (“Agreement”) is between [[Name (Primary First Party)]], a member of The Texas A&M University System, an agency of the State of Texas, (“[[Doing Business As (Primary First Party)]]”), and [[Second Party Name]] (“[[Second Party Reference Name]]”). [[Doing Business As (Primary First Party)]] and [[Second Party Reference Name]] may be individually referred to as “Party” or collectively referred to as “Parties.”

The testing program contemplated by this Agreement is of mutual interest and benefit to [[Doing Business As (Primary First Party)]] and [[Second Party Reference Name]], and will further the instructional and investigative objectives of [[Doing Business As (Primary First Party)]] in a manner consistent with its status as an agency of the State of Texas. The Parties agree as follows:

- 1. STATEMENT OF WORK.** [[Doing Business As (Primary First Party)]] shall use its reasonable efforts to perform a testing program [[Description of testing program.]] (the “Analysis”). The Analysis will be performed as requested by [[Second Party Reference Name]] on various materials (the “Samples”) supplied by [[Second Party Reference Name]]. [[Doing Business As (Primary First Party)]] shall provide a written report of such Analysis.
- 2. DURATION OF PERFORMANCE.** This Agreement begins [[Start Date]] and terminates on [[End Date]] unless sooner terminated as provided in Article 7.
- 3. PRICE AND PAYMENT.** [[Second Party Reference Name]] shall pay [[Doing Business As (Primary First Party)]] [[A&M System Member will be paid as follows:]]. [[Second Party Reference Name]] shall pay [[Doing Business As (Primary First Party)]] within thirty (30) days of receipt of invoice. [[Doing Business As (Primary First Party)]] shall invoice [[Second Party Reference Name]] at the following address:

[[Invoices shall be sent to the Second Party for payment as follows (enter address, city/state/zip, and/or email address)]]

- 4. SAMPLES.** The Samples provided by [[Second Party Reference Name]] for the Analysis will remain the property of [[Second Party Reference Name]]. [[Doing Business As (Primary First Party)]] may use the Samples only for the Analysis and for no other purpose. [[Doing Business As (Primary First Party)]] may not furnish the Samples to any Party other than [[Second Party Reference Name]] except as required by law. At the conclusion of the Analysis, [[Doing Business As (Primary First Party)]] shall either dispose of the Samples according to applicable law and regulation, or, upon the written request of [[Second Party Reference Name]], return any remaining Samples to [[Second Party Reference Name]] at [[Second Party Reference Name]]’s expense.

5. **CONFIDENTIALITY.** [[Doing Business As (Primary First Party)]] may not disclose the final report of the Analysis and any other documents created by [[Doing Business As (Primary First Party)]] as part of the Analysis (collectively, the “Results”) to any Party other than [[Second Party Reference Name]] except with the written permission of [[Second Party Reference Name]] or as required by law. If [[Doing Business As (Primary First Party)]] is legally required to disclose the Results, [[Doing Business As (Primary First Party)]] shall, to the extent allowed by law, promptly give [[Second Party Reference Name]] written notice of the requirement so as to provide [[Second Party Reference Name]] a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If [[Doing Business As (Primary First Party)]] complies with the terms of this Section 5, disclosure by [[Doing Business As (Primary First Party)]] of that portion of the Results which [[Doing Business As (Primary First Party)]] is legally required to disclose will not constitute a breach of this Agreement.
6. **INTELLECTUAL PROPERTY.** [[Doing Business As (Primary First Party)]] shall not make any claim to rights in the Results or in [[Second Party Reference Name]]’s know-how, trade secrets, or patents.
7. **TERMINATION.** [[Second Party Reference Name]] may terminate this Agreement upon sixty (60) days’ advance written notice to [[Doing Business As (Primary First Party)]]. [[Doing Business As (Primary First Party)]] may terminate this Agreement upon written notice to [[Second Party Reference Name]] 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, [[Second Party Reference Name]] shall reimburse [[Doing Business As (Primary First Party)]] for all costs and non-cancelable commitments incurred by [[Doing Business As (Primary First Party)]] in the performance of this Agreement up to the date of termination, not to exceed the total price of this Agreement, or if [[Second Party Reference Name]] has paid in full then [[Doing Business As (Primary First Party)]] shall refund the price to [[Second Party Reference Name]] less all costs and non-cancelable commitments incurred by [[Doing Business As (Primary First Party)]] in the performance of this Agreement up to the date of termination.
8. **DISCLAIMER OF LIABILITY.** [[Second Party Reference Name]] acknowledges that the outcome of the Analysis is inherently uncertain and unpredictable. [[Doing Business As (Primary First Party)]] 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. [[Second Party Reference Name]] acknowledges that [[Doing Business As (Primary First Party)]] 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 [[Second Party Reference Name]] intends to provide [[Doing Business As (Primary First Party)]] with any Samples or information that is subject to export control, [[Second Party Reference Name]] shall notify [[Doing Business As (Primary First Party)]] in writing in advance of the disclosure, and [[Doing Business As (Primary First Party)]] shall advise [[Second Party Reference Name]] 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 MAJEURE. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

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 AGREEMENT. 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. If [[Second Party Reference Name]] employs a purchase order or other form in carrying out the transactions contemplated under this Agreement, none of the terms contained on such form will be applicable except to the extent that they specify information required to be furnished under this Agreement. [[Doing Business As (Primary First Party)]] hereby objects to any other terms contained on any such form; such other terms will not be a basis for any contract and [[Second Party Reference Name]] should not take any action or fail to take any action in reliance on such other terms.

14. DISPUTE RESOLUTION. To the extent that Chapter 2260, *Texas Government Code* is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by [[Doing Business As (Primary First Party)]] and [[Second Party Reference Name]] to

attempt to resolve any claim for breach of contract made by [[Second Party Reference Name]]
[[Second Party Reference Name]] that cannot be resolved in the ordinary course of business. [[Second Party Reference Name]]
[[Second Party Reference Name]] shall submit written notice of a claim of breach of contract under this Chapter to the [[Dispute Resolution Officer]]
[[Doing Business As (Primary First Party)]], who shall examine [[Second Party Reference Name]]
[[Second Party Reference Name]]'s claim and any counterclaim and negotiate with
[[Second Party Reference Name]] in an effort to resolve the claim. This provision and nothing
in this Agreement waives [[Doing Business As (Primary First Party)]]
[[Doing Business As (Primary First Party)]]'s sovereign immunity
to suit or liability, and [[Doing Business As (Primary First Party)]]
[[Doing Business As (Primary First Party)]] has not waived its right
to seek redress in the courts.

15. GOVERNING LAW. The validity of this Agreement and all matters pertaining to this
Agreement, including but not limited to, matters of performance, non-performance, breach,
remedies, procedures, rights, duties, and interpretation or construction, shall be governed and
determined by the Constitution and the laws of the State of Texas.

16. VENUE. Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal
proceedings against [[Doing Business As (Primary First Party)]] is to be in the county in
which the principal office of [[Doing Business As (Primary First Party)]]
[[Doing Business As (Primary First Party)]]'s governing officer
is located.

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

[[NAME (PRIMARY FIRST PARTY)]]

[[SECOND PARTY NAME]]

Signature

Signature

Name

Name

Title

Title

Date

Date