

UNIVERSITY OF ARIZONA
TESTING SERVICES & FACILITY USE AGREEMENT

This **Testing & Facility Use Agreement**, is made as of this ____ day of _____, 201__ (“**Effective Date**”), between the Arizona Board of Regents (“**ABOR**”) for The University of Arizona (as further defined below, “**University**”) and _____ (“**Company**”), a corporation having an address at _____. University and Company are also known as the Party or Parties.

The Parties hereby agree as follows:

1. SCOPE OF WORK AND PAYMENT

1.1. Project. The Parties will perform the project (“**Project**”) in accordance with the Task Order, and any additional Task Orders mutually agreed upon by the Parties in writing, in substantially the same form as set forth on Exhibit A. The specific tasks and objectives to be performed by the University will be performed under the supervision and direction of the Principal Investigator. Each Task Order shall set forth the Scope of Work University employees, Cost of the Project, Schedule of Payments and Period of Performance and may include as exhibits to the Task Order detailed descriptions of the Scope of Work (including any deliverables) and shall otherwise be consistent with the requirements of this Agreement. Neither Party shall have any authority to individually execute any particular Task Order without the consent and execution of the other. All Task Orders shall be subject to the terms and conditions of this Agreement, and to the extent of any conflict, this Agreement will control unless the Task Order expressly and specifically states otherwise with respect to a particular provision.

1.2. Funding and Schedule of Payments. Company will pay for all the costs of the Project, as set forth on Task Order. Funding for the Project will be provided by Company pursuant to the Budget and Schedule of Payments on the Task Order. Unless otherwise set forth in a Task Order, all payments will be due within thirty (30) days from the invoice date.

1.3. Non-Exclusivity of Research. Company acknowledges that the University may engage in other testing that is similar to the Project, funded by public or private sources and conducted separately.

1.4. Safety Data Sheets. Prior to initiating work under this agreement, Company shall provide Safety Data Sheets for all chemical products and materials to be brought on to UA premises. All components of chemical products to be tested under this agreement must be disclosed to University prior to testing.

2. TERM AND TERMINATION

2.1. Term. This Agreement begins on the Effective Date and ends five (5) years after the Effective Date, or until the termination or expiration of the last Task Order executed during the term of the Agreement. Each Task order and will terminate upon final date listed on the Task Order (the “**Term**”), unless sooner terminated in accordance with the provisions of this Section 2.

2.2. Termination by University. University may terminate this Agreement at any time without cause upon sixty (60) days written notice to Company, provided that such termination will not affect either Party’s rights or obligations under any Task Orders then in force or effect and this Agreement will remain in effect as to each surviving Task Oder until termination or expiration of such Task Order. Company is not required to reimburse University for additional costs associated with termination of this Agreement by University in accordance with this Sub-Section provided the Company will reimburse University for all costs and fees which have been incurred prior to the receipt of notice of termination but which have not yet been reimbursed.

2.3. Termination by Company. Company may terminate this Agreement at any time without cause upon sixty (60) days written notice to University, provided that such termination will not affect either Party's rights or obligations under any Task Orders then in force or effect and this Agreement will remain in effect as to each surviving Task Order until termination or expiration of such Task Order. In this event, University will proceed in an orderly and timely fashion to close down the Project under then-current Task Orders, including termination of any obligations in force (except those that are non-cancelable), and will notify Company of those obligations remaining as of the date of termination. Company will reimburse University for all costs associated with termination, and all costs and fees which have been incurred prior to the receipt of notice of termination but which have not yet been reimbursed, as well as commitments existing at the time the notice of termination is received which cannot be canceled.

2.4. Breach. In the event that either Party commits any material breach of or default in any of the terms or conditions of this Agreement or a Task Order, and also fails to remedy such default or breach within thirty (30) days after receipt of written notice of such breach or default from the other Party hereto, the Party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other Party. Such termination will be effective as of the date of the receipt of such notice. The defaulting Party is responsible for all costs and expenses associated with the termination, and will reimburse the non-defaulting Party for such. Furthermore, if Company is the defaulting Party, Company will reimburse University for all costs and fees which have been incurred prior to the receipt of notice of termination but which have not yet been reimbursed, as well as commitments existing at the time the notice of termination is received which cannot be canceled.

2.5. Survival. Expiration or termination of this Agreement by either Party for any reason will not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement. All sections which by their nature should survive the termination of this Agreement, shall survive such termination.

3. LOCATION, ACCESS AND USE OF FACILITIES

3.1. Use of Facilities and/or Land. Company requests for the Project the use of the real property described and depicted on **Attachment 2 to each Task Order** (the "Site"). If agreed to in an executed Task Order and all insurance set forth below in this Agreement and additional insured protections requested by ABOR has been obtained, the Company or Company's subcontractor will be allowed to harvest on the Site. However, no harvesting will be conducted without prior approval from _____'s PI or co-PI. Company will submit a request to harvest in writing at least two (2) weeks prior to any harvest. Approval of such request will not be withheld unreasonably, and notification or request to alter the harvest will be made within one (1) week of receipt of the request.

3.2. Location and Access. If agreed to in an executed Task Order, University grants Company permission to use _____ [*name of facility*]. As applicable, Company and/or Company's subcontractor shall have reasonable access to the facility during normal business hours for the term of the Project as well as permission for ingress/egress to the Site as depicted on Attachment 2 to each Task Order. If any Company equipment, structures, fixtures or personal property ("**Company Property**") is used for the Project on the Site, Company and/or Company's subcontractor will remove all Company Property from the Site as well as from any real property owned by the University on or before sixty (60) days after Project terminates or expires. If the Company Property is not timely removed, the Company Property is deemed abandoned, the University has the right to remove, use, sell or dispose of the Company Property and the Company will reimburse the University for all related costs of such removal.

3.3. Equipment and Supplies. Equipment and supplies purchased by University specifically to conduct the Project become the property of the University at the termination of this Agreement.

4. RESULTS

4.1. University shall deliver to Company the raw data generated during the Project and required to be delivered under the Task Order (“Results”) performed within ninety (90) days of completion of the associated Task Order, which Results shall be owned by Company. University and Company understand and agree that the work to be performed pursuant to this Agreement does not include analyzing or interpreting the Results generated by performing the particular Task Order. In the event that Company desires further investigation or analysis of the Results, Company may initiate a separate sponsored research agreement. Each Task Order will specify what Results, if any, will be delivered to Company.

5. CONFIDENTIALITY OBLIGATIONS

5.1. Confidential Information. Company and University may choose, from time to time, in connection with the Project, to disclose confidential information to each other (“**Confidential Information**”). All such disclosures must be in writing and marked as Confidential Information. Any information that is transmitted orally or visually, in order to be protected hereunder, will be identified as such by the disclosing party at the time of disclosure, and identified in writing to the receiving party, as Confidential Information, within thirty (30) days after such oral or visual disclosure.

5.2. Use and Disclosure. The Parties will use reasonable efforts to prevent the disclosure to unauthorized third parties of any Confidential Information of the other Party and will use such information only for the purposes of this Agreement. Confidentiality obligations with respect to Confidential Information will survive for three (3) years after the termination of this Agreement.

5.3. Exceptions. Notwithstanding any marking or designation to the contrary, the confidentiality obligations set forth herein will not apply to information that: (a) is already in the receiving Party's possession at the time of disclosure; (b) is or later becomes part of the public domain through no fault of the receiving Party; (c) is received from a third party with no duty of confidentiality to the disclosing party; (d) was developed independently by the receiving party prior to disclosure; or (e) is required to be disclosed by law or regulation.

5.4. Press Releases and Other Public Statements. Except as required by law, no press release or other statements in connection with this Agreement or the Project, will be made by either Party without approval of the other Party, which will not be unreasonably withheld. All statements by the Parties will describe the scope and nature of their participation accurately and appropriately. University may, without prior consent from Company, list Project title, amount awarded, Company name, and Principal Investigator(s) names and department(s) affiliation(s) in its reports, which while not disseminated, are available to the public. Neither party has the right to use the marks, logos, or other identifiers of the other Party without its prior written consent.

6. INDEMNIFICATION, INSURANCE, AND LIMITATION OF LIABILITY

6.1. Indemnification by Company. Company shall indemnify, defend, and hold harmless to the fullest extent allowed by law the State of Arizona, the Arizona Board of Regents and the University, its officers, agents, and employees (“Indemnitees”) from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including attorney’s fees and/or litigation expenses, which may be brought or made against or incurred on account of breach, or loss of or damage to any property, or for injuries to or death of any person, or financial loss incurred by Indemnitees, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of Company, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of the Agreement, or arising out of Workers Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of Company and/or its subcontractors of claims under similar such laws and obligations. Company’s obligation

under this provision shall not extend to any liability caused by the sole negligence of the State of Arizona, Arizona Board of Regents, the University of Arizona or its officers, agents, and employees. Such indemnification shall specifically include infringement claims made against any and all intellectual property supplied by Company and third party infringement under the Agreement.

6.2 Insurance Requirements.

6.2.1 Company and subcontractors shall procure and maintain until all of their obligations under this Agreement have been discharged, and until any warranty periods under this Agreement have expired, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Company, his agents, representatives, employees or subcontractors.

6.2.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. ABOR in no way warrants that the minimum limits contained herein are sufficient to protect the Company from liabilities that might arise out of the performance of the services under this Agreement by the Company, its agents, representatives, employees or subcontractors, and Company is free to purchase additional insurance.

6.2.3 MINIMUM SCOPE AND LIMITS OF INSURANCE:

Company shall provide coverage with minimum limits of liability not less than those stated below:

A. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability – Written and Oral	\$1,000,000
Fire Legal Liability	\$ 50,000
Each Occurrence	\$1,000,000

B. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of any services to the University of Arizona by Company.

Combined Single Limit (CSL)	\$1,000,000
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C. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability - Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

This requirement (C.) shall not apply to: Separately, EACH Contractor, contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

6.2.4 For professional services that require licensure or registration, i.e. engineering, design,

architecture, medical services, counseling, or others as applicable, the following insurance is required in addition to the policies specified in 6.2.3.

Professional Liability (Errors and Omissions Liability)	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

In the event that the professional liability insurance required herein is written on a claims-made basis, Company warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time Company's services to the University of Arizona are completed.

The policy shall cover professional misconduct or lack of ordinary skill.

6.2.5 ADDITIONAL INSURANCE REQUIREMENTS: The policies required herein shall include, or be endorsed to include, the following provisions:

A. The insurance policies identified above in 6.2.3.A. and B. shall be endorsed to include the following additional insured language: *"The State of Arizona, Arizona Board of Regents, the University of Arizona, and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Company"*.

B. Wherever additional insured status is required, such additional insureds shall be covered to the full limits of liability purchased by the Company, even if those limits of liability are in excess of those required herein.

C. All insurance policies required by this Agreement shall contain a waiver of subrogation against the State of Arizona, the Arizona Board of Regents, the University of Arizona, and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Company.

D. The Company's insurance coverage shall be primary insurance with respect to all other available sources.

E. Coverage provided by the Company shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

F. NOTICE OF CANCELLATION: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this agreement in the insurance policies above shall require (30) days written notice to ABOR. Such notice shall be sent directly to the attention of **UA Procurement & Contracting, PO Box 210300, Tucson, AZ 85721-0300** and shall be sent by certified mail, return receipt requested.

G. ACCEPTABILITY OF INSURERS: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. University in no way warrants that the above-required minimum insurer rating is sufficient to protect the Service Provider from potential insurer insolvency.

H. VERIFICATION OF COVERAGE: Contractor shall furnish the University with certificates of insurance (ACORD form or equivalent approved by the University) as required by this agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the University before Contractor commences any work for the University. Each insurance policy required by this agreement must be in effect at or prior to commencement of any work and remain in effect for the duration of the project. Failure to maintain the insurance policies as required herein, or to provide evidence of renewal, is a material breach of this agreement. Updated certificates of insurance shall be provided to University at the time of each policy renewal during the term of this agreement.

All certificates required by this Agreement shall be sent directly to the University of Arizona Maricopa Agricultural Center, 37860 W. Smith Enke Rd., Maricopa, Arizona 85138. The University project/contract number and project description shall be noted on the certificate of insurance. ABOR reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

I. SUBCONTRACTORS: Company's certificate(s) shall include all subcontractors as insureds under its policies or Company shall furnish to ABOR separate certificates and endorsements for each subcontractor. All insurance policies for subcontractors shall be subject to the minimum requirements identified above.

J. APPROVAL: Any modification or variation from the insurance requirements in this Agreement requires approval of the UA Department of Risk Management Services. Such action will not require a formal amendment, but may be made by administrative action.

K. EXCEPTIONS: In the event the Company is a U.S. based public entity, evidence of Self-Insurance may be provided in lieu of the insurance policies required herein. If the Company is a State of Arizona agency, board, commission, or university, none of Section 6 applies.

6.3 Disclaimer of Warranties and Limitation of Liability. COMPANY ACKNOWLEDGES THAT THE WORK SET FORTH IN THE PROJECT IS EXPERIMENTAL IN NATURE AND THAT UNIVERSITY MAKES NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, REGARDING THE RESULTS OF THE TESTING DESCRIBED IN THE PROJECT.

7. **ADDITIONAL REQUIRED PROVISIONS**

7.1. Arbitration. The Parties acknowledge that disputes arising from this Agreement may be subject to arbitration in accordance with applicable law and court rules.

7.2. Applicable Law and Venue. This Agreement will be interpreted pursuant to the laws of the State of Arizona. Any arbitration or litigation between the Parties will be conducted in Pima County, Arizona, and Company hereby submits to venue and jurisdiction in Pima County, Arizona. The Parties acknowledge that disputes arising from this Agreement may be subject to arbitration in accordance with applicable law and court rules.

7.3. Non-Discrimination. The Parties agree to be bound by state and federal laws and regulations governing equal opportunity and non-discrimination and immigration.

7.4. Appropriation of Funds. The Parties recognize that performance by University depends upon appropriation of funds by the State Legislature of Arizona. If the Legislature fails to appropriate the necessary funds, or if the University's appropriation is reduced during the fiscal year, ABOR may reduce the scope of this Agreement if appropriate or cancel this Agreement without further duty or obligation. University agrees to notify Company as soon as reasonably possible after ABOR knows of the loss of funds.

7.5. Conflict of Interest. This Agreement is subject to the provisions of A.R.S. §38-511. The University may cancel this Agreement if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of the ABOR becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Agreement while the Agreement or any extension thereof is in effect.

8. **GENERAL PROVISIONS**

8.1. Notices. Notices will be in writing and deemed effective when sent, postage prepaid to:

COMPANY:

UNIVERSITY (Notices and Correspondence):

Sherry L. Esham, Director
Sponsored Projects Services
The University of Arizona
P.O. Box 3308
Tucson, Arizona 85722-3308

With a copy to:

Greg Main, Superintendent
The University of Arizona
Maricopa Agricultural Center
37860 W. Smith Enke Rd.
Maricopa, Arizona 85138

8.2. Entire Agreement. This Agreement embodies the entire understanding of the Parties and supersedes any other agreement or understanding between the Parties relating to the subject matter hereof. There are no additional or supplemental agreements related to the subject matter hereof.

8.3. Modifications. No waiver, amendment or modification of this Agreement will be valid or binding unless written and signed by the Parties. Waiver by either Party of any breach or default of any clause of this Agreement by the other Party will not operate as a waiver of any previous or future default or breach of the same or different clause of this Agreement.

8.4. Assignment. This Agreement may not be assigned or transferred (either directly or indirectly, by operation of law or otherwise, including by way of a merger, acquisition or other sale event) regardless of

whether by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. This Agreement is binding upon and will inure to each Party's respective permitted successors in interest.

8.5. Severability. If any provision of this Agreement is held void or unenforceable, the remaining provisions will nevertheless be effective, the intent being to effectuate this Agreement to the fullest extent possible.

8.6. Exhibits and Headings. Exhibits A are made part of this Agreement for all purposes. The term "days" as used herein refers to calendar days. All headings are for informational purposes only and are not binding on the Parties.

8.7. Independent Contractors. The Parties are deemed independent contractors and may not bind the other, except as provided for herein or authorized in writing by the other Party.

8.8. Electronic Signatures. The Parties agree that any xerographically or electronically reproduced copy of this fully-executed agreement will have the same legal force and effect as any copy bearing original signatures of the Parties.

IN WITNESS THEREOF, the Parties execute this Agreement as of the day and year written above.

COMPANY	The Arizona Board of Regents, a body corporate, for and on behalf of The University of Arizona
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT A

TASK ORDER UNDER TESTING & FACILITY USE AGREEMENT
BETWEEN UNIVERSITY OF ARIZONA AND COMPANY, DATED _____

CALS Accession Number:

Project Title:

Principal Investigator:

Summary Description of Task _____: (Full Scope of Work is show in Attachment 1 to this Task Order)

Period of Performance for Task. Start date: _____. End Date_____.

Funding For Task: COMPANY will provide UNIVERSITY the sum of \$_____. The budget and payment schedule are set forth below.

Payment by COMPANY shall be made within 30 days of receipt of invoices from UNIVERSITY. Checks shall be made payable only to The University of Arizona, and shall identify this Agreement or a UNIVERSITY invoice. Checks should NOT be made payable to or identify individuals. Payments shall be sent to the following addresses:

If sent by US Mail or overnight delivery service:

The University of Arizona (Agreement#)
Maricopa Agricultural Center
ATTN: Cody Jackson
37860 W. Smith-Enke Rd.
Maricopa, AZ 85138-3010
Phone: (520) 374-6204

Budget and Payment Schedule: The following budget represents the anticipated costs and funding for conducting the Scope of Work pursuant to this Task Order.

The anticipated dates and amounts of payments is as follows:

<u>DATE</u>	<u>AMOUNT</u>
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COMPANY AUTHORIZED SIGNATORY

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

ARIZONA AUTHORIZED SIGNATORY

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

ATTACHMENT 1 TO EXHIBIT A
SCOPE OF WORK

ATTACHMENT 2 TO EXHIBIT A

[insert legal description or depiction of Site and access – roads and walkways to be used by
Company]