

PROPRIETARY TESTING AGREEMENT

This Proprietary Testing Agreement ("Agreement") is between the **University of Georgia Research Foundation, Inc.**, a Georgia non-profit corporation with principal offices in Athens, Georgia ("**UGARF**"), and [**sponsor name**], a [state/country] [type of entity] organized under the laws of [location] with a principal place of business located at [address] ("**Sponsor**"). UGARF and Sponsor each may be referred to individually as a "Party" and collectively as the "Parties."

UGARF and Sponsor desire to enter into an agreement whereby Sponsor will fund research to be performed at the University of Georgia ("UGA"). UGA is governed by the Board of Regents of the University System of Georgia ("Regents"), and Regents have authorized UGARF to contract for research projects that will be subcontracted to, and performed by, UGA. In addition, UGARF is Regents' assignee of certain intellectual property created by UGA employees in the course of their employment.

NOW, THEREFORE, in consideration of the mutual obligations stated herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Research Project.** UGARF will complete, or have completed, the research project titled [title of project] and further described in Appendix A ("Project") by subcontracting performance of the Project to UGA, as well as other subcontractors identified in the Project, the budget payment schedule at Appendix B, or as otherwise agreed by the Parties. UGARF, through its subcontractor(s), will use reasonable efforts to perform the Project according to the standards customary among U.S. research universities.
- 2. Principal Investigator.** The "Principal Investigator" is responsible for directing performance of the Project for UGARF and at UGA. [Name] shall be the Principal Investigator. However, if for any reason [Name] becomes unavailable to complete the Project, then with Sponsor's prior approval, which approval Sponsor shall not unreasonably withhold, UGARF may replace [Name] with another qualified researcher who will then serve as Principal Investigator and direct the Project.
- 3. Cost of Project.** Sponsor shall deliver payments to UGARF per the budget and payment schedule identified in Appendix B. UGARF may issue to Sponsor's Financial Contact as shown in Appendix C invoices (with reference to PO # if required) that coincide with the payment schedule, and in such instances Sponsor shall deliver payment to UGARF in the amount of each invoice within thirty (30) days of receipt of the invoice (or upon a later date if indicated by the invoices). Overdue payments will bear interest at the rate of 12% per annum from the date due until paid, and this interest provision survives termination. This is a FIXED PRICE agreement with reporting, deliverable, invoicing, and payment requirements as specifically identified herein.
- 4. Term.** This Agreement will begin on [effective date] ("Effective Date") and will end on the earlier of [end date] or and earlier date pursuant to Section 14 herein ("Term").
- 5. Equipment.** Except as may be expressly set out herein, Sponsor shall have no ownership of, license to, or any other right, title, or interest in equipment, supplies, and/or other tangible or intangible items purchased or developed with funding from Sponsor under this Agreement.

6. Project Intellectual Property. The Parties do not anticipate that new intellectual property will be developed pursuant to this Agreement. However, should intellectual property be developed in performance the Project, the following terms apply.

6.1 “Project Intellectual Property” means all forms of intellectual property under the laws of any state or country, and all legal rights therein, in and to any inventions, patentable discoveries, and/or software, that are first made and reduced to practice in performance of the Project.

6.2 “UGARF Intellectual Property” means all UGARF and/or UGA developed processes, know-how, technical information, methodologies and associated materials, inventions, and intellectual property utilized in performance of Project, the development of which is not included as an aim in the Project description at Appendix A.

6.3 “Sponsor Intellectual Property” means all Project Intellectual Property except UGARF Intellectual Property.

6.4 All right and title in and to Sponsor Intellectual Property shall be owned by Sponsor and is hereby assigned to Sponsor. Sponsor may, in its sole discretion and at its sole expense, seek legal protection for any Sponsor Intellectual Property. UGARF agrees that it shall not file any patent applications or other form of intellectual property protection on any Sponsored Intellectual Property.

6.5 All right and title in and to UGARF Intellectual Property shall be owned by UGARF.

6.6 UGARF shall promptly disclose Sponsor Intellectual Property to Sponsor in writing, but no later than thirty (30) days after the end of the Term.

7. Work Product. Sponsor shall own all data and results generated by UGARF and/or UGA and delivered to Sponsor in performance of the Project (“Work Product”); however, Work Product specifically excludes Project Intellectual Property, the ownership of which is addressed separately in this Agreement. Sponsor hereby grants to UGARF, for UGARF and/or UGA’s academic use and to secure UGARF’s rights in UGARF Intellectual Property only, a non-exclusive, perpetual license to use and reproduce, but not transfer to third parties or sell, that Work Product delivered to Sponsor under this Agreement.

8. Confidential Information. “Confidential Information” means (a) all Project Intellectual Property, descriptions thereof, and associated data shared by one Party (the “Provider”) to the other (“the Recipient”) whether disclosed verbally or in writing and whether or not marked; and (b) all information except as addressed in (a) herein embodied in written, electronic, biological, chemical, or any other tangible form, which is disclosed or provided under this Agreement by one Party (the “Provider”) to the other Party (the “Recipient”) and marked confidential at the time of disclosure; and (c) all information except as addressed in (a) herein verbally disclosed by one Party (the “Provider”) to the other Party (the “Recipient”) if Provider declares such information to be confidential at the time of initial disclosure and confirms such declaration by written notice to the Recipient within thirty (30) days of such initial verbal disclosure.

8.1. Applicability to Subcontractor. Notwithstanding the foregoing, the Parties acknowledge and agree that UGA, as UGARF’s permitted subcontractor hereunder, may be the Provider of

Confidential Information to Sponsor and may be the Recipient of Confidential Information from Sponsor. In any subcontract for the performance of this Agreement from UGARF to UGA, UGARF shall require UGA to adhere to the obligations imposed upon UGARF herein with respect to Sponsor's Confidential Information. Sponsor agrees to protect Confidential Information received from UGA under the terms provided herein for the protection of Confidential Information disclosed to Sponsor by UGARF.

8.2. Limited Exchange. The Parties agree they will only exchange Confidential Information for performance of the Project or otherwise as necessary to perform this Agreement.

8.3. Obligation of Confidentiality and Limited Use. During the Term and for a period of three (3) years thereafter, the Recipient of Provider's Confidential Information (a) shall not disclose such Confidential Information to any third party without prior written consent of the Provider; and (b) shall only use Provider's Confidential Information as necessary to perform the Project and/or this Agreement.

8.4. Exceptions. The Recipient shall have no obligations under Paragraph 8.3 with respect to any portion of the Provider's Confidential Information that:

- a. is or becomes available to the public by through no fault of the Recipient;
- b. is obtained by the Recipient from a third party who had the legal right to disclose it to the Recipient;
- c. the Recipient already possesses, or independently develops without reference to the Confidential Information provided by Provider, as evidenced by written records; and/or
- d. is required to be disclosed by law.

9. U.S. Government Rights. If UGARF is required to grant, or has granted, to the U.S. federal government any rights to Project Intellectual Property under 37 CFR 401, et seq. or any grant, contract, funding instrument or agreement with the U.S. federal government, then the Parties agree that the Parties' rights to such Project Intellectual Property shall be subject to the rights of the U.S. federal government, as specified by applicable law, regulation, or agreement.

10. No Implied or Background Rights. No rights or obligations other than those expressly recited herein are granted or may be implied by this Agreement. Nothing herein constitutes a license or other transfer of rights in or to any intellectual property that is not explicitly the subject of this Agreement.

11. Publication. Sponsor recognizes that the results of Project may be publishable and agrees that UGA researchers engaged in Project may be permitted to present at symposia and professional meetings and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of Project with Sponsor approval, which will not be unreasonable withheld. Principal Investigator agrees to provide Sponsor with a copy of any proposed publication or presentation at least thirty (30) days prior to submission of such proposed publication or presentation to a journal, editor, or other third party. Sponsor shall have thirty (30) days after receipt of said copy to accept or object to such proposed presentation or publication. UGA shall not publish unless either thirty (30) days passes without objection from Sponsor, or Sponsor approves of the proposed publication. Furthermore,

Sponsor shall have the right to request a delay in publication for up to thirty (30) additional days, if necessary, to allow for filing of patents if such publication contains patentable subject matter. In no event shall any of Sponsor's protected Confidential Information be included in any publication without written authorization from Sponsor.

12. DISCLAIMER OF WARRANTIES. THE PROJECT WILL BE CONDUCTED IN UNIVERSITY FACILITIES AND IS EXPERIMENTAL IN NATURE. WORK PRODUCT AND PROJECT INTELLECTUAL PROPERTY ARE PROVIDED "AS IS." UGARF, REGENTS, AND PRINCIPAL INVESTIGATOR MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE SAFETY, UTILITY, VALUE, PERFORMANCE, MARKETABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PROJECT, WORK PRODUCT, CONFIDENTIAL INFORMATION, OR PROJECT INTELLECTUAL PROPERTY, OR THAT SUCH DO NOT INFRINGE ANY THIRD PARTY PROPERTY RIGHTS. UGARF MAKES NO PROMISE THAT PERFORMANCE OF THE PROJECT WILL GENERATE ANY PARTICULAR RESULT. BY SPONSORING THE PROJECT, SPONSOR IS PROVIDING FUNDS TO SUPPORT THE CONTINUED DEVELOPMENT OF SCIENTIFIC KNOWLEDGE IN A SPECIFIC FIELD, IN THE HOPE THAT RESULTS OF THE PROJECT, IF ANY, WILL PROVE USEFUL. SPONSOR UNDERSTANDS AND AGREES THAT, REGARDING THE PROJECT, A HYPOTHESIS MAY GUIDE THE DEFINITION OF THE PROBLEM TO BE SOLVED AND THE APPROACH PURSUED BUT THE UNDERLYING SCIENTIFIC PRINCIPLES WILL NOT ALWAYS SUPPLY THE EXPECTED RESULT. THIS IS THE REASON WHY RESEARCH, DEVELOPMENT, AND FURTHER INQUIRY ARE NEEDED.

13. INDEMNIFICATION. SPONSOR SHALL AT ALL TIMES INDEMNIFY, PAY FOR THE DEFENSE OF, AND HOLD HARMLESS UGARF, REGENTS, AND UGA, AND THEIR RESPECTIVE REGENTS, DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS, AND AGENTS FROM AND AGAINST ALL CLAIMS, PROCEEDINGS, EXPENSES, LOSSES, DAMAGES, JUDGMENTS, AND/OR LIABILITIES OF ANY KIND WHATSOEVER, INCLUDING LEGAL EXPENSES AND ATTORNEYS' FEES, ARISING OUT OF OR RELATING TO SPONSOR'S USE OF WORK PRODUCT, CONFIDENTIAL INFORMATION, AND/OR PROJECT INTELLECTUAL PROPERTY, INCLUDING, BUT WITHOUT LIMITATION THE DEATH OF, OR OTHER BODILY INJURY OR OTHER PERSONAL INJURY TO, ANY ONE OR MORE PERSONS.

14. Insurance. Sponsor shall obtain and carry liability insurance in an amount commensurate with similarly situated companies, with UGARF and Regents named as additional insureds with respect to Sponsor's products, continuing operations, and completed operations coverage. This insurance shall be primary and non-contributory to other insurance available to UGARF or Regents, and insurers shall waive their rights of subrogated recovery against UGARF and Regents. During the Term, Sponsor shall give UGARF thirty (30) days' prior written notice of cancellation of any policy relied upon by Sponsor to meet its requirements hereunder.

15. Early Termination.

14.1. Termination by Mutual Agreement. This Agreement may be terminated at any time by the mutual agreement of the Parties effective as of the agreed upon termination date ("Effective Date of Termination").

14.2. Termination for Convenience. This Agreement may be terminated for convenience by either Party upon ninety (90) days' prior written notice to the other Party ("Final Termination Notice"), in which case termination shall be effective as of the end of the ninetieth (90th) day after notice or upon a later date identified in the notice ("Effective Date of Termination").

14.3. Termination for Breach. If a Party materially breaches any material term of this Agreement (the “Breaching Party”) and fails to cure such breach within thirty (30) days after receipt of written notice of such breach by the other Party (the “Terminating Party”), then the Terminating Party may thereafter deliver, at any time during the Term while the noticed breach remains uncured, notice of termination (“Final Termination Notice”) to the Breaching Party, in which case this Agreement automatically shall terminate as of the date of the Breaching Party’s receipt of such Final Termination Notice or on a later date identified in such notice (“Effective Date of Termination”).

14.4. Payment upon Early Termination. Upon termination of this Agreement by the Parties under Paragraph 15.1, or 15.2, by UGARF under Paragraph 15.3, Sponsor shall deliver payment to UGARF within thirty (30) days of the Effective Date of Termination for: (i) all amounts due and owing up to and including the Effective Date of Termination per the payment schedule at Appendix B; (ii) all work actually performed by UGARF and/or UGA but not otherwise paid under (i) above; and (iii) all non-cancelable obligations incurred by UGARF and/or UGA prior to the Final Termination Notice but not otherwise paid under (i) or (ii) above (collectively, the “Termination Payment”).

14.5. Rights and Obligations Extinguished upon Early Termination. Upon termination of this Agreement by the Parties under Paragraph 15.1 or Paragraph 15.2 (unless otherwise agreed), or by UGARF under Paragraph 15.3, then as of the Effective Date of Termination: (i) Sponsor’s option rights to all Option Intellectual Property are terminated; (ii) Sponsor’s right and license to Work Product is terminated; and (iii) UGARF’s obligations to conduct the Project, deliver Work Product, and disclose Project Intellectual Property are terminated.

16. Return or Destruction of Confidential Information. Upon termination of this Agreement for any reason, the Recipient shall destroy all of the corresponding Provider’s Confidential Information that the Recipient has in its possession or control; or upon timely notice from the Provider, the Recipient shall return such Confidential Information to the Provider at the Provider’s expense. However, each Recipient may retain archive copies of the Discloser’s Confidential Information to the extent required by applicable law or the Recipient’s records retention policies, but the Recipient may not use any such retained Confidential Information of the other Party for any purpose whatsoever except to the extent required by law.

17. Integration. This Agreement and its appendices and attachments embody the entire understanding of the Parties with respect to the matters herein and supersede all previous communications, either verbal or written.

18. Amendment. This Agreement may be amended only by mutual written agreement. Without limiting the foregoing, the terms and conditions of any purchase order that may be associated with the Project or this Agreement do not apply, and the terms stated in this Agreement shall control regardless of when the purchase order is issued or whether statements on the purchase order indicate otherwise.

19. Assignment, Amendment, and Waiver. A Party may not assign, or subcontract performance of, this Agreement to any third party without the prior written consent of the other Party; except that UGARF may subcontract performance of the Project and this Agreement to UGA and any other identified subcontractor under the terms set forth in herein. Except as expressly permitted herein, this Agreement may be amended only by a written instrument executed by both Parties. No waiver of any

provision of this Agreement will be valid unless in writing and signed by the person against whom such waiver is sought to be enforced, nor will failure to enforce any right hereunder constitute a continuing waiver of the same or a waiver of any other right hereunder.

20. Independent Contractor. UGARF's relationship to Sponsor is that of independent contractor and not employee, joint venturer, or partner.

21. Use of Names. Sponsor shall not use the name of UGARF, UGA, Regents, or of any person performing the Project, in any publicity, advertising, or news release without the prior written approval of an authorized representative of UGARF. UGARF shall not use the name of Sponsor, nor any employee of Sponsor, in any publicity, advertising, or news release without the prior written approval of Sponsor.

22. Governing law. This Agreement is to be governed by and construed under the laws of the state of Georgia without regard to its conflict of law rules.

23. Export Controls. Work Product, Project Intellectual Property, and Confidential Information may be subject to U.S. export control laws, sanctions, and/or embargo requirements. Sponsor shall be solely responsible for complying with such laws and other requirements in its use of any rights, information, and/or materials obtained under this Agreement. Sponsor understands and agrees that UGARF makes no representations that an export license may not be required nor that, if required, such an export license will issue with respect to any rights, information, or materials delivered by UGARF or UGA to Sponsor under this Agreement. At the time of disclosure to UGARF and/or UGA, Sponsor shall identify and mark with a legend any information and/or materials subject to U.S. export control laws, sanctions, or embargo requirements before providing such to UGARF or UGA under this Agreement. UGARF and UGA may decline to accept any such information or materials from Sponsor.

24. Severability. All rights and duties herein are binding only to the extent that they do not violate any laws. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, it is the intent of the Parties that any such provision be replaced by a valid provision that implements the purpose of the illegal, invalid, or unenforceable provision. If any provision essential to the purpose of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, all right of appeal has been exhausted, and such essential provision cannot be replaced by a valid provision that will implement the purpose of this Agreement, then this Agreement and the rights granted herein shall automatically terminate.

25. Force Majeure. Delays in, or failure of, performance by any Party will not constitute default, or trigger any claim for damages, if and to the extent such damages are caused by acts of God, strikes, work stoppages, civil disturbances, fires, floods, explosions, riots, war, rebellion, and/or sabotage.

26. Notices. All notices to a Party under this Agreement must be delivered in person, by email, or via commercial carrier with tracking to the Administrative Contact identified in [Appendix C](#) for such Party, or to such other persons and addresses as may be designated by such Party as its Administrative Contact by written notice to the other. Notice shall be effective upon receipt.

27. Survival. All provisions of this Agreement that expressly survive termination, or by their nature should survive termination, do survive termination (except to the extent rights are expressly extinguished including without limitation by Paragraph 14.5).

IN WITNESS whereof, the Parties have executed this Agreement by their authorized representatives on the dates indicated below.

**University of Georgia
Research Foundation, Inc.**

[sponsor legal name]

Name: _____

Title: _____

Date: _____

Name: _____

Title: _____

Date: _____

APPENDIX A – PROPRIETARY TESTING PROJECT

Information to include in the description of the Project:

- Project Title
- Summary of work
- Schedule, time, and specific tasks
- Technical and Financial Reports required and other deliverables
 - If financial reports are required, state “Financial Report is required within 120 days of Agreement end date.”
- Role of Sponsor in conducting or contributing to Project, if applicable

APPENDIX B – BUDGET

Sponsor shall deliver a series of payments to UGARF per the following payment schedule. Invoices will be sent to the Sponsor's Financial Contact as shown in Appendix C with listed PO # if required.

<u>Due Date</u>	<u>Payment Amount</u>	
Date or Milestone	\$XX,XXX	
Date or Milestone	\$XX,XXX	
Date or Milestone	<u>\$XX,XXX</u>	
	\$XXX,XXX	Total Fixed Price Amount Due under this Agreement

UGARF may issue invoices to Sponsor that coincide with the payment schedule, and in that case, Sponsor shall deliver payment to UGARF in the amount of each invoice within thirty (30) days of receipt of the invoice, or by the date identified as the due date on the invoice, whichever is later. Overdue payments will bear interest at the rate of 12% per annum from the date due until paid, and this interest provision survives termination.

Sponsor shall make payment via check to the University of Georgia Research Foundation, Inc. delivered to the UGARF Financial Contact identified in Appendix C or to the individual, office, and address identified on UGARF's invoice if different than Appendix C. Alternatively, Sponsor may deliver payment to UGARF via wire transfer upon request.

APPENDIX C – CONTACT INFORMATION

This Appendix C identifies each Party's "Administrative Contact," who is its notice agent. In addition, this Appendix C identifies UGARF's "Financial Contact," to whom Sponsor may deliver payments due under this Agreement. Further, for the convenience of the Parties, this Appendix C also identifies contact information for the Principal Investigator and Sponsor's Project Director and Financial Contact.

UGARF	SPONSOR
Administrative Contact Name: Address: Sponsored Projects Administration 310 East Campus Road Tucker Hall, Athens Georgia 30602 Telephone: Email: @uga.edu	Administrative Contact Name: Address: Telephone: Email:
Principal Investigator Name: Address: Telephone: Email:	Project Director Name: Address: Telephone: Email:
Financial Contact Name: Callie Adams Mobley Address: 310 East Campus Road Tucker Hall Room 411 Athens, GA 30602 Athens, GA 30602 Telephone: 706-542-9151 Email: cgadmin@uga.edu	Financial Contact Name: Address: Direct Telephone: Direct Email: Secondary or Departmental Contact for Financial Questions Name: Phone: Email: PO # if required: