

MONTANA STATE UNIVERSITY TESTING SERVICES AGREEMENT

This Agreement is entered into on this day of , 20 (the “Effective Date”), between **COMPANY NAME**, a corporation organized under the laws of the State of **STATE**, with its principal place of business located at **INSERT FULL ADDRESS**, (“Client”) and Montana State University, a state institution of higher education located in Bozeman, Montana, (“University”) (individually a “Party”; collectively the “Parties”).

RECITALS:

Client desires Testing Services which the University has the equipment, facilities and capability to provide; and the performance of the Testing Services is consistent, compatible, and beneficial to the role and mission of University to provide educational experience for students and to encourage and support testing and related research and educational activities. Testing Services covered under this Agreement may not involve sponsored research projects.

NOW, THEREFORE, the Parties agree as follows:

1. Scope of Work.

1.1 The University agrees to conduct the Testing Services as outlined in Attachment A. The Testing Services will be provided under the direction and supervision of **Faculty or Staff Member Name** in the **Department or Service Center**. The parties agree that the University retains discretion to involve its students in the conduct of the Testing Services as part of their educational experience, without requiring additional Client approval.

1.2. No SOW Attachment shall be valid or binding unless it has first been reviewed and approved by the University Office of Research Integrity and Compliance to ensure all applicable compliance protocols and requirements are satisfied.

2. Scheduling Tests. The University agrees to make available laboratory facilities, equipment, and support personnel for these tests. The scheduling of such tests shall be arranged to avoid conflict with the University’s educational and research programs. The University shall control the scheduling of tests but will try to meet the convenience of the Client.

3. Term and Termination.

3.1 This Agreement shall become effective **Effective Date** and shall be terminated **one (1) year from the Effective Date**, unless an extension is mutually agreed upon in writing between parties or the Agreement is otherwise terminated as provided herein.

3.2 Either party may terminate this Agreement upon thirty (30) days written notice to the other party. Upon such termination, University will be paid for all expenses incurred through the termination date and for any uncancellable commitments.

4. Compensation. Client agrees to pay University for services performed under this Agreement in the amount of **[dollar amount]** (\$00.00) under the following payment schedule:

All payments shall be made payable to MONTANA STATE UNIVERSITY at the following address:

Department Name
Address
Montana State University
Bozeman, MT **zip code**

5. Publication and Confidentiality.

5.1 University, as an institution of higher education, engages in providing research activities and Testing Services that are compatible, consistent and beneficial to its role and mission of advancing educational opportunity, scientific knowledge, and providing for its dissemination and the transfer of technology related thereto. Therefore, significant results of testing activities on non-proprietary materials must be reasonably available for publication. Before publishing, University agrees to give Client a copy of any proposed publication and Client shall have six (6) weeks to review the publication. University shall consider Client's suggested modifications; however, with the exception of removal of proprietary information or information subject to the confidentiality of section 5.2, the decision of the University as to what the publication shall contain is final.

5.2 The University, to the extent allowed by Montana law, agrees to keep confidential any Client proprietary information supplied during the course of Testing Services performed by University and designated as confidential, and such information will not be included in any published material without prior approval by Client; provided however, that pursuant to Section 13.1, the University shall be free to disclose and publish methods and processes developed solely by the University in performance of Testing Services. Client further agrees that any data from

experiments or tests using non-proprietary materials (controls or generic materials or samples) may be entered into University database and be available for publication without approval by Client.

6. Equipment. Special equipment and supplies purchased under the terms of this Agreement become the property of University unless otherwise specified herein.

7. Indemnification.

7.1 Client hereby agrees to save, defend, indemnify and hold harmless University and its employees, students, agents and their respective successors, heirs and assigns (the “Indemnified Parties”) from and against any and all losses, damages, liabilities, expenses and costs, including reasonable legal expenses and attorneys’ fees to which any of the Indemnified Parties may become subject as a result of any third party claim, demand, action or proceeding that use of any of the materials provided by Client infringes or violates any patent, copyright, trademark or other intellectual property rights of any third party.

7.2 Client hereby agrees to save, defend, indemnify and hold harmless University, its trustees, officers, employees and agents from and against all claims, demands, loss, liability, expense or damage, (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person as a result of a defect in any product tested under this Agreement or from Client’s use or possession of the results produced hereunder.

8. LIMITATION OF LIABILITY. UNIVERSITY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNTS ACTUALLY RECEIVED FROM CLIENT UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY; HOWEVER, IN NO EVENT SHALL UNIVERSITY’S LIABILITY EXCEED ANY LIMIT PROVIDED UNDER APPLICABLE MONTANA LAW.

9. NO WARRANTIES. UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE WORK TO BE PERFORMED OR THE DELIVERABLES TO BE PROVIDED UNDER

THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, THE UNIVERSITY EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE UNIVERSITY DOES NOT WARRANT THAT THE TESTING SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT ANY PARTICULAR RESULT WILL BE ACHIEVED. IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY SPECIAL, INDIRECT (INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOST PROFITS, OR LOSS OF DATA), INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OF ANY KIND, RESULTING FROM WHATEVER CAUSE WHETHER IN AN ACTION UNDER THEORIES OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE WORK TO BE PERFORMED OR THE DELIVERABLES TO BE PROVIDED UNDER THIS CONTRACT.

10. Force Majeure. University shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reason beyond the University's control, or by reason of any of the following: labor disturbances or disputes of any kind, accidents, failure of any required governmental approval, government regulations or court orders, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failures of utilities, mechanical breakdowns, material shortages, disease, epidemic, pandemic, or government or public health directives and regulations, or other dangers to public health, or similar occurrences.

11. Applicable Law. Any dispute regarding or arising under this Agreement shall be subject to and resolved in accordance with the laws of the State of Montana.

12. Assignment. Neither party shall assign or transfer any interest in this Agreement without prior written approval of the other party.

13. Intellectual Property.

13.1 University has previously developed certain data, technical information, writings, observations, methodologies, programs, techniques, records, reports, curricula or other protocols related to the services provided under this Agreement which it considers proprietary and confidential. All previously created data, technical information, writings, observations, methods, programs, techniques, records, reports, curricula or other documents owned by

University shall remain the sole property of University. University retains all right, title, and interest, including any intellectual property rights, in and to any data from experiments or tests using non-proprietary materials (e.g., controls or generic materials or samples). Additionally, University retains all right, title and interest, including any intellectual property rights, in and to the following: 1) any laboratory techniques, methodologies, or protocols developed by University, regardless of whether used for or developed for the purpose of conducting the Testing Services and irrespective of when any such laboratory techniques, methodologies or protocols were developed; 2) any data from experiments or tests using non-proprietary materials (controls or generic materials or samples); and 3) any inventions, discoveries or works created or developed without the use of Client materials or information.

13.2 All data, materials, documents and information provided by Client to University shall remain the property of Client. All data, results, and information that reflect or utilize Client proprietary or confidential materials and information provided pursuant to this Agreement shall belong to Client, including any intellectual property rights associated with the same.

13.3 Except as provided herein, University shall use the Client supplied materials and information only in the course of performing Testing Services for the Client.

13.4 Except as expressly granted herein and required to perform the Testing Services within an applicable SOW Attachment, nothing in this Agreement shall be construed to grant to either party any right, title, or interest in or to any patent, trademark, trade secret, copyright, or other right belonging to the other party.

14. Similar Testing Services. Nothing in this Agreement shall be construed to limit the freedom of University or of its researchers who are not participants under this Agreement, from engaging in similar services made under other grants, contracts or agreements with parties other than the Client. However, University and its researchers who are participants under this Agreement warrant that performance of the Testing Services as provided for herein will not cause a conflict of interest because of work undertaken with others.

15. Publication of Test Results by Client and Use of Names. Client will not include the name of University or any of its employees in any advertising, sales promotion or other publicity

matter without prior written approval of same. University does not endorse any product or service. Reports provided by University under a Testing Services Agreement may be published by Client. However, the published data or report shall include the following statement:

“This information was provided under a Montana State University Testing Services Agreement and is not intended to endorse or recommend any product or service.”

University will not include the name of Client or any of its employees in any advertising, sales promotion or other publicity matter without prior written approval of same.

16. Evaluation of Samples and/or Materials. University agrees not to evaluate, reverse engineer, analyze, or otherwise attempt to identify Client’s proprietary samples and/or materials, and not to use such samples and/or materials other than in the performance of the Testing Services, without the express written consent of Client. All unused portions of Client’s samples and/or materials shall be returned to Client at the completion of the Testing Services.

17. Hazardous Material. Client will provide any applicable Safety Data Sheets, labeled (content and safeguards) Material, other hazard information, and appropriate shipping papers, permits and notifications in accordance with OSHA and DOT regulations and sufficient to permit reasonable safe use and operation of the Material and the proper interpretation of test results. The Investigator will return unused Material subject to this provision within six months of the conclusion of testing. The Client will take back any unused Material returned within this timeframe. All costs and risks of transporting Material to and from University shall be borne by the Client and are not included in the Agreement amount.

18. Export Control. The Parties agree to comply with all applicable federal, state, and local laws and regulations governing performance hereunder, including, but not limited to, US export controls. To the extent that the Testing Services implicate US export controls compliance obligations, the Parties agree to reasonably cooperate to ensure mutual compliance; however, as a non-delegable duty, each Party shall remain solely responsible for their compliance with any applicable export controls.

19. Entire Agreement. This Agreement contains the entire and only agreement between the

parties respecting the subject matter hereof and supersedes or cancels all previous negotiations, agreements, commitments and writings between the parties on the subject of this Agreement. Should processing of this Agreement require issuance of a purchase order or other contractual document, all terms and conditions of said document are hereby deleted in entirety. This Agreement may not be amended in any manner except by an instrument in writing signed by the duly authorized representatives of each of the parties hereto.

The parties hereto have caused this Testing Services Agreement to be executed as of the date set forth herein by their duly authorized representatives.

CLIENT NAME	MONTANA STATE UNIVERSITY
Signature:	Signature:
Signatory Name	Kirk Lubick
Title	Associate VP for Research Integrity and Compliance
Date:	Date:

Attachment A
Scope of Work