**PLYMOUTH STATE UNIVERSITY**

**SPECIALIZED SERVICES AGREEMENT FOR INDUSTRY RESEARCH AND TECHNOLOGY DEVELOPMENT**

**SPECIALIZED SERVICES AGREEMENT** (the “Agreement”) is made by and between Plymouth State University, a member of the University System of New Hampshire, having a principal office at 17 High St, Plymouth, NH 03264 (hereinafter known as “PSU”) and \_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_ corporation, having an office and place of business at \_\_\_\_\_\_\_\_\_\_ (hereinafter known as “COMPANY”) to establish the terms and conditions for the provision of certain services by PSU to COMPANY.

The specialized services contemplated by this Agreement is of mutual interest and benefit to PSU and to the COMPANY, and will further the instructional and research objectives of PSU in a manner consistent with its status as a non-profit, tax-exempt, educational institution.

**THEREFORE**, the parties hereto agree as follows:

1. **Conduct and Contract Period.** PSU will use reasonable efforts to perform the specialized services (“Services”), described in Attachment A (incorporated herein by reference), beginning on \_\_\_\_\_\_\_\_\_\_ (“Starting Date”) and continuing for a period of \_\_\_\_\_\_\_\_\_ months (“Contract Period”). The Services will be performed by faculty, staff, student employees, affiliates, and independent contractors of PSU at its sole discretion (“PSU Personnel”).

**2. Price and Payment.**

2.1 COMPANY agrees to pay PSU $\_\_\_\_\_\_ (“Fixed Price Amount”) for the Specialized Services [Alternative - COMPANY agrees to pay PSU $\_\_\_\_\_ per test performed not to exceed \_\_ tests during the Contract Period.] COMPANY agrees to make an advance payment of twenty-five percent (25%) of the [maximum] Fixed Price Amount to PSU upon signing this Agreement. The advance payment will be applied against the final invoice.

2.2 PSU will submit monthly invoices for equal amounts of the balance of the Fixed Price Amount less the advance payment to COMPANY on or about the twentieth (20th) day of each month. COMPANY will pay each invoice within thirty (30) days of the invoice date.

2.3 All money payments under this Agreement will be made by COMPANY in United States dollars payable by check or wire transfer to The Plymouth State University (Taxpayer Identification No. 02-6000937) and delivered as follows:

Office of Sponsored Programs

Plymouth State University

17 High St, MSC 17

Plymouth, NH 03264-1595

2.3 PSU may discontinue performance of the Services if COMPANY fails to pay any PSU invoice within the time specified in Section 2.2

1. **REPORTS.** PSU will provide COMPANY with reports summarizing the results of the Services as described in Attachment A (“Report”).
2. **PUBLICITY.** Each Party agrees not to use the name, logos, or trademarks of the other Party in any publicity or advertising without the prior approval of the other Party, provided however that PSU may include COMPANY’s name and project title in listings of sponsors. The provisions of this Section shall survive termination of this Agreement.

**5. Intellectual and Other Property.**

5.1 Each Party shall retain ownership of intellectual property rights existing as of the Starting Date, or developed or acquired independently of the Services, and nothing in the Agreement shall assign any ownership to the other Party with respect to such intellectual property rights.

5.2 Technology that is jointly developed by PSU and COMPANY will be jointly owned (“Joint Technology”). COMPANY owns all interests, including all patents, copyrights, and other intellectual property rights, in and to all technology developed under this Agreement by COMPANY using COMPANY facilities (“COMPANY Technology”). PSU owns the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all technology developed under this Agreement using PSU facilities and by PSU Personnel including, but not limited to, all faculty, staff, student employees, and affiliates (“PSU Technology”).

5.3 PSU will provide COMPANY with a complete, written, confidential disclosure of any PSU Technology after the disclosure is received by PSU.

5.4 PSU may file patent applications at its own discretion and expense, or at the request of COMPANY at COMPANY’s expense.

5.5 COMPANY is granted a royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, distribute and perform all such works only for internal research purposes for any copyrighted or copyrightable works, including informational databases, specified to be delivered to COMPANY as part of the Services.

5.6 PSU represents that all of its employees and consultants who participate in providing Services will be obligated to assign to PSU all their rights in PSU Technology and Joint Technology.

**6. Publications.**

6.1 COMPANY recognizes that under its policies and consistent with its tax exempt status, PSU must be free to publish results of Services and agrees that PSU Personnel may present such results at symposia, national, or regional professional meetings, and publish in journals, theses, or otherwise of their own choosing, provided, however, that PSU provides a copy of any proposed publication or presentation at least one month in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party.

6.2 During the one month period COMPANY may review the proposed presentation or publication and, if necessary, request PSU to delete any reference to COMPANY’s Proprietary Information or COMPANY Material included in the publication.

**7. Proprietary Information and Confidentiality.**

7.1 In the course of performing the Services, COMPANY may disclose to PSU COMPANY Proprietary Information. “COMPANY Proprietary Information” means any data or information having commercial value that may include data, databases, product plans, strategies, forecasts, research procedures, marketing techniques and materials, customer names and other information related to customers, price-lists, pricing policies, and financial information that COMPANY treats as sensitive and that is provided to PSU as provided in section 7.3 below.

7.2 PSU agrees to hold in confidence and not disclose COMPANY Proprietary Information received from COMPANY hereunder. The confidentiality obligations of PSU shall extend for three (3) years from the end of the Contract Period. Unless otherwise permitted by separate written agreement, PSU shall use the COMPANY Proprietary Information only for and to the extent required to perform the Services. PSU shall only disclose the Proprietary Information to those PSU Personnel that have a legitimate need for such information and only for and to the extent required to perform the Services.

7.3. COMPANY Proprietary Information provided in writing will be clearly marked as proprietary at the time of disclosure. Non-written information shall only be considered COMPANY Proprietary Information if, at the time of disclosure, it is identified as proprietary and the COMPANY subsequently provides PSU with a written notice that clearly identifies the nature and content of the disclosed information within ten (10) days after such disclosure.

7.4 PSU will not be liable to the COMPANY for the disclosure of COMPANY Proprietary Information that:

a. is published or otherwise available the public through no breach of this Agreement by PSU;

b. can be demonstrated by PSU to have been in its possession prior to receipt under this Agreement;

c. is obtained by PSU without restriction from a third party;

d. is independently developed by PSU by individuals who have not had access to such information;

e. is disclosed by PSU to a third party with the written approval of the COMPANY without any restriction; or

f. is disclosed by PSU pursuant to law or court order after providing notice to COMPANY of the need to make such disclosure.

7.5 PSU shall, at COMPANY’s written request or upon expiration or termination of this Agreement, promptly return or destroy all materials and/or samples furnished under this Agreement, including all copies thereof. PSU shall have the right to retain one (1) copy of such written information in its files for record purposes only.

**8. COMPANY MATERIAL.**

8.1 COMPANY may transfer to PSU tangible material described in Attachment A (“COMPANY Material”) to be used by PSU in performance of the Services.

8.2 The COMPANY Material will remain the exclusive property of the COMPANY. This Agreement will not be deemed to grant to PSU any rights in such COMPANY Material.

8.3 COMPANY assumes all risk associated with the provision of COMPANY Materials and the use by PSU in performance of the Services, including compliance with applicable laws and regulations.

**9. IndemniFICATION.** COMPANY shall indemnify, defend, and hold harmless PSU and its trustees, officers, faculty, students, employees, and agents (the "Indemnitees"), against any liability, damage, loss, or expense (including reasonable attorney’s fees) incurred by or imposed on any of the Indemnitees in connection with any claims, suits, actions, demands, or judgments arising out of any theory of liability relating to this Agreement or concerning any product, process, or service that is made, used, or sold pursuant to any right or license granted under this Agreement. However, indemnification does not apply to any liability, damage, loss, or expense to the extent directly attributable to (i) the negligence or intentional misconduct of the Indemnitees or (ii) the settlement of a claim, suit, action, or demand by Indemnitees without the prior written approval of COMPANY.

**10. REPRESENTATIONS AND WARRANTIES.** PSU MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING THE RESEARCH OR ANY INTELLECTUAL PROPERTY RIGHTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, WHETHER ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE..

**11. Limitation of Liability.** The cumulative liability of PSU to COMPANY for all claims, demands, or actions arising out of or relating to this Agreement, the Services to be performed hereunder, and any deliverables resulting therefrom will not exceed the total amount paid to PSU hereunder during the twelve (12) months immediately preceding such claim, demand, or action. Without limiting the foregoing, in no event shall PSU be liable for any business expense; machine down time; loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against COMPANY or COMPANY’s customers even if PSU has been advised of the possibility of such claims and demands. The foregoing limitation of liability will survive any termination of this Agreement and will apply without regard to any other provision of this Agreement which may have been breached or have been proven ineffective.

**12. Termination.**

12.1 Either Party may terminate this Agreement for any reason upon thirty (30) days’ prior written notice to the other Party.

12.2 COMPANY will pay PSU any costs which have accrued or been encumbered for Services performed to the actual date of termination under this Section and COMPANY will not be relieved of the obligation to pay those costs because of a termination under this Section.

**13. Export ControlS.**

13.1 COMPANY understands and agrees that any and all PSU information provided or exchanged shall be in compliance with all applicable United States export control laws (EAR/ITAR) including “deemed exports”. The transfer of certain technical data and commodities may require a license from a government agency or written assurances by COMPANY that COMPANY will not re-export data or commodities to foreign countries without prior approval of the appropriate U.S. Government Agency. PSU agrees to cooperate with COMPANY in securing any such license necessary in connection with this Agreement. In the event COMPANY provides to PSU technical data or an article that is controlled by the U.S. International Traffic in Arms Regulations (ITAR) or the U.S. Export Administration Regulations (EAR) (the "Controlled Information"), COMPANY will mark such information and provide the appropriate EAR or ITAR classification to enable PSU to properly manage such Controlled Information.

13.2 “Deemed export” means any release of technology to a foreign national within the United States. Technology is released for export when it is (i) made available to foreign nationals for visual inspection, (ii) exchanged orally, or (iii) made available by practice or application under the guidance of persons with knowledge of the technology. The obligations of this Section shall survive any expiration or termination of this Agreement.

**14. NOTICES.** All notices and other communication given under this Agreement will be effective five (5) days following deposit in the United States mail, postage prepaid, and addressed to the parties at their respective addresses set forth below unless by a previous notice a different person or address has been designated or upon confirmation of receipt by email or fax.

**15. Miscellaneous.**

15.1 PSU and COMPANY are and will remain independent contractors and nothing herein will be construed to create a partnership, agency, or joint venture between the Parties for federal and state law purposes. Each Party will be responsible for wages, hours, and conditions of employment of its respective personnel during the term of, and under, this Agreement.

15.2 All questions concerning the validity, operation, interpretation, and construction of this Agreement will be governed by and determined in accordance with the laws of the State of New Hampshire.

15.3 No waiver by either Party of any breach of any provision hereof will constitute a waiver of any other breach of that provision or of any other provision hereof.

15.4 Except with respect to internal business communications and academic reporting, communications with governmental agencies, or as required by law, PSU and COMPANY shall not use each other's name or trademarks in publicity or advertising without first receiving written consent.

15.5 Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, pandemics, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order.

15.6 This Agreement sets forth the entire agreement and understanding between PSU and COMPANY and merges all prior discussions between the Parties pertaining to the subject matter hereof; and neither Party will be bound by any conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof except as expressly provided herein. This Agreement may not be modified or altered except by a written document executed by authorized representatives of both Parties. No provision contained in any standard form document issued by COMPANY, including but not limited to any purchase order or confirmation order, will be applicable, even if signed by the Parties, unless the Parties also execute a separate document expressly modifying this Agreement to include such provisions.

**16. ENTIRE AGREEMENT.** Unless otherwise specified, this Agreement and its Exhibits embody the entire understanding between PSU and the Sponsor for the Research, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement, including without limitation, changes in the statement of work, total estimated cost and period of performance, shall be effective unless made in writing and signed by authorized representatives of the parties.

**IN WITNESS WHEREOF**, this Agreement has been duly executed by our duly authorized

representatives on the day and year set forth below.

**PSU COMPANY**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Title: Principal PSU Personnel Title:

Date: Date:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Heather A. Arnold

Title: Grants Administrator & Compliance Officer

Date:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Ann McClellan

Title: Provost

Date:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Laurie Wilcox

Title: AVP Finance

Date:

**ATTACHMENT A**

**Services to be Performed**

**PSU Project #**

**Principal Investigator(s) Name:**

**Principal Investigator(s) Campus Address:**

**Principal Investigator(s) Campus Phone Number:**

**Principal Investigator(s) Campus email address:**

**Description of Services:**

**Reports – Type and Frequency**

**COMPANY Materials to be provided by COMPANY:**

**PSU Personnel:**