

[LAB/DEPT NAME HERE]
Testing Services Agreement



This **Testing Services Agreement** ("Agreement") is entered into by and between:

[OSU Contact Name and Title]
[Name of Lab or Department]
OREGON STATE UNIVERSITY
[College Address]
Corvallis, OR 97331
T: [Telephone #]
[Email Address]

and

[Insert Contact Name or Position Title]
[Insert Business Legal Name]
[Address 1]
[Address 2]
T: [Telephone #]
[Email Address]

(Hereinafter: "OSU")

(Hereinafter: "Purchaser")

WHEREAS, Oregon Revised Statute Chapter 352 allows for OSU to engage in the sale of goods and services to non-OSU entities for fees when such services or goods are directly and substantially related to the mission of OSU, which includes teaching, research, and public service; and

WHEREAS, Purchaser desires OSU to perform the service(s) and/or test(s) outlined in this Agreement and its attachments.

NOW Therefore, OSU and Purchaser agree to the terms and conditions that are set forth in this Agreement.

1. TERMS AND CONDITIONS

- 1.1. Term. The term of this Agreement will be from the date of last signature and will remain in effect, unless otherwise terminated, until **DATE**. If work is not completed by this date, this Agreement will automatically renew and continue until completion of the work outlined in Attachment A.
- 1.2. Services. OSU agrees to perform the services detailed in Attachment A: Statement of Work.
- 1.3. Fixed Scope. OSU's performance of work is limited to work within the scope described under the Fee listed in the OSU Fee Book. Any work beyond the scope provided in the description of the Fee in Attachment A must be executed in a separate agreement.
- 1.4. Hazardous Material. Purchaser shall notify OSU prior to transferring products containing hazardous chemicals to which OSU employees may be exposed. A hazardous chemical is any chemical that is a physical hazard or health hazard pursuant to 19 CFR 1910.1200 and its appendices, as incorporated by OAR 437-002-0360. Upon such notification, Purchaser shall immediately provide Material Safety Data Sheets, as required.
- 1.5. Export Controls. OSU may have students or employees who are foreign nationals who may be working with the materials, information or data Purchaser provides to OSU. Purchaser agrees to inform OSU, before providing any materials, information or data, whether it is subject to Export Administration Regulations or International Traffic in Arms Regulations and if so what Commerce Control List number(s) or U.S. Munitions List number(s) it is controlled under. OSU shall have the right to decline or limit the receipt of such materials, information or data. Purchaser shall not disclose such materials, information or data until it has been notified by OSU that OSU has implemented a technology control plan for the materials, information or data.

2. FINANCIAL CONSIDERATIONS

- 2.1. Fee Rate. Rates listed in Attachment 'A' are subject to change. Purchaser will be charged at the current published rate at the time the Agreement is fully signed or upon the date the Services are ordered, whichever occurs later. For current rates, refer to the OSU Fee Book found on-line at <http://fees.oregonstate.edu>.

- 2.2. Payment. Purchaser agrees to pay OSU an amount not to exceed **\$0.00**. Such amount is based on the rates listed for the testing activity described in Attachment A. Payment for each test will be made either in advance of testing or upon invoice, as directed by the Department performing test.
- 2.3. Late Payment. Amounts unpaid after thirty 30 days from the date of the invoice will accrue interest at the rate of 8% per annum until paid.

3. GENERAL PROVISIONS

- 3.1. Termination. Either party may terminate this Agreement, at any time, upon mutual written consent. All reasonable costs and non-cancellable obligations incurred by OSU at the time of termination will be reimbursed by Purchaser and OSU will return to Purchaser or destroy all unused materials provided by Purchaser.
- 3.2. Assignment. This Agreement is non-assignable and non-transferrable.
- 3.3. Intended Beneficiaries. Purchaser and OSU are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 3.4. Intellectual Property. OSU has no interest in the deliverables provided in this Agreement. OSU and Purchaser acknowledge that neither party anticipates that any copyrights, trademarks, trade secrets, patents, or any other proprietary rights (collectively, "Intellectual Property Rights") will be generated during OSU's performance of services under this Agreement.
- 3.5. Confidentiality. "Confidential Information" means any materials, written information, and data marked "Confidential" by Purchaser or non-written information and data disclosed by Purchaser that is identified at the time of Purchaser disclosure to the OSU as confidential and is reduced to writing and transmitted to OSU within 30 days of such non-written disclosure. OSU agrees to use the same degree of care it uses to protect its own confidential information. OSU's obligations hereunder do not apply to information in the public domain or independently known or obtained by OSU. OSU's obligations under this provision are subject to the Oregon Public Records Law, ORS 192.311 to 192.355.
- 3.6. Liability. In no event will OSU be responsible for any damages or penalties resulting from OSU's testing services or reporting of results called for by this Agreement or from the use or distribution of the materials tested. Although OSU endeavors to provide accurate testing and reporting, the testing and reporting of results under this Agreement are provided by OSU without any warranty, express or implied, as to their accuracy. In no event will OSU be liable for any direct, indirect, special, punitive, or consequential damages resulting from the testing or reporting of test results under this Agreement. Purchaser agrees to indemnify and hold harmless OSU, its officers, agents, employees, and Board members against any claims arising out of Purchaser's use, sale, or distribution of materials tested and results received under this Agreement and against any claims arising out of Purchaser's breach of this Agreement.
- 3.7. Indemnification. The parties agree to indemnify and hold one another harmless from any loss, damage, injury, claim, or demand arising from their respective activities in connection with this Agreement. Neither party will be liable for any loss, damage, injury, claim, or demand arising from the negligence of the other party or its agents or employees. All of OSU's obligations and liabilities under this Agreement are subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7.
- 3.8. Relationship of Parties. Nothing in this Agreement will be deemed to make OSU and Purchaser partners or joint venturers or to create a relationship of principal and agent between them. Purchaser is not to be considered an agent or employee of OSU for any purpose and is not entitled to any of the benefits that OSU provides for its employees.
- 3.9. Publicity. Neither party will use the name, service mark, trademark, or abbreviation thereof of the other party in any publicity, advertising, or news release without the prior written approval of the authorized representative of the other party. Specifically, and without limitation, Purchaser agrees not to advertise or promote Purchaser's material

or product as having been tested at OSU or to assert that testing at OSU demonstrates or suggests any conclusions or characteristics regarding Purchaser’s sample, material, or product.

- 3.10. Counterparts. This Agreement may be signed in separate counterparts, each of which when signed and delivered shall be an original, and all of which when taken together shall constitute one instrument.
- 3.11. Governing Law and Venue. This Agreement will be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to the conflict of law principles thereof. Any action or suit brought by the parties relating to this Agreement will be brought and conducted solely and exclusively in the Circuit Court of Benton County for the State of Oregon. Purchaser hereby consents to the personal jurisdiction of such courts, waives any objection to venue in such courts, and waives any claim that such forum is an inconvenient forum.
- 3.12. Force Majeure Event. Neither party shall be responsible nor liable for any losses arising out of any delay in or interruption of the performance of its obligations under this Agreement due to acts of God, strikes, lockouts, riots, acts of war, terrorism, epidemics, pandemics, or other health emergencies, governmental regulations, fire, severe weather conditions, flight delays, or other causes beyond the reasonable control of the party so affected at the time such causes arise (a “Force Majeure Event”). If delay due to a Force Majeure Event continues for an unreasonable time, then OSU is entitled to terminate the Agreement without penalty.
- 3.13. Conflicting Provisions. This Agreement and any/all attachments, schedules, and documents attached hereto are intended to be read and construed in harmony with each other. In the event any provisions in any attachment conflict with the provisions of this Agreement, then this Agreement shall control, and such conflicting provision shall be deemed removed and replaced with the governing provision herein.
- 3.14. Merger. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No amendment, consent, or waiver of terms of this Agreement will bind either party unless in writing and signed by both parties. Any such amendment, consent, or waiver will be effective only in the specific instance and for the specific purpose given.

The parties, by their signatures below, acknowledge having read this Agreement, understand it, and agree to be bound by its terms and conditions.

By: OSU

By: _____
*Department Signature*¹ Date

[Name]
 [Title]

By: _____
*PCMM Signature*² Date

[Name]
 [Title]

By: Purchaser

By: _____
Authorized Representative Date

[Name]
 [Title]

By: _____
 _____ Date

¹ Department representative with budgetary authority to commit OSU resources described in TSA.

² PCMM Contract Officer with authorized Contract Signature Authority.

Attachment A
Statement of Work

OSU will perform the following testing services listed below:

ITEM #

Unit/ Department performing Test:	[Insert]
Fee No.	[Insert]
Fee Title/Test Name:	[Insert]
Banner Index:	[Insert]
Fee Rate:	\$____/ per _____
Quantity:	[Insert]
Total Cost:	\$_____

SOW written summary (if applicable):