

O.H. Hinsdale Wave Research Laboratory Testing Services Agreement



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

DIRECTOR
O.H. HINSDALE WAVE RESEARCH LABORATORY
OSU COLLEGE OF ENGINEERING
33550 SW JEFFERSON WAY
CORVALLIS, OR 97331
T: 541.737.2875
pedro.lomonaco@oregonstate.edu
<https://engineering.oregonstate.edu/facilities/wave-lab>

and

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

(Hereinafter: "Purchaser")

(Hereinafter: "OSU")

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.

- 1.6. Facility Use. If the activities that are the subject of this Agreement include Purchaser's Use of OSU's Facility, Purchaser acknowledges and agrees to the applicable terms of use provided in Attachment B, *General Terms of Use for Access to University Facilities*,

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 **\$0.00** for the work outlined 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. 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.
- 3.4. 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.
- 3.5. 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.
- 3.6. 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.

- 3.7. 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.
- 3.8. 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.
- 3.9. 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 object to venue in such courts, and waives any claim that such forum is an inconvenient forum.
- 3.10. 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.
- 3.11. 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.
- 3.12. 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 Purchaser:

 Department Signature Date

Signature: _____

Name: _____

Title: _____

 Contracts Officer | PCMM Date

Date: _____

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 Narrative)

EXHIBIT B – OSU GENERAL TERMS OF USE FOR ACCESS TO UNIVERSITY FACILITIES

**OREGON STATE UNIVERSITY ("OSU") GENERAL TERMS OF USE
FOR ACCESS TO UNIVERSITY FACILITIES**

ACCESS TO PREMISES

1. **Accessing PREMISES:** In OSU providing to another party or entity (hereafter "PERMITTEE") access to an OSU Facility (hereafter the "PREMISES"), OSU, its officers, agents, and employees maintain the right to enter any part of the PREMISES at any time and on any occasion. OSU does not relinquish its rights to control the management and operation of the PREMISES, including its rights to enforce all federal, state, county, and city laws/ordinances and any OSU policies or standards applicable to the PREMISES.
2. **Access to Others for Other Events:** Unless otherwise specified in writing, OSU shall have the right to permit access to others to the PREMISES by scheduling other events in multiuse PREMISES both before and/or after the dates and times of PERMITTEE access and at the same time as the PERMITTEE'S event in other locations on campus, without notice to PERMITTEE.
3. **Removal of PERMITTEE:** OSU reserves the right to deny access of PREMISES by removing PERMITTEE from the PREMISES at any time for reasons including but not limited to: if PERMITTEE'S use of the PREMISES is not conducted in a manner as proposed, if PERMITTEE'S use of the PREMISES threatens the safety of people or property, and/or if any laws, ordinances or OSU policies are violated. Upon exercise of this authority, the PERMITTEE waives any claims for damages or compensation against OSU, its trustees, officers, employees, and agents.

CARE OF PREMISES

4. **Defacement of PREMISES:** The PERMITTEE shall not injure or in any manner deface the PREMISES and shall not cause or allow the PREMISES to be injured or defaced, including, but not limited to, the use of nails, hooks, tacks, or screws in any part of the PREMISES without written permission of OSU.
5. **Installation/Construction of Structures:** PERMITTEE shall not install or construct any structures in/on the PREMISES without prior written permission of the Facilities Manager, or their designee, for the PREMISES. OSU reserves the right to impose any requirements needed for installation or construction of approved structures.
6. **External Equipment:** PERMITTEE must inform Facility Manager in advance of all equipment it plans to bring to the PREMISES to use for its event, including but not limited to production equipment, amplifiers and lighting, electronics, generators, sound systems, etc. ("External Equipment"). OSU reserves the right to control the type of External Equipment used in the PREMISES in order to comply with local regulations, laws and OSU policies and ensure the safety of people and property. PERMITTEE shall obtain written approval from the Facilities Manager or their designated representative to use External Equipment, if any, prior to PERMITTEE'S use of the PREMISES.
7. **Occupancy Loads:** PERMITTEE shall not exceed occupancy loads of the PREMISES. PERMITTEE will be responsible for any fines or penalties for violation of occupancy codes.
8. **Clean Up of PREMISES:** PERMITTEE'S obligation under this section shall be in addition to any services regularly provided by OSU'S custodial staff/contractors. PERMITTEE shall keep the PREMISES clean and generally cared for during use and PERMITTEE is responsible for restoring the PREMISES to the condition they found it, which includes but is not limited to trash picked up and placed in designated receptacles, and equipment, tables and chairs put back and arranged in a manner in which they were found. Events that include distribution of literature requires clean up within 500 feet of the PREMISES for discarded materials. If materials are not cleaned up, the PERMITTEE will be charged for actual clean-up cost and for any additional fees, which may be applicable.

INDEMNITY & RESPONSIBILITY FOR PREMISES

9. **Indemnity:** PERMITTEE shall release, indemnify, and hold harmless OSU, its trustees, officers, employees, and agents from any and all claims and liabilities (including costs and attorneys' fees) arising out of or in connection with use of OSU PREMISES.
10. **Responsibility For Loss and/or Damages:** PERMITTEE shall be responsible for all loss and damage to any property, injury to persons, expense, inconvenience, and delay which may be caused by, or result from, the PERMITTEE'S use of the PREMISES, or from any act, omission, or neglect of PERMITTEE, committed with or without the knowledge or consent of the PERMITTEE or any person acting on behalf of PERMITTEE. If, during the terms of the PERMITTEE Agreement, the PREMISES or any portion of the PREMISES are damaged by the act, default, or negligence of the PERMITTEE or its agents, employees, patrons, or any other person or persons admitted to the PREMISES by the PERMITTEE, the PERMITTEE shall pay to OSU, upon demand, such a sum as shall be necessary to restore the PREMISES to its original condition. PERMITTEE shall be responsible for any Assumption of Risk or Waivers necessary for PERMITTEE'S event.
11. **Responsibility For Loss and/or Damages to Property of Others In/On PREMISES:** OSU assumes no responsibility whatsoever for any property of others placed in/on the PREMISES, and OSU, its officers, agents, and employees are hereby expressly-relieved and discharged from any and all liability for any loss, injury, or damages to persons or property that may be sustained by reason of occupancy or use of the PREMISES by PERMITTEE. OSU shall have the sole right to collect and retain custody of property left in/on the PREMISES not collected by PERMITTEE during clean up. PERMITTEE shall not interfere with the collection or custody of such property left in/on PREMISES.
12. **Insurance:** PERMITTEE shall secure at its own expense and keep in effect during the period related to use of the PREMISES, general liability insurance with a minimum limit of \$2,000,000 per occurrence. Oregon State University, its trustees, officers, employees, and agents shall be included as additional insured on the required liability insurance. The policy must be issued by an insurance company permitted to do business in Oregon, with a minimum A.M. Best rating of A-VII. For all events and activities involving minors (under age

18) the required general liability coverage shall be endorsed to include coverage for physical/sexual abuse and molestation. Liquor liability insurance is required for all events with alcohol. Certificates of Insurance and any applicable endorsements shall be uploaded or provided via email as proof of required insurance prior to PERMITTEE'S use of the PREMISES. OSU reserves the right to require additional insurance based on risks associated with PERMITTEE'S use of the PREMISES.

STANDARDS, POLICY AND LAWS

12. **Weapons and Destructive Devices:** Possession, use, or threatened use of dangerous chemicals, weapons, or destructive devices, are not allowed on property owned or controlled by OSU except as expressly authorized by law or authorized in OSU Standard 576-065.
13. **Smoking:** In accordance with University Standard 07-020, smoking and tobacco use is prohibited on OSU property.
14. **Alcohol:** Alcohol service at all OSU events/activities and properties under OSU control are governed by OSU Standard 07-005 and MUST be registered with OSU Insurance and Risk Management Services 21 days prior to your event (<http://risk.oregonstate.edu/alcohol-service>).
15. **Gambling:** Gambling in any form is prohibited.
16. **Youth Safety and Compliance:** All events and activities involving minors (under age 18) must comply with OSU Policy 07-040 Safety of Minors, which includes a requirement to register university-operated or university-hosted youth programs with the Office of Youth Safety & Compliance. Registration can be completed online at <http://youth.oregonstate.edu>. PERMITTEE must comply with all criminal history check protocols and incident reporting requirements as outlined in said policy.

RIGHTS AND TRADEMARKS & ENDORSEMENT

17. **OSU Logos and Trademarks:** PERMITTEE may not use, sell, or display OSU logos and trademarks without prior written permission from the OSU University Marketing office. This includes use in advertising brochures or press releases.
18. **Recording on Campus:** If PERMITTEE's activities include producing television, online or radio documentary or entertainment content about OSU or featuring OSU people, PERMITTEE must notify University Relations & Marketing's Oregon State Productions office of such planned activities.
19. **Endorsement:** Authorized use of PREMISES or services in no way constitutes OSU endorsement of PERMITTEE, its views, objectives or program content.

MISCELLANEOUS

20. **High Profile Invitees:** PERMITTEE is required to inform the Facilities Manager for the PREMISES in advance if the event includes the attendance of high profile individuals such as celebrities, dignitaries, politicians, etc.. Additional costs borne by OSU to accommodate such individuals, if any, shall be the responsibility of PERMITTEE and OSU shall invoice PERMITTEE for reimbursement of such costs.
21. **Diversity:** PERMITTEE shall comply with OSU policies and guidelines in its commitment to respect of Diversity. As a higher education institution with a diverse community, OSU affirms its commitment to the prohibition of discrimination and harassment and to the protection of equal opportunity for all. Every event at OSU shall create and provide a positive, safe, and respectful environment in alignment with OSU's strategic plan involving diversity.
22. **Relationship of Parties:** Nothing in this Agreement shall be deemed to make OSU and PERMITTEE partners or joint venturers or to create a relationship of principal and agent between them. PERMITTEE is not to be considered an agent or employee of OSU for any purpose, and neither PERMITTEE nor any invitees of PERMITTEE entitled to any of the benefits that OSU provides for its employees. PERMITTEE will be solely and entirely responsible for its acts and for the acts of the invitees of PERMITTEE during the time of this Agreement.
23. **No Third Party Beneficiaries:** OSU and PERMITTEE 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.
24. **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.
25. **Governing Law and Venue:** This Agreement shall 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 shall be brought and conducted solely and exclusively in the Circuit Court of Benton County for the State of Oregon. Customer hereby consents to the in personam jurisdiction of such courts, waives any object to venue in such courts, and waives any claim that such forum is an inconvenient forum.