

FACILITY USE AGREEMENT
Between
_____ **and**
Saint Louis University

This Agreement, (“Agreement”), is made and entered into this _____ day of _____, 2015 (“Effective Date”) by and between Saint Louis University, (the “University”), a Missouri nonprofit corporation, whose principal address is 221 North Grand Avenue, St. Louis, MO 63103 and _____, (the “Company”) a corporation existing under the laws of the state of _____, whose principal address is _____.

RECITALS

WHEREAS, _____ (“Employee”) is a researcher and employee of Company;

WHEREAS, Company desires for Employee to access and use certain facilities and instruments that are owned and/or controlled by UNIVERSITY to perform research, as specifically described in **Schedule A** hereto (the “Purpose”);

WHEREAS, Company desires to lease such UNIVERSITY facilities and instruments for the benefit of Company on a limited and temporary basis; and

WHEREAS, UNIVERSITY is willing to lease such UNIVERSITY facilities and instruments to Company, in accordance with the terms and conditions outlined below.

NOW THEREFORE, in consideration of the premises, covenants, and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GRANT OF FACILITY LEASE. UNIVERSITY hereby grants Company the right to allow Employee, and only Employee, to access and use a portion of UNIVERSITY’s research facilities for the duration of the Term, as provided further herein and more particularly described below, solely for the Purpose:

1.1 **Building/Site:** Employee will be allowed to access and use the facility having the physical address listed in **Schedule A** hereto (the “Facility”).

1.2 **Instruments:** Employee will be allowed to access and use the instruments that are located within the Facility and which are listed in **Schedule A** hereto (the “Instruments”). Employee shall not access or use any other instruments that may be found within or otherwise accessible within the Facility.

1.3 **Fees:** Company shall pay UNIVERSITY for Company’s access to and use of the Facility and Instruments in accordance with **Schedule A** hereto.

2. TERM.

2.1 The term of this Agreement shall commence on the Effective Date and shall expire on the earlier of the Purpose being completed or one (1) month following the Effective Date, unless otherwise terminated earlier by UNIVERSITY as set forth in Section 2.2 below, or extended by mutual written agreement of Company and UNIVERSITY (the “Term”).

2.2 UNIVERSITY shall have the unfettered right to terminate this Agreement for convenience by providing Company with at least five (5) business days prior written notice of such termination.

3. FACILITY REPAIRS / INSTRUMENT AVAILABILITY.

3.1 UNIVERSITY may make repairs or alterations to the Facility as deemed necessary without prior consent by Company. Should the performance of such repairs be expected to negatively impact Employee’s access to the Facility, UNIVERSITY will inform Company about such repairs or alterations at least five (5) business days in advance and will make reasonable efforts to accomplish such repairs in a manner that is respectful of Company Facility usage requirements and plans.

3.2 UNIVERSITY may remove, replace, or modify the Instruments that are within the Facility, according to its sole and exclusive discretion. UNIVERSITY makes no representations or warranties regarding the availability, operability, or other features of the Instruments.

4. RESPONSIBILITIES OF COMPANY. Other than the Instruments provided by UNIVERSITY, Company will provide its own research equipment and all other research materials and reagents that are necessary to conduct Employee’s research in accordance with the Purpose set forth in this Agreement.

5. ACCESS TO FACILITY. UNIVERSITY will provide Employee with a visitor badge and will arrange for such access to the Facility as is reasonably required for Employee to accomplish the Purpose. Use and access to the Facility and Instruments shall be at Company’s and Employee’s sole risk and expense.

6. OWNERSHIP OF DATA / IP.

6.1 Company shall own all right, title and interest in any data and/or intellectual property that Employee may create during Employee’s access to and use of the Facility and Instruments, provided that such data and/or intellectual property are not created through the performance of research that is supported in whole, or in part, with funding or personnel that are provided or controlled by UNIVERSITY.

6.2 Company agrees that Employee will not participate in any research or other services using the Facility and/or Instruments that is supported in whole, or in part, with funding that is controlled by UNIVERSITY.

7. CONFIDENTIALITY.

7.1 “Confidential Information” is information, data, and materials that a party may access or obtain from the other party in connection with the performance of this Agreement.

7.2 Subject to Section 7.4 and for a period of five (5) years from the date of disclosure, a party that receives Confidential Information shall hold such Confidential Information in confidence, shall not disclose the Confidential Information to any third party without the express written permission of the other party, shall not use the Confidential Information other than in performing its obligations under this Agreement, and shall treat such Confidential Information with at least the same degree of care as it treats its own confidential information but not less than with a reasonable degree of care.

7.3 Confidential Information shall not include information that: (i) is already known to a receiving party prior to the Effective Date; (ii) becomes publicly known without the wrongful act or breach of this Agreement by a receiving party; (iii) has been or is disclosed to a receiving party by a third party who has the legal right to do so; (iv) is developed independently by employees of the receiving party who had no access to or knowledge of the Confidential Information, as evidenced by that party's records; or (v) is approved for release by prior written authorization of the disclosing party.

7.4 Either party may disclose Confidential Information to third parties as required by law or governmental regulation, provided that such party shall promptly notify the other as soon as reasonably practical of such a requirement and shall take reasonable and lawful actions to avoid or minimize the extent of such disclosure if requested by the other party.

8. DISCLAIMER AND LIMITATIONS. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EVERYTHING PROVIDED BY UNIVERSITY UNDER THIS AGREEMENT, INCLUDING THE FACILITY AND INSTRUMENTS, ARE UNDERSTOOD TO BE EXPERIMENTAL IN NATURE, MAY HAVE HAZARDOUS PROPERTIES, AND IS PROVIDED WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. UNIVERSITY MAKES NO WARRANTIES REGARDING THE QUALITY, ACCURACY, OR UTILITY OR ANY OTHER ASPECT OF ITS PERFORMANCE PURSUANT TO THIS AGREEMENT OR ANYTHING PROVIDED BY UNIVERSITY UNDER THIS AGREEMENT. WITH THE EXCEPTION OF COMPANY'S INDEMNIFICATION OBLIGATIONS SET FORTH BELOW, IN NO EVENT SHALL UNIVERSITY OR COMPANY BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER IN BREACH OF CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. INDEMNITY.

9.1 Company agrees to defend, indemnify and hold harmless UNIVERSITY and its officers, trustees, employees, students, agents and successors and assigns from and against any and all claims, suits, damages, losses, liabilities or expenses (including but not limited to court costs, reasonable attorneys' fees, and expert witness fees and expenses) arising out of, relating to, or incidental to: (i) Company's breach of this Agreement, (ii) Company's and/or Employee's use or other exploitation of the Facilities and/or Instruments, (iii) any loss, damage, injury, or loss of life which results from use of the Facility and/or the Instruments by Company personnel, including without limitation any damage to the Instruments or Facility caused by Employee's use thereof, and/or (iv) Company's or Employee's negligence or willful misconduct.

9.2 The obligations set forth in this Section shall survive termination of this Agreement and shall not be limited by any provision of this Agreement outside this Section. In the event that UNIVERSITY seeks indemnification under this Agreement, UNIVERSITY shall: (i) give Company prompt written notice of the claim; (ii) cooperate with Company, at Company's expense, in connection with the defense and settlement of the claim; and (iii) not settle or compromise the claim without the written consent of Company, which shall not be unreasonably withheld.

10. INSURANCE.

10.1 Commercial General Liability. Company shall maintain commercial general liability insurance covering all operations and work by or on behalf of Employee on an occurrence basis against claims for bodily injury, death, occupational sickness or disease, personal injury and property damage (including resulting loss of use). Such insurance shall be written for not less than \$1,000,000.

10.2 Workers' Compensation/Employer Liability Insurance. Company shall maintain workers' compensation and employer's liability insurance complying with the statutory requirements of the State of Missouri.

11. POLICIES. Company agrees that its authorized personnel who access the Facility pursuant to this Agreement, including Employee, will adhere to all UNIVERSITY policies.

12. USE OF NAMES.

Neither party may use the name, trademark, logo, symbol, other image or identifying mark of the other party in any form of publicity without the prior written permission of the other. This requirement extends to the name of the University and the names of any of its employees, trustees, officers or agents.

13. NOTICES.

Any notices pursuant to this agreement will be validly given or served if in writing delivered personally or sent, postage prepaid, by U.S. first class mail to the addresses set forth below, or to such other addresses as either party may designate to the other in writing. Delivery of any notice will be deemed to be effective five days after mailing, on the date delivered if personal delivery, or by confirmed facsimile.

For Company

For University:

Department or Core Facility/Lab
Attn:
Campus address
St. Louis, MO 63103
Phone:
Fax:
Email:

With Copy To:

With Copy To:

Contracting Office
Saint Louis University
Campus address
St. Louis, MO 63103
Fax:
Email:

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(Fax)

14. MISCELLANEOUS.

14.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Missouri. The parties hereby irrevocably consent to the jurisdiction of any Missouri State or United States court, located in St. Louis, Missouri, for purposes of enforcement of this Agreement. This provision shall survive if this Agreement is adjudged void or should be canceled, annulled or terminated.

14.2 Headings, Recitals and Preamble. The captions or headings in this Agreement do not form part of the Agreement, but are included solely for convenience. The recitals and preamble to this Agreement, if any, are hereby incorporated as an integral part of this Agreement as if restated herein in full.

14.3 Execution. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and as executed shall constitute one agreement, binding on both parties, even though both parties do not sign the same counterpart. The parties agree that this Agreement may be executed by facsimile including Portable Document Format (PDF) electronic scan, which shall be deemed an original.

14.4 Waiver, Amendment. No waiver, amendment or modification of this Agreement will be effective unless in writing and signed by both parties.

14.5 Assignment. Neither party may assign this Agreement or any of its obligations hereunder without the prior written consent of the other party; however, this Agreement will be binding on any successors or permitted assigns of either party.

14.6 Entire Agreement. This Agreement embodies the entire agreement of the parties. It supersedes all prior written and verbal agreements between the parties with respect to the subject matter.

14.7 Severability. If any term or condition of this Agreement is contrary to applicable law, such term or condition will not apply and will not invalidate any other part of this Agreement. However, if its deletion materially and adversely changes the position of either of the parties, the affected party may terminate the Agreement by giving thirty (30) days written notice.

14.8 Relationship Of The Parties. Neither party is agent, servant, employee, legal representative, partner or joint venturer of the other. Nothing herein shall be deemed or construed as creating a joint venture or partnership between the parties and neither party has the power or authority to bind or commit the other.

14.9 Authority. Each party represents and warrants that it has the right and authority to enter into and perform its obligations under this Agreement. Each party will perform all of its obligations under the Agreement in accordance with all applicable governmental laws, rules and regulations. Neither party will be obligated to enter into any further agreement with the other party.

14.10 Force Majeure. Neither University nor Company will be liable for failure of or delay in performing obligations set forth in the Agreement, and neither will be deemed in breach of its obligations, other than for Payments, if such failure or delay is due to natural disasters or other causes reasonably beyond the control of a party and reasonable notice of the delay is provided to the other party.

14.11 No Third Party Beneficiaries. The Agreement does not create any rights, or rights of enforcement, in third parties.

14.12 Export Controls. It is understood that the University is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979), and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by Company that Company shall not export data or commodities to certain foreign countries without prior approval of such agency. The University neither represents that a license shall not be required nor that, if required, it shall be issued. If for any reason the required license should not, after a reasonable effort by the University, be issued, Company shall pay to the University only those costs of labor and expenses associated with the performance of the Agreement to the date when the University was informed that the license would not be issued and the University shall be released from any further performance of the Agreement.

14.13 Sections 6 – 10, 12 and 14 shall survive the expiration or termination of this Agreement.

14.14 Neither University nor Company will be liable for failure of or delay in performing obligations set forth in the Agreement, and neither will be deemed in breach of its obligations, other than for payments, if such failure or delay is due to natural disasters or other causes reasonably beyond the control of a party and reasonable notice of the delay is provided to the other party.

14.16 The University advises (a) that it is exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code, (b) that maintenance of such exempt status is of critical importance to the University and to its members, and (c) that the University has entered into this Agreement with the expectation that there will be no adverse impact on its tax exempt status. As such, and if it becomes necessary, the parties agree to amend, modify or reform this Agreement as necessary (i) in order to ensure that there is no material adverse impact on the University's tax exempt status, and (ii) in a manner that preserves the economic terms of the Agreement as such are set forth in this Agreement.

14.17 The University is an equal opportunity/affirmative action employer. As part of its affirmative action policies and obligations, the University is subject to and will comply with the provisions governing federal contractors as set forth in 41 CFR § 60-1.4(a), 41 C.F.R. § 60-250.5(a); 41 C.F.R. § 60-300.5(a); and 41 C.F.R. § 60-741.5(a), and these regulations are hereby incorporated into this Agreement by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

[The signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Saint Louis University

Signed: _____

Name:

Title:

Date:

[Company]

Signed: _____

Name:

Title:

Date:

Schedule A

Facility Use Agreement

Purpose

- [Insert detailed description of research to be performed by Employee / Company]

Facility

- [Insert detailed address / location of facility]

Instruments

- [Insert detailed list of instruments that the Employee may use]

Fees

- [Insert fees to be paid by Company to SLU]
- [Insert time at which such fees will be paid, e.g., upon execution of this Agreement, within 30 days thereafter, etc.]

SERVICES AGREEMENT

Between

_____ and

Saint Louis University

This Agreement, (“Agreement”), is made and entered into this _____ day of _____, 2012 (“Effective Date”) by and between Saint Louis University, (the “University”), a Missouri nonprofit corporation, whose principal address is 221 North Grand Avenue, St. Louis, MO 63103 and _____, (the “Company”) a corporation existing under the laws of the state of _____, whose principal address is _____.

The University is a non-profit tax exempt academic research institution. Although the University’s resources, such as research facilities, equipment, and personnel, are needed and used primarily to support the University’s academic and research programs, in some instances those resources may have excess capacity or inactive periods that may be suitable for beneficial use by, or service projects for, commercial entities. Provided that a proposed service project will complement and not conflict with, impede, or hinder the University’s educational and research activities, and provided further that a proposed service project is consistent with legal requirements governing use of the University’s resources, the University may make such resources available to commercial entities at commercially reasonable rates.

Accordingly, Company has requested, and the University has agreed to provide the resources, services, or deliverables described herein, subject to the terms of this Agreement and under the direction of _____ (the “Project Director”). The University and the Company, therefore, have agreed as follows.

ARTICLE I: THE SERVICES

1.1 **Scope of Work.** The Scope of Work in Exhibit A describes the work to be performed under this Agreement (the “Services”), the performance schedule for the Services (the “Schedule”), how much and when Company is to pay for the Services (the “Payment”), what if anything Company is to provide to University for University to perform the Services (the “Company Property”) and

the deliverables University is to provide to Company (the “Deliverables”). Exhibit A is attached hereto and incorporated into this Agreement by this reference.

1.2 University shall use reasonable efforts to perform the Services in accordance with the Scope of Work in compliance with all federal and state statutes, regulations, and policies, to the extent applicable to the Services and to the University as a not-for-profit academic research and education provider, specifically including, without limitation, those regarding environmental and occupational health and safety, animal welfare, and health information privacy. Company shall perform all its obligations under this Agreement in compliance with all applicable federal and state statutes, regulations and policies.

1.3 Company shall use reasonable efforts to provide all Company Property to University as necessary for the performance of the Services. All Company Property is provided at the Company’s own risk and the University assumes no liability for any damage to Company Property of any kind.

ARTICLE II: PERSONNEL

Project Director and University Staff. The University will arrange for the Project Director to direct the Project and University staff in accordance with the Scope of Work. Should the Project Director become unable to continue supervising the Services, the University will so inform the Company and the parties will attempt to identify a replacement Project Director reasonably acceptable to both parties. If the parties are unable to reach agreement, either party may terminate this Agreement upon written notice to the other.

ARTICLE III: PAYMENT

The Company will pay the University in accordance with the Payment section set forth in Exhibit A. Fees and rates set forth in Exhibit A are exclusive of any taxes, duties or tariffs now or hereafter imposed on the production, storage, distribution, sale, transportation, import, export, license or use of any resources, services, or Deliverables provided by the University hereunder. Except as

specified in this Agreement, the University will receive no other payments or reimbursements from Company for or in connection with the Services.

ARTICLE IV: CONFIDENTIALITY AND PUBLICATION

4.1 Confidentiality.

a. “Confidential Information” is information, data and materials (including Company Property) provided to University by the Company to perform the Services. Both parties agree that in order for written information to be Confidential Information, it must be delivered in written form clearly marked as “Confidential.” All information disclosed in oral or some other non-written form must be declared at the time of delivery to be confidential and must be confirmed and summarized in writing and clearly marked as “Confidential” within thirty (30) days of disclosure to be Confidential Information. In recognition that University is a non-commercial, academic institution, Company agrees to limit disclosure of Confidential Information to only that reasonably necessary for University to perform the Services.

b. Subject to 4.1(d) and for a period of five (5) years from the date of disclosure, University shall hold such Confidential Information in confidence, shall not disclose the Confidential Information to any third party without the express written permission of Company, shall not use the Confidential Information other than in performing the Services, and shall treat such information with at least the same degree of care as it treats its own confidential information but not less than with a reasonable degree of care.

c. Section 4.1(a) notwithstanding, however, Confidential Information shall not include information that: (i) is already known to University prior to the effective date, as evidenced by University’s or Company’s records; (ii) becomes publicly known without the wrongful act or breach of this Agreement by University; (iii) has been or is disclosed to University by a third party who was not, or is not, under any obligation of confidence or secrecy to Company at the time said third party discloses to University, or has the legal right to do so; (iv) is developed independently by employees of University who had no access to or knowledge of the Confidential Information, as evidenced by University’s records; or (v) is approved for release by prior written authorization of Company.

d. University may disclose Confidential Information to third parties as required by law or governmental regulation, however, University shall promptly notify Company as soon as reasonably practical of such a requirement and shall take reasonable and lawful actions to avoid or minimize the extent of such disclosure if requested by Company, at Company's sole cost and expense, and in any event University will disclose only that portion of the Confidential Information which its legal counsel determines it is required to disclose.

4.2 **Publication.** The University will advise the Project Director that publication of the Deliverables may only be done with the permission of the Company. If the Project Director receives such permission from the Company, he or she must allow the Company to review any proposed publication thirty (30) days prior to submitting it for publication. If within said period, the Company identifies Confidential Information which Company desires to protect it will notify the University in writing that it wishes publication of identified portions to be delayed. If such a request is received, the parties will have an additional thirty (30) days (a total of sixty (60) days) to agree upon removal or revisions to protect the Confidential Information and Company and University shall work in good faith to develop substitute language that is scientifically comparable but does not disclose the Company's Confidential Information. Upon completion of this publication process or, if applicable, confidentiality is specifically waived under Article 4, University shall proceed with publication.

ARTICLE V: OWNERSHIP OF DELIVERABLES

Company owns, shall own and shall continue to own all right, title and interest in the Deliverables and Company Property, which includes all Confidential Information as defined above. Neither University nor Project Director nor other University personnel shall acquire any rights of any kind in the Deliverables or Company Property as a result of performing the Services.

ARTICLE VI: DISCLAIMER OF WARRANTIES

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EVERYTHING PROVIDED BY UNIVERSITY UNDER THIS AGREEMENT IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE, MAY HAVE HAZARDOUS PROPERTIES, AND IS PROVIDED WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR

FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY PATENT, TRADEMARK, COPYRIGHT OR ANY OTHER THIRD-PARTY RIGHT. UNIVERSITY MAKES NO WARRANTIES REGARDING THE QUALITY, ACCURACY, COMMERCIAL VIABILITY OR ANY OTHER ASPECT OF ITS PERFORMANCE PURSUANT TO THIS AGREEMENT OR REGARDING THE PERFORMANCE, VALIDITY, SAFETY, EFFICACY OR COMMERCIAL VIABILITY OF ANYTHING PROVIDED BY UNIVERSITY UNDER THIS AGREEMENT. IN NO EVENT SHALL UNIVERSITY OR COMPANY BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER IN BREACH OF CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE COMPANY AGREES THAT IT WILL NOT MAKE ANY WARRANTY ON BEHALF OF THE UNIVERSITY, EXPRESSED OR IMPLIED, TO ANY PERSON CONCERNING THE APPLICATION OF, ACCURACY OF, OR THE RESULTS TO BE OBTAINED WITH THE DELIVERABLES, OR WITH RESPECT TO ANY OTHER MATTER.

ARTICLE VII: INDEMNIFICATION AND INSURANCE

7.1 Indemnification.

a. Notwithstanding anything else in this Agreement, the Company will defend, indemnify and hold harmless the University, the Project Director, University's affiliates and each of their employees, trustees, officers, students and agents (collectively "University Indemnitees") from, for and against any and all judgments, settlements, losses, expenses, damages and/or liabilities ("Losses") and any and all court costs, attorneys' fees, and expert witness fees and expenses ("Fees") that a University Indemnitee may incur from any and all allegations, claims, suits, actions or proceedings (the "Claims") arising out of, relating to, or incidental to Company's breach of this Agreement or its use, commercialization, or other exploitation of the Deliverables, whether by or through Company, and including all Claims for infringement, injury to business, personal injury and product liability, University's use of Company Property in accordance with the Services, but excluding Losses, not Fees, to the extent they are adjudicated by a Court of competent jurisdiction to be caused by the gross negligence or willful misconduct of a University Indemnitee.

b. Obligations set forth in this section shall survive termination of this Agreement, shall continue even after assignment of rights and responsibilities, and shall not be limited

by any provision of this Agreement outside this section. A party seeking indemnification under this Agreement shall: (i) give the indemnifying party prompt written notice of the Claim; (ii) cooperate with the indemnifying party, at the indemnifying party's expense, in connection with the defense and settlement of the Claim; and (iii) not settle or compromise the Claim without the written consent of the indemnifying party, which shall not be unreasonably withheld. An indemnifying party may satisfy its duty to indemnify for Fees by accepting an irrevocable duty to defend the Claim on behalf of the Indemnitees without a reservation of rights, at which time the indemnifying party shall be entitled to conduct and direct the defense of Indemnitees against such Claim using attorneys of its own selection; for all other Claims, the Indemnitee shall be entitled to conduct and direct its own defense and that of other Indemnitees using attorneys of its own selection with Fees subject to the indemnifying party's ongoing obligation to indemnify for Fees.

7.2 Insurance. Company shall maintain insurance or self-insurance in an amount reasonably adequate to cover its obligations hereunder in amounts no less than \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate, and shall, upon the reasonable request of University, forward to University evidence of insurance or self-insurance.

ARTICLE VIII: TERM AND TERMINATION

8.1 Term. This Agreement will remain in effect until completion of the Services and provision of Deliverables to Company.

8.2 Termination for Convenience. Either party may terminate the Agreement for any reason upon thirty (30) days written notice.

8.3 Termination for Cause. If either party at any time commits any material breach of the Agreement, and fails to remedy it within ten (10) days after receiving written notice of the breach, the aggrieved party may at its option and in addition to other remedies that it may have at law or in equity, terminate this Agreement by notifying the other in writing.

8.4 Payment upon Termination. In the event of any termination prior to completion of the Services, University shall be paid for all work completed and all non-cancelable obligations

incurred through the effective date of termination. In the instance of advance payments to the University, the University will return all unexpended funds with the exception of funds that reflect payments for work completed to date or that will be required to fulfill non-cancelable commitments made by the University in connection with the Services.

8.5 Accrued Rights and Obligations; Surviving Provisions. Expiration or termination of this Agreement shall not affect accrued rights or obligations of the parties. Articles 3, 4, 6, 7, 8 and 9 shall survive termination or expiration of this Agreement.

ARTICLE IX: USE OF NAMES

Neither party may use the name, trademark, logo, symbol, other image or identifying mark of the other party in any form of publicity without the prior written permission of the other. This requirement extends to the name of the University and the names of any of its employees, trustees, officers or agents.

ARTICLE X: NOTICES

Any notices pursuant to this agreement will be validly given or served if in writing delivered personally or sent, postage prepaid, by U.S. first class mail to the addresses set forth below, or to such other addresses as either party may designate to the other in writing. Delivery of any notice will be deemed to be effective five days after mailing, on the date delivered if personal delivery, or by confirmed facsimile.

For Company _____

For University:

Department or Core Facility/Lab

Attn:

Campus address

St. Louis, MO 63103

Phone:

Fax:

Email:

With Copy To:

With Copy To:

Contracting Office

Saint Louis University

Campus address

St. Louis, MO 63103

Fax:

()

(Fax)

Email:

ARTICLE XI: MISCELLANEOUS

11.1 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Missouri. The parties hereby irrevocably consent to the jurisdiction of any Missouri State or United States court, located in St. Louis, Missouri, for purposes of enforcement of this Agreement. This provision shall survive if this Agreement is adjudged void or should be canceled, annulled or terminated.

11.2 **Headings, Recitals and Preamble.** The captions or headings in this Agreement do not form part of the Agreement, but are included solely for convenience. The recitals and preamble to this Agreement, if any, are hereby incorporated as an integral part of this Agreement as if restated herein in full.

11.3 **Execution.** This Agreement may be executed in any number of counterparts each of which shall be deemed an original and as executed shall constitute one agreement, binding on both parties, even though both parties do not sign the same counterpart. The parties agree that this Agreement may be executed by facsimile including Portable

Document Format (PDF) electronic scan, which shall be deemed an original.

11.4 Waiver, Amendment. No waiver, amendment or modification of this Agreement will be effective unless in writing and signed by both parties.

11.5 Assignment. Neither party may assign this Agreement or any of its obligations hereunder without the prior written consent of the other party; however, this Agreement will be binding on any successors or permitted assigns of either party.

11.6 Entire Agreement. This Agreement embodies the entire agreement of the parties. It supersedes all prior written and verbal agreements between the parties with respect to the subject matter.

11.7 Severability. If any term or condition of this Agreement is contrary to applicable law, such term or condition will not apply and will not invalidate any other part of this Agreement. However, if its deletion materially and adversely changes the position of either of the parties, the affected party may terminate the Agreement by giving thirty (30) days written notice.

11.8 Relationship Of The Parties. Neither party is agent, servant, employee, legal representative, partner or joint venturer of the other. Nothing herein shall be deemed or construed as creating a joint venture or partnership between the parties and neither party has the power or authority to bind or commit the other.

11.9 Authority. Each party represents and warrants that it has the right and authority to enter into and perform its obligations under this Agreement. Each party will perform all of its obligations under the Agreement in accordance with all applicable governmental laws, rules and regulations. Neither party will be obligated to enter into any further agreement with the other party.

11.10 Force Majeure. Neither University nor Company will be liable for failure of or delay in performing obligations set forth in the Agreement, and neither will be deemed in breach of its obligations, other than for Payments, if such failure or delay is due to natural disasters or other

causes reasonably beyond the control of a party and reasonable notice of the delay is provided to the other party.

11.11 No Third Party Beneficiaries. The Agreement does not create any rights, or rights of enforcement, in third parties.

11.12 Independent Developments. Nothing contained in the Agreement shall prevent either Party from entering into projects with third parties which are similar to Services herein.

11.13 Export Controls. It is understood that the University is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979), and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by Company that Company shall not export data or commodities to certain foreign countries without prior approval of such agency. The University neither represents that a license shall not be required nor that, if required, it shall be issued. If for any reason the required license should not, after a reasonable effort by the University, be issued, Company shall pay to the University only those costs of labor and expenses associated with the performance of the Agreement to the date when the University was informed that the license would not be issued and the University shall be released from any further performance of the Agreement.

11.14 Impact on Tax Exempt Status. The University advises (a) that it is exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code, (b) that maintenance of such exempt status is of critical importance to the University and to its members, and (c) that the University has entered into this Agreement with the expectation that there will be no adverse impact on its tax exempt status. As such, and if it becomes necessary, the parties agree to amend, modify or reform this Agreement as necessary (i) in order to ensure that there is no material adverse impact on the University 's tax exempt status, and (ii) in a manner that preserves the economic terms of the Agreement as such are set forth in this Agreement.

11.15 Affirmative Action. The University is an equal opportunity/affirmative action employer. As part of its affirmative action policies and obligations, the University is

subject to and will comply with the provisions governing federal contractors as set forth in 41 CFR § 60-1.4(a), 41 C.F.R. § 60-250.5(a); 41 C.F.R. § 60-300.5(a); and 41 C.F.R. § 60-741.5(a), and these regulations are hereby incorporated into this Agreement by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

[The signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date indicated above, with the intent to be legally bound hereby.

CONTRACT NOT VALID UNLESS SIGNED BY ALL PARTIES PRIOR TO PERFORMANCE.

For: Saint Louis University:

For: Company:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

By his/her signature below, the Project Director accepts, acknowledges and understands his/her obligations under this Agreement, not as a party to this Agreement, but as an employee of the University.

Name: _____

Signature: _____

Date: _____

EXHIBIT A
SCOPE OF WORK

SERVICES (Description of Services):

SCHEDULE (Performance Schedule of/Timeline for the Services):

PAYMENT (Price List or Payment Amount, Schedule and manner of Payment for the Services):

Company invoice address
University payment address

COMPANY PROPERTY (Company Material, including information, to be provided by Company):

DELIVERABLES (Deliverables/Results/Data, etc. University is to provide to Company):