

TECHNICAL TESTING SERVICES AGREEMENT

This Technical Testing Services Agreement (“Agreement”) is entered into by and between Northeastern University (“University”) and [REDACTED] (“Applicant”) as of the [REDACTED] day [REDACTED], 20[REDACTED].

The parties may be referred to individually as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Applicant has identified a need to engage a party to conduct Technical Tests (defined below) for Applicant;

WHEREAS, Applicant has determined that it cannot obtain equivalent Technical Tests from a commercial entity;

WHEREAS, Applicant desires University through its College of Engineering to conduct for Applicant the Technical Tests via the Services (defined below); and

WHEREAS, University through its College of Engineering, has determined that University’s performance of the Technical Tests is appropriate under the policies and procedures of the University and wishes to provide the Services to Applicant.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. PERFORMANCE OF TECHNICAL TESTING SERVICES

1.1. TECHNICAL TESTING SERVICES. Applicant has identified a need to conduct certain tests that: (a) require use of a unique or special University facility (the “Laboratory”) that either does not exist elsewhere or is not readily accessible; and (b) involve established, pre-existing methods of a primarily technical nature; and (c) do not constitute original, creative research (clauses (a) – (c) are collectively referred in this Agreement as “Technical Tests”). University, through its faculty and staff, will perform the Technical Tests identified in the statement of work attached hereto and incorporated herein as **Exhibit A**, which identifies the specific testing methods and unique University equipment/facilities to be used and the objectives to be achieved (“Services”).

1.2. TEST RESULTS. University will deliver to Applicant all observational data, measurements and other results required under the statement of work (“Test Results”). Test Results will be the property of Applicant. Applicant hereby certifies to University that the Test Results will not be used in commercial production.

1.3. INTERPRETATION AND ANALYSIS. In no event will University provide expert interpretation or analysis of Test Results under this Agreement. Applicant will secure by separate agreement the related expert/consultant services that it may require.

1.4. TECHNICAL CONTACTS. Each Party appoints the following individual to serve as its technical contact during performance of Services. Each Party will notify the other of any change in the technical contact.

For University: **Sivasubramanian Somu**

Principal Office (contact information) for University technical contact:

_____448 Egan Research Center _____

Phone: ___617-373-5848_____

Email: ___s.somu@neu.edu_____

For Applicant: _____

Principal Office (contact information) for Applicant technical contact:

[Redacted contact information]

Phone: [Redacted]
Email: [Redacted]

1.5. TEST MATERIALS. Applicant will furnish to University all materials to be tested (“Test Materials”). If Applicant determines that a material transfer agreement is required as a condition of furnishing the Test Materials to University, Applicant will be responsible for ensuring that a material transfer agreement is signed by the Parties prior to Applicant’s delivery of Test Materials to University. In the absence of a material transfer agreement, University will exercise reasonable care in the handling and storage of Test Materials but will not be liable to Applicant for any loss of or damage to Test Materials.

1.6. INDEPENDENT CONTRACTOR STATUS. University will at all times control the manner in which the Services are performed, including, without limitation, the scheduling of the Technical Tests. University will furnish the tools, equipment and materials (other than the Test Materials) necessary for its performance of this Agreement.

1.7 SERVICES PROVIDED BY THE LABORATORY.

(A) Applicant is permitted access to the Laboratory and University shall conduct the Services within the Laboratory only for covered research purposes only. In no event shall Applicant be entitled to access and use the Laboratory for non-research-related, commercial activities. Whether an activity is considered to be commercial and therefore prohibited is determined by University.

(B) Use of the Services within the Laboratory is made available on an “as requested, as available” basis for covered research purposes only. Requests for Services must be submitted in writing by Applicant to Laboratory personnel in accordance with University policies and procedures.

(C) Notwithstanding any provision in this Agreement, University reserves the right to interrupt, curtail, stop or suspend the furnishing of Services provided for in this Agreement when necessary by reason of accident or emergency, or of repairs, alterations, replacements or improvements in the reasonable judgment of University desirable or necessary to be made, or of difficulty or inability in securing supplies or labor, or of strikes, or of any other cause beyond the reasonable control of University, until said cause has been removed. University shall have no responsibility or liability for any such interruption, curtailment, stoppage, or suspension of possession or use of Services.

2. CONFIDENTIAL INFORMATION. If Applicant determines that University cannot perform the Services without disclosure of Applicant’s propriety or confidential information (collectively, “Confidential Information”) to University, then prior to any such disclosure the Parties will enter into a separate nondisclosure agreement using only the University’s standard nondisclosure agreement that clearly defines Confidential Information and the University’s confidential obligations to Applicant. All information provided to University in the absence of the NDA shall be treated as publically available, non-confidential and non-proprietary information.

3. INTELLECTUAL PROPERTY. The Parties do not anticipate that any Inventions will result from the performance by the University of the Services. However, if the University conceives any Inventions during its performance of the Services then: (a) title to Inventions conceived through the University’s access to the Confidential Information of Applicant provided in connection with this Agreement shall vest in the Applicant, provided however, that Applicant hereby grants to University an irrevocable, non-exclusive, fully-paid up license to use such Inventions for the nonprofit, educational and/or research purposes of University; or (b) title to all other Inventions shall vest in University. For purposes of this Agreement, the term “Inventions” means inventions or discoveries conceived and actually reduced to practice as a direct result of the performance of the Services, improvements and resulting patents thereof, and patent applications thereof (and divisions, continuations, continuations-in-part, or substitutions of such applications).

4. COMPENSATION

4.1. PAYMENT SCHEDULE. In consideration for University’s performance of Services, Applicant will pay to University compensation in accordance with the fee and/or payment schedule **Exhibit B**, attached hereto and incorporated herein. Except as otherwise provided on Exhibit B or any invoices, all payments are due within thirty (30) days from the date of the invoice.

4.2. BILLING ADDRESS. University will send all invoices to Applicant at the following address:

Phone: _____
Email: _____

Applicant will send all payments to University at the following address: (Only Checks made payable to “Northeastern University”)

_____ Sivasubramanian Somu _____
_____ 448 Egan Research center _____
_____ 360 Huntington Ave _____
_____ Boston MA 02115 _____
Phone: _____ 617-373-5848 _____
Email: _____ s.somu@neu.edu _____

5. TERM AND TERMINATION

5.1. TERM. This Agreement shall commence on the date first written above.

5.2. TERMINATION. Either Party may terminate this Agreement at any time by providing thirty (30) days prior written notice to the other Party. University may immediately terminate this Agreement upon breach of this Agreement by Applicant provided, however, no termination or expiration of this Agreement shall relieve any unpaid payment obligation of Applicant to University under this Agreement. If Applicant terminates this Agreement, Applicant shall promptly pay to University all amounts for Services performed by University up to and including the effective date of such termination. If University terminates this Agreement other than for breach of this Agreement by Applicant, University shall use reasonable efforts to complete all Services in process at the time the notice of termination is provided to Applicant.

6. DISCLAIMER OF WARRANTIES. Except as expressly stated in this paragraph, University hereby makes no representations and disclaims any and all warranties, whether express or implied, including, without limitation, the warranties of merchantability, non-infringement and fitness for a particular purpose regarding the Services and/or the performance of University under this Agreement. University will perform the Services in accordance with standards appropriate to an institution of higher education on an “AS IS, AS PROVIDED” BASIS WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND AND ANY AND ALL INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY AND OTHER PROPERTY AND RIGHTS PROVIDED AND/OR MADE AVAILABLE BY UNIVERSITY PURSUANT TO THIS AGREEMENT ARE PROVIDED AND /OR MADE AVAILABLE ON NO OTHER BASIS.

7. INDEMNIFICATION; LIMITATION OF DAMAGES; RELEASE. Applicant shall defend, indemnify and hold harmless University from and against any and all claims, demands, suits, actions, causes of action, liabilities, damages, losses, costs and/or expenses including, without limitation reasonable attorneys’ fees, asserted against, incurred by or paid by the University, its trustees, officers, employees, faculty, staff, students, agents, successors and assigns (collectively, the “University Parties”) arising under or relating to or in connection with this Agreement, including without limitation, the use of the Test Materials or any use by a third party of the Test Results. In no event shall the University Parties have any liability to Applicant or any other party arising under or in connection with this Agreement for any consequential, incidental, special or other indirect damages of any kind whatsoever, including without limitation lost profits, revenue or other economic loss or damage even if the University was advised of the possibility of such damages. Notwithstanding any provision in this Agreement, the maximum liability of the University Parties under this Agreement shall not exceed an amount equal to the amount paid by Applicant to University under this Agreement. The Applicant is responsible and liable for insuring the property (for example, materials, data and/or information) of the Applicant and the Applicant’s personnel, including for

losses due to fire, smoke, water, malfunctions, error, theft or disclosure. The University Parties are not responsible for liable for any loss or damage to the property of the Company or its personnel and does not provide any property or liability insurance coverage for the benefit of Applicant or its personnel. The University reserves the right to discard or donate the property of Applicant and/or its personnel remaining at the Laboratory with any any liability therefor upon termination of this Agreement and/or thirty (30) days following completion of any Services. Applicant, on behalf of itself and its personnel and their respective heirs, executors, administrators, personal representatives, beneficiaries, agents, successors and assigns, hereby irrevocably and unconditionally remises, releases and forever waives any and all manner of Claims (defined below) asserted against, incurred by or imposed upon the University Parties in connection with any claim, suit, action or demand (each a "Claim") arising out of, relating to or in connection with the Services. "Claims" include but are not limited to those involving (a) any bodily injury, death and/or property damages arising The foregoing defense, indemnity and hold harmless applies to Claims under any theory of liability (including without limitation, actions in tort, warranty or strict liability or violation of any law and regardless of whether such action has any factual basis.)

8. GENERAL PROVISIONS

8.1. USE OF NAMES. Neither Party will use the name of the other in any form of advertising or publicity without the express written permission of the other Party.

8.2. RELATIONSHIP OF THE PARTIES. Neither Party is an agent, employee, legal representative, partner or joint venturer of the other. Neither Party has the power or right to bind or commit the other.

8.3. GOVERNING LAW. This Agreement and any dispute arising under this Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its conflicts of law principles.

8.4. THIRD PARTY BENEFICIARIES. This Agreement does not create any rights, or rights of enforcement, in third parties.

8.5. SEVERABILITY. If a court of competent jurisdiction finds any provision of this Agreement legally invalid or unenforceable, such finding will not affect the validity or enforceability of any other provision of this Agreement and the Parties will continue to perform. If the Agreement cannot be performed in the absence of the provision, this Agreement will terminate upon 30 days prior written notice by one Party to the other Party.

8.6. ENTIRE AGREEMENT; CAPTIONS. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all previous or contemporaneous communications, understandings and agreements, whether oral or written, between the Parties relating to the subject matter of this Agreement. All terms and conditions of any other instruments, including purchase orders, issued by Applicant at any time to facilitate payment under this Agreement are void. All captions are for convenience only and shall not affect the meaning of any provision of this Agreement.

8.7. AMENDMENTS; WAIVER. This Agreement may not be modified, amended, revised, supplemented or otherwise changed except by a writing signed by an authorized representative of each Party. Any waiver of any rights or failure to act in a specific instance shall relate only to such instance and shall not be construed as an agreement to waive any rights or fail to act in any other instance, whether or not similar.

8.8. ASSIGNMENTS. Neither Party may assign or transfer, in whole or in part, this Agreement without the prior written consent of the other Party and any attempted assignment or transfer is hereby void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

8.9 FORCE MAJUERE. Neither Party will be responsible for delays resulting from causes beyond the reasonable control of such Party, including without limitation fire, explosion, flood, war, strike and natural disasters, provided that the nonperforming Party uses reasonable efforts to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.

8.10. EXPORT CONTROL. Applicant shall comply with all applicable export control regulations of the United States of America. Applicant shall not provide to University any export controlled information, data, technology, equipment, materials or other items without the prior, authorized written consent of University to accept such controlled information, data,

technology, equipment, materials or other items. The University reserves the right, in its sole discretion, to refuse or accept such information or other item or use it in performance of the Services. In accordance with this Agreement, Applicant shall indemnify and hold harmless the University against any and all claims, damages, losses or other costs and expenses including without limitation, reasonable attorneys' fees, arising out of or relating to or in connection with Applicant's breach or alleged breach of this Section.

8.11. RESOLUTION OF DISPUTES. The Parties will enter into good faith negotiations to resolve any disputes arising from this Agreement. Resolution will be confirmed by written amendment to this Agreement. If the Parties cannot resolve any dispute amicably through negotiation, either Party may terminate this Agreement in accordance with Section 5.

8.12. NOTICES. All notices, materials, demands and other communications required or permitted hereunder or in connection herewith shall be in writing and delivered in person or sent electronically, by facsimile, nationally recognized overnight courier or registered or certified mail, return receipt requested and postage prepaid to the applicable party at its address or facsimile number set forth below or at such other address or facsimile number as any party hereto may designate as its address or facsimile number for communications under this Agreement by notice so given. Such communications shall be deemed effective on the (i) day on which delivered or sent if delivered in person, electronically (with confirmatory response electronically sent), or by facsimile (with answered back confirmation received in the case of email or fax); (ii) first (1st) business day after the day on which sent, if sent by a nationally recognized overnight courier; or (iii) third (3rd) business day after the day on which mailed, if sent by registered or certified mail to:

If to Northeastern University:

Northeastern University
Attn: _____
360 Huntington Avenue
Boston, MA 02115

(email)
(fax)

If to Applicant:

(email)
(fax)

8.13. NO ENDORSEMENT. The Services (including without limitation any services requiring the use of the Laboratory and/or the Test Results) do not constitute any endorsement, recommendation or favor by the University or any of its employees, or agents of Applicant or its products or services and Applicant may not state or imply any thing in any communications to the contrary.

8.14 SURVIVAL. All provisions, terms and conditions of this Agreement that are intended to survive termination or expiration, including without limitation, Sections 3 – 4 and Sections 6 – 8, to be effective shall survive such termination or expiration.

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above:

NORTHEASTERN UNIVERSITY

[NAME OF APPLICANT]

By: _____

By: _____

Printed Name

Date

Printed Name

Date

EXHIBIT A
STATEMENT OF WORK

(Please fill in)

EXHIBIT B
FEE and PAYMENT SCHEDULE
NU College of Engineering

External User Fee (\$/hr) effective Oct 1st 2015

Clean Room Charges	\$56.00
Staff assistance	\$154.5
4 Point Probe Manual	\$12.70
Anatech SP-100 Plasma System	\$63.60
Brewer Spinner	\$25.45
Bruce Anneal Furnace	\$76.35
Carl Zeiss 1540 Cross Beam	\$190.90
Dek-tak 3030/3ST	\$12.70
E-beam Evaporator	\$76.35
Electrical Probe Station	\$38.20
Electroplating Bench: Bay 3	-----
Laurell Spinner	\$25.45
LC Technologies Glove Box	\$63.65
Lift Off Bench: Bay 2	----
Micro Automation 1006	\$61.10
MIE wire Bonder	\$50.10
Mini Brute furnace	\$63.65
MRC 8667	\$63.65
Nabity	\$12.75
Nanonex NX2000	\$152.70
Nanospec	\$12.75
Optiphot 200 Fluorescence Microscope	\$12.75
Oxford Plasma Lab System	\$152.70
PANalytical/Philips X'Pert Pro	\$50.90
Parks Scientific XE-70	\$89.10
Perkin Elmer 2400	\$63.65

PGT Shara	\$12.75
Pioneer 800	\$12.75
Quintel 4000 Mask Aligner	\$76.35
SCS Parylene Coating	\$510/run
Supra 25 SEM	\$101.80
Thermal Evaporator	\$71.25
Tousimus Dryer	\$63.65
Unaxis PlasmaTherm 790	\$127.25
UV spectrophotometer	\$76.35
Veeco Microtech Ion Mill	\$127.25
Wet Etch bench: Bay 1	---
XACTIX e1	\$50.90
Zygo NuView 6000	\$50.90
Zyvex Nanomanipulator	\$127.25
Sputter Coater System	\$25.45