

GEORGIA TECH RESEARCH CORPORATION

Parker H. Petit Institute for Bioengineering and Bioscience

Specialized Services Agreement

Project No. _____

THIS AGREEMENT is made by and between **GEORGIA TECH RESEARCH CORPORATION** (“GTRC”), having its principal offices at 505 Tenth Street NW, Atlanta, Georgia 30318, and _____ (“COMPANY”), having an office and place of business at _____.

In consideration of the mutual promises and covenants herein contained and intending to be legally bound, GTRC and COMPANY agree as follows:

Section 0. Preamble.

The Parker H. Petit Institute for Bioengineering and Bioscience (“IBB”) is an Interdisciplinary Research Institute of the Georgia Institute of Technology (“GIT”), a unit of the University System of Georgia. Part of fulfilling the mission of IBB is to provide research support to a broad research community by making unique, regionally accessible facilities available for the furtherance of innovative bioengineering, bioscience, and medical research and education.

The purpose of this Agreement is to provide terms and conditions that GTRC and COMPANY (each, a “Party,” and collectively, the “Parties”) agree to apply to the performance of specialized research services and activities under this Agreement.

GTRC is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and is a supporting organization of GIT under Section 509(a)(3) of the Code. GTRC was formed for the purpose of entering into sponsored research agreements for GIT. GTRC owns and administers intellectual property developed at GIT. GTRC is managing the access and use of IBB solely for the purposes of the research services and activities to be performed hereunder.

The Parties understand and agree that the terms and conditions of this Agreement are specific to this Agreement and the specialized services described herein and will not necessarily be used as precedent for any other sponsored research agreement that the Parties may enter into in the future.

Section 1. Term and Scope of Work.

1.1 GTRC will perform the specialized services (the “Services”), as described in Exhibit A (incorporated herein by reference) during the term of this agreement, beginning on _____ (the “Effective Date”) and continuing for until and through _____ (the “Term”). The Services will be performed by employees, independent contractors, visiting scholars, consultants and/or student assistants of GTRC and GIT (“Staff Members of GTRC”). Additionally, during the Term, employees, consultants and representatives of COMPANY (“Staff Members of COMPANY” or “Users”) may participate in the performance of Services, with or without collaboration by Staff Members of GTRC, *provided that* all requirements of the Special Terms and Conditions for Facilities Use and Facilities User Log Sheet, attached hereto as Exhibit B and B1, respectively, and incorporated into and expressly made part of this Agreement, are satisfied in full prior to any such participation by Staff Members of COMPANY.

Section 2. Payment; Contract Cost Limitation.

2.1 COMPANY will pay GTRC the actual direct and indirect costs incurred by GTRC in the performance of the Services. GTRC reserves the right to modify its direct and indirect rates effective July 1, each year.

2.2 GTRC will submit its monthly invoices to COMPANY on or about the twentieth day of each month. COMPANY will pay each invoice within thirty days of the invoice date. Any invoice not paid within thirty days of the invoice date will be considered delinquent and subject to one and one half percent (1.5%) per month fee for each month or fraction thereof, until payment is received.

2.3 COMPANY agrees to pay up to _____ Dollars (\$_____) ("Contract Cost Limitation") for the Services. GTRC will not invoice COMPANY for any amount in excess of the Contract Cost Limitation without first obtaining COMPANY's approval. COMPANY will make payments to:

**Georgia Tech Research Corporation
P. O. Box 100117
Atlanta, Georgia 30384-0117**

For electronic payments:

**Georgia Tech Research Corporation
c/o Bank of America
600 Peachtree Street, NE
Atlanta, GA 30308
Account No. 0100825661
Routing Transit No. 061000052**

2.4 GTRC may choose to discontinue performance of the Services if COMPANY fails to pay any GTRC invoice within the time specified in Section 2.2. GTRC will not be obligated to incur costs in excess of the Contract Cost Limitation.

Section 3. Reports.

3.1 GTRC will provide COMPANY a final report summarizing the results of the Services (the "Final Report").

Section 4. Publicity.

4.1 Each Party agrees not to authorize or commission the publication of any promotional materials containing any reference to the other Party without the prior written approval of the other Party; provided, however, that GTRC and GIT may include COMPANY's name and project title in listings of research sponsors. The provisions of this Section 4 shall survive termination of this Agreement.

Section 5. Intellectual Property.

5.1 GTRC hereby grants to COMPANY the right, title and interest to the data or test results generated during the performance of the Services and contained in the Final Report.

5.2 Title to all other intellectual property developed by Staff Members of GTRC including, without limitation, any inventions and discoveries conceived or first reduced to practice, all computer software, works, and material developed in the course of performance of the Services, whether or not protectable by patent or copyright, will reside in GTRC.

5.3 Subject to Section 7 hereunder and notwithstanding anything to the contrary contained herein, COMPANY hereby grants to GTRC and GTRC reserves for itself and GIT an irrevocable, fully paid-up, worldwide, nonexclusive, royalty-free license in and to the data and test results developed hereunder for educational and research and development purposes, whether alone or with a third party.

Section 6. Publication.

6.1 GTRC and GIT may catalog and place reports of the Services in the GIT Library as to ensure that such results are available to the interested public, and they may issue publications based on the Services and use any results non-proprietary to COMPANY in their research and educational programs. GTRC will give COMPANY an opportunity for thirty (30) days prior to any proposed presentation or submission of any publication to review such publication or presentation and, if necessary, request GTRC to delete any reference to COMPANY's proprietary information included in the publication. Furthermore, COMPANY shall have the right to request a delay in publication for up to thirty (30) additional days, if necessary, to allow for filing of patents if such publication contains patentable subject matter. COMPANY's right of review under this Section shall terminate twelve (12) months from completion of the Services. In no event shall COMPANY's proprietary information be included in any publication without written authorization from COMPANY.

Section 7. Proprietary Information and Confidentiality.

7.1 In the course of performing the Services, COMPANY may disclose COMPANY Proprietary Information to GTRC. "COMPANY Proprietary Information" means any data or information having commercial value which may include but not be limited to data, databases, product plans, strategies, forecasts, research procedures, marketing techniques and materials, customer names and other information related to customers, price-lists, pricing policies and financial information which COMPANY considers sensitive and which is not generally known to the public.

7.2 GTRC agrees to hold in confidence and not disclose any and all COMPANY Proprietary Information received from COMPANY hereunder. The confidentiality obligations of GTRC shall extend for three (3) years from the Effective Date. Unless otherwise permitted by separate written agreement, GTRC shall use the COMPANY Proprietary Information only for and to the extent required to perform the Services. GTRC shall only disclose the COMPANY Proprietary Information to those Staff Members of GTRC that have a legitimate business need for such information and only for and to the extent required to perform the Services. Notwithstanding the foregoing, GTRC may disclose COMPANY Proprietary Information to GIT provided that GIT is obligated to GTRC under terms at least as restrictive as those contained in this Agreement not to disclose COMPANY Proprietary Information to any other third party.

7.3. Written information exchanged hereunder shall be clearly marked with an appropriate stamp or legend "Proprietary Information." Markings such as "In Confidence", "Proprietary", or "COMPANY Use Only" shall be sufficient. Non-written information exchanged hereunder shall only be considered Proprietary Information if, at the time of such disclosure, the Proprietary Information being disclosed is identified as proprietary and the COMPANY provides GTRC with a written notice that clearly identifies the nature and content of the disclosed information within thirty (30) days after such disclosure.

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

- a. is published or otherwise in the public domain through no fault of GTRC; or
- b. can be demonstrated by GTRC to have been in its possession prior to receipt under this Agreement; or
- c. is obtained by GTRC without restriction from a third party; or
- d. is independently developed by GTRC by individuals who have not had either direct or indirect access to such information; or
- e. is disclosed by GTRC to a third party with the written approval of the COMPANY without any restriction; or
- f. is obligated to be disclosed by order of a court of competent jurisdiction.

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

Section 8. Disclaimer.

8.1 GTRC AND GIT DISCLAIM ANY AND ALL WARRANTIES BOTH EXPRESS AND IMPLIED WITH RESPECT TO THE SERVICES TO BE PERFORMED HEREUNDER AND ANY DELIVERABLES (INCLUDING COPYRIGHTABLE DELIVERABLES) RESULTING THEREFROM, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN, AND THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, OR NONINFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

Section 9. Limitation of Liability.

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

Section 10. Termination.

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

10.2 COMPANY will pay GTRC any costs which have accrued or been encumbered up to the actual date of termination under this Section 10 and COMPANY will not be relieved of the obligation to pay those costs because of a termination under this Section 10.

Section 11. Export Control.

11.1 COMPANY understands and agrees that any and all information provided or exchanged shall be in compliance with all applicable United States export control laws (EAR/ITAR) including "deemed exports". The transfer of certain technical data and commodities may require a license from a government agency or written assurances by COMPANY that COMPANY will not re-export data or commodities to foreign countries without prior approval of the appropriate U.S. Government Agency. GTRC agrees to cooperate with COMPANY in securing any such license necessary in connection with this Agreement.

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

Section 12. Miscellaneous.

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

To GTRC for administrative matters: To COMPANY for administrative matters:

Georgia Tech Research Corp.
505 Tenth Street NW
Atlanta, Georgia 30332-0420
Attn: Jarrett Ellis
Phone: 404.894.6929
Fax: 404.894.6992
jarrett.ellis@gtrc.gatech.edu

Attn: _____
Phone: _____
Email: _____

To GTRC for technical matters: To COMPANY for technical matters:

Georgia Tech Petit Institute for Bioengineering
315 Ferst Dr. NW
Atlanta, Georgia 30332-0363
Attn: Steve Woodard
Phone: (404) 894-5981
Email: steve.woodard@ibb.gatech.edu

Attn: _____
Phone: _____
Email: _____

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

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

12.4 The Parties irrevocably and exclusively submit to the jurisdiction of the state and federal courts of or for the State of Georgia, including the related appellate courts in any such action or proceeding and waive any rights to a jury trial. Personal jurisdiction over the Parties may be obtained by the mailing (postage prepaid) of a summons or similar legal document to the Party's address for notices under this Agreement.

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

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

IN WITNESS WHEREOF, this Agreement has been duly executed by our duly authorized representatives on the day and year set forth below.

GEORGIA TECH RESEARCH CORPORATION

By: _____
Typed Name: _____
Title: _____
Date: _____

By: _____
Typed Name: _____
Title: _____
Date: _____

By: _____
Typed Name: _____
Title: _____
Date: _____

EXHIBIT A

Description of Services

EXHIBIT B

SPECIAL TERMS AND CONDITIONS FOR FACILITIES USE

These Special Terms and Conditions for Facilities Use (the “Special Terms and Conditions”) are made part of and incorporated into that certain Parker H. Petit Institute for Bioengineering and Bioscience Specialized Services Agreement by and between Georgia Tech Research Corporation and _____ dated _____ (the “SSA”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the SSA.

As an express condition of access to and use of certain facilities and equipment of IBB located on the campus of the GIT (hereinafter referred to as the “Facilities”), COMPANY and GTRC agree as follows:

1. GTRC will make, during normal operating hours, the Facilities available to certain Staff Members of COMPANY (hereinafter collectively referred to as the “Users”), which may include equipment, services or materials, with or without GIT collaboration, for the purposes described in the Services (the “Purpose”).
2. Permitted activities/use shall include access to the Facilities as authorized and defined in each of the User SUMS access profiles, solely in connection with the Purpose.
3. Subject to Sections 5, 6 and 7 below, Users may access and use the Facilities for the Purpose for the duration of the Services. COMPANY understands that GIT will have sole responsibility and discretion for allocating and scheduling usage of the Facilities under the SSA.
4. An express condition of access to the Facilities includes the completion of background investigations for all Users. In accordance with the foregoing requirement:
 - a. COMPANY represents that COMPANY has completed or will complete a background investigation for any and all Users who will access the Facilities prior to access. COMPANY further understands and agrees that all Users who will access the Facilities must complete the Facilities User Log Sheet attached to the SSA as exhibit B1 prior to initial access.
 - b. Each background investigation shall include, at a minimum, the following:
 - i. a state and federal criminal history check covering a minimum of seven (7) years. Institutions may require state and federal criminal history check covering more than the minimum of seven (7) years for specified positions of trust;
 - ii. a nationwide sex offender search;
 - iii. a social security number check;
 - iv. for all professional, faculty and academic positions, an academic credentials check; and
 - v. for all positions with access to or responsibility for money and/or a Purchase Card, a credit check.

5. COMPANY shall, at its own expense, secure and maintain in full force and effect, the following insurance coverages:
 - a. General liability insurance covering COMPANY's use of the Facilities, on an occurrence basis, with minimum limits of not less than:
 - i. Three Million Dollars (\$3,000,000) with respect to bodily injury or death to one person;
 - ii. Three Million Dollars (\$3,000,000) with respect to any one accident,
 - iii. Three Million Dollars (\$3,000,000) with respect to property damage; and
 - b. Workers' compensation insurance covering all persons employed in connection with any work done on or about the Facilities.

All insurances coverages required under this Section 5 shall be written by companies in recognized financial standing which are authorized to engage in the insurance business in the State of Georgia, and all such insurance coverages shall name GIT/GTRC as additional insured. COMPANY shall deliver to GTRC promptly after execution of this Agreement, a certificate of insurance satisfactory to GIT, evidencing the insurance which is required to be maintained by COMPANY pursuant to 5.(a) and 5.(b) above, and COMPANY shall, within 30 days prior to the expiration of such insurance, deliver a certificate of insurance evidencing the renewal of such insurance.

6. Compliance.
 - a. Users will follow the administrative and research policies, standards and practices of GIT when present on the GIT campus or using the Facilities including, but not limited to, policies and safety procedures for the Facilities established by the IBB and/or GIT's Office of Environmental Health and Safety.
 - b. Users will comply with all applicable federal, state and local laws including but not limited to the use, possession, manufacture or distribution of alcohol and controlled substances, compliance with drug-free workplace, non-discrimination, sexual harassment and export regulations.
 - c. COMPANY understands and agrees that access to the Facilities may be terminated immediately in the event that any User fails to comply with the rules and policies of GIT and/or with any instructions given by the Staff members of GTRC
 - d. COMPANY understands and agrees that access to the Facilities is granted solely for the benefit of COMPANY and upon the promise to take due care during such access by Users, COMPANY hereby releases and discharges, indemnifies and holds harmless the Board of Regents of the University System of Georgia, Georgia Institute of Technology and GTRC, and their members, officers, agents, employees, and any other persons or entities acting on their behalf, and the successors and assigns for any and all of the aforementioned persons and entities, against any and all claims, demands, and causes of action whatsoever, whether presently known or unknown, either in law or in equity, relating to injury, disability, death or other harm, to person or property or both, arising from any User's actions, omissions or presence within the Facilities.
7. Relationship. The parties understand and agree that:
 - a. Staff Members of COMPANY shall not be deemed to be employed by or an agent or a servant of GIT, the Board of Regents of the University System of Georgia, or GTRC;

- b. GIT, the Board of Regents of the University System of Georgia and GTRC assume no responsibilities which may be imposed upon an employer under any law, regulation or ordinance;
- c. Staff Members of COMPANY are not entitled to any benefits available to employees of GIT, the Board of Regents of the University of Georgia, or GTRC; and,
- d. Users shall not in any way to hold themselves out as an employee of GIT, the Board of Regents of the University System of Georgia, or GTRC.

Exhibit B1
Facilities User Log Sheet

This Facilities User Log Sheet is made part of and incorporated into the Special Terms and Conditions for Facilities Use (the “Special Terms and Conditions”) under that certain Parker H. Petit Institute for Bioengineering and Bioscience Specialized Services Agreement by and between Georgia Tech Research Corporation and _____ dated _____. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Special Terms and Conditions.

As an express condition to the initial entry into and/or use of the Facilities in connection with the Purpose, each User must complete the following:

Printed Name: _____ Printed Name: _____

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Signature: _____ Signature: _____