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**OFFICE OF SPONSORED PROJECTS ADMINISTRATION**

**TESTING SERVICES AGREEMENT**

***THIS TESTING SERVICES AGREEMENT*** is entered into effective as of  by and between the Regents of the University of Minnesota (“University”), a Minnesota constitutional corporation, and  (“Company”), a . This Agreement is entered into by University through its through Office of Sponsored Projects Administration.

**Purpose**

The non-research related testing services provided under this agreement involve animal or human subjects.

**NOW, THEREFORE,** the parties agree as follows:

**1.** **Description of Services and Ownership of Results.**

1.1 The testing services provided by University under this Agreement are more fully described on Attachment A, which is attached to, made a part of, and incorporated in this Agreement as Attachment A.

1.2 Any materials or information provided by Company to University under this Agreement shall remain the property of Company and Company grants University no express or implied intellectual property rights in such information or materials except for the purpose of performing the testing services.

1.3 University shall not publish the results of the services or Company’s Confidential Information, but University may freely use and publish on the general information learned and the testing methodologies it develops or refines in the course of performing the services.

**2.** **Compensation.** For the services rendered under section 1, Company shall pay to the University the fees set forth in Attachment A within thirty (30) days from the date of University’s invoice. University reserves the right to modify the fees and other terms of payment on thirty (30) days’ notice.

**3.** **Term.** The term of this Agreement shall commence on. The term of this Agreement shall expire on  unless terminated earlier as provided in section 4.

**4.** **Termination.** Either party may terminate this Agreement for material breach on seven (7) days written notice, during which period the breaching party may cure. Additionally, either party may terminate this Agreement for its convenience upon thirty (30) days prior written notice to the other party. University may terminate if Company’s account is more than thirty (30) days past due. Upon termination, Company shall promptly pay University for all services rendered and costs incurred up to and including the effective date of termination.

**5.** **Limitation of Damages.** EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL UNIVERSITY BE LIABLE, FOR LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY, WORK STOPPAGE, LOST DATA, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OF ANY KIND.

**6.** **Limitation of Remedies**. IN THE EVENT OF UNIVERSITY’S BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT, UNIVERSITY’S ENTIRE LIABILITY AND COMPANY’S EXCLUSIVE REMEDY SHALL BE, AT UNIVERSITY’S OPTION, EITHER (A) RETURN OF THE MONETARY CONSIDERATION PAID TO UNIVERSITY UNDER THIS AGREEMENT OR (B) UNIVERSITY’S PERFORMANCE OF ANY OBLIGATION THAT FAILED TO SATISFY THE TERMS OF THIS AGREEMENT.

**7.** **Disclaimer of Warranties**. UNIVERSITY DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE SERVICES PROVIDED UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THE SERVICES SHALL BE PROVIDED AND ACCEPTED “AS IS.”

**8.** **No University Endorsements.** In no event shall Company (or its successors, employees, agents and contractors) state or imply in any publication, advertisement, or other medium that University has approved, endorsed or tested any product or service. In no event shall University’s performance of the services described in section 1 be considered a test of the effectiveness or the basis for any endorsement of a product or service.

**9.** **Use of University Name or Logo.** Company agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with University or the name of any representative of University in any sales promotion work or advertising, or any form of publicity, without the prior written permission of University in each instance.

**10.** **Indemnification.**

10.1 Company shall indemnify, defend and hold University and its regents, faculty members, students, employees, agents and contractors harmless from actions, suits, claims, negligent losses, costs, judgments and expenses, including reasonable attorneys’ and investigative fees, arising out of: (i) Company’s infringement of a third party’s intellectual property rights or violation of any law, rule, or regulation in the provision of any materials to University; (ii) personal injury, death or property damages arising out of a failure to warn University of any dangerous substances or materials supplied to University by or on behalf of Company; (iii) Company’s, or any other entity’s, use of the results or deliverables, or the use of products, services or representations based on such results or deliverables; and (iv) any negligent act or omission of Company in connection with this Agreement. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, actions, suits, damages, or loss was caused by the intentional, willful, or wanton acts of University.

10.2 Each party represents that it has and will continue to have at least the following levels of insurance during the term of this Agreement: (i) as to University, Workers’ Compensation in statutory compliance with Minnesota Law and General Liability insurance in an amount not less than $1,000,000 each claim/$3,000,000 each occurrence; and (ii) as to Company, General Liability insurance, including Products and Completed Operations, in an amount not less than $1,000,000 each occurrence/$2,000,000 annual aggregate.; Automobile Liability with limits not less than $1,000,000 each occurrence. Regents of the University of Minnesota shall be added as an additional insured for General Liability and Auto Liability. Company represents that it has worker’s compensation insurance to the extent required by law. Company agrees to furnish proof of all such insurance to University upon request.

**11. Non-Disclosure**

11.1 For purposes of this Agreement, "Confidential Information" means written or tangible information disclosed by either party to the other, which at the time of disclosure is clearly and conspicuously labeled “Confidential” or “Proprietary”. Confidential Information shall also include oral and visual disclosures which are identified as confidential at the time of such disclosures and which are confirmed and summarized within fifteen (15) days of the disclosure by the disclosing party in a writing that sets forth the substance of the Confidential Information disclosed. The parties agree to maintain confidentiality of the Confidential Information during the term of this Agreement, including any renewal periods, and for a period of three (3) years from the effective termination or expiration date of this Agreement. Neither party shall use said Confidential Information for any purpose other than those purposes specified in this Agreement. The parties may disclose Confidential Information to employees requiring access thereto for the purposes of this Agreement provided, however, that prior to making any such disclosures each such employee shall be apprised of the duty and obligation to maintain Confidential Information in confidence and not to use such information for any purpose other than in accordance with the terms and conditions of this Agreement. Neither party will be held financially liable for any inadvertent disclosure, but each will agree to use its reasonable efforts not to disclose any Confidential Information.

11.2 Nothing contained herein will in any way restrict or impair either party's right to use, disclose, or otherwise deal with any Confidential Information which:

11.2.1 At the time of its receipt, is generally available in the public domain, or thereafter becomes available to the public through no act of the receiving party;

11.2.2 Was independently known prior to receipt thereof, or made available to such receiving party as a matter of lawful right by a third party;

11.2.3 Is received without obligation of confidentiality from a third party; or

11.2.4 Is required by law (including the Minnesota Government Data Practices Act), and/or regulation or court order to be disclosed. In the event that Confidential Information is required to be disclosed pursuant to this subsection, the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under law.

11.3 The parties shall comply with export controls and sanctions statutes and regulations, including the Export Administration Regulations (EAR, 15 C.F.R. pts. 730-774), the International Traffic in Arms Regulations (22 C.F.R. pts. 120-130), and the Foreign Assets Control Regulations (31 C.F.R. pts. 500-599), to the extent such statutes and regulations are applicable to the parties' activities. Company shall not use any technology, technical data, commodity, or software relating to this Agreement contrary to the requirements in Part 744 of the EAR, Control Policy: End-Use and End-User Based (15 C.F.R. pt. 744). Company shall not transfer to University any controlled technology, technical data, commodity, software, or other item on the Commerce Control List (15 C.F.R. pt. 774) or U.S. Munitions List (22 C.F.R. pt. 121) except with the prior written consent of University's Export Controls Officer (contact info at: https://research.umn.edu/units/riact/export-controls/overview). University may decline the transfer of any such controlled, listed item at its sole discretion, at no penalty, and with no contractual consequence.

**12.** **General Provisions.**

12.1 Amendment. This Agreement shall be amended only in a writing duly executed by all the parties to this Agreement.

12.2 Assignment. Company may not assign any rights or obligations of this Agreement without the prior written consent of University. In the event of any assignment, Company shall remain responsible for its performance and that of any assignee under this Agreement. This Agreement shall be binding upon Company, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement shall be void at the sole option of University.

12.3 Entire Agreement. This Agreement (including all attached or referenced addenda, exhibits, and schedules) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements among the parties, whether oral or written, relating to the subject matter of this Agreement. The terms and conditions of any purchase order or similar document submitted by Company in connection with the services provided under this Agreement shall not be binding upon University.

12.4 Force Majeure. No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure the parties’ duty to perform obligations shall be suspended.

12.5 Governing Law. The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles.

12.6 Jurisdiction. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hennepin County, Minnesota.

12.7 Independent Contractor. In the performance of their obligations under this Agreement, the parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, partners, joint ventures, or employees. Neither party shall have the right or power to bind the other party and any attempt to enter into an agreement in violation of this section 12.7 shall be void. Neither party shall take any actions to bind the other party to an agreement.

12.8 Notices. All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

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| --- | --- |
| **If to University**:  (Insert Name)  Sponsored Projects Administration  University of Minnesota  450 McNamara Alumni Center  200 Oak Street S.E.  Minneapolis, MN 55455-2070  Telephone: (612)  Fax : (612)  E-Mail: @umn.edu | **with a copy to**  (Insert Department Contact Information)    Telephone:  Fax:  E-Mail: |

**If to Company**:

Attn:

Facsimile No.:

E-mail:

12.9 Taxes and similar fees. In addition to the payment obligation in section 2, Company is responsible for the payment of any and all income, sales, use, consumption, value added, excise, custom duties or other taxes and similar fees in connection with this Agreement, levied or required to be withheld from payment(s) to University by any taxing authority or any other body having jurisdiction under any present or future laws. To the extent that Company is required to withhold or deduct taxes or similar fees on any payment to be made to University, then the amount payable shall be increased by the amount that will result in University receiving a net payment in the amount it would have received absent such withholding or deduction. If University is required to pay any of such fees and/or taxes or any related penalties or interest, then any such payments shall be reimbursed to University by Company.

12.10 Breach; Attorneys’ Fees. In the event it fails to perform any of its duties under this Agreement, Company shall reimburse University for all University’s costs and expenses (including reasonable attorneys’ fees, court costs, and costs of investigation) to enforce this Agreement, regardless of whether a suit or action had been commenced or concluded.

12.11 Other Terms:

None

Quality Assurance Program- Letter of Continuing Guarantee. Company shall provide to University upon execution of this Agreement a Quality Assurance Program – Letter of Continuing Guarantee as set out in Attachment B, signed by Company’s Vice President for Food Safety and Quality Assurance or other officer of Company responsible for ensuring and carrying the guarantees contained in the letter.

12.11 Survival. Upon termination or expiration of this Agreement, Sections 2, 5, 6, 7, 8, 9, 10, 11, and 12 shall survive.

**IN WITNESS WHEREO**F, the parties have entered into the Agreement as of the date first above written.

**Regents of the University of Minnesota**

By: By:

Name:  Name:

Title:  Title:

Date: Date:

Attachment A

Description of Services and Pricing Terms

Attachment B

Quality Assurance Program- Letter of Continuing Guarantee

[PLEASE PROVIDE SIGNED COPY ON COMPANY LETTERHEAD]

     , complies with all regulatory requirements and licenses for the distribution and production of wholesome, unadulterated, and properly labeled food products. Our procedures are designed to control potential biological, physical, and chemical hazards from procurement, to raw material production and handling, to the distribution of properly labeled products to our customers.

All processed products purchased by       for distribution originate from approved sources and receive the appropriate inspection where applicable for the type of commodity being supplied. All acidified foods are in compliance with regulations in 21 CFR Part 114. Certification for incoming raw materials by letters of guarantee, results of analysis, or other satisfactory means may also be required. Branded products meet strict specifications that exceed USDA standards, when applicable to the product.

All meat, poultry, seafood, and juice products must originate from suppliers with approved Hazard Analysis Critical Control Point Programs (HACCP). X’s processing plants are in compliance with federally mandated HACCP regulations in 9 CFR Part 416 and 417, for meat and 381 for poultry, and are under the inspection for wholesomeness by the United States Department of Agriculture, and 21 CFR Part 123, for seafood. Lastly, all X’s Operating Companies operate under a voluntary HACCP program based on the temperature sensitivity of the products handled to maintain the cold chain from receipt to delivery.

Hold Harmless and Guaranty or Warranty of Product Agreements are on file for each supplier which generally provides that each of the articles comprising each shipment or other delivery of any product or products to Performance Food Group is guaranteed, as of the date of such shipment or delivery, to be on such date not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended from time to time, and not an article which may not, under the provisions of Section 404 or Section 405 of the Act, be introduced into interstate commerce.

      requires all suppliers/manufactures with whom we conduct business to be properly registered with the FDA in compliance with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and the 2011 Food Safety Modernization Act, unless otherwise exempt by regulation. Additionally, suppliers are required to conduct mock recalls on an annual basis and maintain records of the results.

All suppliers must have Allergen Control Programs that clearly outline a transportation program that provides for proper receiving and storage controls, production precautions that specify the segregation of equipment or production schedules, clear identification of ingredient bins and packaging that contain allergens and a training program for employees.

Suppliers of       branded product will receive an initial comprehensive facility audit by       Quality Assurance to evaluate their quality system programs. This evaluation includes a review of ingredient specifications, approved supplier list, product formulations and specifications, packaging and labeling specifications, manufacturing procedures, critical control point identification, in-process analysis, records and reporting procedures, cleaning and sanitizing programs, good manufacturing practices, pest and rodent management, recall program, Biosecurity measures, warehousing, shipping and receiving programs, and laboratory analysis. Additionally, all       product suppliers, branded and non-branded, must receive a satisfactory rating by a nationally recognized independent third party audit organization on an annual basis.

The quality of our branded products is continually monitored by review of suppliers’ processing records, audits of product in distribution, by periodic unannounced in-plant audits of suppliers’ products/facilities, and by thorough investigation of complaints submitted by       operating companies. Changes to any existing specifications are made only through written permission of      QA after receipt of supplier research material and testing of the proposed item is conducted at the       Test Kitchen, thereby ensuring product characteristics are similar or better than the original.

Name of officer

VP, Food Safety & Quality Assurance