ANALYSIS AND TESTING AGREEMENT

This Agreement entered into by and between the The Administrators of The Tulane Educational Fund (d/b/a Tulane University) with a principal place of business at
___________________________________________ (hereinafter referred to as “UNIVERSITY”), and
___________________________________________

with a principal place of business at ______________________________________________,
(hereinafter referred to as “SPONSOR”).

WHEREAS, the project contemplated by this AGREEMENT is of mutual interest and benefit to the UNIVERSITY and the SPONSOR, and will further the instructional, research, and public service objectives of the UNIVERSITY in a manner consistent with its status as a public educational institution; and

WHEREAS, SPONSOR desires to provide funding in support of the project;

NOW, THEREFORE, the parties hereto agree as follows:

(1.) SCOPE OF PROJECT: The UNIVERSITY will use its best efforts to undertake the testing protocol as described in Attachment "A", hereby made a part of this AGREEMENT, and hereafter referred to as "PROJECT".

(2.) PROJECT COORDINATOR: The project shall be under the supervision of __________ __________________, from the (Department/Laboratory/Unit) of _________________ ______ who shall serve as University Project Coordinator. If for any reason the Project Coordinator shall be unable to continue to serve, and a successor acceptable to both parties is not available, this AGREEMENT shall be terminated as hereafter provided.

(3.) PERIOD OF PERFORMANCE: The activities of this PROJECT shall be conducted during the period beginning __________ through __________. This period will be subject to modification or renewal only by mutual written agreement of the parties hereto.

(4.) PAYMENT OF COSTS: In consideration of the UNIVERSITY’S performance hereunder, SPONSOR agrees to support the UNIVERSITY’S costs incurred conducting the activities as stated in Attachment “A”, in the amount of ______________ Dollars ($ __________). This amount shall not be exceeded by the UNIVERSITY without the written authorization of the SPONSOR.

Payments shall be made by the SPONSOR according to the following schedule: ______________ ______________ ______________ ______________ ______________. Invoice will be issued within 30 days after work has been completed.

(5.) REPORTS: UNIVERSITY shall deliver to the SPONSOR a final report showing the results of the activity performed. Said report shall be due within ninety (90) days of completion of the PROJECT. UNIVERSITY hereby grants SPONSOR an unlimited, royalty-free, non-exclusive right and license to
use the data and information developed under the Project. UNIVERSITY’S use of such data and information shall be consistent with the terms of this Agreement.

(6.) RIGHTS IN DEVELOPMENTS:

(a.) Title to all intellectual property, data or information, owned, developed, conceived and reduced to practice by SPONSOR prior to the start of the work under this AGREEMENT shall remain the sole property of the SPONSOR (hereinafter referred to as SPONSOR’s Pre-Existing Technology).

(b.) Intellectual property conceived or reduced to practice under this AGREEMENT by one or more employees and/or students of UNIVERSITY which result from or constitute improvements in or additions to the SPONSOR’s Pre-existing technology, including but not limited to any inventions, designs, techniques, innovations or other discoveries, shall belong to SPONSOR, provided such improvements or additions result from and could be anticipated by the Protocol attached to this AGREEMENT as Attachment A.

(c.) Intellectual property rights in all other inventions, designs, techniques, innovations, or other discoveries not designated as being the property of the Sponsor pursuant to Subparagraphs (a) or (b) above, conceived or reduced to practice under this AGREEMENT by one or more employees and/or students of UNIVERSITY, shall belong to UNIVERSITY.

(d.) SPONSOR shall have an option to negotiate for a royalty-bearing, exclusive license to any such intellectual property rights belonging to UNIVERSITY under subparagraph (c) above, provided SPONSOR must exercise its option by notice in writing within three (3) months of the disclosure to it by UNIVERSITY of the discovery, or within three (3) months following the completion of the PROJECT.

(e.) UNIVERSITY will maintain for itself at all times a royalty-free, nonexclusive, nontransferable license to any intellectual property falling within subparagraph (6) (b) or (c) hereof, such license to be limited to non-commercial research and educational purposes.

(7.) WARRANTY: UNIVERSITY MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY GOODS OR SERVICES PROVIDED. The UNIVERSITY makes no representation or warranty regarding the actual or potential infringement of patents or copyrights of third parties, and SPONSOR acknowledges that the avoidance of such infringement in the use of the services related to this AGREEMENT shall remain the responsibility of SPONSOR.

(8.) TERMINATION Performance under this AGREEMENT may be terminated by either party upon sixty (60) days written notice. Upon termination by either party, UNIVERSITY will be reimbursed for all costs and noncancelable commitments incurred in performance of the PROJECT prior to the date of termination in an amount not to exceed the total commitment set forth in Paragraph 4.)
(9.) **LIABILITY:** The liability of the UNIVERSITY, as an agency of the State of North Carolina, for bodily injury, property damage, infringement of proprietary rights and patents, and other items is limited by the North Carolina Tort Claims Act, Article 31, sec. 143-291.

The SPONSOR will indemnify and hold harmless UNIVERSITY, its trustees, officers, employees and agents from and against any liabilities, damages, or claims (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person as a result of SPONSOR's negligence or willful misconduct in the performance of this AGREEMENT or from SPONSOR's use or possession of the results produced hereunder.

(10.) **HAZARDOUS MATERIALS:** All materials provided by SPONSOR must be accompanied by the appropriate environmental and safety information for those materials as required by law.

The responsibility for and costs of disposal of all SPONSOR provided materials remaining at the termination of the PROJECT will rest with the SPONSOR. SPONSOR shall arrange for disposal or removal of any remaining SPONSOR provided materials prior to receipt of any final report of the PROJECT. The UNIVERSITY may decline to accept projects that impose undue risk.

UNIVERSITY will observe all applicable safety precautions and governmental requirements concerning handling of test materials. SPONSOR and UNIVERSITY acknowledge that the selection of PROJECT procedures, sites, and equipment, and the assignment and supervision of personnel to be used in the conduct of PROJECT hereunder rest under the sole and exclusive direction of UNIVERSITY.

(11.) **PROPRIETARY INFORMATION:** Any proprietary information disclosed by one party to the other, including invention disclosures made by UNIVERSITY to SPONSOR, shall be disclosed in writing and designated as proprietary, or if disclosed orally, shall be confirmed in writing and designated proprietary within thirty (30) days of such disclosure. A party receiving proprietary information hereunder, hereafter referred to as “RECIPIENT”, agrees to use the proprietary information only for the purpose of this AGREEMENT and further agrees that it will not disclose or publish such information except that foregoing restrictions shall not apply to:

(i) information which is or becomes publicly known through no fault of RECIPIENT;
(ii) information learned from a third party entitled to disclose such information;
(iii) information already known to or developed by RECIPIENT prior to receipt hereunder, or information independently developed, at any time, by RECIPIENT personnel not privy to the proprietary information, as shown by RECIPIENT’s written records;
(iv) information which is published in the necessary course of the prosecution of patent applications based upon inventions developed pursuant to this AGREEMENT; or;
(v) information required to be disclosed by operation of law (including, but not limited to, the NC Public Records Act) or court order.

The obligation of confidentiality imposed by this provision shall expire three (3) years following the expiration or termination of this AGREEMENT. Each party will use a reasonable degree of care to
prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of proprietary information disclosed hereunder.

(12.) **NON-ANALYSIS:** UNIVERSITY agrees not to perform or permit others to perform any test analyses, or other evaluation of SPONSOR'S samples ("Samples") for the purpose of determining the chemical character, components, or physical characteristics or the method of manufacture thereof, without the prior written consent of SPONSOR, not even to share these samples or any portion thereof with other parties.

(13.) **USE OF NAMES:** Neither party will use the name, marks, or symbols of the other for any commercial purpose without the express written permission of the other party.

(14.) **NOTICES:** Any notices required to be given or which shall be given under this AGREEMENT shall be in writing, delivered by first-class mail or facsimile, addressed to the parties as follows:

for SPONSOR

for UNIVERSITY


(15.) **INDEPENDENT PARTIES:** For purposes of this AGREEMENT, the parties hereto shall be independent contractors and neither shall at any time be considered an agent or employee of the other. No joint venture, partnership, or like relationship is created between the parties by this AGREEMENT.

(16.) **ASSIGNMENT:** This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and may be assigned only to the successors of these parties. Any other assignment by either party without prior written consent of the other party shall be void.

(17.) **GOVERNING LAW:** This AGREEMENT is acknowledged to have been made and shall be construed and interpreted in accordance with the laws of the State of North Carolina, provided that all questions concerning the construction or effect of patent applications and patents shall be decided in accordance with the laws of the country in which the particular patent application or patent concerned has been filed or granted, as the case may be.

(18.) **CONSULTING:** In the event that the University Project Coordinator and/or the SPONSOR shall seek a consulting arrangement with each other on the subject of this study during the period covered by this AGREEMENT, such arrangement shall be reported to the UNIVERSITY according to the Conflict of Interest and External Pay Policies of the UNIVERSITY.

(19.) **ENTIRE AGREEMENT:** Unless otherwise specified herein, this AGREEMENT embodies the entire understanding of the parties for this project and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this AGREEMENT including, without limitation, changes in the activities of the program, total estimated cost, and period of performance, shall be effective unless made in writing and signed by authorized representatives of
both parties. If any provisions stated in this AGREEMENT, resulting purchase orders, and the project proposal are in conflict, the order of precedence, beginning with the first to last shall be (1) this AGREEMENT with attachments, (2) the project proposal, and (3) the purchase order, it being understood and agreed that any purchase order or similar document issued by SPONSOR will be for the sole purpose of establishing a mechanism for payment of any sums due and owing hereunder. Notwithstanding any terms and conditions contained in said purchase order, the purchase order will in no way modify, or add, or take precedence to the terms of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT effective as of the date last hereinafter written.

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