**UNIVERSITY OF PITTSBURGH**

**SPECIALIZED SERVICES AGREEMENT**

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| **University****NAME OF YOUR CORE LAB**University of PittsburghADDRESSAttention: NAME OF CONTACT.Telephone: Fax: | **User** Name of UserAddressContact namePhoneFax  |

**THIS SPECIALIZED SERVICES AGREEMENT** (the “Agreement”) is made by and between **UNIVERSITY OF PITTSBURGH – OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION**, a non-profit, state-related, academic institution organized under the laws of Pennsylvania, through its CORE LAB NAME (hereinafter known as the “University”), and User.

**WHEREAS,** User desires that the University perform certain services, as more specifically set forth in the Statement of Work attached hereto as Exhibit A and incorporated herein by reference as if a part of this Agreement (the “Services”); and

**WHEREAS,** consistent with the University’s educational mission, the University offers the provision of the Services to promote the extension of the frontiers of knowledge and creative endeavor, including teaching, research, service and activities incident or ancillary thereto; and

**WHEREAS,** User and the University understand and agree that the terms and conditions of this Agreement are specific to this Agreement and the Services hereto. This Agreement shall not be used as precedent for any existing or future sponsored research agreement between the Parties and supersedes any and all verbal or written agreements related to the Services performed hereunder.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants herein contained and intending to be legally bound, the University and User (each, a “Party,” and collectively, “Parties”) agree as follows:

**Section 1. Term and Termination.**

* 1. This Agreement shall be effective on START DATE (“Effective Date”) and continuing for a period of twelve (12) months (the “Term”).
	2. Either Party may terminate this Agreement prior to the expiration of the Term by providing at least thirty (30) days prior written notice to the other Party. Upon termination of this Agreement, User shall pay all costs accrued by the University as of the date of termination, including all non-cancelable obligations for the Term of the Agreement, which shall include but is not limited to all appointments of research staff prior to the effective date of the termination.
	3. In addition, the University may terminate this Agreement immediately upon written notice if User fails to pay any University invoice within the time specified in Section 2, below.
	4. Notwithstanding the foregoing, in the event that the University is required by federal, state, or local government order to temporarily cease operations prior to or after the Effective Date, the Term and performance obligations hereunder shall be extended to a time that is commensurate to the University’s temporary inability to perform, plus 10 business days.
	5. The University may immediately terminate this Agreement should University conditions outside of its control render performance an impossibility or impracticably.

**Section 2. Payment.**

2.1 User agrees to pay the University an amount not to exceed AMOUNT (the “Fees”) for the performance of the Services in accordance with the attached Exhibit B, which is incorporated herein by reference. User agrees to make an advance payment of twenty-five percent (25%) of the Fees to the University upon signing of this Agreement. The advance payment will be applied against the final invoice.

2.2 The University will invoice User periodically for Fees incurred through the performance of the Services. Invoiced Fees shall be paid within thirty (30) days of User’s receipt of an invoice from the University.

**Section 3. Materials.**

3.1 User shall provide University with User’s materials which are necessary for the performance of the Services under this Agreement (the “Materials”). All Materials shall be listed on Exhibit C, which shall include the name and amount (as applicable) of the Materials.

3.2 All Materials shall remain the property of User and will be used by the University solely for the Services. The Materials will be returned to User or destroyed by the University, as requested by User, at the expiration of the Term of this Agreement or upon early termination of this Agreement.

3.3 User agrees to defend and indemnify the University, its trustees, officers, employees, representatives and agents from any and all claims and damages in any way arising from the acquisition, use, storage or disposal of the Materials by the University.

3.4 Materials will be provided and used in compliance with all applicable statutes and regulations, including but not limited to the National Institutes of Health guidelines on the use of animals and recombinant DNA. The Materials may not be used for in vivo testing in human subjects. Materials derived from human donors may not be transferred with any individual donor-identifying information.

3.5 If User provides the University with Materials that are of human origin, User represents and warrants that such Materials were collected and stored, and are being provided, in accordance with all applicable federal, state, and local laws, regulations, and ordinances, and that, as applicable, legally sufficient consent for use by and transfer to the University for the Services has been obtained from the donor. The Parties agree to not perform any processes to try to identify any individual subject from such Materials provided. Each party agrees to abide by applicable privacy laws governing the release of human subject information, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and 45 C.F.R 46.

3.6 No option, license, or conveyance of rights, express or implied, is granted by one Party to the other party in connection with any Materials provided under this Agreement, except the right to use the Materials strictly in accordance with the terms of this Agreement.

**Section 4. Intellectual Property.**

4.1 The University will provide User with the final results of the Services (“Final Report”). User shall own the right, title, and interest to the data generated during the performance of the Services and contained in the Final Report. The University shall retain a non-exclusive right to use the Final Report, including the data contained therein, for non-commercial purposes.

4.2 Nothing contained in this Agreement shall affect the pre-existing rights of either Party in intellectual property developed prior to the Effective Date of this Agreement.

**Section 5. Confidential Information.**

5.1 “Confidential Information shall mean (i) Materials, written information or data, which is provided by one Party to the other Party for the performance of the Services; and (ii) non-written information or data disclosed by one Party to the other for the performance of the Services, which is identified at the time of disclosure as confidential and is reduced to writing and transmitted to the non-disclosing Party within thirty (30) days of such non-written disclosure. Confidential Information does not include information that is in, or becomes part of, the public domain or that is independently known, developed, or obtained by the University.

5.2 For a period of three (3) years following disclosure of Confidential Information, each Party shall maintain, with the same degree of care it uses to protect its own confidential information of similar nature, any Confidential Information received from the other Party under this Agreement.

**Section 6. Publication.**

6.1 User recognizes that the University is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and must serve a public, rather than a private, interest, and that the University must maintain the discretion to present or publish new scientific information that is realized as a part of this Agreement. As such, the University shall be free to publish results generated through the performance of the Services; provided that the University will not disclose User’s Confidential Information, and further provided that the University will provide User with thirty (30) days to review any proposed publication arising out of this Agreement.

**Section 7. WARRANTY AND LIABILITY.**

7.1 THE UNIVERSITY AGREES TO USE ITS REASONABLE EFFORTS TO PERFORM THE SERVICES IN ACCORDANCE WITH ACADEMIC STANDARDS. ALL SERVICES, INFORMATION AND MATERIALS PROVIDED BY THE UNIVERSITY UNDER THIS AGREEMENT ARE PROVIDED ON AN “AS IS” BASIS. THE UNIVERSITY MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, INCLUDING, WITHOUT LIMITATION, AS TO RESULTS TO BE ATTAINED FROM THE SERVICES OR BY USING THE MATERIALS, OR ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGMEENT.

7.2 IN NO EVENT SHALL THE UNIVERSITY BE LIABLE TO USER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS OR SHOULD HAVE BEEN FORESEEABLE AND WHETHER OR NOT THE UNIVERSITY HAS BEEN ADVISED OF THE POSSIBLITY OF SUCH DAMAGES. IN NO EVENT SHALL THE UNIVERSITY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE FEES PAYABLE HEREUNDER.

7.3 USER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE UNIVERSITY, ITS TRUSTEES, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ANY AND ALL EXPENSE, CLAIM, LIABILITY, LOSS, DAMAGE OR COST (INCLUDING REASONABLE ATTORNEYS’ FEES) IN CONECTION WITH OR IN ANY WAY ARISING OUT OF THE SERVICES PERFORMED HERUNDER, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, OR USER’S USE OF THE DATA OR RESULTS FROM THE SERVICES. THE FOREGOING INDEMNITY SHALL NOT APPLY TO THE EXTENT THE CLAIMS ARE THE RESULT OF THE GROSSLY NEGLIGENT ACTS OR OMISSIONS OR THE WILLFUL MISCONDUCT OF THE UNIVERSITY.

**Section 8. Insurance.**

8.1 User represents and warrants that it maintains a policy or program of insurance or self-insurance at levels sufficient to support the indemnification obligations assumed under this Agreement, in an amount not less than One Million Dollars ($1,000,000) per occurrence. The policy shall name “University of Pittsburgh – Of the Commonwealth System of Higher Education and its trustees, officers, agents and employees” as additional insureds, to the extent permitted by law. User shall provide to the University evidence of its insurance or self-insurance prior to or simultaneous with the full execution of this Agreement.

**Section 9. Compliance with Law.**

9.1 Each Party is in compliance with and shall comply with all applicable laws, regulations and ordinances. Without limiting the foregoing, each Party shall, and shall cause its officers, directors, employees and agents to, comply with all applicable laws, rules, and regulations relating to bribery, fraud, kickbacks or anti-corruption, including but not limited to the United Sates Foreign Corrupt Practices Act of 1977, as amended (each, an “Anti-Bribery Law”). Each Party represents that it has implemented, and must at all times implement, adequate procedures designed to prevent itself and its officers, directors, employees and agents from engaging in any activity that would constitute an offense under any applicable Anti-Bribery Law. Each Party represents that, in connection with this Agreement, no improper financial or other advantage has been, will be, or is agreed to be given to any person or entity by or on behalf of itself or any of its officers, directors, employees and agents.

9.2 Notwithstanding any other provision of this Agreement, the Parties understand and agree that they are subject to, and agree to abide by, any and all applicable United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities. The University’s obligations hereunder are contingent on its ability to comply with applicable United States export and embargo laws and regulations. It is the expectation of the University that the work done pursuant to this Agreement will not involve export-controlled technology or data. User acknowledges that the University is public academic institution for fundamental research that may have foreign persons as its employees and students. As an institution of higher learning, the University does not wish to take receipt of export-controlled information except as may be knowingly and expressly agreed to in writing signed by an authorized representative of the University and for which the University has made specific arrangements. User agrees that it will not provide or make accessible to the University any export-controlled materials (including, without limitation, equipment, information and/or data) without first informing the University of the export-controlled nature of the materials and obtaining from the University’s Office of Sponsored Programs its prior written consent to accept such materials as well as any specific instructions regarding the mechanism pursuant to which such materials should be passed to the University. User agrees to comply with any and all applicable. U.S. export control laws and regulations, as well as any and all embargoes and/or other restrictions imposed by the Treasury Department’s Office of Foreign Asset Controls.

**Section 10. Miscellaneous.**

10. 1 The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

10.2 Nothing in this Agreement shall be construed to limit the freedom of participants in this Agreement, whether paid under this Agreement or not, from engaging in similar research inquiries made independently under other grants, contracts or agreements with other parties.

10.3 Neither Party shall use the name of the other Party or any of its staff in connection with any products, promotion, or advertising without the prior written approval of such other Party. User shall not, without the University’s prior written consent, record the presentation or provision of Services in audio, video, or other media format.

10.4. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, excluding its choice of law provisions. Any controversy, claim or dispute arising out of or relating to this Agreement shall be adjudicated in the Court of Common Pleas of Allegheny County, Pennsylvania or the United States District Court for the Western District of Pennsylvania.

10.5 User shall not assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the University. Any purported assignment or delegation in violation of this Section shall be null and void. This Agreement is binding on and inures to the benefit of the parties to this Agreement and their respective permitted successors and permitted assigns.

10.6 Any notice or communication pursuant to this Agreement shall be sufficiently made or given if sent by certified or registered mail, postage prepaid, or by overnight courier, with proof of delivery by receipt, addressed to the address below or as either party shall designate by written notice to the other party.

**In the case of University:**

For scientific matters: PI NAME

 PI ADDRESS

For administrative matters: Office of the Senior Vice Chancellor

for the Health Sciences

 3550 Terrace Street

Suite 401

Pittsburgh, PA 15213

Attention: Research Administration Office

 Telephone: (412) 648-4110

 With a copy to: Office of University Counsel

 University of Pittsburgh

 2400 Cathedral of Learning

 4200 Fifth Avenue

 Pittsburgh, PA 15260

 **In the case of User:**

For administrative matters: USER ADMINSTRATIVE CONTACT

 For scientific matters: USER SCIENTIFIC CONTACT

10.7 Neither Party waives its right to enforce any and all provisions of the Agreement at any time during the Term. Either Party’s failure to enforce any provision shall not prejudice such Party from later enforcing or exercising the same or any other provision of the Agreement.

10.8 Headings are for convenience of reference only, and not for interpreting the provisions of the Agreement.

10.9 This Agreement, together with all attachments and exhibits, constitutes the entire agreement and understanding between the Parties and supersedes any prior or contemporaneous negotiations, agreements, understandings, or arrangements of any nature or kind with respect to the subject matter herein. In the event of any inconsistency between this Agreement or any attachments and exhibits, the terms of this Agreement shall govern.

10.10 This Agreement may not be changed, altered, modified, amended, rescinded, canceled or waived except by a writing executed by authorized representatives of the Parties.

10.11 This Agreement may be executed in multiple counterparts, each of which is deemed an original and all of which constitute one and the same agreement. The signatures of all of the Parties need not appear on the same counterpart. Delivery of an executed counterpart of this Agreement, by facsimile, portable document format (.pdf) or by any other electronic means, has the same effect as delivery of an executed original of this Agreement.

**Section 11. Force Majeure.**

11.1 No Party will be liable to the other for any failure or delay in the performance of its obligations to the extent such failure or delay is caused by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, disease, epidemics, quarantines, pandemics, acts of government, a declorated state of emergency, delays in visas, changes in laws and governmental policies, or other conditions beyond its reasonable control following execution of this Agreement. If the performance by either party of any of its obligations under this Agreement (including making a payment) is prevented by any such circumstances, then such party shall communicate the situation to the other as soon as possible, and the parties shall endeavor to limit the impact to the project. The parties agree to mitigate risks to the project and personnel, and to amend project period of performance and milestones if possible. Nothing herein shall limit the rights of either party to terminate this Agreement as indicated in Section 1 hereunder.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

**USER UNIVERSITY** **UNIVERSITY OF PITTSBURGH – OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: Anantha Shekhar, MD, PhD

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: Senior Vice Chancellor, Health Sciences,
Dean, School of Medicine

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 University Principal Investigator confirms that he/she has read and understands this Agreement and agrees to abide by its terms.

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**Scope of Work**

1. **General Description of Services**

1. **Services to be Performed**

1. **Results**

Example: Data will be delivered, samples will be completely used during processing (CHANGE TO SUIT)

**EXHIBIT B**

**FEES**

Provide a detailed list of costs.

**EXHIBIT C**

**MATERIALS**

Provide a Description of any materials to be provided.