To obtain Technical Services from the W. M. Keck Metabolomics Research Laboratory of the Iowa State University Office of Biotechnology (hereinafter “UNIVERSITY”), CUSTOMER hereby agrees to the following Terms and Conditions:

1. **Scope of Work Description**
   The UNIVERSITY will perform Technical Services as described in the Order Form agreed upon by the parties in writing and incorporated herein by reference (“Order Form”) between the W. M. Keck Metabolomics Research Laboratory personnel and CUSTOMER. If CUSTOMER is to furnish UNIVERSITY with materials to be tested or used while performing the Technical Services (“Materials”), such Materials shall be identified in the Order Form. CUSTOMER shall provide UNIVERSITY, at no charge, with a sufficient quantity of the Materials to perform the Technical Services. CUSTOMER represents and warrants that it is authorized to retain UNIVERSITY to perform the Technical Services using the Materials. CUSTOMER shall disclose in the Order Form whether the Material is a hazardous substance and of any known hazards and risks associated with the Materials and whether the Material is an item on the Munitions List or the Commerce Control List other than EAR99 items. UNIVERSITY shall use the Materials only as needed to provide the Technical Services and shall not modify, alter, reverse engineer or run analytic tests to determine the composition of the Materials without CUSTOMER’s prior written permission. UNIVERSITY shall not provide the Materials to a third party nor allow access to the Materials by a third party. UNIVERSITY may provide the Materials to its employees and students who have a bona fide need to use the Materials in performing the Technical Services provided that UNIVERSITY requires such employees or students to abide by the terms of this Agreement. Upon completion of the Technical Services or at CUSTOMER’S request, UNIVERSITY shall destroy or return to CUSTOMER the Materials not consumed during the performance of the Technical Services in accordance with CUSTOMER’s instructions. UNIVERSITY may retain a sample of the Materials if needed to evidence its fulfillment of its contractual obligations. Unless stated otherwise in the Order Form, CUSTOMER shall assume all risk of loss for the transportation of the Materials to and from UNIVERSITY and shall be responsible for all delivery costs. CUSTOMER retains ownership of the Materials at all times.

2. **Term**
   The UNIVERSITY will complete the Technical Services in a reasonable and timely manner.

3. **Compensation**
   CUSTOMER agrees to compensate UNIVERSITY according to the current Fees for Services Schedule posted on the Biotechnology website: [http://www.biotech.iastate.edu/Metabolomics/index.php/rates/](http://www.biotech.iastate.edu/Metabolomics/index.php/rates/) to cover the cost of all direct labor, supervision, supplies, materials, and other operating and incidental expenses necessary for the satisfactory completion of the Technical Services. UNIVERSITY agrees to provide CUSTOMER with an invoice for the Technical Services completed at the request of CUSTOMER. UNIVERSITY reserves the right to require CUSTOMER to prepay, submit a deposit prior to providing Technical Services or send a monthly or periodic invoice.

4. **Payments**
   a) Payment shall be made by CUSTOMER to UNIVERSITY promptly within thirty (30) days of receipt of an invoice.
   b) Payment shall be submitted to UNIVERSITY at the following address:
      Iowa State University
      Treasurer’s Office
c) Each payment must reference the CUSTOMER Account Number shown on the invoice.

d) Off-campus CUSTOMERS may make payment by credit card (MasterCard or Visa only) after making arrangements with the W. M. Keck Metabolomics Research Laboratory.

e) On-Campus CUSTOMERS must use the UNIVERSITY Intramural payment process.

5. **Failure to Pay**
If payment is not received from CUSTOMER when due, UNIVERSITY may terminate this Agreement. In addition, the full account balance may be accelerated. UNIVERSITY may also impose a FINANCE CHARGE computed at a periodic monthly rate of 1% per month on the balance or an ANNUAL PERCENTAGE RATE (APR) of 12% when computed from the billing date. The unpaid account may be referred for collection, and CUSTOMER agrees to pay all collection costs and reasonable attorney’s fees if UNIVERSITY must take action to recover any past due amounts owing the UNIVERSITY. UNIVERSITY reserves the right under Iowa Code Section 421.17(27) to offset State of Iowa tax refunds, lottery winnings or vendor payments.

6. **Duties of UNIVERSITY**
Unless stated otherwise in this Agreement, UNIVERSITY shall provide facilities, including office, laboratory, equipment and field space, required for the Technical Services to be completed under this Agreement. The UNIVERSITY shall use reasonable efforts to perform the Technical Services requested within the projected costs and time period indicated in this Agreement. In the event the Technical Services cannot be performed within the time desired, UNIVERSITY will notify CUSTOMER as soon as reasonably possible. CUSTOMER shall have the option of terminating this Agreement with reimbursement to UNIVERSITY for its reasonable costs to the date of termination or continuing the Technical Services for an additional cost or, if feasible, an extension of time.

7. **NO WARRANTY**
The parties recognize the Results cannot be guaranteed even through use of UNIVERSITY’s reasonable efforts. Accordingly, the failure to achieve specific Results shall not constitute a breach of this Agreement. The results of the Technical Services completed under this Agreement are believed to be reliable, but no representations, guarantees or warranties of any kind are made as to the accuracy, suitability for particular applications or the results to be obtained. CUSTOMER should determine independently whether Results obtained from the Technical Services under this Agreement are suitable for the particular use intended by the CUSTOMER. UNIVERSITY DOES NOT MAKE ANY WARRANTIES REGARDING THE SERVICES OR RESULTS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNIVERSITY IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. Customer should determine independently whether the Results are suitable for the particular use intended by Customer. Customer shall indemnify and hold harmless UNIVERSITY, the State of Iowa, and the Board of Regents – State of Iowa and their respective officers, employees and students from any claims, damages, fines, losses or expenses incurred by any of them arising from or in connection with Customer’s use of the Results, including but not limited to Customer’s sale of a commercial product based upon the Results.

8. **Results**
CUSTOMER shall be the sole and exclusive owner of all deliverables generated as part of the Technical Services (“Results”), including any intellectual property rights in the Results. UNIVERSITY may retain a copy of the Results to evidence its fulfillment of its contractual obligations pursuant to this Agreement. UNIVERSITY shall treat the Results as Confidential Information.

9. **Inventions**
The parties do not anticipate that any potentially patentable discoveries will be first conceived and reduced to practice in UNIVERSITY’S performance of the Technical Services (“Inventions”). However, if while performing the Technical Services UNIVERSITY develops an Invention that incorporates or requires use of the Materials or CUSTOMER’S Confidential Information, UNIVERSITY shall promptly notify CUSTOMER and all right, title and interest to such Invention shall vest solely and exclusively in CUSTOMER. All right, title and interest to any Invention developed by UNIVERSITY while providing the Technical Services that does not incorporate or require use of the Materials or Confidential Information shall vest solely and exclusively in UNIVERSITY (e.g., improvements in methodology, processes or equipment that do not incorporate Customer’s Materials or Confidential Information). The parties shall execute any assignments or other documents necessary to effect the foregoing.

10. **Nature of Relationship**
CUSTOMER and UNIVERSITY are independent contractors, and nothing in this Agreement creates any partnership or joint venture. CUSTOMER warrants that the Technical Services are not sought for the purposes of admitting the Results as evidence in litigation, and CUSTOMER shall not call any UNIVERSITY employee as an expert witness as a result of the Technical Services rendered under this Agreement. This Agreement is not exclusive; CUSTOMER reserves the right to select other contractors to provide services similar or identical to the Technical Services, and UNIVERSITY reserves the right to provide to other clients services similar or identical to the Technical Services.

11. **Confidential Information**
   a. **Definition.** If a party shares information with the other party and desires for the recipient to treat such information as confidential, the provider shall identify it as such at the time of disclosure (“Confidential Information”). Results shall be deemed Confidential Information without further need to identify it as such. Confidential Information does not include information that: (a) is or becomes generally known or available to the public without breach of this Agreement; (b) is known by the recipient at the time of disclosure, as shown by recipient’s written records; (c) is disclosed to the recipient by a third party who had no duty of confidentiality; or (d) is independently developed by recipient without use of the provider’s Confidential Information, as shown by recipient’s written records.

   b. **Use and Disclosure.** The recipient shall use Confidential Information only for the purpose of this Agreement. The recipient shall hold Confidential Information in confidence and not disclose Confidential Information to any third party. The recipient may disclose Confidential Information to its employees or students provided that the recipient requires such employees or students to abide by the terms of this Agreement. If a recipient is required by judicial or other governmental authority or by a subpoena or a public records request to disclose Confidential Information, the recipient shall promptly inform the provider in writing so that the provider may seek a protective order or take other appropriate measures. Customer acknowledges and understands that UNIVERSITY is a state entity subject to Iowa’s public records laws.

   c. **Return or Destruction; Ownership.** Upon the provider’s written request, the recipient shall destroy or return to the provider the Confidential Information. The receiving party may retain a copy to evidence its fulfillment of its contractual obligations pursuant to this Agreement. Unless stated otherwise in this Agreement, Confidential Information remains the provider’s property.

12. **Publicity and Use of Name**
The parties shall not use the name or trademarks of the other party or the name of any of its employees in any publicity or advertising, including endorsements, without the prior written consent of the other party. The parties may use the name of the party and its employees for fulfilling any reporting obligations.

13. **Force Majeure**
Neither party shall be deemed in breach of this Agreement or liable for damages if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its reasonable control, such as acts or omissions of communications carriers, energy shortages or outages, strikes or labor disputes of
other’s workforces, fires, floods, inclement weather, acts of God, war, terrorism, civil disturbances, or acts of civil or military authorities.

14. **Termination**
This Agreement shall terminate upon completion of the Technical Services. Either party may earlier terminate this Agreement provided the other party receives written notification thirty (30) days prior to the proposed termination date. In the event of termination, UNIVERSITY shall be paid for all services completed and non-cancelable obligations incurred prior to the date of termination and UNIVERSITY shall provide CUSTOMER with Results completed as of the termination date for which payment has been received. The foregoing shall be in addition to any other remedies to which the parties are entitled.

15. **Notices**
Notices relating to this Agreement shall be in writing and shall be delivered by messenger or overnight carrier to the other party at the address set forth above or such other address as may be given in writing in accordance with this Section. Notice shall be deemed effective upon receipt.

16. **Miscellaneous**
This Agreement (including the Order Form) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, whether written, oral, or implied. All terms and conditions in other instruments, including purchase orders issued by Customer, are void. This Agreement shall not be modified without the written mutual consent of the parties. The failure of either party to require performance of any term or condition of this Agreement by the other party shall not constitute a waiver to subsequently enforce such term or condition. The invalidity or illegality of one or more provisions of this Agreement shall not affect the enforceability of the remaining provisions. The parties’ rights and obligations in this Agreement that, by their nature, would continue beyond the termination of this Agreement shall survive such termination. The parties’ obligations with respect to Confidential Information shall remain in effect for a period of five years from the date of termination of this Agreement. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which shall not be unreasonably withheld. This Agreement shall be construed in accordance with the laws of the State of Iowa, without giving effect to its conflicts of law provisions, and any litigation or actions commenced in connection with this Agreement shall be instituted in a court of competent jurisdiction in the State of Iowa.

17. **Counterparts; Authorization**
This Agreement may be executed in any number of counterparts and delivered by electronic transmission in PDF format. Each party represents and warrants that the person executing this Agreement on its behalf is authorized to do so.