



# GlycoMIP Service Agreement for Proprietary and/or International Work

*(Addendum to Service/Sample Requests or Research Project Proposals)*

This GlycoMIP Service Agreement for Proprietary and/or International Work (“Agreement”) is made and entered on the date last signed below (“Effective Date”) by and between \_\_\_\_\_ having a principal office at \_\_\_\_\_ (“User”), and Virginia Polytechnic Institute and State University, with principal offices in Blacksburg, Virginia (“Virginia Tech”). User and Virginia Tech may each be referred to individually as a “Party” and collectively as the “Parties”. Virginia Tech will perform its obligations under this Agreement through the *GlycoMIP: An NSF Materials Innovation Platform* (“GlycoMIP”) housed within Virginia Tech’s Fralin Life Sciences Institute under the following terms:

- 1. Scope of Project.** Virginia Tech shall perform the testing protocol described in attached project description (“Project”). Within ninety (90) days of Project completion, Virginia Tech shall deliver to User a report of the Project that contains the following information: \_\_\_\_\_. After Project completion, and at User’s request, Virginia Tech shall deliver to User the agreed upon data generated in Virginia Tech’s performance of the Project (“Data”).
- 2. Term.** Virginia Tech shall promptly begin work on the Project on or about the Effective Date (or an otherwise mutually agreed upon start date) and shall complete the Project no later than \_\_\_\_\_ (“Term”). If an extension is required to complete the Project, Virginia Tech will communicate with User, and the Parties will work together in good faith to agree upon a revised completion date.
- 3. Payment.** In consideration of Virginia Tech’s performance of the services identified in this Agreement, User shall pay Virginia Tech the fixed amount of \$ \_\_\_\_\_. Virginia Tech shall invoice User in accordance with the payment terms contained in the Project, and User shall make payment to Virginia Tech within 30 days of User’s receipt of the Virginia Tech invoice.
- 4. Transfer of Material.** User shall provide to Virginia Tech sufficient quantities of the materials identified in Exhibit A (“Material”), if any, so that Virginia Tech is able to perform the Project, and Virginia Tech will have no obligation to perform the Project absent receipt of necessary Material. User shall provide Material to Virginia Tech safely and in compliance with all applicable laws, regulations, and guidelines. Virginia Tech will not distribute or transfer Material to any third party without the prior written consent of User. Virginia Tech will keep Material under suitable containment conditions and will not use Material on human subjects. Virginia Tech will comply with all applicable laws and regulations concerning the use of Material. At the request and option of User within 90 days of completion of the Project, Virginia Tech will return to User or destroy any unused Material.
- 5. Intellectual Property.** The Parties recognize and intend that (i) the existing inventions, technologies, know-how, and intellectual property rights of User and of Virginia Tech that pre-date or are developed outside of performance of this Agreement are their separate property, respectively, and are not affected by this Agreement, and (ii) that neither Party shall have any claim or right in any such rights of the other Party as a result of this Agreement. User will retain ownership of all intellectual property rights in Material, including the original Material transferred to Virginia Tech hereunder, as well as in all derivatives, progeny, improvements, clones, and modifications of Material that are at least partially based upon or incorporate any element of the original Material, as well as the rights in any other intellectual property provided by User to Virginia Tech under this Agreement (“User IP”). Except as above, Virginia Tech will retain ownership of all methods, processes, know-how, technical information, methodologies, inventions, other technologies, and all intellectual property rights in any of the foregoing, that Virginia Tech may use or develop in the performance of the Project. No rights or obligations of any kind other than those expressly recited herein are granted to either Party or implied by this Agreement.

**6. Obligations of Confidentiality.** “Confidential Information” means all User’s proprietary information related to the Project, including but not limited to Data; Materials, Derivatives, and technical and business materials that User may deliver to Virginia Tech pursuant to this Agreement, which are stamped “Confidential,” and all orally-disclosed information where User declares such to be confidential at the time of its initial disclosure and confirms such declaration in writing within thirty (30) days of initial disclosure. For the Term, and for three years thereafter, Virginia Tech shall use Confidential Information only as necessary to perform the Project and, for the same 3-year period, Virginia Tech shall not disclose or provide Confidential Information to any third party.

**7. Exceptions to Obligations of Confidentiality.** Virginia Tech shall have no obligations of confidentiality with respect to Confidential Information, or any portion thereof, that:

- (a) As evidenced by Virginia Tech’s written records was lawfully known to Virginia Tech before disclosure by User to Virginia Tech and was received free of restrictions on disclosure or use; or
- (b) As evidenced by Virginia Tech’s written records was independently developed by Virginia Tech without reference to information or material provided by User;
- (c) Was in the public domain prior to User’s disclosure to Virginia Tech;
- (d) Enters the public domain other than by Virginia Tech’s breach of this Agreement;
- (e) Becomes known to Virginia Tech through the actions of a third party not in breach of a duty of confidence; or
- (f) Is released from obligations of confidentiality by User in writing.

**8. Disclosure Required by Law.** The provisions of Section 6 shall not restrict Virginia Tech from disclosing User’s Confidential Information to the extent required by law, regulation, or court order.

**9. Export Control.** It is understood that Virginia Tech is subject to U.S. export control laws and regulations. In the event User wishes to provide to Virginia Tech under this Agreement data or information that is controlled under U.S. export control laws or similar, User must first notify Virginia Tech of User’s intention to do so, as well as provide a non-controlled description of such data or information and its export classification. Virginia Tech will then determine whether it will accept such data or information and under what conditions, and Virginia Tech will communicate said determination back to User. User shall not provide export-controlled data or information to Virginia Tech without Virginia Tech’s prior written approval.

**10. Disclaimer of Warranties in Material.** MATERIAL IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE AND MAY HAVE HAZARDOUS PROPERTIES. USER MAKES NO WARRANTIES TO VIRGINIA TECH, EXPRESS OR IMPLIED, REGARDING MATERIAL, INCLUDING WARRANTIES OF MERCHANTABILITY OR TO FITNESS FOR A PARTICULAR PURPOSE.

**11. Disclaimer of Warranties in Performance of Project.** SYNTHESIZING AND ANALYZING MATERIALS IS A SCIENTIFIC ENDEAVOR, AND THE PARTIES ACKNOWLEDGE VIRGINIA TECH CANNOT GUARANTEE ANY PARTICULAR OUTCOME OR SPECIFIC YIELD. USER UNDERSTANDS THAT IT MAY NOT BE POSSIBLE TO SYNTHESIZE OR ANALYZE SOME MATERIALS (SAMPLES). VIRGINIA TECH MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE VALUE, UTILITY, MERCHANTABILITY, USE, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY REPORTS, RESULTS, DATA, OR OTHER

WORK PERFORMED UNDER THIS AGREEMENT. VIRGINIA TECH FURTHER MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE CONTENTS OF SUCH REPORTS, RESULTS, DATA, OR OTHER WORK PERFORMED UNDER THIS AGREEMENT DO NOT INFRINGE UPON THE PROPERTY RIGHTS OF OTHERS.

**12. Completion of Work and Rework.** The Project may be planned in phases, with reasonable stopping points in the event the Project ultimately is deemed not feasible. If the Project is phased, User and Virginia Tech's Project Manager will engage in periodic review and consultation regarding the Project and its feasibility. Once a Project phase has been initiated, User agrees to pay all fees associated therewith.

**13. NSF Reporting and Publication.** The National Science Foundation ("NSF") encourages publication of science conducted using any GlycoMIP instrument or facility. Users are encouraged to publish results (via conference or journal or website), as appropriate, and to report such publication to Virginia Tech for inclusion in NSF annual reporting. In the event of publication, any Virginia Tech staff member who contributes significant intellectual effort to the project should be included as an author or acknowledged appropriately.

Examples of acceptable acknowledgements include:

*This work was supported by GlycoMIP at Virginia Polytechnic Institute and State University, a National Science Foundation Materials Innovation Platform funded through Cooperative Agreement DMR-1933525.*

*The (samples/data/model/etc.) used in this study (was/were) provided by GlycoMIP at Virginia Polytechnic Institute and State University, a National Science Foundation Materials Innovation Platform funded through Cooperative Agreement DMR-1933525.*

*The authors wish to acknowledge the contributions of (name(s)) in the (synthesis/preparation/characterization/analysis) of (samples/date/model/etc.) provided by the GlycoMIP at Virginia Polytechnic Institute and State University, a National Science Foundation Materials Innovation Platform funded through Cooperative Agreement DMR-1933525.*

**14. Relationship of the Parties.** Virginia Tech shall perform the Project as User's independent contractor and neither Virginia Tech nor its employees are employees of User. Accordingly, neither User nor its employees may (a) participate in any Virginia Tech employee benefit plans; (b) bind Virginia Tech or assume or create any obligation or responsibility, express or implied, on Virginia Tech's behalf or in Virginia Tech's name; or (c) represent to any person or entity that User or any employee of User has any such power or authority to assume or create an obligation on Virginia Tech's behalf.

**15. Termination.** Either Party may terminate this Agreement upon sixty (60) days' written notice to the other Party. Upon termination, User shall pay Virginia Tech for all work performed under this Agreement as of the effective date of termination, as well as all costs and non-cancelable obligations incurred under this Agreement prior to the effective date of termination; but in any case, the total of such amounts will not exceed the total payment owed under this Agreement.

**16. Limitation of Liability.** Each Party is responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent provided by applicable law. Except as otherwise provided herein, the limits of Virginia Tech's liability to User for claims resulting from breach of this Agreement shall not exceed the compensation Virginia Tech has received from User under this Agreement.

**17. Indemnity.** User shall indemnify and hold harmless Virginia Tech, the Commonwealth of Virginia, and its departments, agencies, and instrumentalities, officers, employees, students, and agents (“Indemnitees”) from and against each and every claim, judgment, or liability asserted by a third party to the extent arising out of or related to (i) any breach of this Agreement by User or its employees or agents; or (ii) use by User or any third party of information or material of any kind provided by Virginia Tech to User under this Agreement; except that User shall not be responsible to Virginia Tech under this Section 17 to the extent that a claim, judgment, or liability is caused by or attributable to Virginia Tech’s negligent acts or willful misconduct.

**18. Notices.** Notices, payments, and other communications required by this Agreement may be e-mailed, sent by commercial carrier, or sent via U.S. mail to the Parties as follows:

<b>Virginia Tech Project Manager/Advocate</b>	<b>USER</b>
NAME	NAME
EMAIL	EMAIL
ADDRESS	ADDRESS

**19. Assignment.** This Agreement may not be assigned without the prior written consent of both Parties.

**20. Entire Agreement.** This Agreement represents the entire understanding of the Parties with respect to the Project, and supersedes all other agreements and representations whether oral or written. This Agreement may only be modified in a written document signed by authorized representatives of both Parties.

The Parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

<b>FOR Virginia Tech</b>	<b>FOR USER</b>
SIGNATURE	SIGNATURE
SIGNED BY	SIGNED BY
TITLE	TITLE
DATE	DATE

**Acknowledged by GlycoMIP:**

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SIGNATURE

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SIGNED BY

Maren Roman

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TITLE

GlycoMIP Director

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DATE