

TECHNICAL TESTING SERVICES AGREEMENT

This **Technical Testing Services Agreement** (the "**Agreement**") is made this **DAY** day of **MONTH YEAR** (the "**Effective Date**").

BETWEEN:

DALHOUSIE UNIVERSITY, a university with its principal place of business at 6299 South Street, PO Box 15000 Halifax, Nova Scotia, B3H 4R2, Canada ("**Dalhousie**")

- AND -

COMPANY, a body corporate, incorporated under the laws of **Jurisdiction** with its registered office at **Company Complete Address** (the "**Company**")

BACKGROUND

The Company has identified a need to conduct certain tests on **description** that: (a) require use of unique or special Dalhousie facilities which are not otherwise readily accessible; and (b) involve established, pre-existing methods of a primarily technical nature; and (c) do not require original, creative research ("Technical Tests");

Dalhousie has agreed to perform the Technical Tests in the Dalhousie **lab or facility**.

TERMS OF AGREEMENT

1. Performance of Technical Testing Services.

- a) **Technical Testing Services.** Dalhousie, through its faculty and staff, will perform the specific Technical Tests prescribed in the statement of work titled '**title of proposal**' and attached as Schedule "A", which identifies the specific testing methods and unique Dalhousie equipment/facilities to be used and the objectives to be achieved ("Services"). Dalhousie will perform the Services in accordance with standards appropriate to an institution of higher education.
- b) **Test Results.** Dalhousie will deliver to Company all observational data, measurements and other results required under the statement of work ("Test Results"). Test Results will be the property of Company. Dalhousie will retain copies of Test Results for a minimum of two years after completion of Services.
- i. Notwithstanding the provisions of Section 1.a), all files, technology, scripting, programming, coding, information, data, research, documents, photographs, materials owned by Dalhousie or in the possession of Dalhousie independent of

this Agreement and used by Dalhousie in conjunction with the Services shall continue to be the exclusive property of Dalhousie.

- ii. **No Human or Animal Testing or Research.** No testing or research involving the use of humans or animals may be undertaken by either party in the performance of this Agreement.
- iii. **No Transfer of Biological Materials.** No transfer of biological or similar materials is contemplated in the performance of the Services, any transfer of such materials and rights therein is not permitted by either party in the performance of this Agreement.
- c) **Interpretation and Analysis.** Dalhousie shall not provide consulting services or interpretation or analysis of Test Results under this agreement. Any request for consulting services or interpretation or analysis of Test Results will be the subject of a separate agreement to be negotiated in future.
- d) **Technical Contacts.** Each party appoints the following individual to serve as its technical contact during performance of Services. Each party will notify the other of any change in the technical contact in accordance with the notice requirements of this agreement.

If to Dalhousie, to:

(Dalhousie service provider information)

Dalhousie University

ADDRESS

Halifax NS

B3H 4R2

PHONE

Attention: PI NAME

If to the Company, to:

Institution

Street Address

Halifax, NS

Postal Code

Fax

Attention:

- e) **Test Materials.** The Company may furnish some materials to Dalhousie in connection with the Services ("**Company Test Materials**"). In the event that the Company

provides Dalhousie with Company Test Materials:

- i. Dalhousie shall use the Company Test Materials only for the purposes of performing the Services;
 - ii. Dalhousie will exercise reasonable care in the handling and storage of Company Test Materials but will not be liable to Company for loss any of or damage to Company Test Materials; and
 - iii. At Company's direction, Dalhousie either will (a) destroy all unused Test Materials and upon request provide Company certification of destruction; or (b) return to Company, at Company's expense and to a location within Halifax Regional Municipality, all unused Company Test Materials.
- f) **Independent Contractor Status.** Dalhousie will at all times control the manner in which the Services are performed, including the scheduling of the Technical Tests. Dalhousie will furnish the tools, equipment and materials (other than the Company Test Materials) necessary for its performance of the Services.

2. Proprietary/Confidential Information

- a) Company and Dalhousie may disclose confidential information, which shall be clearly identified as such in writing ("Confidential Information"), one to the other to facilitate work under this Agreement. Such Confidential Information shall be safeguarded and not disclosed to anyone without a "need to know" within the Company or Dalhousie. Each party shall use its best efforts to protect such Confidential Information from disclosure to third parties.
- b) The obligation to keep confidential shall however not apply to information which:
 - i. is already known to the party to which it is disclosed;
 - ii. becomes part of the public domain without breach of this Agreement;
 - iii. is independently developed without the use of or reliance upon Confidential Information received hereunder;
 - iv. is obtained from third parties which have no confidentiality obligations to the contracting parties, or;
 - v. is authorized for release by the disclosing party or is required by law to be disclosed.

3. Inventions.

- a) **Ownership.** "Inventions" means those potentially patentable discoveries, including pending patent applications and issued patents, first conceived and actually reduced to practice in performance of the Services. The parties do not anticipate that Inventions will result from Dalhousie's performance of the Services; however, if an Invention results from performance of this agreement, then:

- i. **Company Inventions.** Title to Inventions conceived through Dalhousie's access to Confidential Information provided in connection with this agreement and that are intrinsic to or derived directly from Company Confidential Information shall vest in Company.
 - ii. **Other Inventions.** Title to Inventions other than those described in Subsection 3.a)i shall vest as follows: Inventions of Dalhousie employees shall vest in Dalhousie or its employees in accordance with Dalhousie's policies; Inventions of Company's employees shall vest in Company; and the parties shall jointly own all Inventions of employees of both Dalhousie and Company.
- b) **Disclosure.** Dalhousie shall promptly notify Company of any Invention disclosure received by its Office of Commercialization and Industry Engagement and in which Company would have an ownership interest.
- c) **License Option.** For any Invention in which Dalhousie has an ownership interest, Dalhousie grants to Company a first option to negotiate a license on reasonable commercial terms. The option period will be six months, beginning on the date the Dalhousie discloses the Invention to Company.

4. Publication.

- a) **Permission To Publish.** Subject to section 1.b, Dalhousie shall not use, publish, or disclose any Test Results without first obtaining written permission from the Company.

5. Compensation

- a) **Payment Schedule.** In consideration for Dalhousie's performance of the Services, Company shall pay Dalhousie the balance of the fees for the Services in accordance with the budget contained in Schedule "B". Cheques should be made payable to Dalhousie University and forwarded to Ms. Bobbi Bowering, Financial Services, Dalhousie University, within 30 days of receipt of invoice.

6. Term and Termination

- a) **Term.** This agreement is effective on the date signed by the last of the parties to sign and will expire on **DAY** day of **MONTH**, **YEAR**.
- b) **TERMINATION FOR CONVENIENCE.** (a) Either party may terminate this agreement prior to its expiration date by providing written notice to the other party at least 3 days in advance of termination. (b) If Company terminates this agreement, then Company will promptly pay Dalhousie for Services performed, including non- cancellable obligations made by Dalhousie prior to Dalhousie's receipt of termination notice. (c) If Dalhousie terminates this agreement, Dalhousie will complete, to the extent practicable, any Services in progress when notice is received.

7. **Disclaimer of Warranties.** Dalhousie makes no representations or warranties regarding its performance under this agreement. Dalhousie disclaims all warranties of merchantability,

fitness for a particular purpose including but not limited to the use of the Test Results and non-infringement of intellectual property rights with regard to the Test Results. Dalhousie will, in no event, be liable for any loss, whether direct, consequential, incidental, or special or other similar damages arising from any defect, error or failure to perform, even if Dalhousie has been advised of the possibility of such damages. Company acknowledges that the Services are of an experimental and exploratory nature, that no particular test results can be guaranteed, and that company has been advised by Dalhousie to undertake its own due diligence with respect to all matters arising from this agreement.

- 8. Limitation of Damages/Liability to Third Parties.** Dalhousie shall not be liable for any damages, whether direct, indirect, special, incidental or consequential (including lost revenue, lost profits, loss of use or data, business interruption or other economic loss) however caused and regardless of theory of liability, arising from or related to company's use of the Test Results, even if Dalhousie was advised of the possibility of such damages. Company, and not Dalhousie, shall be responsible for third-party liabilities arising from or related to Company's use of the Test Results. Company shall indemnify, hold harmless and defend Dalhousie against any and all claims arising out the use by Company (or any third party acting on behalf of or under the authorization of the Company) of any data or the Test Results arising from the performance of the Services, or out of any use, sale or other disposition by Company (or by any third party acting on behalf or under authorization from Company) of products made through the use of data or other Test Results arising from the performance of the Services.

9. General Provisions

- a) **Publicity.** Company will not use the name of Dalhousie in any publicity without the prior written approval of the Assistant Vice-President Communications and Marketing. Dalhousie will not use the name of Company in any publicity without the prior written approval of Company.
- b) **Relationship of The Parties.** Neither party is agent, employee, legal representative, partner or joint venturer of the other. Neither party has the authority to bind the other party to any contract.
- c) **Choice of Law.** This Agreement shall be interpreted, performed, and enforced in accordance with the laws of Nova Scotia.
- d) **Severability.** If a court of competent jurisdiction finds any provision of this agreement unenforceable, such finding will not affect the validity of any other provision of this agreement and the parties will continue to perform. If this agreement cannot be performed in the absence of the provision, this agreement will terminate on the date either party receives written notice of termination from the other party.
- e) **Integration.** This agreement embodies the entire understanding of the parties and supersedes all previous or contemporaneous communications, either oral or written, between the parties relating to the subject matter of this agreement. Dalhousie will accept purchase orders or other similar payment instruments issued by Company pursuant to this agreement for payment purposes only. No such payment instruments

will be construed to modify this agreement.

- f) **Amendments.** No modification to this agreement will be effective unless confirmed in a written amendment signed by each party's authorized signatory.
- g) **Counterparts.** The parties may sign this agreement in counterparts, each of which constitutes an original and all of which together constitute the agreement. Facsimile signatures, such as in a scanned PDF, constitute original signatures for all purposes.
- h) **Assignments.** This agreement shall bind, and inure to the benefit of, the parties and any successors in interest to substantially the entire assets of the respective party. Neither party may assign this agreement without first obtaining the prior written consent of the other party, and any attempted assignment without such consent is void.
- i) **Force Majeure.** A party will be excused from performance of this agreement only to the extent that performance is prevented by conditions beyond its reasonable control including but not limited to restrictions on the ability to perform the Services as a result of the pandemic COVID-19. The party claiming excuse for delay will promptly notify the other party and will resume its performance as soon as performance is possible.
- j) **Resolution Of Disputes.** The parties will enter into good faith negotiations to resolve any disputes arising from this agreement. Resolution will be confirmed by written amendment. If the parties cannot resolve any dispute amicably through negotiation, either party may terminate this agreement with notice and pursue all other available remedies.
- k) **Survival.** All terms of this agreement that are intended to survive termination or expiration in order to be effective shall survive termination or expiration.
- l) **Notices.** Any notice given under this agreement will be in writing and will be effective upon receipt evidenced by: (a) personal delivery; (b) confirmed facsimile transmission; (c) return receipt of postage prepaid registered or certified mail; or (d) delivery confirmation by commercial overnight carrier. All communications will be sent to the addresses set forth below or to such other address designated by a party by written notice to the other party in accordance with this section:

If to Dalhousie, to:

Dalhousie University
Office of Commercialization & Industry Engagement
1344 Summer Street, Suite 207
PO Box 15000
Halifax, NS
B3H 4R2

902-494-5189 (fax)
Attention: Stephen Hartlen, Assistant Vice-President, Industry Relations

If to the Company, to:

Company
Street Address
Halifax, NS
Postal Code

Fax
Attention:

BY SIGNING BELOW, the Parties agree to be bound by the terms of this Agreement as of the Effective Date.

DALHOUSIE UNIVERSITY

COMPANY

Per: _____
Dr. Alice Aiken
Vice-President, Research & Innovation

Per: _____
Name: _____
Title: _____

Date: _____

Date: _____

RESEARCHER ACKNOWLEDGMENT

RESEARCHER 1

RESEARCHER 2

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

Date: _____

Date: _____

SCHEDULE "A"
STATEMENT OF WORK

SAMPLE

SCHEDULE "B"
BUDGET

SAMPLE