**SERVICE AGREEMENT**

**STANDARD TERMS AND CONDITIONS**

This agreement is made and entered into as of [DATE] (the “Effective Date”)

Between

**Queen’s University at Kingston** (“Queen’s”)

 and

**Company Name** (“Client”).

**NOW THEREFORE** the Client and Queen’s agree to the following terms and conditions:

1. **QUEEN’S TO PERFORM SERVICE** – Queen’s, as an independent contractor, will perform the Services as outlined in Schedule A and will use reasonable efforts to complete such Services on or before <insert date>.

The term may be extended by mutual written agreement by the same parties on the same terms or on such other terms as may be mutually agreed upon in writing.

The Services will be performed under the direction of <NAME> at Queen’s.

1. **PAYMENT –** The Clientwill pay Queen’s the service fee and other fees provided for in Schedule B attached hereto and incorporated (the “Service Fees”) in accordance with the payment provisions set forth in Schedule B.
2. **CONFIDENTIALITY** – “Confidential Information” includes any and all information of a confidential or proprietary nature that relates to the business of the Party and all of its affiliated, related and subsidiary entities, including, without limitation, administrative practices; analyses; business plans and policies and future business plans and policies; business records; business relationships including those with suppliers and others; correspondence; creations; customer lists including identities of customers and prospective customers, and their respective preferences, businesses or habits; data; designs; developments; drawings and sketches; financing and financial information; formulae; ideas; inventions; marketing notes and strategies; Personal Information, pricing and sales information; methods; processes; reports; results; systems and computer software programs; techniques; technology used by the University; trade and business secrets.

During the Term of this Agreement, either Party may disclose to the other information that constitutes Confidential Information. Each Party warrants that neither it nor any of its officers, agents, or employees shall, during the term of this Agreement or thereafter, disclose any of the other Party’s Confidential Information to any third party, including any governmental authority, without the express written consent of the disclosing Party, unless otherwise required to do so by law.

Further, each Party warrants that any Confidential Information of the other Party will only be disclosed within its own organization to facilitate the purposes of this and on a strictly need-to-know basis.

Each Party warrants that, upon the conclusion of this Agreement, or earlier if requested by the other Party, it shall promptly return to the other Party all Confidential Information in its possession whether it be in paper, electronic, digital or other form and that it shall purge all such information from all of its electronic, digital or similar document storage systems.

Each Party agrees and undertakes to notify the other of any actual, potential or threatened breach of its obligations under this section, and will take all necessary and appropriate actions to correct the breach and to restrain any further or continuing breach.

Each Party warrants that it will promptly notify the other Party, unless if it receives any third party request with respect to disclosure of or access to Confidential Information, including data access, data rectification and all similar requests, and shall not respond to any such requests unless expressly authorized to do so by the other party.

**EXCLUSION** – Any obligation to keep information confidential will cease to apply when: (i) through no fault or omission of such Party or its officers, agents, or employees, such Information becomes public knowledge, (ii) the Information is received by the recipient from a third party without duty of confidentiality; (iii) the Party is ordered by judicial or administrative process to disclose any or all of the information provided that the Party who owns the Information is first given notice of such disclosure order and has the opportunity to contest it prior to disclosure; or (iv) the other Party gives prior written consent to disclose the Information.

Section 3 shall survive the termination of this Agreement, however caused.

1. **SERVICE RESULTS** – Service Results include any and all conclusions and information on which the same are based, developed in the provision of the Service, including compilations, notes, data and reports but do not include existing intellectual property owned by Queen’s or intellectual property developed by or utilized by Queen’s in the provision of the Services. The Client acknowledges that it shall not acquire any interest in, or right to use, any such intellectual property as a result of this Agreement.
2. **OWNERSHIP and USE** – Subject to the rights of Queen’s pursuant to this Section 5 and Section 6 below, all Service Results will be the property of the Client. The Client does grant Queen’s a license to use the Service Results of, or connection to, the Client for teaching and internal research purposes.
3. **PUBLICATION** – Queen’s shall not have the right to publish the Service Results obtained during its performance of the Services outlined in this Agreement, or any part thereof, without written consent from Client.
4. **NO REPRESENTATIONS AND WARRANTIES ON SERVICE RESULTS** – Except as otherwise provided in this Agreement, Queen’s makes no representations or warranties, either express or implied, as to any matter including, without limitation, the existence or non-existence of competing technology, the condition, quality or freedom from error of the Service Results or any part thereof, or its merchantability or fitness for any particular purpose and all warranties and conditions, expressed or implied, statutory or otherwise, are hereby disclaimed. The Client assumes the risk of defects or inaccuracies in the Service Results supplied by Queen’s and Queen’s will have no liability, consequential, special, punitive, or otherwise which might arise from the use by the Client of the Service Results or any other materials delivered hereunder.
5. **TERMINATION** – Queen’s and Client shall each have the right to terminate this Agreement at any time upon thirty days’ written notice. If terminated by Client, Client shall make prompt payment to Queen’s for the Services performed including non-cancelable obligations undertaken or assumed by Queen’s before receipt of such written notice. If terminated by Queen’s, and if Schedule A includes sample analyses, which are in progress, Queen’s shall complete the sample analyses unless circumstances warrant otherwise.

Queen’s will be not be in default of its obligation to provide the Services as described or in the timeframe set out in this Agreement if it is unable to do so due to war, acts of terrorism, strikes, labour disturbances, lockout, riot, fire, flood, outside electrical failure, outside telecommunications facilities failure, computer virus, acts of God, or other cause that is similarly beyond its reasonable ability to control.

1. **INDEMNIFCATION** - The Client will indemnify, defend and hold Queen’s, its directors, trustees, officers, employees and agents harmless from and against all claims, losses, suits, damages or liability of any kind made, sustained or brought against Queen’s arising out of or in any way in connection with any injury, loss or damage arising from the use or omission to use by the Client, its officers, agents, employees, or independent contractors of such advice, technology, materials, or similar recommendations or data issued by Queen’s as a result of the Service Results. The Client agrees to maintain adequate insurance to cover its obligation of indemnification referenced above.

This Section 9 shall survive termination of this Agreement, however caused.

1. **LIMITATION OF LIABILITY** – In no event will Queen’s be liable to the Client for any breach of contract or tort or otherwise arising from or in relation to this Agreement or the matters or activities dealt with herein in excess of the aggregate amounts paid by the Client to Queen’s pursuant hereto.
2. **PUBLICITY** – The Client agrees that it will not employ the name of Queen’s or any of its officers, agents, or employees in connection with the promotion or advertisement of the Service Results, without the prior written consent of Queen’s.
3. **AMENDMENT** – This Agreement and all its schedules constitutes the entire agreement and understanding between the Parties concerning the subject matter hereof and may not be modified or amended except by written agreement of both Parties hereto.
4. **INDEPENDENT CONTRACTOR** – This Agreement is a contract for the performance of a service and Queen’s is engaged as an independent contractor; neither Queen’s, nor its officers, agents, or employees, is engaged as employee or agent of the Client, nor is there any partnership or joint venture relationship created hereby. Client undertakes that it will not make any representations, public or otherwise, to the contrary.
5. **BINDING** – The Agreement shall ensure to the benefit of and be binding on the Parties hereto and their respective successors and assigns.
6. **NOTICES** – All notices, requests, direction or other communications required or permitted herein will be in writing and will be delivered to the Parties hereto respectively as follows:

**For Client:**

**For Queen’s:**

**For Contract/Finance Matters:**

Attn:

**For Service Matters:**

Attn:

All notices, requests, direction or other communication required or permitted herein will be deemed to have been received:

 (a) If delivered personally to the party for whom intended, on the date so delivered;

 (b) If delivered by pre-paid overnight courier, 1 business day following deposit with a courier delivery service;

 (c) If delivered by regular mail, on the 5th business day following the Canada Post postmark date on the envelope, (unless any one or more of such seven 5 days falls during a postal disruption, in which case delivery will be deemed not to have been effective);

 (d) If delivered by facsimile, the business day following transmission so long as a no- error receipt is obtained from the facsimile machine used for delivery; or

 (e) If delivered by email (which must be with a delivery receipt requested), on the date it is received in the recipient’s email Inbox.

1. The Client warrants that the provisions of this Agreement do not contravene the provisions of any signed agreement between the Client and any other Party in connection with the performance of the Services.
2. **GOVERNING LAW** – The Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario, Canada and with the laws of Canada applicable therein.
3. **INTERPRETATION –** The Parties acknowledge and agree that the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and the Agreement shall be interpreted without regard to any presumption or other rule requiring interpretation of the Agreement more strongly against the Party causing it to be drafted.
4. **CHOSEN LANGUAGE**

The parties declare that they have agreed the agreement will be drafted only in English.

Les parties déclarent qu'elles ont acceptés l'accord sera rédigées en Anglais seulement.

1. **LEGAL ADVICE –** The Parties acknowledge that they have each had the opportunity to obtain independent legal advice in connection with this Agreement and in connection with the execution hereof and each of the Parties acknowledges that they have read, understand and agree with, all of the terms hereof and that they execute this Agreement voluntarily and in good faith.
2. **COUNTERPARTS –** The Parties agree that this Agreement shall be executed by the Parties on the dates, and at the places specified below, and shall be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one single agreement between the Parties.

[Signature page follows]

**IN WITNESS WHEREOF,** the Parties have executed this Agreement on the Effective Date first above written.

**ON BEHALF OF QUEEN’S UNIVERSITY AT KINGSTON**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Name:Title: |  | Date |

**Read and Understood**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Name: |  | Date |

**ON BEHALF OF [COMPANY NAME]**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| <insert name and title> |  | Date |

**SCHEDULE A**

**THE SERVICE**

Queen’s reserves the right to make changes to the specification of the Services if required to conform to applicable safety, statutory or regulatory requirements or which do not materially affect the quality or performance of the Services.

Details of Services Required

Delivery Date and Time

What information Queen’s will be sending the Client

Note: The Service does not include the provision of improvements, additions, or changes to any information, product or technique which is the subject of the Service or the provision of solutions to problems identified in such information, product or techniques as a result of the provision of the Service.

**SCHEDULE B**

**PAYMENT**

**Service Fee**s

The Client will pay Queen’s the following amount in fulfillment of the contract:

* $XXX
* Plus HST (Queens to confirm applicability)

**Invoicing**

Queen’s shall invoice the Client on a monthly basis. Invoices shall be sent to: TBD

**Payment**

Client shall pay the amounts due within 30 days of receipt of Invoice. Cheques will be made payable to Queen’s University and forwarded to the attention of: TBD