
UNIVERSITY OF GUELPH
GFIC MASTER SERVICES AGREEMENT TERMS AND CONDITIONS

GFIC STANDARD AGREEMENT TERMS AND CONDITIONS

The University of Guelph (“University”) operates a unit known as Guelph Food Innovation Centre (“GFIC”) which offers services to the food industry (“Services”). These Terms and Conditions apply to and are part of any agreement for such Services by GFIC (“Service Agreements”).

1. DEFINITIONS AND INTERPRETATION

- 1.1 Definitions. Certain capitalized terms as used in these Terms and Conditions are set forth in Schedule A. Other capitalized terms used in these Terms and Conditions are defined in the context in which they are used and will have the meanings indicated therein.
- 1.2 Currency. Except as otherwise specifically provided in these Terms and Conditions, all references to money refer to Canadian funds.
- 1.3 Time. Time will be of the essence in these Terms and Conditions.
- 1.4 Priority of Documents. In the event of any conflict or inconsistency between the provisions of any of the following documents, then unless the Parties expressly agree otherwise, the following descending order of priority will apply, to the extent of such conflict or inconsistency:
- (a) the applicable Change Order (to the extent it expressly states that it is intended to amend these Terms and Conditions and identifies the specific amendments), in reverse chronological order;
 - (b) the applicable Service Agreements, where the applicable Service Agreement clearly contemplates the intention of deviating from the provisions of these Terms and Conditions;
 - (c) these Terms and Conditions, excluding the Schedules, Service Agreements, and Change Orders; and
 - (d) the Schedules, with equal priority.

2. SERVICES

- 2.1 Performance of Services. Subject to these Terms and Conditions and the applicable Service Agreement, University agrees to use reasonable efforts to provide the Services and Deliverables described in any Service Agreement entered into by the Parties. No Service Agreement shall be effective until signed by authorized Representatives from both Parties. These Terms and Conditions shall constitute a part of each executed Service Agreement.
- 2.2 Equipment. All materials, supplies, and equipment purchased for the Services and installed at the University using Fees provided under this Agreement shall remain the property of the University after completion of the Services.
- 2.3 No Sale of Samples. Company acknowledges and agrees that the purpose of any samples generated by University in providing the Services is to evaluate the Deliverables only, and that the samples cannot be re-sold or used for any purpose other than providing such

samples to potential customers, partners, or distributors of Company, free of charge. Unless the University issues a certificate that a food sample is fit for human consumption, the sample must be treated as a laboratory sample that is not fit for human consumption.

- 2.4 Information, Feedback, and Resources. Company will provide all reasonable information, feedback, facilities, services, and resources required to allow University to provide the Services. University will not be responsible for any error, omission, missed deadline, or damages caused by: (i) any inaccuracy with the information provided by Company; (ii) a failure by Company to provide required information or resources; and/or (iii) delays in performance caused by acts or omissions of Company.
- 2.5 Compliance with Applicable Law. Each Party will comply with all Applicable Laws in exercising all of its rights, powers, or authorities and in performing all of its obligations, duties, covenants, and responsibilities under this Agreement. Each Party will obtain all necessary approvals (regulatory or otherwise), licenses, and permits applicable to its business and its performance of its rights and obligations under this Agreement. Company shall be responsible for obtaining all necessary licenses, authorizations, and consents for the materials and content that it provides to University. Each Party will cooperate with the other to enable the other Party to comply with laws applicable to it.
- 2.6 Third Party Use of Services. Company may not, except as expressly permitted in these Terms and Conditions or in writing by University: (i) authorize a third-party to use, copy, or modify the Services, the Deliverables, or University's Confidential Information; or (ii) remove the copyright and other proprietary notices and legends placed on the Services, the Deliverables, or University Confidential Information.
- 2.7 Compliance with University Policies. At all times during the Term, Company will cooperate and assist, and will cause all other Company Personnel to cooperate and assist, the University to comply with the University Policies.
- 2.8 Non-Solicitation. During the Term of this Agreement or any Service Agreement Term, and for a period of two (2) years thereafter, Company shall not, without the prior written consent of the University, directly or indirectly: (i) employ or retain as an independent contractor any employee, staff, or contractor of the University with whom the Company had contact with respect to the Services prior to the termination of the Agreement or the applicable Service Agreement; or (ii) solicit or attempt to induce any such person to leave their employment or to terminate that person's contract with the University.
- 2.9 Subcontractors. University shall have the right to subcontract the Services provided under this Agreement to third parties (e.g. contract employees), provided that University remains fully responsible and liable for the acts or omissions of such subcontractors.
- 2.10 Company Material.
- (a) Company is to furnish University with samples, proprietary ingredients, generic ingredients as identified by the University, packaging and competitive products to be tested or used in the performance of the Services ("**Company Material**"); such Company Material may be identified in the applicable Service Agreement. Company shall provide University, at no charge, with a quantity of Company

Material sufficient to perform the Services. Company assumes all costs and risks of transporting Company Material to and from the University and shall be responsible for obtaining any required permits and approvals with respect to such Company Material.

- (b) Company shall disclose the following in the applicable Service Agreement: (i) whether Company Material is a hazardous substance; (ii) any known hazards and risks associated with Company Material; and (iii) whether Company Material is export controlled. University may, at its sole discretion, accept or reject delivery of Company Material that is a hazardous substance or export controlled.
- (c) In the event University accepts delivery of Company Material that is a hazardous substance, Company shall provide material data safety sheets, labeled (content and safeguards) Company Material, other hazard information, and appropriate shipping papers, permits, and notifications in accordance with Applicable Laws, sufficient to permit reasonable and safe use and operation of Company Material.
- (d) In the event University accepts delivery of Company Material that is export controlled, the burden shall be on Company to make the export controlled materials available only to eligible persons as designated by University, or to obtain license or approval from the relevant agency, or to invoke an available exception, exemption, or exclusion.
- (e) In the event University rejects the delivery of Company Material that is a hazardous substance or export controlled, such rejection by University shall not constitute a breach of this Agreement. University will exercise reasonable care in the handling and storage of Company Material but will not be liable to Company for any loss or damage to Company Material.
- (f) Upon completion of the Services or termination of this Agreement, University will either destroy or return to Company all unused Company Material in accordance with Company's instructions. University may retain a sample of Company Material if needed to evidence its fulfillment of its contractual obligations, or if required by Applicable Laws. Nothing in this Agreement constitutes a transfer of ownership rights, or any other rights in the Company Material to University.

3. TERM AND TERMINATION

- 3.1 Service Agreement Term. Each Service Agreement will set out the Service Agreement effective date, the term, and any terms and conditions relating to the renewal of the Service Agreement (the "**Service Agreement Term**").
- 3.2 Termination for Convenience. Either Party may, without prejudice to any other rights or remedies it may possess, terminate this Agreement, in whole or in part, for convenience, upon thirty (30) days' written notice to the other Party, by identifying the scope of the termination and specifying the date upon which such termination will be effective, for any reason.
- 3.3 Termination for Breach. Either Party may terminate this Agreement in whole or in part for cause, effective upon notice:

- (a) if the other Party commits a breach of this Agreement, which breach is not cured within thirty (30) days after the receipt of a notice of such breach; or
- (b) if (i) the other Party makes a general assignment for the benefit of its creditors or a proposal or arrangement under any applicable bankruptcy or insolvency legislation (or gives notice of its intent to make such a proposal); (ii) a petition is filed against the other Party under any applicable bankruptcy or insolvency legislation, and the other Party is not disputing such petition diligently and in good faith within ten (10) Business Days of such petition being received; (iii) the other Party is declared or adjudicated insolvent or bankrupt; (iv) a liquidator, trustee in bankruptcy, custodian, receiver, and manager or any other officer with similar powers is appointed for the other Party; or (v) the other Party proposes a compromise or arrangement or institutes proceedings to be adjudged bankrupt or insolvent or consents to the institution of such appointment or proceedings or admits in writing its inability to pay debts generally as they become due and payable.

3.4 Effect of Termination. Upon termination of this Agreement for any reason:

- (a) Company will immediately pay to University all amounts owed to University pursuant to Section 4 hereof, up to the effective date of termination, and any other costs directly resulting from such termination, including non-cancellable commitments; and
- (b) upon request, each Party will immediately cease all use of and will return to the other Party within thirty (30) Business Days all Confidential Information of such other Party and all copies, portions, and abstracts thereof, that are in its possession or under its control, other than any Deliverables. University will deliver to Company such portion of the Deliverables that are complete.

3.5 Survival. Sections titled “Company Material”, “Confidentiality”, “Intellectual Property”, “Disclaimer of Warranties”, “Limitation of Liability”, “Indemnification”, “Applicable Law”, and “Disputes” shall survive the termination of this Agreement for any reason.

4. FEES AND INVOICING

4.1 Fees. Unless otherwise agreed in an applicable Service Agreement, Company will pay University the fees for the performance of the Services and Deliverables provided under a Service Agreement (the “**Fees**”), in accordance with these Terms and Conditions and the applicable Service Agreement. Company is not entitled to any refund of the Fees, provided that the Services and Deliverables are performed in accordance with these Terms and Conditions and the applicable Service Agreement. If Deliverables are provided to Company prior to the payment of the Fees, this in no way constitutes a waiver of any rights University may have with respect to the outstanding balance of any Fees.

4.2 Expenses. Company will reimburse the University for any additional, reasonable, out-of-pocket expenses incurred in the course of the performance of the Services such as the purchase of any Company Materials not provided by the Company (“**Expenses**”). Categories of Expenses will be supported by receipts.

- 4.3 Invoicing. Unless otherwise agreed in an applicable Service Agreement, University shall invoice Company. In the event of any dispute with regard to a portion of an invoice, the undisputed portion shall be paid as provided herein. Each invoice will include the information reasonably required by Company. Amounts invoiced to Company shall be payable to University within thirty (30) days of the date of Company's receipt of an invoice from University, in accordance with the payment methods set out in the invoice. For Services provided and invoiced in accordance with this Agreement, Company shall pay all value-added taxes as required by Applicable Law.

5. CHANGE PROCESS

- 5.1 Changes. All changes, modifications, additions, or deletions to, in, or from the nature or scope of the Services, or changes to the manner of delivery of the Services (each a "**Change**"), will be initiated, implemented, and documented in accordance with the provisions of the contract change process (the "**Change Process**") set out in this section. No Change will be implemented by Company except in accordance with the provisions of a Change Order executed by the Parties.

5.2 Requests for Changes.

- (a) Company or University may request a Change by delivering to the other Party a written document (a "**Change Request**") describing the proposed Change, the reason for the proposed Change, and any specific requirements of the Change. If a Change Request is acceptable to the receiving Party, then the Parties shall set out and describe, in reasonable and necessary written detail, such Change in the form of an amendment to this Agreement that is to be agreed to and which shall be executed and delivered by authorized signing officer(s) on behalf of each Party (a "**Change Order**") to authorize such Change. Change Orders that are executed by the authorized Representative(s) of each Party shall be deemed amendments to this Agreement in accordance with Section 15.6 and the Parties shall implement and perform such Change in accordance with the terms and conditions of such Change Order.
- (b) Company agrees that it will not be entitled to reject any Change Request delivered by University for a Change that is required by University to comply with Applicable Law.

6. INTELLECTUAL PROPERTY

- 6.1 University IP. As between the Parties, the University is and will be the exclusive owner of all of the following, including all Intellectual Property Rights and proprietary rights therein (the "**University IP**"):
- (a) all University Confidential Information (including University Personal Information and other University Information);

- (b) all information, know-how (including expertise, knowledge, skill, techniques, methods, procedures, ideas, concepts, experience), technology, or other Intellectual Property of any kind that has been acquired or developed by the University (whether alone or jointly with one or more Persons) or acquired or developed for, or licensed to, the University by another Person, whether such activities occurred prior to or after the Effective Date, independent of, or in connection with this Agreement or the Services;
- (c) all information, know-how (including expertise, knowledge, skill, techniques, methods, procedures, ideas, concepts, experience), technology, or other Intellectual Property developed as a result of the Services, or gained in the pursuit of providing the Services, including methods, techniques, computer codes, or processes, that are improved or developed by University Personnel or University students, in accordance with University Policies and collective agreements, for the purposes of performing the Services; and
- (d) any and all Modifications to any of the foregoing.

All right, title, and interest, including all Intellectual Property Rights, in the University IP will vest in the University, immediately upon creation and regardless of the state of completion of such University IP. Except otherwise expressly set out in this Agreement, Company will acquire no rights to any University IP. Company will permit the University to always have full, free, and unfettered access to the University IP in its custody or control, even if there is a dispute between the Parties.

6.2 Company IP. As between the Parties, Company is and will be the exclusive owner of all of the following, including all Intellectual Property Rights and proprietary rights therein (the “**Company IP**”):

- (a) all Company Confidential Information;
- (b) all information, know-how (including expertise, knowledge, skill, techniques, methods, procedures, ideas, concepts, experience), technology, or other Intellectual Property of any kind that has been acquired or developed by Company (whether alone or jointly with one or more Persons) or acquired or developed for, or licensed to, Company by another Person, whether such activities occurred prior to or after the Effective Date, independent of, or in connection with this Agreement or the Services;
- (c) all Company Material; and
- (d) any and all Modifications to any of the foregoing.

All right, title, and interest, including all Intellectual Property Rights, in Company IP will vest in Company, immediately upon creation and regardless of the state of completion of such Company IP. Except otherwise expressly set out in this Agreement, University will acquire no rights to any Company IP. University will permit Company to always have full, free, and unfettered access to Company IP in its custody or control, even if there is a dispute between the Parties.

- 6.3 Ownership of Deliverables. The University agrees that all right, title, and interest in and to all Intellectual Property Rights of the University in Deliverables provided under an applicable Service Agreement shall be transferred to and vest in the Company upon full payment of all applicable Fees for the creation of such Deliverables, with no set-off.
- 6.4 Nothing contained in this Agreement or any Service Agreement shall restrict a Party from using any ideas, concepts, know-how, methodologies, processes, technologies, algorithms, or techniques retained in the unaided memory of such Party's Personnel.

7. TRADE-MARKS

- 7.1 University Marks. Company may not use at any time the University's name, logo, or crest, or any Trade-mark owned by the University, without explicit prior written consent from the University. Company may not at any time, directly or indirectly, communicate with media, social media, or any other third parties any information in relation to this Agreement, including the Services or the Deliverables, for the purpose of advertising, marketing, or public relations, without first obtaining the explicit prior written consent from the University. Any use of the University Marks will be in accordance with applicable University Policies.
- 7.2 Company Marks. Except as may otherwise be expressly required pursuant to Applicable Law, University will neither: (i) use or display any Company Marks together or in conjunction with any University Marks; nor (ii) use or display any Company Marks in any client-facing communications in connection with the Services, without explicit prior written consent from Company.
- 7.3 No Rights. Neither this Agreement nor the relationship of the Parties under this Agreement confers upon Company any interest in University Marks except the right to depict the Trade-marks in accordance with the terms of this Agreement, and Company agrees not to depict University Marks in any manner calculated to represent that Company is the owner of University Marks. Company agrees during and after the Term not to dispute or contest, directly or indirectly, the validity of the registration of University Marks or otherwise attempt to dilute the value of the goodwill attached to the University Marks, nor to counsel, procure, or assist any other Person to do the same.
- 7.4 Adverse Impact Notice. Company will provide the University with prior notice (which need not be in writing), if possible, of events with respect to Company and its Affiliates that Company anticipates will become public and could reasonably be expected to adversely impact the University or the relationship between the Parties, or be covered negatively in any media. Company's obligation to provide such notice is subject to the provisions of Applicable Laws, including securities laws applicable to Company and its Affiliates, and to the confidentiality obligations of Company and its Affiliates.

8. PRIVACY

- 8.1 Company acknowledges that the University is an educational institution to which the *Freedom of Information and Protection of Privacy Act (Ontario)* ("**FIPPA**") applies and agrees to cooperate with the University from time to time with respect to the University's compliance with *FIPPA* and any regulations passed thereunder.

- 8.2 Company agrees not to disclose to the University any personal information it collects or uses in any manner related to this Agreement unless authorized to do so by the University and in compliance with any conditions identified by the University from time to time.

9. CONFIDENTIALITY

9.1 In connection with this Agreement, “**Confidential Information**” means all information disclosed by or on behalf of a Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”), in whatsoever form or media, whether communicated visually, orally, electronically, in writing or otherwise, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure. Confidential Information includes, but is not limited to, any data or information that relates to either Party or any of either Party's existing or contemplated business activities, technology, developments, software, methods, trade secrets, and clients, where such data or information is not otherwise publicly available.

9.2 Exceptions to Obligation of Confidentiality. The obligations applicable to Confidential Information in this Section 9 will not apply to any Confidential Information of the Disclosing Party to the extent that the Receiving Party can reasonably demonstrate that such Confidential Information:

- (a) is disclosed (without confidentiality obligations) with the prior approval of the Disclosing Party;
- (b) is or becomes publicly known or readily ascertainable by the public, and through no wrongful act of the Receiving Party;
- (c) is received by the Receiving Party on a non-confidential basis from a third-party without, to the best of Receiving Party's knowledge, breaching an obligation owed to any other person, if the Receiving Party is not restricted by the third-party from disclosing such Confidential Information;
- (d) that Receiving Party can show, by documentary and competent evidence, to have been developed independently by or for the Receiving Party without using the Confidential Information; or
- (e) is disclosed to a third-party by the Disclosing Party without similar restrictions on disclosure.

9.3 Limited Disclosure and Use of Confidential Information.

- (a) For the Term and seven (7) years thereafter, the Receiving Party will not use or disclose the Disclosing Party's Confidential Information, without the prior written consent of the Disclosing Party, except to the extent necessary to allow its Personnel with a need to know the information to perform the obligations or to exercise or enforce the rights of the Receiving Party under this Agreement, provided such Persons have been informed of the confidential nature of the Confidential Information and are required to maintain its confidentiality in accordance with this Agreement.

- (b) Notwithstanding the foregoing or any other provision of this Agreement, each Party may retain electronic copies of the other Party's Confidential Information that have been made in the normal course of business, which shall continue to be subject to the obligations of confidentiality set out in this Section 9.

9.4 Disclosure Compelled by Law. A Receiving Party will not be in breach of this Agreement for disclosing any Confidential Information to the extent that disclosure is required to satisfy Applicable Laws, provided that the Receiving Party required to make such disclosure (the "**Compelled Party**"):

- (a) promptly upon receiving any such request and within a reasonable time prior to disclosure (if possible), notifies the Disclosing Party of the terms and circumstances of the requested disclosure;
- (b) consults with the Disclosing Party regarding the nature and scope of such request and the response or other position that the Compelled Party intends to take with respect to such request;
- (c) does not obstruct or interfere with, and to the extent practical, permits the Disclosing Party to obtain, a protective order or other remedy to prevent, object to, enjoin, narrow the scope of, or otherwise contest the requested disclosure;
- (d) if the Disclosing Party is unable to obtain a protective order or other similar remedy within a time period that is appropriate in the circumstances, then the Compelled Party will only disclose such of the Confidential Information that it is legally obligated to disclose; and
- (e) makes and reasonably pursues a request, which is reasonable and customary in the circumstances, to the applicable Governmental Authority, for confidential treatment of the information to be disclosed pursuant to such Applicable Laws.

9.5 Return, Destruction, and Retention of Confidential Information. Upon expiry or any termination of this Agreement, or upon the request of the Disclosing Party, the Receiving Party shall return or securely destroy (at Disclosing Party's option) all documents and other tangible objects containing or representing the Disclosing Party's Confidential Information and all copies thereof that are in the possession of the Receiving Party. Upon the request of the Disclosing Party, the Receiving Party shall provide a certificate of destruction of all destroyed documents

9.6 Injunctive Relief. Each Party acknowledges that its failure to comply with the provisions of this Section 9 may cause irreparable harm to the other Party which cannot be adequately compensated for in damages, and accordingly acknowledges that the other Party will be entitled to claim, subject to Applicable Law, in addition to any other remedies available to it, interlocutory and permanent injunctive relief to restrain any anticipated, present, or continuing breach of this Section 9.

10. REPRESENTATIONS AND WARRANTIES

- 10.1 Each Party represents, warrants, and covenants to the other Party as follows, and acknowledges that the other Party is relying on the following representations, warranties, and covenants in entering into this Agreement.
- (a) Validly Existing. It is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation, and has all requisite corporate power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted, and is duly qualified to do business in all jurisdictions in which qualification is necessary in order to transact its business and perform its obligations set out in this Agreement.
 - (b) Authority. It has the necessary corporate power, authority, and capacity to perform its obligations under this Agreement, and its entry into this Agreement has been duly authorized by all necessary corporate action on behalf of it.
 - (c) Applicable Laws. It shall comply with all Applicable Laws, statutes, ordinances, by-laws, and regulations applicable to it in its capacity as either a recipient of the Services or as a provider of the Services.
 - (d) Required Consents. It has obtained all necessary and required consents from third parties as required to enter into and participate in this Agreement, including granting any licenses pursuant to this Agreement.
- 10.2 Disclaimer. University will carry out the Services in accordance with the terms of this Agreement and in conformance to generally accepted practices. Company acknowledges that the Services are of an experimental and exploratory nature and that no particular results can be guaranteed. The Services and Deliverables are provided “as is”, and University makes no representations or warranties of any kind, whether express or implied, as to any matter whatsoever including, without limitation, the condition, merchantability, fitness for a particular purpose, quality, or freedom from error of the Services or Deliverables or any part thereof.

11. INDEMNIFICATION

- 11.1 Company agrees to indemnify, defend, and hold harmless the University and its governors, senators, faculty, employees, officers, agents, and students (each, a “**University Indemnitee**”) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a “**Claim**,” and collectively, the “**Claims**”), including reasonable legal fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any University Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of the Company, its officers, directors, agents, employees, and contractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to:
- (a) bodily injury (including death) or damage to tangible personal or real property;

- (b) fraud, theft (including misappropriation of funds), other crime, bad faith, wilful misconduct, or gross negligence of Company in connection with this Agreement;
- (c) the failure of Company to comply with Applicable Laws;
- (d) any claim arising out of Company's manufacturing processes that negatively impact food quality or food safety;
- (e) any claim caused by or related to the samples, arising out of Company's use, sale, or distribution of the samples in violation of Section 2.3;
- (f) any claim arising from the sale or distribution by Company of a commercial product based upon the Services or Deliverables, or materials manufactured by Company in the University's facilities (or any party acting on behalf of or under authorization from Company);
- (g) any breach of Company's confidentiality or privacy representations, warranties, or covenants under this Agreement;
- (h) all loss or damage resulting directly or indirectly from Company's use of the Services or Deliverables, or any information contained in the Deliverables;
- (i) any material misrepresentation or breach of any representation or warranty set forth in this Agreement; or
- (j) any material breach of any covenant set forth in this Agreement not expressly mentioned above;

provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of a University Indemnitee.

11.2 University agrees to indemnify, defend, and hold harmless Company and its directors, officers, employees, contractors, and agents (each, a "**Company Indemnitee**") from and against any Claims, including reasonable legal fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Company Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of University, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to:

- (a) bodily injury (including death) or damage to tangible personal or real property;
- (b) fraud, theft (including misappropriation of funds), other crime, bad faith, wilful misconduct, or gross negligence of University in connection with this Agreement;
- (c) the failure of University to comply with Applicable Laws;
- (d) any breach of the University's confidentiality or privacy representations, warranties, or covenants under this Agreement;

- (e) any material misrepresentation or breach of any representation or warranty set forth in this Agreement; or
- (f) any material breach of any covenant set forth in this Agreement not expressly mentioned above;

provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of a Company Indemnitee.

- 11.3 To receive the foregoing indemnities, the Indemnitee must: (i) promptly notify the indemnifying Party in writing of the Claim; (ii) grant the indemnifying Party sole control of the defence and/or settlement of the Claim; and (iii) provide the indemnifying Party, at the indemnifying Party's expense, with all assistance, information, and authority reasonably required for the defence and/or settlement of the Claim.
- 11.4 For the purposes of this Section 11, non-party Indemnitees are third-party beneficiaries of this Agreement in accordance with its terms. Other than as provided for in this provision, this Agreement is for the sole benefit of the signatories hereto and their permitted successors and assigns. Nothing, express or implied, in this Agreement is intended to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor non-party Indemnitees.

12. LIMITATION OF LIABILITY

- 12.1 In no event, whether in contract or tort (including negligence), as a result of breach of warranty, strict liability, indemnity, or under any other theory of liability whatsoever, shall either Party be liable for: (i) any indirect, consequential, incidental, exemplary, punitive or special damages; or (ii) any damages, whether direct, indirect, consequential, incidental, exemplary, punitive, or special, characterized as loss of revenue, loss of profits, loss of reputation, loss of use of revenue, loss of savings, or losses by reason of the cost of capital, even if such Party has been advised of the possibility of such damages in advance.
- 12.2 The maximum aggregate liability of either Party under this Agreement in contract or tort (including negligence), as a result of breach of warranty, strict liability, indemnity, or under any other theory of liability whatsoever, shall be limited to direct damages in an amount equal to all Fees paid by University under this Agreement and any SOW in the twelve (12) months immediately preceding the date of the act or omission or circumstance giving rise to the liability hereunder.
- 12.3 The limitations of liability set out in Subsections 12.1 and 12.2 do not apply to:
 - (a) losses resulting from gross negligence or wilful misconduct;
 - (b) claims arising in respect of personal injury including death and property damage;
 - (c) infringement claims with respect to the Intellectual Property Rights of a third-party;
 - (d) breach of the provisions of this Agreement dealing with security, confidentiality, and privacy; or

(e) either Party's indemnification obligations.

12.4 Each Party has a duty to mitigate damages suffered by it.

12.5 The remedies set forth in Section 11 and Section 12 are the sole and exclusive remedies available to Company in respect of any loss, liability, damage, cost, or expense resulting from a breach of this Agreement by University.

13. INSURANCE

13.1 Each Party will provide, maintain, and pay for, any insurance which it is required by Applicable Law to carry, or which it considers necessary to cover the risks under this Agreement, in its sole discretion.

14. EXPORT

14.1 Except as expressly agreed to in writing by a duly authorized University Representative, and for which University has made specific arrangements, University shall not take receipt of export controlled information or materials. Company agrees that it will not provide or make accessible to University any export controlled materials (including, without limitation, equipment, information, and/or data) without first informing University in writing of the export controlled nature of the materials and obtaining from University its prior written consent, through a duly authorized University Representative, to accept such materials as well as any specific instructions regarding the mechanism pursuant to which such materials should be passed to University.

15. GENERAL PROVISIONS

15.1 Independent Contractors. For all purposes hereof and in the performance of its obligations under this Agreement, the University is and shall remain an independent contractor and nothing in this Agreement or in a SOW shall be deemed or construed to create a joint venture, agency, or partnership relationship between University and Company. Nothing herein shall be deemed or construed to create an employment relationship between Company and any employee, agent, or independent contractor of University. Neither Party shall have any authority to insure any obligations on behalf of the other Party or to make any promise, representation, or contract of any nature on behalf of the other Party.

15.2 Assignment. This Agreement shall bind and enure to the benefit of University and Company and their respective successors and permitted assigns. Neither Party may assign this Agreement in whole or in part, including any SOW, without the prior written consent of the other Party, not to be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement to a purchaser of all or substantially all of its assets or shares without consent of the other Party.

15.3 Force Majeure. The Parties will be excused from the consequences of any breach of this Agreement if and to the extent that such breach was caused in whole or in part by a Force Majeure Event, provided that (i) the affected Party will not in any material way have caused or contributed to such Force Majeure Event; and (ii) the Force Majeure Event could not

have been prevented by reasonable and ordinary precautions (as would be employed by a reasonable person in the position of the affected Party).

- 15.4 Right to Disclose Risks. University has the right and the obligation to publicly disclose information about (i) immediate or near-term risks to research participants or the general public; or (ii) threats to the public interest, that become known in the course of performing the Services. This information will be disclosed to Company and/or any pertinent Governmental Authorities prior to public disclosure.
- 15.5 Entire Agreement. The Service Agreement, these Terms and Conditions, all Schedules and Annexes hereto, and any written amendments made in accordance with these Terms and Conditions constitute the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements, negotiations, understandings, and discussions, whether written or oral, of the Parties. There are no representations, warranties, or conditions including any that may be implied by statute, law, or equity, except as specifically set out in this Agreement.
- 15.6 Amendments. No modification or amendment of this Agreement will be binding unless made by Change Order or other mutual written agreement that: (i) is executed in writing by the duly authorized Representatives of all Parties; and (ii) expressly states that it is intended to modify or amend this Agreement.
- 15.7 Severability. If any provision contained in this Agreement or its application to any Person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected, and each provision of this Agreement will be separately valid and enforceable to the fullest extent permitted by law.
- 15.8 Waiver. No waiver of any default, breach, or non-compliance under this Agreement will be effective unless in writing and signed by the Party to be bound by the waiver.
- 15.9 Notices. Any notice required or permitted to be given to any Party shall be in writing and shall be delivered to the Party's representatives identified in the Service Agreement.

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, or sent before 4:30 p.m. (Eastern Time) on such day.

Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided, however, that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

Each Party may change its particulars respecting notice by issuing notice to the other Party in the manner described in this section.

- 15.10 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any Person (other than the Parties and their successors and permitted assigns), and the indemnified parties who are expressly indemnified pursuant to the provisions of this Agreement, any rights, benefits, or remedies of any kind or character whatsoever, and no Person will be deemed to be a third-party beneficiary under or by reason of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and construed in all respects in accordance with the laws of the province of Ontario and the laws of Canada applicable therein. This Agreement shall be treated, in all respects, as an Ontario contract. Each Party consents and attorns to the exclusive jurisdiction of the courts located in Toronto, Ontario. Each Party hereby irrevocably waives, to the fullest extent permitted by law, all rights to trial by jury in any action, proceeding, or counterclaim, whether in contract, statute, tort (such as negligence), or otherwise, relating to this Agreement.
- 15.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed in original, faxed, or electronic form and the Parties adopt any signatures so received as original signatures of the Parties; provided, however, that any Party providing its signature in such manner will promptly forward to the other Party an original of the signed copy of this Agreement.

SCHEDULE A DEFINITIONS

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person will be deemed to “**control**” another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term “**controlled**” will have a similar meaning.

“**Agreement**” means the Service Agreement, these Terms and Conditions, all Schedules and Annexes hereto, and any written amendments made in accordance with these Terms and Conditions as amended, restated, or supplemented from time to time.

“**Applicable Law**” means all applicable laws, including: (a) any constitution, treaty, statute, regulation, code (including building codes), ordinance, directive, principle of common law, rule, by-law (including municipal by-law), order, ruling, judgment, injunction, award, decree, or other requirement (including a requirement arising at common law) having the force of law of any Governmental Authority; or (b) any policy, practice, protocol, directive, standard, guideline, or other requirement of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law.

“**Business Day**” means a day other than Saturday, Sunday, or a statutory holiday in Guelph, Ontario, commencing at 8:30 a.m. and ending at 4:30 p.m., Eastern time, on any such day.

“**Change**” has the meaning given to it in Section 5.1.

“**Change Order**” means a document setting out the particulars of a Change that is agreed to by the Parties in writing in accordance with the Change Process, which comprises a Change Request.

“**Change Process**” has the meaning given to it in Section 5.1.

“**Change Request**” has the meaning given to it in Section 5.2.

“**Claim**” has the meaning given to it in Section 11.

“**Company IP**” has the meaning given to it in Section 6.2.

“**Company Mark**” means the name and Trade-Marks of Company.

“**Company Material**” has the meaning given to it in Section 2.10.

“**Compelled Party**” has the meaning given to it in Section 9.4.

“**Confidential Information**” has the meaning given to it in Section 9.1.

“**Deliverables**” means all data, materials, work product, and deliverables to be developed or delivered by the University in connection with the Services hereunder as set forth in an applicable Service Agreement.

“**Disclosing Party**” means the Party disclosing its Confidential Information to the other Party.

“**Effective Date**” has the meaning given to it on the first page of this Agreement.

“Fees” means the amounts payable in consideration of the Services as set out in an applicable Service Agreement.

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31, s 1.

“Force Majeure Event” means the occurrence of an event or circumstance beyond the reasonable control of a Party. Force Majeure Events will include, without limitation: (i) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (ii) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion, or sabotage; (iii) acts of federal, state, provincial, local or foreign governmental authorities, or courts; (iv) epidemics, pandemics, quarantine restrictions; (v) labor disputes, lockouts, strikes, or other industrial action, whether direct or indirect and whether lawful or unlawful; (vi) failures or fluctuations in electrical power or telecommunications service or equipment; (vii) delays caused by shortage or inability to acquire sourcing ingredients, equipment, packaging, and packaging with respect to the Services; and (viii) delays caused by the other Party or third-party non performance.

“Governmental Authority” means: (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal, local, or other political jurisdiction (whether administrative, legislative, executive, or otherwise); (b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, commission, board, or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial, or administrative powers or functions of, or pertaining to, government; and (c) any court, commission, individual, arbitrator, arbitration panel, or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative, or similar functions; in each case, whether now or in the future constituted or existing and having or purporting to have jurisdiction over a Party, any aspect of the performance of this Agreement, the Services, or the business that is the subject of the Services.

“Intellectual Property” means discoveries, research, developments, designs, improvements, innovations, inventions, software, computer programs and code of all types, layouts, interfaces, applications, tools, databases, hardware, methods, concepts, processes, works subject to copyright, Trade-marks, and other technologies, works and creations now existing or developed in the future, whether or not registered or registrable, patentable or non-patentable, or confidential or non-confidential.

“Intellectual Property Rights” means, in connection with a specified subject matter, on a worldwide basis: (a) all registered or unregistered trade-marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and (b) all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration, or right.

“Modify” means to add to, enhance, adapt, reduce, change, replace, update, upgrade, create fixes or enhancements for, revise, transform or improve, or to develop or create derivative works, and the term **“Modification”** has a corresponding meaning.

“Parties” means Company and University, and **“Party”** means either Company or University.

“Person(s)” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company, or corporation with or without share capital, unincorporated

association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority, or other entity however designated or constituted.

“Personnel” means, in respect of any Party, the directors, officers, employees, advisors, contractors, agents, and representatives of such Party.

“Receiving Party” means the Party receiving Confidential Information from the other Party.

“Representative” means: (a) with respect to Company, a director, officer, employee, individual independent contractor, agent, solicitor, accountant, or other advisor or representative of Company; and (b) with respect to the University, an employee, individual independent contractor, agent, solicitor, accountant, or other advisor or representative of the University.

“Services” means, collectively, all of the functions, responsibilities, obligations, tasks, and services performed or to be performed by University under this Agreement or an applicable Service Agreement.

“Service Agreement” means the mutually agreed upon plan and delineation of activities, events, and Services to be performed and Deliverables to be provided, by University pursuant to this Agreement.

“Term” has the meaning given to it in Section 3.1. Upon any renewal of this Agreement all references to “Term” will mean the Term as renewed.

“Trade-marks” means trade-marks, trade-names, brands, trade dress, business names, domain names, designs, graphics, logos, and other commercial symbols and indicia of origin whether registered or not and any goodwill associated therewith.

“University Information” means any and all information (including University Personal Information) and records relating to the University, its business, assets, or operations, any students and staff of the University that: (a) was provided, collected, or generated as part of the use or operation of the Deliverables provided hereunder or the provision of the Services, or in order to comply with any Applicable Law; or (b) otherwise became known to either Party as a result of the provision by University of the Services, including all University records, all University Personal Information, and all other University Confidential Information.

“University IP” has the meaning given to it in Section 6.1.

“University Marks” means the name and Trade-Marks of the University.

“University Personal Information” means all recorded information that: (a) is about an identifiable individual or is defined or deemed as “personal information” pursuant to any Applicable Laws related to privacy or data protection that are applicable to the University or to Company (including any information that constitutes “personal information” as such term is defined, from time to time, under *FIPPA*); (b) is transferred to, collected or compiled by, or otherwise under the Control or is in possession of Company; (c) is about University students, staff, members of the public, or employees of, or consultants to, the University, and is under the Control or is in possession of the University or of any “public body” (as such term is defined in *FIPPA*), or is otherwise held by Company on behalf of the University; and (d) all other information that is designated by the University as “personal information”.

“University Policies” means the requirements, policies, procedures, and standards of the University as otherwise communicated to Company by the University, and such requirements, policies, procedures, and standards as may be amended, restated, or replaced from time to time by the University.