CONTRACT SERVICES AGREEMENT

THIS AGREEMENT made the       day of      , 20     .

BETWEEN:

(the “Client”)

- and -

**The University of Manitoba,**

a corporation under The University of Manitoba Act (Manitoba)

(the “University”)

**WHEREAS** the University and the Client wish to enter into this services agreement (the “Agreement”) to have the University perform services for the Client in accordance with the terms of this Agreement.

**NOW THEREFORE** in consideration of the mutual covenants of the parties set forth in this Agreement and other good and valuable consideration, the University and the Client agree as follows:

# University to Perform Service.The University as an independent contractor, will perform the review, test or other academic or technical service outlined in Schedule “A” (the “Service”) and will use reasonable efforts to complete such service according to the timeline outlined in Schedule “A”. 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. The Service will be performed under the direction of      .

# Payment.The Client will pay to the University the service fee provided in Schedule B (the “Service Fee”), plus applicable taxes, in accordance with the payment provisions set forth in Schedule B.

# Confidentiality.Each of the University and the Client may disclose information it considers confidential to the other to facilitate the Service. Each party will use all reasonable efforts to treat and keep confidential, and cause its officers, servants, students and employees to treat and keep confidential, any such information received by it from the other marked “Confidential” and in no event will such efforts be less than the degree of care and discretion the recipient exercises in protecting its own confidential information. Any such information will be disclosed within the recipient’s organization on a “need to know” basis. Except as otherwise permitted pursuant to Section 7 the University will use all reasonable efforts to treat and to cause all officers, servants and employees of the University to treat as strictly confidential all Service Results.

# Exclusions from Confidentiality. The obligations regarding confidentiality set out in this Agreement shall not apply to information which:

## was in the recipient’s possession before receipt from the disclosing party, as established by written records;

## is or becomes a matter of public knowledge without breach of the Agreement by the recipient;

## is received by the recipient from a third party which had no duty of confidentiality with respect to it;

## is independently developed by the recipient, as established by written records;

## is required to be disclosed by law or valid court order, or

## is disclosed by the recipient with the disclosing party’s prior written approval.

# Service Results. Service Results mean 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. Service Results do not include background intellectual property or intellectual property developed by or utilized by the University in the provision of the Service, the Client acquiring no interest in, or right to use, any such intellectual property as a result of this Agreement. “Background Intellectual Property means proprietary or confidential information of the University to facilitate the Services and includes methods, techniques, processes or computer codes or other background intellectual property utilized by the University for the conduct of the Services, and which may or may not be required in order to practice the Service Results.

# Ownership and Use. Subject to the rights of the University pursuant to this Section 6 and Section 7, all Service Results will be the property of the Client. The Client grants to the University a non-exclusive, perpetual, royalty free license to use the Service Results without identification of, or connection to, the Client for teaching and non-commercial internal research purposes.

# Publication of Service Results. The University will be entitled, after giving the Client sixty (60) days to review any proposed publication of Service Results to publish and/or to present at conferences, workshops or symposia, or to allow others to publish or present, the Service Results or any portion thereof without identification of, or connection to, the Client. Notwithstanding the foregoing provisions of this Section 7 or the provisions of Section 6, neither permission for comments nor submission to the Client prior to publication is required at any time on or after the earlier of three (3) months following the submission of the Service Results to the Client or the publication of the Service Results or any edited, revised or partial version thereof by the Client or the University or a person allowed by either to publish. Should the Client at any time publish the Service Results in its entirety, the University and all investigators of the University designated by it will be identified in such publication.

# Excusable Delay. No liability shall be incurred by the University for delay in progress of the Services, or damages suffered or non-performance by the University of its obligations hereunder, as a result of any causes beyond the reasonable control of the University but in no way caused by the University’s default or collusion.

# Representations and Warranties. The University possesses the necessary skills, expertise and experience to perform the Service in accordance with the provisions of this Agreement and will perform the Service using reasonable care and skill. **Except as otherwise provided in this Agreement, the University, its officers, employees, students and agents make 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.**

# Termination. In the event that either party fails to remedy any breach or default on its part pursuant to this Agreement within ten (10) days of notice from the other to that effect, the party not in default may upon written notice to the party in default terminate the Service and any further right of the party in default under this Agreement. In the event that either party becomes insolvent or bankrupt, or makes an assignment for the benefit of its creditors, or in the event that a receiver or trustee of its property is appointed, such party shall be deemed to be in default under this Agreement and the other party may forthwith terminate this Agreement. Any termination in accordance with this section 10 is without prejudice to or limitation of any other right or remedies of the party not in default including the right to collect sums due to it at the time of such termination.

# Indemnification. The Client will defend, indemnify and hold harmless the University (including its officers, employees, students and agents) from all liabilities, demands, damages, expenses and losses arising out of the use by the Client or by any party acting on behalf of or under authorization from the Client of the Service Results or out of any use, sale or other disposition by the Client, or by any party acting on behalf of or under authorization from the Client of any product or technique which is the subject of the Service or is created or modified based on the Service Results.

# Limitation of Liability. In no event will the University be liable to the Client for all breaches of contract or for torts 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 the University pursuant hereto.

# Use of University Name. The Client will not utilize the name of the University or the University Staff member involved with the Service in conjunction with the Client’s use or exploitation of the Service Results, including without limitation, the development, production or marketing of products.

# FIPPA. The Client acknowledges that all records prepared by the University in the performance of this Agreement are in the custody and control of the University. The University is or will be subject to the access and privacy provisions of the Freedom of Information and Protection of Privacy Act (Manitoba) which creates a right of access to records under the custody and control of public bodies subject to specific, limited exceptions. Except as required by law or as otherwise permitted pursuant to the terms of this Agreement, neither the University nor the Client will disclose the contents of this Agreement or the foregoing records other than for the purpose of implementation or enforcement of the same or for a general statement on the parties to the Agreement, the amount being paid for the Service and the general nature of the Service, either party being entitled to publish that information.

# Notices. All notices, requests, directions or other communications required or permitted herein will be in writing and will be delivered to the parties hereto respectively as follows:

**The Client:**

**For Contract Matters: For Day to Day Matters:**

|  |  |  |
| --- | --- | --- |
| Attention:    Phone:  Fax:  Email: |  | **Attention:**    **Phone:**  **Fax:**  **Email:** |

**The University:**

**For Contract Matters: For Day to Day Matters:**

|  |  |  |
| --- | --- | --- |
| The University of Manitoba  Attention:    Winnipeg, MB  Phone:  Fax:  Email: |  | The University of Manitoba  Attention:    Winnipeg, MB  Phone:  Fax:  Email: |

In order for any notices, requests, directions, or other communications to be effective, the same will either be delivered in person or sent by registered mail, facsimile or electronic transmission, addressed to the party for whom it is intended at the above-mentioned address or fax number and will be deemed to have been received, if sent by registered mail, when the postal receipt is acknowledged by the other party; and, if sent by facsimile or electronic transmission, when transmitted. The address or fax number of either party may be changed by notice in the manner set out in this Section.

# Survival. Articles 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 16 and 21 shall survive the termination or expiration of this Agreement.

# No Agency. Nothing contained herein or done hereunder shall be construed as establishing any agency, partnership or joint venture relationship between the parties for any purpose whatsoever.

# Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter herein and supersedes all prior agreements, negotiations, representations and proposals, written and oral. Any Schedules attached hereto form part of this Agreement. No amendment, or variation of this Agreement shall be effective unless set forth in writing signed by a duly authorized representative of each party.

# Further Assurances. Each of the parties shall sign such documentation and deliver such information as may be reasonably required by the other in order to confirm and give effect to the provisions set forth in this Agreement.

# Enurement and Assignment. This Agreement shall be binding upon and enure to the benefits of the parties hereto and their respective successors and permitted assigns, provided that neither of the parties shall assign or subcontract this Agreement or any part thereof or any rights or obligations under this Agreement or with respect to the Services Results without the prior written approval of the other party hereto.

# Governing Law. This Agreement will be governed by and interpreted in accordance with the laws in force in the Province of Manitoba and the parties expressly attorn to the exclusive jurisdiction of the courts of Manitoba for enforcement thereof.

# Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

IN WITNESS WHEREOF the duly authorized officers of the parties have executed this Agreement on the date first above written.

**The University of Manitoba**

Per: Per:

Name:       Name:

Title:       Title:

**Project Lead:**

I have read and understood the foregoing and hereby agree as though I were a party hereto:

**Name:**

**Title:**

SCHEDULE "A"

THE SERVICE

The University shall perform the services:

in accordance with the attached outline/proposal which is attached hereto as Appendix “1” to Schedule “A”; or

As set out below:

SCHEDULE "B"

PAYMENT

# Service Fee. The Client will pay to the University for the University’s performance of the Service a Service Fee of $     , $      of which is payable by the Client, without invoice from the University, concurrently with delivery of this Agreement.

# Invoicing. The University will invoice the Client for the balance of the Service Fee, after allowance for the amount due with delivery of this Agreement, in accordance with the following schedule:

* [enter fixed dates, "upon delivery of Service Results" or "not applicable"]

# Payment. Invoiced amounts are due and payable by the Client within thirty (30) days of receipt of invoice or within such shorter time as provided in Section B.2. Interest will be paid on overdue amounts at a rate of 15% per annum. The Service Fee is exclusive of GST which, if applicable, will be paid by the Client at the same time as the payment of the Service Fee on which the same is based.