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| FACILITY ACCESS AGREEMENT |  |

THIS AGREEMENT (the “**Agreement**”) made as of Select the Effective Date of the contract (the “Effective Date”) is between:

**Enter the other party’s name**, having an office at

Street Address

City, Province, Country Postal Code

(the “**Company**”)

AND

**British Columbia Institute of Technology**, having an office at

3700 Willingdon Avenue

Burnaby, British Columbia, Canada V5G 3H2

(“**BCIT**”)

**IN CONSIDERATION** of the mutual Agreements in this Agreement and subject to the terms and conditions specified in this Agreement, the parties agree as follows:

* + 1. Definitions
       1. **Definitions:** In this Agreement, the following capitalized words and expressions will have the following meanings unless the context otherwise requires:
          1. “**Business Day**” means a day other than Saturday, Sunday or a day that is a statutory holiday in British Columbia;
          2. “**Confidentiality Agreement**” has the meaning given to it in section 12.7;
          3. “**Fees**” means the Fees for Facility Access charged by BCIT as set out in Schedule B hereto;
          4. “**Representative**” has the meaning given to it in section 3.1;
          5. “**Personnel**” means BCIT’s employees, consultants, agents and sub-contractors;
          6. “**Facility Access**” means the access to BCIT property to be provided by BCIT to the Company as described in Schedule A.
          7. “**Term**” has the meaning set out in Schedule A.
       2. **Schedules:** The following schedules are attached to and form part of this Agreement:

Schedule A: Facility Access

Schedule B: Fees

* + 1. Term and Termination
       1. BCIT shall provide Facility Access during the Term unless this Agreement is earlier terminated in accordance with this Article 2, or renewed as may be contemplated in Schedule A hereto.
       2. Either party may terminate this Agreement for any reason upon at least 30 days prior written notice to the other party.
       3. Either party may terminate this Agreement immediately if the other party breaches any of its obligations under this Agreement and does not cure that breach within 30 days after receiving the non-breaching party’s written notice of the breach.
       4. If this Agreement is terminated before the Facility Access is complete, the Company will pay to BCIT all costs and liabilities, including expenses incurred before the notice of termination that have not yet been reimbursed, commitments existing at the time of termination that cannot be cancelled and the Fees for any Facility Access provided before the notice of termination all in accordance with the Fees and any other financial obligations of the Company set out in Schedule B.
    2. Representatives
       1. Each party shall appoint a representative (each a “**Representative**”) who shall be the first line of contact for all matters arising under this Agreement, as follows:
          1. for the Company: Enter the other party’s representative  
             Telephone: Enter the telephone number  
             Fax: Enter the fax number  
             Email: Enter the email address
          2. for BCIT: Enter BCIT’s representative  
             Telephone: Enter the telephone number  
             Fax: Enter the fax number  
             Email: Enter the email address
       2. Each Representative shall be responsible for administering this Agreement on behalf of the party appointing him or her. Each party may change its Representative upon written notice to the other party. Neither Representative shall have the authority to execute amendments or additions to this Agreement on behalf of his or her appointing party without further written consent from such party.
    3. Financial Obligations
       1. In consideration of the Facility Access, the Company agrees to pay BCIT in the amount and manner, and at the times, specified in Schedule B.
       2. Unless otherwise provided in Schedule B, the Company shall pay any invoice received from BCIT for the Facility Access within 30 days from the date of receipt of the invoice.
       3. Unless otherwise provided in Schedule B, payment of the Fees by the Company to BCIT shall be in Canadian funds and shall be paid by wire transfer in same day available funds to such account as BCIT shall advise in writing.
       4. Except as otherwise specified, the Fees set out in Schedule B do not include any applicable taxes. The Company will pay the amount of any taxes that may be imposed on or payable by BCIT relating to or arising out of the Facility Access and the collection or remittance of the Fees.
       5. Late payment of Fees to BCIT by the Company pursuant hereto shall bear interest at the rate of 10% per annum until paid in full.
    4. Publicity
       1. Each party acknowledges and agrees that it shall not use the name, logo, trade-mark, or any other identifying mark, or the names of any staff member of the other party in any advertising or publicity material, or make any form of public representation, statement or communication in relation to this Agreement or the Facility Access provided hereunder that would constitute an express or implied endorsement by the other party of any product or service without obtaining the prior written approval of the other party.
    5. Company’s Indemnity and Release
       1. The Company will indemnify, hold harmless and defend, and hereby forever releases and discharges, BCIT and BCIT’s Board of Governors, directors, officers, employees, faculty, students, representatives and agents from and against any claims, suits, losses, damages, actions, causes of action, costs, fees and expenses (including actual legal fees and expenses) and liability of any kind and every nature that can or may arise, directly or indirectly, either before or after this Agreement ends, and whether asserted by third parties or otherwise, relating to or arising from the Services, the Deliverables or this Agreement, excepting always that this indemnity does not apply to the extent, if any, to which the claims are caused by errors, omissions or the negligent acts of BCIT, its other contractors, assigns and authorized representatives or any other person.
    6. Limitation Of Liability
       1. If, despite the disclaimers of liability contained in this Agreement, BCIT is held liable to the Company or any third party for any reason in respect of the Facilities Access or otherwise under or relating to this agreement, BCIT’s maximum liability will be the total of Fees received by BCIT from the Company under this Agreement.
    7. Insurance
       1. During the Term of this Agreement, the Company will maintain, with reputable insurers authorized to do business in British Columbia, general business insurance with policy coverage of at least $2,000,000 on a per occurrence or per incident basis, and will ensure that the insurance covers all liability the Company may have under this Agreement. The Company will add BCIT as an additional insured on those policies, and will ensure that the policies require BCIT to receive notice at least 30 days prior to cancellation of any policy. The Company will provide BCIT with evidence of such coverage promptly on request.
       2. In addition to the foregoing, the Company will obtain and maintain, at its cost, appropriate insurance coverage in respect of any of its employees, representatives, or other authorized third parties who will attend at the BCIT facilities in connection with the Facility Access including Workers Compensation insurance to the extent its employees receive the Facility Access or are otherwise engaged with the provision of the Facility Access, and providing to BCIT upon execution hereof certificates of insurance evidencing such coverage.
       3. BCIT is covered by the University, College and Institution Protection Program (“UCIPP”); BCIT will maintain commercial general liability coverage of at least $2,000,000 on a per occurrence basis through the University, Colleges & Institute Protection Program (UCIPP) throughout the Term of the Agreement.
    8. Disclaimer
       1. The Company acknowledges and agrees that BCIT is providing the Facility Access “as is” and without any representations or warranties (express, implied or statutory) of any kind, that BCIT expressly disclaims all representations and warranties (express, implied or statutory), including those regarding operation, functionality, durability, merchantability, fitness for a particular purpose and non-infringement, or that the Facility Access will meet the Company’s needs, and that BCIT does not promise success in achieving any desired result. BCIT will not be liable for any loss or damage, whether direct, indirect, consequential, incidental, special, punitive or otherwise, arising from any defect, error or failure to perform under, or arising from or relating to this Agreement, the Facility Access, whether in negligence or otherwise, even if BCIT has been advised of the possibility of such damages.
       2. The Company acknowledges and agrees that, BCIT has advised the Company to undertake, and the Company is solely responsible for undertaking, its own due diligence and quality assurance with respect to all matters arising from or related to this Agreement, the Facility Access.
    9. Dispute Resolution
       1. If any dispute arises out of or relating to this Agreement at any time before or after this Agreement terminates, the parties will attempt to resolve the dispute amicably through confidential good-faith discussions.
       2. If the parties cannot resolve the dispute within 10 Business Days, or such longer period as the parties may agree in writing, then the parties will submit the dispute to be settled confidentially by a single neutral arbitrator under the *Commercial Arbitration Act* (British Columbia) and the rules of the British Columbia International Commercial Arbitration Centre. If the parties cannot agree on an arbitrator within 10 Business Days after the dispute is referred to arbitration then the British Columbia International Commercial Arbitration Centre will appoint the single arbitrator. The arbitrator will apply the federal laws of Canada and the provincial laws of British Columbia. The arbitrator’s decision will be binding upon the parties, and judgment on the decision may be entered in any court of competent jurisdiction. The arbitration hearing will be held in Burnaby, British Columbia and will be conducted in English. The parties will share equally in the arbitrator’s fees and expenses and the cost of the facilities used for the arbitration hearing, but will otherwise each bear their respective costs in connection with the arbitration.
       3. Notwithstanding the previous paragraph, each party may seek immediate injunctive relief if, in its reasonable opinion, such relief is necessary to protect its intellectual property or confidential information before initiating or completing the dispute resolution process described above.
    10. Notice
        1. Any notice, direction request or other communication required or contemplated by any provision of this Agreement will be given in writing and will be given by delivering or faxing or emailing the same to the parties as follows:
           1. If to the Company:  
              **Enter the other party’s name**  
              Street Address  
              City, Province, Country Postal Code  
                
              Fax: Enter the fax number  
              Attention: Enter the other party’s representative  
              Email: Enter the email address
           2. If to BCIT:  
              **British Columbia Institute of Technology**3700 Willingdon Avenue  
              Burnaby, BC V5G 3H2  
                
              Fax: Enter the fax number  
              Attention: Enter BCIT’s representative  
              Email: Enter the email address
        2. Any such notice, direction request or other communication will be deemed to have been given or made on the date on which it was delivered, or in the case of fax or email, on the next Business Day after receipt of transmission. Any party may change its fax number, email or address from time to time by written notice in accordance with this section 11.1.
    11. General
        1. **Precedence of Documents.** If there is any conflict or inconsistency between this Agreement’s main body and any Schedule to this Agreement, the main body of this Agreement will take precedence unless the Schedule expressly states otherwise, including by identifying the specific provision over which the Schedule takes precedence.
        2. **Relationship between the parties.** The parties are independent contractors and nothing in this Agreement shall be construed as establishing an agency, partnership, or employment relationship between the parties. Neither party shall have the authority to act on behalf of the other party or to commit the other party in any manner or cause whatsoever, or to use the other party’s name in any way not specifically authorized in this Agreement.
        3. **Persons Bound.** This Agreement enures to the benefit of and is binding on the parties and their respective successors and permitted assigns.
        4. **Further Assurances.** Each party will promptly sign and deliver all documents and take all action as may be necessary or desirable to effectively carry out the intent and purposes of this Agreement, to protect the parties’ interests and to establish, protect and perfect the rights, remedies and interests granted or intended to be granted under this Agreement.
        5. **Waiver.** A waiver of any term of this Agreement or of any breach of this Agreement is effective only if it is in writing and signed by the parties and is not a waiver of any other term or any other breach.
        6. **Amendment.** No modification of this Agreement is effective unless it is in writing and signed by the parties.
        7. **Entire Agreement.** This Agreement, together with any Confidentiality Agreement and/or License Agreement, constitutes the entire Agreement between the parties regarding its subject-matter and supersedes all prior Agreements, understandings, negotiations and discussions between the parties.
        8. **No Assignment.** Neither party will assign any part of this Agreement or any of its rights under this Agreement without the other party’s prior written consent, and any purported assignment without such prior consent will be void.
        9. **Change in Control.** If the Company is a corporation there shall be no change in the control of the Company without the prior written consent of BCIT.
        10. **Force Majeure.** Neither party will be held responsible for damages caused by delay or failure to perform its obligations under this Agreement (other than its payment obligations) to the extent caused by events or circumstances beyond the non-performing party’s reasonable control, including acts of God, war, riot, embargoes, acts of government including civil or military authorities, export controls, catastrophe, fire, floods, accidents, strikes, shortages of transportation, facilities, fuel, energy, labour or material, or acts of public enemies, but not including the non-performing party’s financial status.
        11. **Law and Jurisdiction.** The laws of British Columbia, without giving effect to its conflict of law principles, govern this Agreement and all proceedings arising out of it, and the parties attorn to the exclusive jurisdiction of the British Columbia courts.
        12. **Severability.** Any provision of this Agreement that is held to be invalid, illegal or unenforceable will be deleted from this Agreement and the remaining provisions will continue in full force and effect.
        13. **Time.** Time is of the essence in this Agreement.
        14. **Survival.** Article 4 (financial obligations), Section 2.4 (obligations on termination), , 5.1 and, Article  5 (publicity), Article  6 (indemnity), Article  8 (insurance), Article  9 (disclaimer), Article  1.1 (limitation of liability), Article  11 (notice), Article  10 (dispute resolution), and Article  12 (general), and all other provisions of this Agreement that are reasonably necessary for the interpretation of this Agreement or to give effect to this Agreement continue in force indefinitely, even after this Agreement ends.
        15. **Authority.** Each party confirms that it has read this Agreement and that the person(s) executing this Agreement on its behalf is (are) authorized to bind that party.
        16. **Counterparts.** This Agreement may be executed in counterparts, and each executed counterpart will be considered to be an original. All executed counterparts taken together will constitute this Agreement. Any party may deliver a counterpart signature page by digital or electronic transmission.

The parties are signing this agreement as of the Effective Date:

INSTRUCTIONS:

All contracts must be reviewed by Risk Management, Corporate Services prior to signing.

Contracts over $50,000 required two signatures; reference BCIT Policy 2501 for signature matrix. Submit signed contract with the Contract Approval Form (CAF) to Corporate Service in NE09-120.

Direct questions to the Risk Management Coordinator (604-432-8359).

REMOVE THIS INSTRUCTIONAL CONTENT FROM FINAL DRAFT

* 1. Enter the other party’s name

By:

Name: Enter the name of person signing

Title: Enter the title of the person signing.

By:

Name: Enter the name of person signing

Title: Enter the title of the person signing.

* 1. British Columbia Institute of Technology

By:

Name: Enter the name of the person signing

Title: Select from the list; you may edit to include department/school

By:

Name: Select from the list

Title: Select from the list

1. SCHEDULE A
   1. FACILITY ACCESS

INSTRUCTIONS:

The contents of this schedule will depend on the specifics of the Services and Deliverables to be provided. This schedule should set out, in as much detail as possible:

* what BCIT is expected to do and deliver;
* the timeframe for providing the Services, including any specific deliverable dates or dates on which Services will be provided;
* the Company’s responsibilities, including what information, materials, etc., the Company has to provide for BCIT to be able to provide the Services and Deliverables.

The following headings may help structure the schedule.

REMOVE THIS INSTRUCTIONAL CONTENT FROM FINAL DRAFT

* + 1. Description of Access:
       1. BCIT shall provide the following access to the Company (the “**Facility Access**”):
          1. Describe the services that BCIT is expected to provide in as much detail as possible. If applicable, describe the services such that these descriptions can be tied to the financial obligations of the Company set out in Schedule B and any timelines for the provision of Services set out below.
    2. Term:
       1. The Agreement will commence on the Effective Date and will end on select the end date, or such other date as the parties may agree in writing (the “**Term**”).
          1. Describe any renewal term or ability of the parties to renew if applicable.
    3. Schedule of Facility Access:
       1. The Facility Access will be performed and provided by BCIT according to the following schedule or timeline:
          1. Describe the applicable timelines.
    4. Company Responsibilities:
       1. The Company will:
          1. Be responsible for any damage done to BCIT property by the Company, its guests, invitees, employees, independent contractors or agents. The Company will at all times keep BCIT property occupied by it free from accumulation of waste materials/rubbish caused by its operations, and at the completion of the agreement, will remove all equipment brought onto the premises and any other materials associated with the Company’s use of BCIT property, and return BCIT property to BCIT in the same condition that it was provided by BCIT to the Company, unless BCIT otherwise agrees in writing
          2. Agree that all property of the Company kept or stored on BCIT property is at the risk of the Company.
          3. All displays, exhibits, decorations, and signage must be approved in advance by BCIT and be free standing without attachment to walls, ceilings, or floors. The Company will not affix or display or cause to be affixed or displayed, any signage or advertisement on any part of the exterior of any buildings without the prior written approval of BCIT. At the end of the agreement, the Company will remove any such displays, exhibits, decorations, signage and advertisement.
          4. Not install any equipment which will exceed or overload the capacity of any utility facilities, will not bring onto BCIT property or install any utility facility or service which BCIT does not in its sole discretion approve. The Company agrees that if any equipment installed by the Company requires additional utility facilities, the same will be installed, if available, at the Company’s expense in accordance with plans and specifications to be approved in advance in writing by BCIT.
          5. Agree that all food or beverage concessions are to be provided by BCIT’s catering provider, Chartwells, unless otherwise approved in advance in writing by BCIT.
          6. Acquire any permits or licences from any governing body, local, provincial, or federal, for any activities the Company engages in that require such permits or licences while on BCIT property and the Company is solely responsible for obtaining such licenses or permits at the Company's expense.
    5. Additional Terms and Conditions:
       1. Describe any additional terms and conditions not set out in the main body of the Agreement or which might modify or supplement the terms and conditions of the main body of the Agreement (try to be as explicit as possible in this respect).

SCHEDULE B

* 1. FEES

INSTRUCTIONS: This schedule should set out in as much detail as possible, how much and when the Company will pay BCIT for the Services and Deliverables and any invoicing or payment particulars.

REMOVE THIS INSTRUCTIONAL CONTENT FROM FINAL DRAFT

* + 1. Fees and Expenses
       1. The Company shall pay BCIT the following amounts for the Facility Access (the “**Fees**”):
          1. Describe the Fees payable by the Company to BCIT and any BCIT expenses relating to the Agreement that the Company will pay. Use as much detail as possible so that it is clear when and how the Company’s obligation to pay Fees arises.
    2. Payment Schedule and Invoices
       1. Describe any schedule or timeline for the payment of Fees. Also describe particulars with respect to the delivery and payment of invoices in as much detail as possible. Keep in mind the terms and conditions at Article 5 of the Agreement.
    3. Additional Terms and Conditions
       1. Describe any additional terms and conditions relating to the payment of the Fees or which may supplement or modify the terms and conditions of the main body of the Agreement relating to the payment of Fees (such as particular payment methods).