

SCHEDULE B: TERMS AND CONDITIONS

General Terms and Conditions for Research Services

("General Terms")

1. Definitions

- 1.1 **"Background IP"** shall mean any and all intellectual property that is to be used for the Project that was developed, acquired or controlled by a Party or Parties, or by a third party prior to, or independently of, the Project;
- 1.2 **"Client Material"** means the samples and materials provided by Client to UVic for performance of the Project;
- 1.3 **"Confidential Information"** means all oral, written or machine readable information and data disclosed by one Party to the other Party that:
- a) If disclosed in tangible form, is clearly marked "CONFIDENTIAL" at the time of disclosure;
 - b) If disclosed orally, is identified as confidential or proprietary at the time of disclosure and which is summarized in a tangible format which is clearly marked as "CONFIDENTIAL" and delivered to the receiving Party within fifteen (15) days of the original disclosure; or
 - c) was provided under a non-disclosure or confidentiality agreement made between the Parties for the purposes of allowing the Parties to engage in discussions prior to the commencement of the Agreement about a potential research project and which will be used by the Parties in the performance of the Project.
- Confidential Information does not include information or data that:
- d) is disclosed by a third party, acting independently, who acquires and delivers such information lawfully and without breaching any agreement, including this one;
 - e) can be demonstrated by written evidence to have been in the possession of the receiving Party without restriction and prior to disclosure thereof by the disclosing Party hereunder;
 - f) is already in the public domain or, after disclosure, is published or otherwise becomes part of the public domain through no fault of the receiving Party;
 - g) is required to be disclosed by law or by the order of any judicial, administrative, or similar body of competent jurisdiction provided that, where permitted by law, the receiving Party promptly notifies the disclosing Party of the requirement and co-operates reasonably at the disclosing Party's expense, in preventing and minimizing the extent of the disclosure; or
 - h) is developed independently by the receiving Party as demonstrated by written evidence.
- 1.4 **"UVic Methods"** means any tools, techniques, reagents or methodologies developed or generated by UVic during the course of the Project.
- 1.5 **"Party"** means individually Client or UVic and "Parties" means together Client and UVic.

- 1.6 **“Project”** means the scientific work to be performed by UVic as described in a Statement of Work.
- 1.7 **“Related Persons”** means every UVic officer, governor, employee, faculty members, student, contractor, or agent, including employees of faculty members performing the Project.
- 1.8 **“Research Data”** means the raw data generated in the performance of the Project and any analysis or interpretation of such data. For clarity, Research Data may include Restricted Information.
- 1.9 **“Restricted Information”** means information generated by the PC during the performance of the Project that is directly related to the Client’s Materials and can be shown by the Client to be subject to laws, regulations, restrictions or pre-existing third party rights that restrict such information’s use or disclosure.
- 1.10 **“Statement of Work”** means a completed document forming part of this Agreement as Schedule A describing the activities to be conducted by UVic in support of Client’s research project and the amount to be paid to UVic for conduct of the work.

Each capitalized term used but not defined in this Schedule B shall have the meaning assigned to such term in the Agreement Statement of Work.

2. Project

- 2.1 UVic shall perform the Project in accordance with this Agreement.
- 2.2 Client shall pay UVic within 30 days of the date of invoice for actual experiments completed and actual number of samples analyzed.
- 2.3 Any amount not paid by Client when due will bear interest at the rate of 12% per annum or the highest rate permitted by law, whichever is lower, from the date payment was due under the terms of this Agreement until it is paid, and the interest will accrue and be payable without the necessity of any demand for it being made.

3. Client Materials

- 3.1 Client, at its own cost and expense, shall make shipping arrangements for any Client Materials in accordance with any applicable law or regulation including any applicable import, export, export control, customs, health and safety law or regulation in effect from time to time. Client is responsible for obtaining any and all permits, licenses or permissions that may be required by regulatory authorities to ship and deliver Client Materials to and from UVic.
- 3.2 Client represents and warrants:
 - a) it has the right to provide Client Materials to UVic for UVic’s use under the Agreement;
 - b) Client Materials were collected lawfully with all necessary consents and approvals;
 - c) to the extent the Client Materials are subject to laws or regulations restricting their use or disclosure, the Client agrees to provide UVic with written notice identifying the applicable restrictions; and

- d) the collection, use and disclosure of Client Materials by UVic pursuant to the terms of the Agreement will not violate the rights of any third party.

4. Term and Termination

- 4.1 This Agreement comes into effect on the date of execution by the last of the Parties to sign and shall expire on the date of conclusion of Project unless terminated earlier as set out herein.
- 4.2 This Agreement may be terminated by either Party:
 - a) upon ten (10) days written notice of termination;
 - b) if UVic is unable to complete the Project; or
 - c) if the other Party is in default of its obligations or any conditions hereunder and fails to cure such default within thirty (30) days after receipt of notice of such default from the non-defaulting Party.
- 4.3 In the event of termination of this Agreement for any reason, the Parties shall take all necessary steps to effect the orderly termination of the Project and Client agrees to reimburse UVic in accordance with the Statement of Work for costs incurred by UVic in the conduct of the Project up to the date of termination, including non-cancellable commitments made prior to the date of termination.

5. Confidentiality

- 5.1 Each Party maintains the sole and absolute discretion to determine what, if any, of its Confidential Information it will disclose to the other Party.
- 5.2 The receiving Party shall only use the disclosing Party's Confidential Information for the purpose of the Project, and shall not disclose such Confidential Information, or any portion thereof, to any other individual, person, firm or corporation, provided, however, that the receiving Party may disclose Confidential Information to its employees, affiliates, adjunct faculty, postdoctoral fellows, grant funded employees, students, and agents with a need to know in connection with the Project and who are bound by obligations of confidentiality substantially similar to those set out in this Agreement.
- 5.3 All right, title and interest in Confidential Information disclosed by the disclosing Party to the receiving Party remains the property of the disclosing Party.

6. Ownership and Licenses

- 6.1 Client retains all right, title and interest in and to Client's Confidential Information and Background IP and no right, title or interest in such is transferred to UVic except to the extent necessary to perform the Project.
- 6.2 UVic retains all right, title and interest in and to any and all UVic's Confidential Information and Background IP and no right, title or interest in such is provided to Client except as expressly set out in this Agreement.
- 6.3 All right, title and interest in and to Research Data shall vest in Client. Parties acknowledge and agree that UVic may only use the Research Data for academic, internal research and development

and non-commercial uses, subject to the confidentiality and publication requirements of this Agreement.

- 6.4 Notwithstanding anything else in this Agreement, UVic retains the right, title and interest in any UVic Methods. UVic acknowledges and agrees that Client may use the UVic Methods for publication and non-commercial use, subject to the confidentiality and publication requirements of this Agreement.

7. Publication

- 7.1 Subject to the requirements set out in this Agreement, the Client shall be unrestricted from publishing, presenting or otherwise disclosing accounts of the work pertaining to this Agreement, or the Research Data. The Client shall acknowledge the UVic-Genome BC Proteomics Centre in any client publications ("Client Publications") resulting from the Project in accordance with the *UVic-Genome BC Proteomics Centre Policy on Publications and Acknowledgement* as amended or replaced from time to time, which policy can be found at: <https://www.proteincentre.com/acknowledgements>.
- 7.2 Subject to the requirements set out in this Agreement, UVic shall be unrestricted from publishing, presenting or otherwise disclosing accounts of the work pertaining to methodology, or UVic Methods. However, if such a publication led by UVic includes Research Data ("UVic Publication"), UVic shall first request permission from the Client following the process set out below:
- 7.2.1 At least forty-five (45) days prior to disclosure of any UVic Publication, the UVic authors of such UVic Publication shall provide the Client with a copy of the proposed UVic Publication.
- 7.2.2 The authors of the proposed UVic Publication shall be free to proceed if the Client does not object in writing within thirty (30) days of receipt of the proposed UVic Publication.
- 7.2.3 Client may object to the proposed UVic Publication within the specified time period on the basis that the proposed UVic Publication:
- a) includes Client's Confidential Information, in which case the authors shall remove such Confidential Information following which the authors shall be free to publish or present the revised UVic Publication;
 - b) includes Restricted Information, in which case the authors shall remove such Restricted Information, following which the authors shall be free to publish or present the revised UVic Publication;
 - c) discloses patentable subject matter or other potentially commercially valuable intellectual property which a Client wishes to seek to protect, in which case the authors shall, at the request of the Client, remove Research Data or delay disclosure of the UVic Publication for up to one hundred and twenty (120) days for the Client to pursue patent or other protection, following which the authors shall be free to publish or present the revised UVic Publication.
- 7.2.4 Unless otherwise requested in writing by Client, Client's contributions to the Project shall be acknowledged in any UVic Publication. Authorship of any UVic Publication shall be determined between the individuals who contributed to such UVic Publication and in accordance with commonly accepted standards of the academic community.

8. Limitation of Warranties; Liability and Insurance

- 8.1 To the maximum extent permitted by applicable law, Research Data and UVic Methods will be provided to Client on an "as is" basis. Client agrees that neither UVic nor any Related Person makes, has made, or is authorized to make any representations or extend any warranties, either express or implied, with respect to Research Data, UVic Methods or any other matter touched upon in this Agreement, nor has Client relied upon any such representations or warranties. Neither UVic nor any Related Person makes, has made, or is authorized to make any express or implied warranties of merchantability or fitness of Research Data or UVic Methods for a particular purpose, or otherwise represent or warrant that use of outputs or research data will not infringe any patent, copyright, trademark or other rights. Client agrees that the Project is of an experimental and exploratory nature, that no particular results can be guaranteed, and that it has been advised by UVic to undertake its own due diligence with respect to any and all use of Research Data, UVic Methods or other intellectual property, materials or data arising from this Agreement.
- 8.2 In no event shall UVic's liability arising out of or in connection with this Agreement exceed, in the aggregate, the total fees paid by Client to UVic under this Agreement whether such liability is based on an action in contract, warranty, strict liability or tort (including, without limitation, negligence) or otherwise.
- 8.3 Notwithstanding any other provision of this Agreement, in no event will UVic or any Related Person be liable for any special, indirect, consequential, incidental exemplary or punitive damages, however caused, and regardless of the theory of liability (including but not limited to contract, negligence, strict liability in tort or warranty of any kind), arising out of or related to this Agreement, or any use of or inability to use Research Data, UVic Methods, or other intellectual property, materials or data, even if UVic has been advised of the possibility of such losses or damages.
- 8.4 Client will hold harmless and indemnify UVic and the Related Persons from and against any and all claims or judgments, including all associated legal fees, expenses and disbursements actually incurred, on a solicitor and own client basis, from or arising out of the use by Client, or anyone for whom Client is in law responsible or any of their successors or assigns, of Research Data or UVic Methods, including without limitation any damages of any kind or nature whatsoever (including but not limited to direct, indirect, special, incidental, punitive or consequential), losses of any kind or nature (including without limitation loss of revenues, profits, savings, business, data or records) or costs arising in any manner whatsoever (including arising from fault or negligence of UVic or Related Persons, or arising from or incidental to any product liability or other lawsuit, claim, demand or other action brought), directly or indirectly, from or out of any use whatsoever of Research Data or UVic Methods.
- 8.5 Each Party shall at its own expense maintain appropriate insurance sufficient to cover its obligations under this Agreement. Upon request, each Party shall provide to the other a certificate of insurance.

9. General Provisions

- 9.1 **Use of Name.** Notwithstanding anything in this Agreement, either Party may disclose the identity of the other, the title of the Project, the name of Related Persons, the Project term and the amount of funding being provided for the Project. Except as provided by the foregoing, no Party may use the others logo or name, the name or logo of UVic, nor the name of any member of the other Party's staff, in any publicity, advertising, or news release without the prior written approval of an authorized representative of such Party.

- 9.2 **Headings.** The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 9.3 **Governing Law.** This Agreement shall be governed and construed, and all claims arising out of or related to it shall be determined in accordance with, the laws of British Columbia (without regard to any conflict of laws principles) and any laws of Canada applicable therein.
- 9.4 **Severability.** In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, that will not affect the validity or enforceability of the remaining provisions of this Agreement and the balance of this Agreement shall continue in full force and effect.
- 9.5 **Force Majeure.** No failure or omission by either Party in the performance of any obligation in this Agreement shall be deemed a breach of this Agreement or create any liability if the same is due to a reason or circumstance beyond the reasonable control of such Party, including, without limitation, changes to applicable laws or government regulations, fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, invasion, public health emergency, pandemic, epidemic, labour dispute, labour shortage, unavailability of key personnel, third party non-performance, or failure or malfunction of computer or telecommunications hardware, equipment or software, provided that the other Party is notified and that such failure or omission is cured as soon as it is practicable after the occurrence of the event of force majeure. In no event shall lack of funds be considered to be a default of delay beyond the reasonable control of a Party.
- 9.6 **COVID-19.** The Parties acknowledge that in March 2020 the World Health Organization declared a global pandemic of the virus leading to COVID-19. The Governments of Canada and the Province of British Columbia responded to the pandemic with legislative amendments, controls, orders, requests of the public, and requests and requirements to UVic to change its delivery of education and services in various ways (collectively, the “Governmental Response”). It is uncertain how long the pandemic, and the related Governmental Response, will continue, and it is unknown whether there may be a resurgence of the virus leading to COVID-19 or any mutation thereof (collectively, the “Virus”) and resulting or supplementary renewed Government Response. Without limiting the foregoing paragraph, neither party shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of:
- a) the continued spread of the Virus;
 - b) the continuation of or renewed Governmental Response to control the spread of the Virus; and
 - c) a party’s decision, made on an organization-wide basis and in good faith, to control the spread of the Virus, even if exceeding the then current specific Government Response.

Dates or times of performance shall be extended to the extent of delays excused by this clause, provided that the Party whose performance is affected notifies the other promptly of the existence and nature of such delay shall, so far as practicable, use commercially reasonable efforts to minimize and mitigate the extent, effect and period of any such delay or non-performance

- 9.7 **Notices.** All notices, documents, statements, reports and other writings required under this Agreement will be sufficient if given in writing and delivered in person, by registered mail, or by electronic mail, and any such notice will be deemed to have been duly given upon delivery if delivered in person or on the next business day if delivered by registered or electronic mail. Notices

to Client shall be delivered to the address or facsimile number identified in a duly executed Statement of Work or Sample Submission Form, and notices to UVic shall be delivered to the address or facsimile number below. Each Party may change its address by written notice to the other Party.

For UVic:

For legal or administrative matters:

Office of Research Services, attn: Contracts
University of Victoria
Michael Williams Building, Room B202
3800 Finnerty Road (Ring Road)
Victoria, BC, Canada V8P 5C2
Tel: 250-472-4362
Email: contract@uvic.ca

For financial matters:

Melissa Joyce, Manager Research Accounting
Accounting Services
University of Victoria
Michael Williams Building, B115
3800 Finnerty Road (Ring Road)
Victoria, BC, Canada V8P 5C2
Tel: 250-721-4157
Email: meljoyce@uvic.ca

For scientific, technical, or project management matters:

University of Victoria Proteomics Centre
Vancouver Island Technology Park
#3101-4464 Markham St
Victoria, BC Canada
V8Z 7X8
Tel: (250) 483-3226
Email: info@proteincentre.com

- 9.8 **Independent Parties.** Nothing contained in this Agreement shall be deemed or construed by the Parties, or by any third party, to create the relationship of partnership or joint venture between any of the Parties, it being understood and agreed that no provision contained herein shall be deemed to create any relationship between the Parties other than the relationship of independent Parties contracting for services.
- 9.9 **Waiver.** No provision of this Agreement and no breach by either Party of any such provision will be deemed to have been waived by the other Party unless such waiver is in writing signed by the other Party. The written waiver of any breach of any provision of this Agreement will not be deemed a waiver of any subsequent breach of the same or any other provision of this Agreement.
- 9.10 **Waiver.** No waiver or delay on the part of either Party in exercising any right, power, privilege or remedy will be, or be deemed to be, a waiver of it; nor may any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of the same or any other right, power, privilege or remedy.
- 9.11 **Entire Agreement.** This Agreement (including exhibits and schedules) constitutes the entire

agreement between the Parties pertaining to its subject matter, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no warranties, representations or other agreements between the Parties in connection with its subject matter except as specifically set forth in this Agreement.

- 9.12 **Amendment.** This Agreement may only be modified or amended in writing signed by the Parties.
- 9.13 **Assignment.** A Party may not sell, assign, encumber, license or otherwise transfer any of its rights, duties or obligations under this Agreement without the express written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.14 **Enurement.** This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective heirs, successors, executors, personal representatives and permitted assigns.
- 9.15 **Surviving Terms.** All terms of this Agreement which by their nature have continuing effect shall survive the termination or expiration of this Agreement. The obligations set out in section 5 (Confidentiality) shall survive termination or expiration of the Agreement for a period of five (5) years.
- 9.16 **Rights and Remedies.** The rights and remedies available under this Agreement shall be cumulative and not alternative and shall be in addition to and not a limitation of any rights and remedies otherwise available to the Parties at law or in equity. No exercise of a specific right or remedy by either Party precludes it from or prejudices it in exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.
- 9.17 **Currency.** Unless otherwise specified, all references to currency in this Agreement are to Canadian dollars (CAD).
- 9.18 **Counterparts.** This Agreement may be signed and delivered in one or more counterparts and each such counterpart may be transmitted by electronic mail in portable document format (PDF) or similar format or by facsimile and each will constitute an original document and such counterparts, taken together, will constitute one and the same instrument.