



Technology Development & Commercialization

SERVICE AGREEMENT

This Service Agreement (the “Agreement”) is made as of **[Insert date]** and is between **University Health Network**, an Ontario corporation incorporated under the *University Health Network Act 1997*, having a business office at 101 College Street, Suite 150, Heritage Building, MaRS Centre, Toronto, Ontario, Canada, M5G 1L7 (“UHN”) and **[Insert Company name]**, a company incorporated in the **[Insert particulars]**, having a principal office at **[Insert address]** (“Purchaser”). (UHN and Purchaser may be individually referred to as a “Party” and collectively as the “Parties”.)

BACKGROUND:

- A. Whereas UHN has equipment and staff under the supervision of **[Insert UHN Principal Investigator name]** (hereinafter the “UHN Principal Investigator”) capable of providing services pertaining to **[Insert general description of research services to be provided]** as further detailed in **Appendix 1** (as may be amended from time-to-time; hereinafter the “Services”).
- B. Purchaser requires these Services, and UHN desires to provide these Services to Purchaser.
- C. These Services can be provided by UHN to Purchaser at full cost and without disrupting the normal activities of UHN.

The Parties agree as follows:

NATURE OF THE ARRANGEMENT

1. The Parties confirm that this is a fee for service arrangement. As such, all Services will be provided according to the payment terms and conditions set out in Appendix 1 and shall be inclusive of an institutional overhead rate of forty percent (40%).

CONFIDENTIALITY

2. UHN shall hold in confidence and not disclose or use for any purpose other than for the provision of the Services any “Confidential Information” provided by Purchaser. “Confidential Information” means any information provided by the Purchaser to UHN in confidence and any Purchaser samples and/or materials associated with the Services, and shall further include any information and all related data and information generated pursuant to the provision of the Services.

Confidential Information shall not include or otherwise encompass any information and materials which:

- (i) are part of the public domain, or become part of the public domain through no fault of UHN;
- (ii) are obtained from a third party who is not under a duty of confidentiality respecting the Confidential Information and said third party has a legal right to disclose such information;
- (iii) are identified by the Purchaser as no longer constituting Confidential Information of the Purchaser;

- (iv) are already known at the time of disclosure by Purchaser to UHN, as can be demonstrated by written or other records/information; or
- (v) are developed independently by UHN without access to the Confidential Information of the Purchaser, as can be demonstrated by written or other records/information.

In the event that UHN is required to disclose Purchaser Confidential Information by law or an order of a court, tribunal or government agency, UHN shall promptly notify Purchaser and give Purchaser a reasonable opportunity to seek a confidentiality order or take other appropriate action in respect of the proposed disclosure.

This obligation of confidentiality in respect of any particular Confidential Information shall survive for a period of **three (3) years** from the earlier of (i) the full and final provision of the specific Services associated with the particular Confidential Information, or (ii) the expiration or earlier termination of this Agreement.

SERVICE AND USE

3. UHN will provide the Services as further detailed in **Appendix 1** (as amended) through the laboratory of the UHN Principal Investigator, provided that UHN has capacity over and above its own internal needs and Purchaser has fulfilled its obligations (e.g. payment installment(s)) further to any of the terms and conditions of Appendix 1 (as amended). Unless otherwise explicitly agreed to in writing, UHN will not be involved in (i) the preparation and provision of biological samples or any other materials required for analysis or otherwise any other use in the Services, and (ii) in the assessment or interpretation of any data generated pursuant to the provision of the Services. The provision of any such samples, materials and analysis of data will remain the responsibility of the Purchaser.

OWNERSHIP OF DATA

4. Purchaser will own all data and information specifically and directly arising from the provision of the Services, and as such UHN will have no claim on any intellectual property that may be derived from any such data and information.

TERM, RENEWAL and/or TERMINATION

5. This Agreement will be in force for a period of **one (1) year** from the date first written above in the introductory clause, renewable upon the mutual written agreement of the Parties. At the time of any such renewal the Parties shall review and update this Agreement, in particular the information under **Article 9 ("Notices")**. Notwithstanding, a Party may earlier terminate this Agreement upon the provision of thirty (30) days notice to the other Party, and the Parties shall immediately cease all unnecessary activities and shall cooperate to minimize all costs associated with this cessation/termination of activities associated with the provision of said Services. In addition and in the event that this Agreement is earlier terminated by UHN for cause, the Purchaser shall pay UHN for all reasonable expenses and un-cancellable commitments incurred as of the date of notice of termination, but the amount may not exceed the maximum payable under this Agreement.

EXCLUSION OF WARRANTIES

6. **EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, UHN (WHICH INCLUDES ITS DIRECTORS, OFFICERS, EMPLOYEES, STAFF MEMBERS, STUDENTS, RESEARCH TRAINEES AND AGENTS) MAKES NO CONDITIONS, REPRESENTATIONS, WARRANTIES, UNDERTAKINGS, PROMISES, INDUCEMENTS OR AGREEMENTS OF ANY KIND, WHETHER DIRECT, INDIRECT, COLLATERAL, EXPRESS OR IMPLIED, AS TO:**
 - a. **ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION, ORIGINALITY, OR ACCURACY OF DATA, RESULTS, CONCLUSIONS AND PRODUCTS ARISING THEREFROM, AND ANY OTHER DELIVERABLE OR MATTER ARISING FROM THE PROVISION OF THE SERVICES, WHETHER TANGIBLE OR INTANGIBLE, AND ANY INTELLECTUAL PROPERTY ASSOCIATED THEREWITH, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER OR AS A RESULT OF THIS AGREEMENT, AND**

- b. THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF SAID DATA, RESULTS, CONCLUSIONS AND PRODUCTS ARISING THEREFROM, AND ANY OTHER DELIVERABLE OR MATTER ARISING FROM THE PROVISION OF THE SERVICES, AND ANY INTELLECTUAL PROPERTY ASSOCIATED THEREWITH,

INCLUDING WITHOUT LIMITATION, ANY REPRESENTATIONS AND WARRANTIES IN RESPECT OF INTELLECTUAL PROPERTY ASSOCIATED WITH THE PROVISION OF ANY SERVICES OR IN RESPECT OF ANY DELIVERABLE OR OTHER MATTER ARISING FROM THE PROVISION OF THE SERVICES.

LIMITATION OF LIABILITY

7. UHN (AND ITS DIRECTORS, OFFICERS, EMPLOYEES, STAFF MEMBERS, STUDENTS, RESEARCH TRAINEES AND AGENTS) SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY PURCHASER OR ANY OTHERS RESULTING FROM THE USE OF THE DATA, RESULTS OR CONCLUSIONS, AND ANY PRODUCTS AND INTELLECTUAL PROPERTY ASSOCIATED THEREWITH, CONCEIVED, DISCOVERED, OR OTHERWISE PREMISED ON, OR DEVELOPED UNDER OR AS A RESULT OF, OR CONSEQUENTIAL TO, THIS AGREEMENT. THE ENTIRE RISK AS TO ANY USE OF SAID DATA, CONCLUSIONS OR RESULTS (AND ANY PRODUCTS AND INTELLECTUAL PROPERTY ASSOCIATED THEREWITH), AND THE DESIGN, DEVELOPMENT, MANUFACTURE, OFFERING FOR SALE, SALE, OR OTHER DISPOSITION AND/OR PERFORMANCE OF THE DATA, RESULTS, CONCLUSIONS AND PRODUCTS ARISING THEREFROM (AND ANY INTELLECTUAL PROPERTY ASSOCIATED THEREWITH) IS ASSUMED ENTIRELY BY PURCHASER, WITHOUT ANY LEGAL OR EQUITABLE RECOURSE TO UHN.

INDEMNIFICATION

8. Purchaser shall indemnify and save harmless UHN against all costs, actions, suits, claims, losses or damages and for all other matters arising out of its (i.e Purchaser's) use or any other exploitation of the data, results, conclusions, and products derived therefrom, arising out of, or resulting from, this Agreement (and any intellectual property associated therewith), except to the extent that such were caused by UHN's gross negligence, willful misconduct or material breach of this Agreement.

NOTICES

9. Notices may be sent by fax, electronically or surface mail as follows:

A. For University Health Network:

1. Concerning this Agreement:

Franco E. Rossetto, PhD, JD
Director (Interim) and Legal Counsel, Technology Development & Commercialization
University Health Network
101 College Street – Suite 150
Heritage Building – MaRS Centre
Toronto, Ontario
M5G 1L7 Canada
Tel: (416) 581-7813
Fax: (416) 977-4765
Email: tdc@uhnresearch.ca

2. For invoicing:

Cheryl Szombati
Compliance Specialist
University Health Network
101 College Street – Suite 150
Heritage Building – MaRS Centre
Toronto, Ontario
M5G 1L7 Canada
Tel: (416) 581-7400

Fax: (416) 977-4765
Email: cszombat@uhnresearch.ca

3. For scheduling or other matter(s) re. Services:

Insert UHN Contact Information

B. For Purchaser:

1. Concerning this Agreement:

Insert Purchaser Contact Information

2. For invoicing:

Insert Purchaser Contact Information for Invoicing

3. For scheduling or other matter(s) re. Services:

Insert Purchaser Contact Information concerning Services

DISPUTES

10. The Parties shall attempt to resolve any dispute relating to this Agreement promptly by negotiation between officials with authority to settle the matter who are at a higher level of responsibility than the persons with direct responsibility for the administration of this Agreement. All negotiations under this provision shall be considered confidential and shall be treated as compromise and settlement negotiations and deemed to be "off the record" and without prejudice.

GENERAL PROVISIONS

11. This Agreement shall be construed according to the laws of the Province of Ontario and the federal laws of Canada applicable therein.
12. This Agreement shall not be assignable by any Party without the prior written consent of the other Party. Any and all assignments not made in accordance with this section shall be void.
13. Each provision of this Agreement shall be deemed separate, severable and distinct. If any part of any provision of this Agreement is found by a court to be invalid, illegal or unenforceable in any way, the finding shall not limit or affect the validity, legality or enforceability of the remaining provisions.
14. For the purposes of this Agreement and all services to be provided under it, each Party shall be deemed to be an independent contractor and not an agent or employee of the other Party. No Party shall have the authority to make any statements, representations or commitments of any kind, or take any action which shall be binding on the other Party, except as may be explicitly provided for herein or authorized by the other Party in writing.
15. Except as otherwise required by law, neither Party shall, without the consent of the other Party, (i) use the name(s), logo(s), trade-mark(s) or trade-name(s) of the other Party in connection with any products, publicity, promotion, news release, advertising or similar public statements in respect of the Agreement and the Services provided, **and** (ii) make any other public disclosure in respect of this Agreement and its subject matter. Notwithstanding, UHN may disclose the general subject matter and monies received further to this Agreement without any further consent of Purchaser.
16. A Party shall execute such agreements or other instruments and take such steps as may be reasonably requested by any the other Party from time to time in order to give effect to the provisions of this Agreement.

17. In the event that payment in full is not received by UHN within thirty (30) days of Purchaser's receipt of the data and results (as per the terms and conditions of Appendix 1), this Agreement may be terminated in UHN's sole discretion and all right and title to the data and results, and all intellectual property therein, shall revert to UHN.
18. Articles 1 (re. payment terms & conditions), 4, 5 (re. payment of termination expenses and non-cancellable commitments), 6 - 9, 11 - 15 (as required to give effect to any surviving obligations), 16, 18 and this Article 17 shall survive the expiration or earlier termination of this Agreement until such time as the Parties mutually agree to the release of the obligations (in whole or in part) contained therein; Article 2 shall survive the expiration or earlier termination of this Agreement as specifically set out therein.
19. This Agreement (with Appendix 1 (as amended)) constitutes the entire agreement and understanding between the Parties and supersedes any prior agreements between or among the Parties with respect to the Services.
20. This Agreement may be executed by the Parties by in counterparts by facsimile or electronically, each of which who so executed or delivered will be deemed to be an original and all will constitute one agreement.

The Parties are signing this Agreement so as to be effective as of the date stated in the introductory clause.	
<p>Insert PURCHASER name (in full)</p> <p>By: _____</p> <p>Name: Insert Authorized Signatory Name</p> <p>Title: Insert Authorized Signatory Title</p> <p>Date:</p>	<p>UNIVERSITY HEALTH NETWORK</p> <p>By: _____</p> <p>Name: Bradly G Waters, PhD</p> <p>Title: Vice President Research</p> <p>Date:</p>

ACKNOWLEDGMENT

I, the UHN Principal Investigator, have read the provisions of this Agreement and will use my best efforts to direct the provision of the Services in my capacity as an employee/staff member of UHN and as directed by UHN.

UHN Principal Investigator

by: _____
Insert UHN PI Name

Date:

**APPENDIX 1
DESCRIPTION OF "SERVICES" AND PAYMENT TERMS**

"Services" Detail(s):

- e.g** Description of work to be performed
 Sample preparation and submission
 Duration of Project
 Scheduling re. work/activity performance
 Deliverables (i.e. raw data, written report, etc.)

Cost/Payment Details [or Budget]:

Salaries and Benefits:	aa x \$xx	=	\$xx
Supplies and Services:	aa x \$xx	=	\$xx
Other:	aa x \$xx	=	\$xx
<u>Total of Direct Costs</u>			<u>\$xx</u>
Plus UHN Overhead 40% of Total Direct Costs			\$xx
<u>Total Cost to Purchaser</u>			<u>\$xx</u>

Payment Schedule: Fifty percent (50%) upon execution of the Agreement, with the remainder fifty percent (50%) payable upon completion of the Services.

All monies payable to UHN hereunder and not paid when due bear interest at the prime rate of interest quoted by the Bank of Canada, plus 10% (ten percent) per annum until the date on which said monies are fully paid to UHN. UHN will be entitled to that interest in addition to any other rights or remedies available to it in respect to default or delay in payment by Purchaser.

Cheques should be made payable to "University Health Network" and sent to:

**Attention: Cheryl Szombati – Compliance Specialist
 Office of Technology Development & Commercialization
 University Health Network
 101 College Street – Suite 150
 Heritage Building – MaRS Centre
 Toronto, Ontario M5G 1L7 Canada
 T: (416) 581-7400**