



Trial Period Terms and Conditions Product Supply Agreement

Recital

The Company has agreed to provide the NESDEP instrument and Test Kits to the Customer and the Customer has agreed to trial the Instrument for the Specified Purpose during the Trial Period on the terms and conditions detailed in this Agreement.

1. Definitions

Agreed Price means \$35.00 per Test Kit, and Gratis (no charge) for the NESDEP instrument.

Test Kit means a disposable and cost-effective biochip with associated required plastic items.

Commencement Date means the date the Instrument is delivered to the Delivery Location.

Defective Goods means a Instrument or Test Kits that is not to specification, is defective in design, performance, workmanship, makeup or is the subject of a product recall.

Instrument means the Company's portable, rapid diagnostic testing instrument named NESDEP.

Delivery Location means the delivery location for the Instrument and Test Kit agreed between the Company and the Customer.

End Date means the date which is the earlier of:

- (a) 30 days after the Commencement Date; or
- (b) the date this Agreement is terminated in accordance with its terms.

Specified Purpose means trail testing of the Instrument and the sample Test Kits in the Customer's business.

Trial Period means the period from the Commencement Date to the End Date.

2. *Delivery of Instrument and Sample Test Kits*

2.1 The Company will supply 1 Instrument and 50 Test Kits to the Customer at the Delivery Location no later than the Commencement Date.

2.2 During the Trial Period, the Customer will not pay a fee for the right to use the Instrument or the supply of Test Kits.

3. *Trial period*

3.1 The Customer will use the Instrument for the Specified Purpose during the Trial Period.

3.2 During the Trial Period, the Company will provide the following training and technical assistance to the Customer and its employees in relation to the use of the Instrument and Test Kits:

(a) initial training and support as required on the use and operation;

(b) ongoing technical assistance by calling our Director of Business Development.

3.3 The Company is not liable to the Customer for any delay in the delivery of the Instrument and Test Kits.

4. *Title, risk and property*

4.1 The Company retains title to the Instrument delivered to the Customer.

4.2 For the purposes of this Agreement, the Customer:

(a) must keep the Instrument in good and marketable condition, operate it diligently, and for the

4.3 The Customer may not sell, pledge or in any way charge the Instrument by way of security while the Device remains the property of the Company.

5. *Intellectual Property*

5.1 In this clause, "**Intellectual Property**" means any and all present and future intellectual property rights in the Instruments and Tests throughout the world, including without limitation:

(a) any patent, copyright (including future copyright), trade mark (whether registered or unregistered) including the trade marks, software, design, circuit layout right, trade, business or company name or other proprietary rights; and

(b) all present and future rights in an invention, discovery, trade secret, know-how, concept, idea, data or formula and rights in information, including any serendipitous discoveries, granted by law or equity from time to time under the law of any jurisdiction.

5.2 The Customer acknowledges and agrees that:

- (a) all Intellectual Property is owned by the Company;
- (b) nothing in this Agreement shall be read to confer any rights to the Intellectual Property to the Customer.

6. *Health and Safety*

6.1 Whilst the Company will provide initial training and ongoing support to the Customer, its employees and representatives, the Customer is responsible for all health and safety relating to the persons who are operating the Instrument and Test Kits and the Customer must comply with all applicable health and safety legislation and all applicable regulations, advisory standards and codes of practice.

6.2 The Customer must ensure that the Instrument and Test Kits are maintained and operated in accordance with all applicable health and safety laws.

6.3 The Customer must maintain adequate public liability insurance during the Trial Period.

7. *End of Trial Period*

7.1 Following the expiry of the Trial Period, the Customer will:

- (a) participate in feedback discussions with the Company with respect to the operation and performance of the Instrument and Test Kits;
- (b) provide the Company with a letter of reference expressing the Customer's satisfaction with the Instrument and the Company's services (if applicable);
- (c) make available copies of any data generated by the Instrument during the Trial Period; and
- (d) allow the Company to retain and use any data collected during the Trial Period, on a no names basis, without paying a fee to use such data, for the purpose of further commercially and technically validating the Instrument as may be reasonably required by the Company.

7.2 Following the expiry of the Trial Period, the Company will:

- (a) provide to the Customer customary related service offerings and product warranties in connection with the Instrument; and
- (b) deliver copies of third party laboratory testing reports when available.

7.3 Within 15 Business Days of the expiry of the Trial Period (or such other period acceptable to the Company), the Customer must notify the Company in writing whether it wishes to continue to use the Instrument.

7.4 If the Customer elects to continue using the Device in accordance with clause 7.3, the parties acknowledge and agree that they will work together in good faith to negotiate a long term commercial agreement for an annual purchase of in excess of 500 Test Kits at the Agreed Price for a minimum term of 1 year.

7.5 If the Customer elects not to continue using the Instrument they will notify the Company within 15 Business Days of expiry of the Trial Period:

- (a) the Company will collect the Instrument and all unused Test Kits:
- (b) in the same condition as it was delivered, other than for fair wear and tear.

8. *Termination*

8.1 The Company can cancel the supply of the Instrument and terminate this Agreement immediately by giving the Customer notice in any of the following circumstances:

- (a) if the Customer breaches the Customer's obligations under this Agreement

8.2 On termination of this Agreement, the Customer must return the Instrument and any Test Kits:

- (a) to a location nominated by the Company within seven days of receiving notice from the Company; and
- (b) in the same condition as it was delivered, other than for fair wear and tear.

8.3 Termination of this Agreement is without prejudice to any rights which have accrued up to the date of termination.

9. *Warranties and Liabilities*

9.1 To the maximum extent permitted by law, the Company makes no warranty or representation regarding the Instrument and Test Kits and accepts no liability whatsoever for the Instrument and Test Kits.

9.2 To the maximum extent permitted by law, all terms and warranties expressed or implied by any legislation, common law, equity, trade custom or usage or otherwise in relation to the Instrument and Test Kits are expressly excluded.

9.3 The Customer is liable for and must fully indemnify and hold the Company harmless against any and all direct and indirect losses, damages, costs (including legal costs on a full indemnity basis) and expenses incurred by the Company, and hereby releases the Company from any action, claim, proceedings, suit or demand arising out of or in connection with:

- (a) a breach of the Customer's obligations under this Agreement;
- (b) the Customer's employees use of the Instrument and Test Kits (including but not limited to negligent acts or omissions of the Customer);
- (c) the repossession of the Instrument and Test Kits pursuant to this Agreement (including but not limited to entering the premises of third parties);
- (d) any injury to any person, or loss or damage to property arising out of the collection, loading, unloading or transportation of the Instrument and Test Kits;
- (e) any direct losses, damages, costs and expenses arising out of or in connection with the use of the Instrument and Test Kits.

9.4 The Company is not liable to the Customer for:

- (a) any claims in relation to the operation of the Instrument and Test Kits; and
 - (b) any loss of revenue or profit or for any indirect or consequential loss including loss of profits, loss of revenue, loss of production, loss of business opportunity, loss of use, loss of expected savings, opportunity costs, loss of contracts, loss of business, damage to reputation and loss incurred as a result of claims by any third party arising out of or in connection with the provision of the Instrument or Test Kits.
- 9.5 Notwithstanding any other term of this Agreement, the aggregate liability of the Company to the Customer for loss or damage in connection with the supply of the Instrument and Test Kits shall be limited to the value of the Instrument and Test Kits provided.
- 9.6 The Customer warrants and represents to the Company that it will use the Instrument and Test Kits:
- (a) for the Specified Purpose in accordance with the instructions and training provided by the Company;
 - (b) in accordance with ordinary principles of care designed to avoid any damage, injury or work health and safety incidents from occurring; and
 - (c) in accordance with all applicable laws and regulations.

10. Confidentiality

- 10.1 This Agreement is strictly confidential and may not be disclosed by either party to any third party other than:
- (a) to a related body corporate of the Company or the Customer;
 - (b) to an advisor, employee, banker, auditor or other consultant of the Company or the Customer;
 - (c) with the consent of the party to which the information relates;
 - (d) where the information has come within the public domain other than due to a breach of this clause; or
 - (e) as required by any law or by any government body or stock exchange.

11. General provisions

11.1 Governing law

This Agreement is governed by the laws of Chicago, Illinois and the parties will submit to the non-exclusive jurisdiction of the courts of Chicago, Illinois.

11.2 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

11.3 *Entire agreement*

This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements, proposals, representations, correspondence and discussions. Accordingly, anything not reflected in this Agreement does not bind the parties and may not be relied on by either of them.

11.4 *Severance*

If any term (or part of a term) in this agreement is void or unenforceable, that term (or part) is taken to be removed from this agreement and not to form part of it. The remaining terms continue to have full effect.

11.5 *Costs*

Except as expressly stated otherwise in this agreement, each party must pay its own legal and other costs and expenses associated with preparing, executing and performing its obligations under this agreement.

11.6 *Notices*

Notices under this agreement must be in writing and in English and addressed to the addressee at the address of that party stated at the head of this agreement or as subsequently notified by that party. Notices may be delivered by hand, by mail or by email. Notices will be deemed given:

- (a) in the case of hand delivery, on the date of delivery as evidenced by a written acknowledgement of receipt by an authorised employee, agent or representative of the addressee;
- (b) in the case of posting, two Business Days after posting if posting within the United States and five Business Days after posting if posted from or to a place outside the United States; and
- (c) in the case of email, at the time of transmission if the transmission was made before 5.00pm (addressee's local time) on a Business day or otherwise at the commencement of the first Business Day following transmission.

11.7 *Further acts*

Each party must promptly do whatever the other party reasonably requires of it to give effect to this agreement and to perform its obligations under it.

11.8 *Counterparty*

This Agreement may be executed in counterparts and electronically, such counterparts together forming one document.

Executed as an agreement.