

**STANDARD TERMS AND CONDITIONS FOR DISCOVERY SERVICES**

These standard terms and conditions contained herein (the “**Agreement**”) shall govern the provision of certain discovery services (“**Services**”) as set forth in a quote or statement of work (each, a “**SOW**”) referencing these standard terms and conditions and provided by X-Chem, Inc., a Delaware corporation with an address of 100 Beaver Street, Suite 101, Waltham, MA 02453, USA (“**X-Chem**”), to the party ordering the Services (the “**Company**”).

**1. Agreement Structure.** Company and X-Chem must complete and execute a SOW before any Services are provided. No terms or conditions other than those described herein and in the applicable SOW shall apply to this Agreement. If there is any conflict, discrepancy or inconsistency between the terms of this Agreement and any SOW, Change Order, purchase order or other form used by the parties, the terms of this Agreement will control.

**2. About Services.**

**2.1. Provision of Services.** X-Chem shall use commercially reasonable efforts to provide all Services identified in any SOW: (a) within the time period specified in the relevant SOW; and (b) in accordance with prevailing industry standards and practices for the performance of similar activities. X-Chem shall use commercially reasonable efforts to promptly inform Company about any unforeseen results, problems, or difficulties with regard to the Services.

**2.2. Project Leaders.** For each SOW, X-Chem will designate an “**X-Chem Project Leader**” who will be available for communications with Company regarding Services provided under that SOW, as well as contacts for administrative and payment matters for such Services. Company will designate a “**Company Project Leader**” who will be the point of contact at Company for the X-Chem Project Leader.

**2.3. Coordination.** The X-Chem Project Leader and Company Project Leader and their designees will participate in meetings to review performance of Services and to coordinate Services as provided in the SOW and as otherwise reasonably necessary.

**2.4. Change Orders.** If either party identifies a need to modify a SOW, the identifying party will notify the other party in writing as soon as reasonably possible. X-Chem will use reasonable efforts to provide to Company, promptly after receiving or providing the notice described above, a written change order containing a description of the required modifications and their effect on the scope, fees and timelines specified in the SOW (each, a “**Change Order**”). No Change Order will be effective unless and until it has been signed by an authorized representative of each party. If Company does not approve a Change Order and has not terminated the SOW, but still desires that the SOW be modified, then the parties will use reasonable good faith efforts to agree on a Change Order that is mutually acceptable.

**2.5. Subcontracting.** With Company’s prior written consent or as otherwise specified in the relevant SOW, X-Chem may subcontract the performance of specific obligations of X-Chem under a SOW to an Affiliate (as defined below in this Section 2.5) of X-Chem or to a qualified non-Affiliate third party; provided, that (a) such Affiliate or third party performs such Services in a manner consistent with the terms and conditions of this Agreement; (b) such Affiliate or third party is bound by written agreement to obligations of non-disclosure and non-use of the Confidential Information of Company that are at least as restrictive as those set forth in this Agreement; and (c) X-Chem remains liable for the performance of such Affiliate or third party. Notwithstanding the foregoing, Company hereby acknowledges that X-Chem may use the following subcontractor(s) for the stated tasks without further notice to Company: Cepter Biopartners for protein science and assays, Tufts University Core Facility and Psomagen, Inc. for DNA sequencing. For purposes of this Agreement, “**Affiliate**” means, with respect to either Company or X-Chem, any corporation, company, partnership, joint venture and/or firm which controls, is controlled by or is under common control with Company or X-Chem, as applicable. As used in this Section 2.5), “**control**” means (i) in the case of corporate entities, direct or indirect ownership of more than fifty percent (50%) of the stock or shares having the right to vote for the election of

directors (or such lesser percentage that is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction); and (ii) in the case of non-corporate entities, the direct or indirect power to manage, direct or cause the direction of the management and policies of the non-corporate entity or the power to elect more than fifty percent (50%) of the members of the governing body of such non-corporate entity.

**2.6. Disclosure.** The results of all Services with respect to any SOW performed by each party as part of such Services (a) shall, with respect to X-Chem, be promptly disclosed to Company, and (b) may, with respect to Company and in Company’s discretion, be promptly disclosed to X-Chem, in each case in accordance with the SOW and this Agreement. Such results disclosed by one party to the other party pursuant hereto may be used only in accordance with the rights granted under this Agreement.

**2.7. Record-Keeping.** X-Chem shall maintain complete and accurate records of all work conducted in the performance of the Services and all results, data, inventions and developments made in the performance of the relevant Services under the relevant SOW. Such records shall be in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes.

**2.8. Shipping.** X-Chem shall ship final compounds as per Company instructions. Company will provide X-Chem with Company’s shipper account information (e.g., FedEx) to facilitate payment and tracking.

**3. Representations and Warranties.**

**3.1. Mutual.** Each party represents and warrants as follows:

**3.1.1. Organization.** Such party is and will remain a corporation or company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization.

**3.1.2. Enforceability of this Agreement.** The execution and delivery of this Agreement by such party has been authorized by all requisite corporate or company action. This Agreement is and will remain a valid and binding obligation of such party, enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors.

**3.1.3. Absence of Other Contractual Restrictions.** Such party is under no contractual or other obligation or restriction that is inconsistent with such party’s execution or performance of this Agreement. Such party will not enter into any agreement, either written or oral, that would conflict with such party’s obligations under this Agreement.

**3.2. Of X-Chem.** X-Chem represents and warrants as follows:

**3.2.1. Qualifications of X-Chem Personnel.** X-Chem has engaged, will engage and will cause any Affiliates involved in rendering Services to engage, employees and permitted subcontractors including consultants (collectively, “**X-Chem Personnel**”) with the proper skill, training and experience to provide Services. Before providing Services, all X-Chem Personnel must be subject to binding written agreements with X-Chem under which they have confidentiality obligations with regard to Confidential Information of Company and Company Materials (each as defined below) that are consistent with the terms of this Agreement. Company agrees to use commercially reasonable efforts to notify X-Chem of any breach of the foregoing warranty as soon as Company becomes aware of such breach.

**3.2.2. Compliance.** X-Chem will perform all Services with requisite care, skill and diligence, in accordance with all applicable laws, rules, regulations, orders and industry standards. Company agrees to use commercially reasonable efforts to notify X-Chem of any breach of the foregoing warranty as soon as Company becomes aware of such breach.

**3.2.3. Absence of Debarment.** To X-Chem’s knowledge, neither X-Chem nor X-Chem Personnel involved in rendering Services have been debarred, convicted, or

are subject to a pending debarment or conviction, pursuant to section 306 of the United States Food Drug and Cosmetic Act, 21 U.S.C. § 335a. X-Chem agrees to use commercially reasonable efforts to notify Company if it or any X-Chem Personnel involved in rendering Services becomes subject to the foregoing, or if any action, suit, claim, investigation, or proceeding relating to the foregoing is pending.

### 3.3. Disclaimers.

**3.3.1.** X-Chem specifically disclaims any warranty, guarantee or representation that any Services will be successful or achieve any goal described in any SOW, that compounds having desired activity against the relevant target will be identified, or that any information or results contained within any Deliverable is useful, safe or effective, provided that X-Chem shall perform Services using due care and good faith efforts consistent with the requirements of this Agreement. Any time schedule or quantity requirement within an SOW shall not be binding and any failure to meet the defined Deliverables shall not be deemed a material breach by X-Chem of its obligations. In the event of such failure, X-Chem shall have no liability for any Company Materials used in the development of the Deliverables nor the replacement cost of the same.

**3.3.2.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (A) THE SERVICES, DELIVERABLES AND CONFIDENTIAL INFORMATION PROVIDED BY X-CHEM HEREUNDER ARE PROVIDED "AS-IS" AND (B) NEITHER PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

### 4. Compensation.

**4.1. Payments.** As full consideration for the Services, Company will pay X-Chem the non-refundable amounts set forth in the applicable SOW in accordance with the payment schedule set forth in such SOW. X-Chem will invoice Company for all amounts due in United States Dollars. Except to the extent otherwise specified in the applicable SOW, all payments will be made by Company within thirty (30) days after its receipt of a proper invoice and reasonable supporting documentation for such invoice. Should any part of an invoice be the subject of a good faith dispute, Company shall promptly notify X-Chem in writing of such dispute and shall pay the undisputed amount according to the terms and conditions described herein while said dispute is being resolved. The parties shall work in good faith to resolve any such dispute in a timely manner. If Company fails to pay any undisputed amount when due, in addition to its other rights under this Agreement, X-Chem may cease all activities hereunder and withhold all data, information, reports and material of any kind (including Company Materials and Deliverables) until all outstanding and undisputed amounts have been paid in full.

**4.2. Late Payment.** Unless subject to a good faith dispute as provided above, invoice balances not remitted when due shall be subject to a one percent (1%) per month interest charge. X-Chem reserves the right to suspend the performance of Services in the event of late payments of undisputed amounts after providing Company with written notice of such late payments and allowing Company a period of ten (10) days to pay the late amounts.

**4.3. Taxes.** Duty, sales, use or excise taxes imposed by any governmental entity that apply to the provision of Services will be borne by Company (other than taxes based upon the income of X-Chem).

**4.4. Pass-Through Charges.** Company shall reimburse X-Chem on a monthly basis for X-Chem's documented out-of-pocket costs, plus an administrative fee of nine percent (9%) thereof, for goods (other than eligible consumables) and services that X-Chem obtains from third parties in connection with the Services with a budget approved in writing by Company and X-Chem.

**4.5. Inflation Adjustment.** X-Chem may, no more than once per year with respect to each SOW, alter the fees set forth therein by an amount up to 2% above any increase over the previous twelve (12) months in the Consumer Price Index

for All Urban Consumers (CPI-U) published by the U.S. Bureau of Labor Statistics. Alterations of the fees under this Section 4.5 require not less than thirty (30) days' notice by X-Chem to Company.

### 5. Proprietary Rights.

**5.1. Company Materials.** All documentation, information, and biological, chemical or other materials owned and/or controlled by Company and furnished to X-Chem to perform the Services by or on behalf of Company (collectively, with all associated intellectual property rights, the "Company Materials") will remain the exclusive property of Company. X-Chem will not be liable to Company nor be deemed to have breached this Agreement for errors, delays or other consequences arising from Company's failure to provide the Company Materials, any necessary documents or information as agreed or in a timely manner, nor will X-Chem be liable to Company if Company fails to otherwise reasonably cooperate in order to enable X-Chem to perform its obligations. Company hereby grants to X-Chem a worldwide, non-exclusive license under Company's intellectual property rights solely to use Company Materials only as necessary to perform Services and X-Chem will not use Company Materials for any other purpose whatsoever. X-Chem will not analyze Company Materials except as necessary to perform Services and will not transfer or make the Company Materials available to Affiliates or third parties without the express prior written consent of Company.

**5.2. Deliverables.** "Deliverables" means, subject to the following sentence, the items and information as described in an SOW to be provided by X-Chem to Company in connection with this Agreement. Where, pursuant to an SOW, (a) X-Chem synthesizes, develops or modifies compounds for Company, such compounds shall constitute part of the Deliverables, unless such compounds originate from X-Chem's libraries ("Library Compounds") or are acquired from third party suppliers or (b) Company has purchased from X-Chem off-the-shelf DNA encoded libraries of Library Compounds where each Library Compound is physically linked to a nucleic acid strand which contains the information for the synthetic assembly of the displayed small organic molecule in the form of nucleobases ("ReadiDEL Library"), in each case such Library Compounds or ReadiDEL Library shall not constitute part of the Deliverables.

**5.3. Rights in Deliverables.** Subject to Section 5.4 and upon payment of all fees due under the applicable SOW, as between X-Chem and Company, all right, title and interest in all Deliverables shall be owned by Company. Subject to Section 5.4 and upon payment of all fees due under the applicable SOW, X-Chem, on behalf of itself and its Affiliates, agrees to assign and hereby assigns to Company all of its right, title and interest in and to the Deliverables. To the extent any rights in the Deliverables cannot be assigned to Company by X-Chem based on applicable law, X-Chem hereby grants to Company a worldwide, exclusive, fully paid, sublicensable license under X-Chem's rights in the Deliverables to make, have made, use and have used, import and export compounds based on, identified or otherwise derived from such Deliverables. Information contained in any Deliverables or otherwise generated during the Services may be used by X-Chem for internal, non-target-specific research purposes.

**5.4. X-Chem Technology.** Notwithstanding any of the foregoing, X-Chem will retain full ownership rights in and to all compounds, Library Compounds, ReadiDEL Libraries, discoveries, inventions, programs, databases, algorithms, methodologies, processes, technologies, protocols, patents, know-how and other materials and information owned or controlled by X-Chem and its Affiliates prior to or apart from performing its obligations under this Agreement (collectively, with all associated intellectual property rights, the "X-Chem Technology"), regardless of whether such X-Chem Technology is used in connection with X-Chem's performance of its obligations under this Agreement. X-Chem Technology shall also include any improvements to the foregoing items made by X-Chem as the result of rendering the Services hereunder. Client hereby expressly agrees that X-Chem, and its affiliates may use data generated during the Services in a blinded format for X-Chem's technology development.

**5.5. Library Compound Licenses to Company.** Upon payment of all fees due under the applicable SOW, Company is hereby granted a worldwide, non-exclusive, fully paid, (a) sublicensable license under X-Chem's rights in and to the Library Compounds for Company to make, have made, use and have used, import and export compounds based on, identified or otherwise derived from such Library

Compounds, and (b) non-sublicensable license under X-Chem Technology only to the extent required to exploit the Deliverables or Library Compounds.

**5.6. ReadIDEL Licenses to Company.** Upon payment of all fees due under the applicable SOW, Company is hereby granted a worldwide, non-exclusive, fully paid, (a) sublicensable license under X-Chem's rights in and to the ReadIDEL Libraries purchased by Company from X-Chem, including rights in and to any know-how to the extent directly provided by X-Chem to Company related to the operation or use thereof (but excluding any know-how related to the design or synthesis thereof, or machine based learning or predictive applications related thereto), to use such ReadIDEL Library for "**ReadIDEL Library Screening**" defined as internal interrogation of the ReadIDEL Library with targets of interest (proteins, nucleic acids, lipids, tissues, organs) in affinity-mediated selections and the respective decoding processes of the remaining binders to the target after elution by PCR and next-generation sequencing, and (b) non-sublicensable license under X-Chem Technology only to the extent specifically required to support the license grant in Section 5.6(a). For clarity, any Library Compounds identified through ReadIDEL Library Screening are subject to the license grant set forth in Section 5.5.

**5.7. Company Inventions.** Nothing in this Agreement shall give X-Chem any rights to, or any rights to receive disclosure of, any inventions made by or on behalf of Company through the use of Deliverables or practice of any license granted under Sections 5.5 or 5.6, including any compounds based on, identified or otherwise derived by or on behalf of Company, its Affiliates or its/licensees from the Deliverables or Library Compounds in accordance with the licenses granted under Section 5.5, or the screening of any ReadIDEL Library in accordance with the licenses granted under Section 5.6.

**5.8. No Other Rights.** Each party expressly reserves and retains all rights to all intellectual property and technology not expressly granted to the other party herein, and no right or license under any patent rights, trademarks, know-how or other proprietary rights of either party is granted or shall be granted by implication. Except as otherwise expressly provided in this Agreement, neither party shall receive any rights under this Agreement to own, use or access the patent rights, know-how or other intellectual property of the other party.

## 6. Confidential Information.

**6.1. Definition. "Confidential Information"** of Company means all scientific, technical, financial or business information, materials, know-how or trade secrets owned, possessed or used by Company, that are disclosed by Company to X-Chem hereunder in connection with this Agreement, including in the negotiation of any Statement of Work, whether or not labeled "Confidential", and shall include but not be limited to (a) Company Materials and any scientific and medical data or assay protocols disclosed to X-Chem hereunder, and (b) development and marketing plans, regulatory and business strategies, financial information, and forecasts, personnel information and customer lists of Company. For clarity, Confidential Information of Company excludes X-Chem Technology. "**Confidential Information**" of X-Chem means all scientific, technical, financial or business information, materials, know-how or trade secrets owned, possessed or used by X-Chem, that are disclosed by X-Chem to Company hereunder in connection with this Agreement, including in the negotiation of any SOW, whether or not labeled "Confidential". Confidential Information of X-Chem shall include but not be limited to X-Chem Technology.

**6.2. Obligations.** During the term of this Agreement and for a period of five (5) years thereafter (or in perpetuity in the case of trade secrets), except as otherwise expressly provided in this Agreement, including in Section 6.3, a party receiving Confidential Information hereunder ("**Receiving Party**") will not, directly or indirectly, publish, disseminate or otherwise disclose, or deliver or make available to any third party, or use, any such Confidential Information of the other party ("**Disclosing Party**"), other than in furtherance of the purposes of this Agreement. The Receiving Party will exercise all reasonable precautions to protect the integrity and confidentiality of the Disclosing Party's Confidential Information. The Receiving Party may disseminate or permit access to Confidential Information of the Disclosing Party only to its representatives who have a need to know such Confidential Information in the course of the performance of their duties or exercise of rights under this Agreement and who are bound to obligations of non-

disclosure and non-use of the Confidential Information that are at least as restrictive as those set forth in this Agreement.

**6.3. Exceptions.** The Receiving Party's obligations of non-disclosure and non-use under this Agreement will not apply to any portion of the Disclosing Party's Confidential Information that Receiving Party can demonstrate, by competent proof: (a) is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the Receiving Party; (b) is in the Receiving Party's possession at the time of disclosure other than as a result of the Receiving Party's breach of any legal obligation; (c) becomes known to the Receiving Party on a non-confidential basis through disclosure by sources other than the Disclosing Party having the legal right to disclose such Confidential Information in such manner; or (d) is independently developed by or on behalf of the Receiving Party without reference to or reliance upon Confidential Information of the Disclosing Party.

If the Receiving Party is required (x) by a governmental authority, (y) by order of a court of competent jurisdiction, or (z) in filing or prosecuting of patent applications to the extent permitted in accordance with this Agreement, to disclose any Confidential Information of the Disclosing Party, to the extent permitted by applicable law, the Receiving Party will give the Disclosing Party prompt written notice of such requirement, order, filing or prosecuting and the Receiving Party will take all reasonable and lawful actions to avoid or minimize the degree of such disclosure. The Receiving Party will cooperate reasonably with the Disclosing Party, at the Disclosing Party's expense, in any efforts to seek a protective order.

**6.4. Terms of Agreement.** The existence and the terms and conditions of this Agreement shall be considered Confidential Information of both parties. Either party may disclose such terms as reasonably required to a *bona fide* potential licensee, investor, investment banker, acquirer, merger partner or other potential financial partner, and their attorneys and agents; *provided that* each such person or entity to whom such information is to be disclosed is informed of the confidential nature of such information and is obligated to keep such information confidential. Any other disclosure of such information shall require the mutual written agreement of the parties.

## 7. Indemnification, Insurance and Remedies.

**7.1. Indemnification by X-Chem.** X-Chem will indemnify, defend and hold harmless Company, its Affiliates, and its and their respective officers, directors, employees and agents (collectively, the "**Company Indemnitees**") against any third party claims, including reasonable attorneys' fees for defending those claims, to the extent such claims arise out of or relate to (a) any X-Chem Indemnitee's negligence or willful misconduct in performing obligations under this Agreement; or (b) X-Chem's breach of this Agreement.

**7.2. Indemnification by Company.** Company will indemnify, defend and hold harmless X-Chem, its Affiliates, and its and their respective officers, directors, employees and agents (collectively, the "**X-Chem Indemnitees**") against any third party claims, including reasonable attorneys' fees for defending those claims, to the extent such claims arise out of or relate to (a) the use of the Deliverables or exercise of rights granted hereunder by or on behalf of Company or its Affiliates (except to the extent such claims result from X-Chem's breach of this Agreement or an X-Chem Indemnitee's negligence or willful misconduct); (b) any Company Indemnitee's negligence or willful misconduct in performing obligations under this Agreement; (c) Company's breach of this Agreement; or (d) any allegation that X-Chem's use in the performance of the Services in accordance with the applicable SOW of any Company Materials, Confidential Information of Company, and/or any other technical information, materials, processes or know-how specifically provided to X-Chem by Company constitutes an infringement or misappropriation of intellectual property rights of such third party.

**7.3. Indemnification Procedures.** Each party must notify the other party within thirty (30) days after receipt of any claims made for which the other party might be liable under Section 7.1 or 7.2, as applicable. The indemnifying party will have the sole right to defend, negotiate, and settle such claims. The indemnified party will be entitled to participate in the defense of such matter and to employ counsel at its expense to assist in such defense; *provided, however,* that the indemnifying party will have final decision-making authority regarding all aspects of the defense

of the claim. The indemnified party will provide the indemnifying party with such information and assistance as the indemnifying party may reasonably request, at the expense of the indemnifying party. Neither party will be responsible or bound by any settlement of any claim or suit made without its prior written consent; provided, however, that the indemnified party will not unreasonably withhold or delay such consent.

**7.4. Insurance.** Each party will carry, with financially sound and reputable insurers, insurance coverage (including with respect to X-Chem, worker's compensation at or above the applicable statutory limits, and comprehensive liability coverage with contractual liability coverage) with respect to the conduct of its business against loss from such risks and in such amounts as is customary for well-insured companies engaged in similar businesses and reasonably sufficient to support its obligations under this Agreement. Upon the reasonable request of the other party, a party will provide the other party with a Certificate of Insurance evidencing such coverage.

**7.5. Remedies.** Each party agrees that (i) the other party may be irreparably injured by a breach of this Agreement; (ii) money damages may not be an adequate remedy for any such breach; and (iii) each party will be entitled to seek equitable relief, including injunctive relief and specific performance, without having to post a bond, as a remedy for any such breach by the other party.

**7.6. Limitation of Liability.** NEITHER PARTY HERETO SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR MULTIPLE DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF ITS RIGHTS HEREUNDER, OR FOR LOST PROFITS ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THIS SECTION 7.6 SHALL NOT LIMIT OR RESTRICT (A) DAMAGES AVAILABLE FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS PURSUANT TO ARTICLE 6, OR (B) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS PURSUANT TO ARTICLE 7. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL X-CHEM BE RESPONSIBLE FOR DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT OF FEES PAID UNDER THE APPLICABLE SOW IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE. FURTHERMORE, NO ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED UNDER ANY SOW MAY BE BROUGHT BY COMPANY MORE THAN TWELVE (12) MONTHS AFTER THE ACCRUAL OF THE CAUSE OF ACTION.

## 8. Expiration and Termination.

**8.1. Expiration.** The term of this Agreement shall commence on the date set forth in the SOW (the "Effective Date") and, unless an extension is mutually agreed by the parties or the Agreement is terminated in accordance with Section 8.2 or 8.3, will expire on the second anniversary of the Effective Date; provided that the term shall be automatically extended until the completion of all Services under all SOW(s) executed by the parties prior to the expiration date specified above.

**8.2. Termination by Company.** Company may terminate this Agreement or any SOW at any time, with or without cause, upon sixty (60) days' prior written notice to X-Chem.

**8.3. Termination by X-Chem.** X-Chem may terminate this Agreement or any SOW if Company fails to cure a material breach of this Agreement or of a SOW within thirty (30) days after receiving written notice from X-Chem of such breach. In addition, X-Chem may terminate any SOW effective upon written notice to Company if Company Materials are not received by X-Chem within ninety (90) days of the relevant SOW Effective Date.

**8.4. Effect of Expiration or Termination.** Upon termination or expiration of this Agreement, neither X-Chem nor Company will have any further obligations under this Agreement, or in the case of termination or expiration of a SOW, under that SOW, except that:

**8.4.1.** X-Chem will terminate all affected Services in progress in an orderly manner as soon as practical, unless Company specifies in the notice of termination that Services in progress should be completed;

**8.4.2.** X-Chem will deliver to Company or, at Company's option, dispose of, any relevant Company Materials in its possession or control;

**8.4.3.** Company will pay X-Chem any monies due and owing X-Chem, up to the time of termination or expiration, for Services properly performed and all authorized expenses actually incurred (as specified in the applicable SOW);

**8.4.4.** upon written request of the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party all Confidential Information of Disclosing Party (including all copies) provided to Receiving Party under this Agreement or under any applicable SOW which has been terminated or has expired, except for one (1) copy which the Receiving Party may retain solely to monitor Receiving Party's surviving obligations of confidentiality and non-use and provided that Receiving Party shall not be required to destroy any computer files stored securely by the Receiving Party that are created during automatic system back up; and

**8.4.5.** the terms and conditions under Sections 3.3, 4.2, 4.3, 5, 6, 7, 8.4 and 9 will survive any such termination or expiration.

## 9. Miscellaneous.

**9.1. Independent Contractors.** Each party is an independent contractor and not an agent or employee of the other party. Neither party will in any way represent itself to be an agent, employee, partner or joint venturer of or with the other party, and neither party has any authority to obligate or bind the other party by contract or otherwise. X-Chem shall not be entitled to any benefits or compensation from Company except as set forth in this Agreement and shall in no event be entitled to any fringe benefits payable to Company employees. X-Chem shall be solely responsible for meeting its payroll tax requirements. X-Chem agrees to defend, indemnify and hold Company harmless against any claim that Company is jointly or severally liable or obligated to X-Chem's employees, agents, employees' representative, a benefit plan or any governmental fund or entity related to X-Chem's employees on the basis of a statute, regulation or common law duty relating to employment, provided that Company promptly notifies X-Chem of any such claim, and gives X-Chem the sole control over the defense and settlement thereof.

**9.2. Publicity.** Except to the extent required by applicable law or regulation or the rules of any stock exchange or listing agency or as otherwise provided in this Agreement, neither party will make any public statement or release concerning this Agreement or the transactions contemplated by this Agreement or use the other party's name or the name of any Affiliate of the other party in any form of advertising, promotion or publicity, without obtaining the prior written consent of the other party. X-Chem shall not make any publication, lecture, manuscript, poster presentation or other disclosure or dissemination (oral or written) containing Confidential Information or referring to the Services or their Deliverables, either during the term of this Agreement or after its termination or expiration, without the prior written approval of Company. Notwithstanding the foregoing, X-Chem may generally disclose that Company has retained X-Chem for professional services in X-Chem's customer lists and related materials (including online customer lists and advertising materials).

**9.3. Notices.** All notices must be in writing. Communications and notices to Company will be marked "Attention: Chief Executive Officer". Communications and notices to X-Chem will be marked "Attention: Chief Executive Officer". All notices must be delivered (a) by personal delivery, with receipt acknowledged; (b) by prepaid certified or registered mail, return receipt requested; (c) by prepaid recognized express delivery service; or (d) by email, with return receipt. Notices will be effective upon receipt or at a later date stated in the notice.

**9.4. Assignment.** Except as expressly provided in Section 2.5, neither party may assign, delegate or transfer its obligations under this Agreement, in whole or in part, without the prior written consent of the other party; provided, however, that either party may, without such consent, but with notice to the other party, assign

this Agreement, in whole or in part, (a) in connection with the transfer or sale of all or substantially all of its assets or the line of business to which this Agreement relates, (b) to a successor entity or acquirer in the event of a merger, consolidation or change of control, or (c) to any Affiliate. Any purported assignment in violation of the preceding sentence will be void. No assignment, delegation or transfer will relieve either party of the performance of any accrued obligation that such party may then have under this Agreement.

**9.5. Entire Agreement.** This Agreement, any fully-signed SOW and the Change Order(s) to such SOW, if applicable, each of which are incorporated into this Agreement, constitutes the entire agreement between the parties with respect to the specific subject matter of this Agreement (i.e., performance of Services) and all prior agreements, oral or written, with respect to such subject matter are superseded. Each party confirms that it is not relying on any representations or warranties of the other party except as specifically set forth in this Agreement.

**9.6. No Modification.** This Agreement (including any SOW) may be changed only by a writing signed by authorized representatives of each party.

**9.7. Severability; Reformation.** Each provision in this Agreement is independent and severable from the others, and no provision will be rendered unenforceable because any other provision is found by a proper authority to be invalid or unenforceable in whole or in part. If any provision of this Agreement is found by such an authority to be invalid or unenforceable in whole or in part, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision and the intent of the parties, within the limits of applicable law.

**9.8. Governing Law.** This Agreement and any disputes arising out of or relating to this Agreement will be governed by, construed and interpreted in accordance with the internal laws of the Commonwealth of Massachusetts, USA, without regard to any choice of law principle that would require the application of the law of another jurisdiction. The parties expressly reject any application to this Agreement of (a) the United Nations Convention on Contracts for the International Sale of Goods; and (b) the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by that certain Protocol, done at Vienna on April 11, 1980.

**9.9. Dispute Resolution.** If any dispute arises from this Agreement, including any dispute on the establishment, validity, interpretation, termination or enforcement of this Agreement, the parties shall make every effort to settle such dispute through friendly consultation. If any such dispute fails to be settled through consultation, within thirty (30) days of any written request for resolution of such dispute by any party, it shall be finally resolved by binding arbitration under the rules then in effect (“**ICC Rules**”) of the International Chamber of Commerce (“**ICC**”), as such ICC Rules may be modified by this Section 9.9 or by written agreement of the parties. The arbitration proceeding shall be conducted in the English language, and shall be conducted in Boston, Massachusetts. The arbitration shall be conducted before a single arbitrator selected in accordance with the ICC Rules as expeditiously as practicable. The arbitration award shall be in writing and shall briefly state the findings of fact and conclusions of law on which it is based. Each party shall pay its own expenses of arbitration and the expenses of the arbitrator shall be equally shared. The arbitral award shall be final and binding upon the parties and non-appealable. Each party irrevocably and unconditionally (a) consents to the jurisdiction of any such proceeding and waives any objection that it may have to personal jurisdiction or the laying of venue of any such proceeding; and (b) knowingly and voluntarily waives its rights to have disputes tried and adjudicated by a judge and jury except as otherwise expressly provided herein. Any party may, without inconsistency with this agreement to arbitrate, apply to a court to seek pre-arbitral provisional injunctive relief to maintain the status quo or prevent irreparable harm, or any other relief or order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

**9.10. Waivers.** Any delay in enforcing a party’s rights under this Agreement, or any waiver as to a particular default or other matter, will not constitute a waiver of such party’s rights to the future enforcement of its rights under this Agreement, except with respect to an express written waiver relating to a particular matter for a particular period of time signed by an authorized representative of the waiving party, as applicable.

**9.11. Headings; Interpretation.** The section headings are included solely for convenience of reference and will not control or affect the meaning or interpretation of any of the provisions of this Agreement. The words “include,” “includes” and “including” when used in this Agreement (and any SOW(s)) are deemed to be followed by the phrase “but not limited to”.

**9.12. E-Signature.** The parties agree that execution of any SOW by e-Signatures (as defined below) constitutes execution of this Agreement and shall have the same legal force and effect as the exchange of original signatures. Pursuant to this Agreement, e-Signature shall mean a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with the electronic document, that (a) is unique to the person making the signature; (b) the technology or process used to make the signature is under the sole control of the person making the signature; (c) the technology or process can be used to identify the person using the technology or process; and (d) the electronic signature can be linked with an electronic document in such a way that it can be used to determine whether the electronic document has been changed since the electronic signature was incorporated in, attached to or associated with the electronic document.

**9.13. Force Majeure.** Neither party shall be responsible for any failure of or delay in performance of any obligation hereunder (other than a payment obligation) that is due, in whole or in part, to any occurrence or cause beyond its reasonable control. Any timeframe for performance hereunder shall be automatically adjusted to account for any such delay. The party claiming the existence of such a force majeure event shall provide prompt written notice to the other party of such event and its expected duration, shall use commercially reasonable efforts to resume performance under this Agreement as soon as possible, and if it has not performed the relevant obligation under this Agreement due to a force majeure event for more than sixty (60) days, the other party may terminate the applicable SOW or this Agreement without further cost or liability, in addition to any other applicable termination rights.

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