

THIS INVESTMENT AGREEMENT, DATED THE ____ DAY OF _____, 20__, BETWEEN:

ALBERTA INNOVATES

A Provincial research and innovation corporation
established pursuant to Section 6.1(3) of the *Alberta
Research and Innovation Amendment Act, 2016*

- and -

[NAME]

A Corporation incorporated pursuant
to the laws of [TBD]

(the “**Applicant**”)

- and -

[NAME]

A Corporation incorporated pursuant
to the laws of [TBD]

(the “**Industry Partner**”)

BACKGROUND

1. The Applicant is an SME with a plan to develop and commercialize a novel technology or business solution to address a gap or market need in Alberta.
2. The Applicant will collaborate with the Industry Partner to carry out the Project, but requires funding from Alberta Innovates to carry out the Project; and.
3. Alberta Innovates has reviewed the Application and agreed to fund the Project, as set out in in this Investment Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**ARTICLE 1 DEFINITIONS AND INTERPRETATION****1.1 Terms and Conditions**

The Investment is governed by the Terms and Conditions which form a part of this Investment Agreement. A copy of the Terms and Conditions are attached as Schedule **A**.

1.2 Definitions

For ease of reference, a list of defined terms is included in Schedule **B**.

ARTICLE 2 PROJECT PLAN, START AND COMPLETION DATES**2.1 Project Plan**

The Applicant and Industry Partner agree to carry out the Project in accordance with the Project Plan, a copy of which is attached as Schedule **C**, including achieving the Milestones as required by Section 4.2 below.

2.2 Project Start Date

The Applicant must determine a Project Start Date. This date will be the commencement of the first Milestone, as set out in Schedule **D**. The Project Start Date must be after the date Alberta Innovates receive a fully executed copy of this Investment Agreement from the Applicant and Industry Partner. If special circumstances require that the Project Start Date must be before the execution of the agreement, permission must first be received from Alberta Innovates in writing. If the Project Start Date is different from the proposed start date initially set out in the Application, this will be addressed in Schedule **D**. Such amended Milestone, Reporting and Payment Timelines will replace whatever was initially included with the Application. Alberta Innovates will not fund any costs incurred prior to the Project Start Date, and all costs incurred prior to the Project Start Date are considered Ineligible Expenses.

2.3 Industry Partner Funding of Costs Incurred Prior to Project Start Date

Notwithstanding the generality of 2.2 above, those costs incurred by the Applicant and the Industry Partner prior to the Project Start Date and identified as such shall be deemed Eligible Expenses, provided same are paid exclusively by the Industry Partner's Contribution and not by Alberta Innovates.

2.4 Project Completion Date

The Project Completion Date must be no later than three (3) years from the Project Start Date. If the Project is not completed before such date, subject to an amendment agreed to between the Parties, the Investment is rescinded, with the effect that this Investment Agreement shall be deemed *void ab initio* and the Applicant will be required to reimburse Alberta Innovates for any portions of the Investment received to date. Alberta Innovates will have no obligation to reimburse the Applicant or Industry Partner for any Project Costs incurred after such date of rescission.

2.5 Effective Date of this Agreement

The effective date of this Agreement shall be the Project Start Date.

ARTICLE 3 INVESTMENT BY ALBERTA INNOVATES, CONTRIBUTIONS OF THE PARTIES**3.1 Investment by Alberta Innovates**

Subject to the Terms and Conditions of this Investment Agreement, Alberta Innovates agree to provide the Applicant with a contribution to the Project (the "Investment") not exceeding \$ **AMOUNT** Canadian dollars in accordance with the Payment Schedule as set out in Schedule **D**.

If the total Project Costs for the Project decreases, the Investment payable by Alberta Innovates shall be adjusted pro-rata with respect to Alberta Innovates contributions in accordance with such decrease. Alberta Innovates shall pay the Investment to the Applicant in the amounts and at the times specified in Schedule **D**.

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3.2 Milestone Payments

The Investment will be paid over time in accordance with the critical Milestones as set out below. A Project may have one or more Milestones, up to a maximum of nine (9) to be disbursed throughout the maximum three (3) year term of this Investment Agreement, unless an extension is agreed to by the Parties. Upon completion of a Milestone, the Applicant is required to submit a Progress Report or Final Report (as the case may be) to Alberta Innovates.

3.3 Milestones Generally

Milestones may overlap, but Alberta Innovates will not review more than one Progress Report or issue more than one payment per calendar month.

3.4 Payment on Commencement of Project

Alberta Innovates will not pay more than twenty (20%) percent of the total Investment on the Project Start Date. In those rare instances where additional funds may be required to jump-start the Project, the Recipient may seek Alberta Innovates' prior written approval to provide additional funding within forty-five (45) days of the Project Start Date, such additional funding to be wholly at Alberta Innovates' discretion. Any requests for additional funding within such forty-five (45) day period will include a detailed summary explaining why such funds are urgently required to ensure the success of the Project. If any additional funding is to be paid during such forty-five (45) day period then this amount must be spent in full by the Milestone 1 End Date, and the Recipient shall detail all expenditures related to such funds in the Progress Report due on completion of Milestone 1.

3.5 In-Kind Contributions

For clarity, In-Kind contributions will only be recognized as eligible when the costs incurred by the Applicant and/or Industry Partner are incidental to its ordinary course of business, directly attributable to the Project and easily auditable.

3.6 Contributions by the Applicant and Industry Partner

The Applicant and/or Industry Partner must apply, pay and deliver their Contribution as set out in Schedule D.

3.7 Eligible and Ineligible Expenses

The Investment shall only be applied towards Eligible Expenses pursuant to the terms of this Investment Agreement. Guidance concerning what constitutes an "Eligible Expense" versus an "Ineligible Expense" is provided under the definitions of those terms in Schedule B. It is a condition of the Investment that Alberta Innovates have the right to require the Applicant to repay all amounts of the Investment which were used to cover Ineligible Expenses, and such amount shall constitute a debt owing and repayable by the Applicant to Alberta Innovates.

3.8 Stacking Limit

The maximum level of total government assistance (whether from federal, provincial/territorial, and/or municipal departments, governmental agencies or Crown corporations) cannot exceed seventy-five (75%) percent of the total Project Costs (the "Stacking Limit"). At times where the total government assistance to the Applicant exceeds the Stacking Limit, Alberta Innovates reserve the right to unilaterally and without notice reduce its investment such that the Stacking Limit is not exceeded.

3.9 Monitoring Stacking Limit

For the purposes of monitoring the Stacking Limit, the Applicant and Industry Partner have an ongoing obligation to disclose all sources of governmental financial assistance mentioned in 3.8 above throughout the term of this Investment Agreement and to that end the Applicant and Industry Partner agree to disclose to Alberta Innovates any governmental assistance received subsequent to making its disclosure in the Application.

ARTICLE 4 MILESTONE, REPORTING AND PAYMENT TIMELINES

4.1 Terms and Conditions

All Milestone Payments are subject to the Terms and Conditions governing the Project. Alberta Innovates will pay and deliver the Investment in such amounts, to such Party, and at the times identified in Schedule D upon completion of the particular Milestone, and Alberta Innovates' written approval of the completed Progress Report or Final Report, as the case may be. Alberta Innovates may refuse to approve a Progress Report or Final Report, or request changes to such report, as determined in its sole discretion upon written notice to the Applicant advising of the reason for refusing approval and/or requesting a change.

4.2 Milestone, Reporting, and Payment Timelines

The Milestone, Reporting, and Payment Timelines are set out in Schedule D.

4.3 Reporting Obligations During the Project

Upon the completion of a particular Milestone, as set out above, the Applicant and Industry Partner agree to provide to Alberta Innovates, within fourteen (14) days of completing such Milestone, a Progress Report in the required form. For the final Milestone of the Project, the Applicant and Industry Partner will deliver to Alberta Innovates the Final Report in the standard form within thirty (30) days of the Project Completion Date. For clarity, the failure to provide the required Report for any given Milestone shall be cause for Alberta Innovates to withhold payment of that portion of the Investment associated with that Milestone.

4.4 Post-Investment Period

As it is critical for Alberta Innovates to report on the outcomes of the Project, it may from time to time request certain information from the Applicant and/or the Industry Partner regarding the results of its Investment in the Project, including but not limited to new or enhanced products or processes, intellectual property generated, new customers, new employees or new hires, new or increased sales, market capture, or other economic growth experienced by the Applicant or the Industry Partner attributable to the Project or the Investment. Such information will be contained within the Post-Investment Metrics Report, which the Applicant and Industry Partner agree to provide to Alberta Innovates during each year of the Post-Investment period. The information contained within the Post-Investment Metrics Report may be disclosed to third parties or published in the public domain without further notice to the Applicant, provided that prior to such disclosure Alberta Innovates will aggregate such information by removing any identifying particulars of the Applicant or the Industry Partner. All such information is deemed to be non-confidential for all of Alberta Innovates' purposes and the Applicant and Industry Partner agree to provide such information when requested by Alberta Innovates during the Post-Investment Period.

ARTICLE 5 CHANGES TO THE PROJECT

5.1 Changes and Review Procedure

Alberta Innovates expect the Applicant and Industry Partner to set reasonable Milestone start and completion dates as set out above, anticipating times during the term of the Project when setbacks or

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unavoidable delays may occur. Should an unforeseen circumstance arise whereby it is not possible to meet the deliverable set out in a particular Milestone, the Applicant and Industry Partner may request an Amendment to the Investment Agreement by contacting Alberta Innovates' representative set out in ARTICLE 6 below. Changes may include, but are not limited to the following: (i) an increase or decrease in the Investment associated with a particular Milestone, or the Project as a whole; (ii) a proposed change in the scope of the Project; (iii) a delay in the completion of a Milestone, irrespective of any impact on the Project Completion Date; (iv) a Change in Control of the Applicant or the Industry Partner; or (v) any other changes as determined by Alberta Innovates. Upon review of the request, Alberta Innovates may, at their sole and unfettered discretion, approve, decline or request further information concerning the change. Should an amendment be approved by Alberta Innovates, all other terms and conditions of the Investment Agreement shall remain in full force and effect. If the requested change is declined, the Applicant and Industry Partner may either elect to proceed with the Project as previously approved by Alberta Innovates or terminate the Investment Agreement, in which case no further payments from the Investment will be provided.

5.2 Cumulative Changes in Excess of Twelve Months

For clarity, any changes over the term of the Project that result in more than a twelve (12) month extension from the original Project Completion Date will not be approved by Alberta Innovates. Should such changes delay the Project Completion Date for more than twelve (12) months from the initial Project Completion Date, all funding from Alberta Innovates shall cease on the day after the one year anniversary of the original Project Completion Date, unless otherwise approved by Alberta Innovates in writing.

ARTICLE 6 NOTICES**6.1 Generally**

Any notice or other communication regarding the matters contemplated by this Investment Agreement shall be delivered to the individuals listed below and must be in writing and delivered by courier, registered mail or email, as follows:

IF TO ALBERTA INNOVATES:

Name: Garth Likes
Address: 250 Karl Clark Rd. NW, Edmonton, AB T6N
1E4 Phone: (780) 450-5415
Email: garth.likes@albertainnovates.ca

IF TO THE APPLICANT:

Please complete the following:

Name:

Address:

Phone:

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Email:

IF TO THE INDUSTRY PARTNER:

Please complete the following:

Name:

Address:

Phone:

Email:

If the individual named above is different than the Applicant Representative named in the Application, such person must have the authority and permission to the Application and any attachments, the Investment Agreement, and all future correspondence, forms and other documentation. The person listed above is deemed the Applicant Representative on a go-forward basis.

A notice is deemed to be delivered and received on the date of delivery if delivered prior to 4:30 p.m. (MST time) on a Business Day and otherwise on the next Business Day.

A Party may change its address for service from time to time by notice given to all other Parties in accordance with the foregoing provisions.

[The remainder of this page has been intentionally left blank. Signature pages follow]

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ALBERTA INNOVATES

Garth Likes
Director, ASBIRI

Rollie Dykstra,
VP, Investments

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[APPLICANT]

Per: (printed name): _____

Position: _____

I have authority to bind the company.

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[INDUSTRY PARTNER]

Per: (printed name): _____

Position: _____

I have authority to bind the company.

[THIS SPACE LEFT INTENTIONALLY BLANK]

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SCHEDULE A – TERMS AND CONDITIONS

THE FOLLOWING LEGAL TERMS AND CONDITIONS ARE INCORPORATED INTO AND FORM PART OF THE INVESTMENT AGREEMENT. PLEASE REVIEW THESE TERMS CAREFULLY.

1. Conditions of Payment

Alberta Innovates' obligation to pay the Investment, or any portion or instalment thereof, is conditional on:

- (a) the Applicant and the Industry Partner at all times being in compliance with the Investment Agreement;
- (b) the Project progressing as set out in Article 4 - MILESTONE, REPORTING AND PAYMENT TIMELINES above;
- (c) the Project being completed by the Project Completion Date;
- (d) the Contribution to carry out and complete the Project remaining in place and being applied in accordance with Article 4 - MILESTONE, REPORTING AND PAYMENT TIMELINES;
- (e) timely completion of all Reports as required.

2. Use of Sub-Contractors

It is understood that the Applicant and the Industry Partner may require the use of another entity as a Sub-Contractor in order to adequately complete the Project. Where such Sub-Contractors are utilized, a collaboration letter, contract or agreement between the Applicant and the Sub-Contractor(s) must be in place prior to executing this Investment Agreement with Alberta Innovates, or immediately upon engaging a new Sub-Contractor within the term of the Investment. Such collaboration letters, contracts or agreements must be provided upon request. The Applicant and Industry Partner shall be solely responsible for all work, acts, defaults any liabilities of any Sub-Contractor(s) so engaged and agree to release Alberta Innovates from all liability in respect of same. For clarity, the Applicant and Industry Partner shall seek Alberta Innovates' prior written approval before engaging any such Sub-Contractors during the Term, which consent will not be unreasonably withheld or delayed. Any proposed sub-contracting in violation of this section will be null and void and of no force or effect and shall constitute an act of Default under this Agreement.

3. Alberta Innovates' Right to Terminate Funding

Notwithstanding any other term of this Investment Agreement, Alberta Innovates may terminate its obligations under this Investment Agreement immediately or at any time during the term in the event the Government of Alberta at any time suspends, revokes, reduces or terminates funding to Alberta Innovates. In such event this Investment Agreement shall terminate immediately subject to the obligation of the Applicant and Industry Partner to provide a summary Report as set out below. Alberta Innovates will notify the Applicant and Industry Partner of such suspension as soon as is reasonably practicable.

Notwithstanding any other terms of this Investment Agreement, Alberta Innovates may terminate this Investment Agreement at any time without cause on thirty (30) days' written notice to the Applicant and Industry Partner, and Alberta Innovates' obligation to make any further payments of the Investment shall cease upon delivery of such notice.

Alberta Innovates additionally have the right to unilaterally terminate the Investment for any Project that incurs a Default or a Change of Control. However, Alberta Innovates will not terminate the Investment in the case of a Change of Control where:

- (a) the Applicant continues to satisfy the minimum requirements to be eligible for the Program; and
- (b) Alberta Innovates, the Applicant, the Industry Partner and the new entity execute an assignment and novation agreement whereby the original Applicant or Industry Partner as the case may be agrees to assign its rights to the new entity, and the new entity assumes all obligations under the Investment Agreement and Alberta Innovates consent to such assignment and assumption.

Should Alberta Innovates elect to terminate this Investment Agreement, for any reason, the Applicant and Industry Partner will not be obligated to deliver the Final Report, but will provide to Alberta Innovates a Progress Report summarizing the outcomes of the Project up to the effective date of such termination, such report to be delivered not later than ninety (90) days from the date of termination.

4. Termination of the Project for Delay

If the Applicant or the Industry Partner suspends or delays the Project for any reason whatsoever for a period in excess of one (1) year, or for periods which in the aggregate exceed twelve (12) months during the term of the Project, then Alberta Innovates may terminate this Investment Agreement immediately upon notice to the Applicant and Industry Partner, in which case Alberta Innovates will have no further payment obligation. If any one of the Applicant or the Industry Partner terminates their part of the Project for any reason prior to the Project Completion Date, Alberta Innovates must be notified immediately. Nothing will excuse the Applicant and Industry Partner from providing a Progress Report summarizing the outcomes of the Project up to such date of termination.

5. Repayment of the Investment

Alberta Innovates have the right to require the Applicant to repay any portions of the Investment paid to the Applicant where:

- (a) the Applicant fails to comply with all reporting requirements set out in this Investment Agreement;
- (b) the Applicant or the Industry Partner terminate their portion of the Project prior to the Project Completion Date; or
- (c) the Applicant or Industry Partner incurs a Default.

In any of these instances, any amount of the Investment already advanced to the Applicant shall constitute a debt owed by the Applicant to Alberta Innovates on a dollar for dollar basis, together with interest, which shall accumulate from and after the date of notice of rescission from Alberta Innovates at the prime rate for commercial loans fixed by the Royal Bank of Canada at that date, plus 3%. Such debt plus

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accrued interest is due and payable within forty-five (45) days of Alberta Innovates delivering the notice of rescission.

6. Intellectual Property

Alberta Innovates makes no claim to any Intellectual Property generated as a result of its Investment in the Project. Alberta Innovates requires a written intellectual property ownership agreement be executed between the Applicant and the Industry Partner(s) prior to executing this Investment Agreement. A copy of such agreement shall be provided to Alberta Innovates on request.

7. Representations and Warranties

Alberta Innovates represents and warrants that:

- (a) it is a Provincial research and innovation corporation established pursuant to the laws of Alberta and is in good standing under the laws of such jurisdiction;
- (b) it has all necessary power and authority to enter into, deliver, and perform its obligations under this Investment Agreement and all necessary action has been taken to approve this Investment Agreement and the transactions contemplated herein; and
- (c) the entering into and performance of this Investment Agreement does not violate or breach any other agreement to which Alberta Innovates is a party, or any of its constating documents.

8. Representations of the Applicant

The Applicant represents and warrants that, both at the time of signing this Investment Agreement and throughout the term of the Project:

- (a) it is a corporation in good standing, either incorporated in the Province of Alberta or incorporated federally or in another province and extra-provincially registered in Alberta;
- (b) all information contained in the Application and the Project Plan, together with any other documentation provided to Alberta Innovates in relation to the Project are accurate and complete;
- (c) it has made full, true and plain disclosure of all facts relevant to the Project and its commitments under this Investment Agreement and will comply with same throughout the term, including specifically any ongoing disclosure and reporting obligations;
- (d) it has all necessary power and authority to execute, deliver and perform its obligations under this agreement and all necessary action has been taken by it to approve this Investment Agreement and the transactions contemplated hereby;
- (e) the entering into and performance of this Investment Agreement does not violate or breach any other agreement to which it is a party or any of its constating documents, and that throughout the Project it will remain an eligible entity under the guidelines set out in the Program Guide;
- (f) it will ensure that the individuals named in the Project who are employees or contractors of the Applicant will be assigned to or otherwise enabled to perform their respective roles in the Project;

- (g) it will complete the Project in accordance with Article 4 - MILESTONE, REPORTING AND PAYMENT TIMELINES and the Project Plan;
- (h) it will only use the Investment solely for costs related to the Project; and
- (i) it will not change the Project in any way from what is set out in the Project Plan without the prior written consent of Alberta Innovates, which consent may be withheld for any reason.

9. Representations of the Industry Partner

The Industry Partner represents and warrants both at the time of signing this Investment Agreement and throughout the term of the Project:

- (a) it is [TBD Entity];
- (b) all information contained in the Application and the Project Plan, together with any other documentation provided to Alberta Innovates in relation to the Project are accurate and complete;
- (c) it has made full, true and plain disclosure of all facts relevant to the Project and its commitments under this Investment Agreement and will comply with same throughout the term, including specifically any ongoing disclosure and reporting obligations;
- (d) it has all necessary power and authority to execute, deliver and perform its obligations under this agreement and all necessary action has been taken by it to approve this Investment Agreement and the transactions contemplated hereby;
- (e) the entering into and performance of this Investment Agreement does not violate or breach any other agreement to which it is a party or any of its constating documents;
- (f) it will complete the Project in accordance with Article 4 - MILESTONE, REPORTING AND PAYMENT TIMELINES and the Project Plan;
- (g) it will only use the Investment solely for costs related to the Project; and
- (h) it will not change the Project in any way from what is set out in the Project Plan without the prior written consent of Alberta Innovates, which consent may be withheld for any reason.

10. Records, Reporting and Monitoring

During the term of the Project and for a period of seven (7) years thereafter, the Applicant and the Industry Partner shall maintain or cause to be maintained full, accurate and complete records of the activities conducted in furtherance of, and the results achieved through the conduct of the Project, including without limitation full, accurate and complete records and books of account relating to the receipt and expenditure of the Investment. The Parties acknowledge that certain records required to be maintained under this Investment Agreement are subject to the protection and access provisions of the *Freedom of Information and Protection of Privacy Act* (Alberta). Alberta Innovates may, from time to time, upon reasonable prior notice to the Applicant and the Industry Partner, audit or examine the records or books of account to be maintained in accordance with this section. The

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costs of any such audit, examination or report shall be paid by Alberta Innovates unless such audit, examination or report reveals a breach of this Investment Agreement or a failure by the Applicant or Industry Partner to maintain proper records as required by this section, in which case the costs shall be paid by the Applicant or Industry Partner, as the case may be.

Alberta Innovates shall be entitled, at reasonable times and upon reasonable prior notice to the Applicant and Industry Partner to have their authorized agents attend at the premises of the Applicant or Industry Partner or the location where the Project is being carried out for the purposes of examining the files, documents, records and other assets pertaining to the project, or to assess whether the Applicant and Industry Partner are complying with the terms of this Investment Agreement. The Applicant and Industry Partner agree to provide Alberta Innovates' authorized agents with all such assistance as may be reasonably required during such inspection. For clarity, such right of inspection shall be limited to the purpose of ascertaining whether this Investment Agreement has been complied with, and Alberta Innovates will not have any general right to obtain custody or copies of the records of the Applicant or Industry Partner except as contemplated by this section.

11. Forms

The Applicant and Industry Partner agree to use Alberta Innovates' standard form documents during the course of completing and reporting on the Project. All forms can be found on Alberta Innovates' website at: <https://fund.albertainnovates.ca/Fund/CommercializationServices/IndustryFundingFormsandGuidelines.aspx>. Alberta Innovates may update or amend its standard forms from time to time without notice to the Applicant or the Industry Partner. Accordingly, all parties are encouraged to access the particular form from Alberta Innovates' website at the time it is required in order to ensure the most current version of the form is used.

12. Acknowledging Alberta Innovates

All publications, presentations and public messages concerning the Investment or the Project must acknowledge the contribution of Alberta Innovates, the Ministry of Economic Development and Trade, and the Government of Alberta, where applicable, and be provided to Alberta Innovates in draft form for approval. Use of the full legal name 'Alberta Innovates' is required, rather than 'AI' or a similar acronym. Alberta Innovates' financial support or investment in a Project in no way constitutes an endorsement of the Project, the Applicant, or the Industry Partner and any suggestion or statement that Alberta Innovates endorses or approves of a Project or a party involved in the Project is strictly prohibited and may result in termination of this Investment Agreement by Alberta Innovates.

13. Non-Confidential Information and Publication of Non-Confidential Information

The Applicant and the Industry Partner agree that Alberta Innovates may either: (1) publish and/or disseminate in the public domain certain information contained within the Application, Project Plan, Progress Report(s), Final Report, and/or Post-Investment Metrics Reports marked 'non-confidential' as a way of promoting the success of innovation initiatives within the Province of Alberta, or; (2) use certain information within the Application and Project Plan to verify other information provided by the Applicant. To that end, the Parties acknowledge and agree that the information expressly set out as non-confidential information in the Application, the Project Plan and the results with respect to those components

described in any Progress Report, Final Report or Post-Investment Metrics Report is non-confidential and may be used or disclosed by Alberta Innovates in its sole and absolute discretion at any time without notice to the Applicant or the Industry Partner.

14. Liability and Indemnities

Alberta Innovates shall not be liable in any way whatsoever to the Applicant or the Industry Partner, or any of their respective directors, officers, employees, agents, personal legal representatives and/or heirs for any losses, damages or claims, including but not limited to indirect, incidental, consequential, or special damages or any loss of profits, loss of business opportunity, loss of revenue, or any other loss or injury suffered or arising in any way whatsoever in the course of the Project, whether arising before or after submitting an Application or entering into the Investment Agreement with Alberta Innovates.

Each of the Applicant and the Industry Partner, severally and in accordance with their allocable share of negligence or fault at law, agree to indemnify and hold harmless Alberta Innovates, its directors, officers, employees and agents against and from any and all third party claims, demands, actions and costs whatsoever (including legal costs on a solicitor and his own client full-indemnity basis) that may arise directly or indirectly out of any act or omission of the Applicant or the Industry Partner, or any of their respective directors, officers, employees, contractors, agents or legal representatives or the negligence or tortious act or willful misconduct of the Applicant or the Industry Partner or any of their respective directors, officers, employees, contractors, agents or legal representatives in relation to their obligations under the Project.

This section will survive termination or expiry of this Investment Agreement.

15. Insurance

Each of the Applicant and the Industry Partner shall, at their own expense and without in any way limiting their liabilities herein, insure their operations under a contract of General Liability Insurance in accordance with the *Insurance Act* (Alberta) in an amount of not less than **\$2,000,000** inclusive per occurrence, insuring against bodily or personal injury and property damage, including the loss of use thereof. Such insurance must be in place before the signing of this Investment Agreement and shall be maintained during the term of the Project. The Applicant and Industry Partner acknowledge that no protection is available from Alberta Innovates for any third-party claims pursuant to the Project. The Applicant and Industry Partner shall provide a certificate of insurance when requested by Alberta Innovates.

16. Dispute Resolution

In the event of any dispute regarding the interpretation of any provision of this Investment Agreement, the Parties agree to refer the matter to joint discussion by senior officials of the Applicant, the Industry Partner and Alberta Innovates. If such senior officials cannot resolve a dispute, the parties may agree to participate in mediation with a mutually acceptable mediator. Mediation will proceed on the following basis:

- (a) if the Parties cannot agree on a mediator they will ask the President or Executive Director of the Alberta Arbitration and Mediation Society to assist in the selection process;
- (b) the Parties will share the cost of the mediator equally and

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bear their own costs incurred with respect to the mediation, including but not limited to any legal costs;

- (c) no evidence of anything said or of any admission or communication made in the course of the mediation shall be admissible in any further legal proceedings, except with the consent of all Parties; and
- (d) any resolution reached will be based on the full participation of and agreement between the Parties.

For clarity, nothing in this agreement shall abrogate Alberta Innovates' rights to seek judicial or equitable relief or to enforce the terms of this Investment Agreement in a court of law.

17. No Partnership, Joint Venture or Agency

Nothing in this Investment Agreement shall be deemed to create a partnership, joint venture, association, agency, trust, or employer-employee relationship and no Party shall be authorized to hold itself out or to act as the agent or employee of any other Party for any purpose whatsoever.

18. Governing Law

This Investment Agreement shall be governed by the laws of the Province of Alberta and the laws of Canada applicable therein and the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta for all disputes arising under this Investment Agreement.

19. Interpretive Aids

All references to the singular include the plural and vice versa and references to one gender include both genders and gender-neutral parties, where applicable. Derivations of terms or expressions defined herein shall have a corresponding meaning to the defined term or expression. The headings, article and section references appearing in this Investment Agreement are for convenience and ease of reference only and in no way define, limit or describe the scope or intent of this Investment Agreement or any part thereof. All of the provisions of this Investment Agreement shall be construed to be covenants and agreements as though the words specifically expressing covenants or agreements were used in each separate provision hereof. All recitals and schedules to this Investment Agreement are expressly incorporated herein. Any references to a statute include all applicable regulations, all amendments to that statute or applicable regulations and any statute or applicable regulation that supplements or replaces such statutes or applicable regulations, as the case may be. All monetary references are in lawful currency of Canada.

20. Assignment

Alberta Innovates may assign its rights under this Investment Agreement to an 'affiliate' (as that term is defined in section 2(1) of the *Business Corporations Act* (Alberta)) or successor entity on written notice to the Applicant and the Industry Partner.

21. General Terms and Conditions

A waiver of any provision of this Investment Agreement must be in writing and signed by the Party providing the waiver, and is legally binding only in the specific instance and for the

specific purpose for which it was given. The failure or delay of any Party to exercise any right under this Investment Agreement does not constitute a waiver of that right. No single or partial exercise of any right will preclude any other or further exercise of that right or the exercise of any other right, and no waiver of any of the provisions of this Investment Agreement will constitute a waiver of any other provision (whether or not similar).

If any provision of this Investment Agreement or its application to any Party or circumstance is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, it will be ineffective only to the extent of its illegality, invalidity or unenforceability without affecting the validity or the enforceability of the remaining provisions of this Investment Agreement and without affecting its application to the other Parties or circumstances.

This Investment Agreement does not and is not intended to confer any rights or remedies upon any Person other than the Parties. Any third party is not entitled to rely on the provisions of any project document in any action, suit, proceeding, hearing or other forum.

This Investment Agreement, including all schedules hereto, constitutes the entire agreement between the Parties as they relate to the obligations of Alberta Innovates under the Program. This Investment Agreement supersedes all other understandings, agreements and representations with Alberta Innovates. There are no representations, warranties, terms, conditions, covenants or other understandings, express or implied, collateral, statutory or otherwise from Alberta Innovates that the Parties are relying on in entering into and completing the Project. The Parties hereto acknowledge and agree that: (i) each Party has read and understands the terms and provisions of this Investment Agreement, have had the opportunity to review same with their legal counsel, and any rule whereby an ambiguity is to be resolved against the drafting Party does not apply in the interpretation of this Investment Agreement; and (iii) the terms and provisions of this Investment Agreement will be construed fairly as to all Parties hereto and not in favour of or against any Party, regardless of which Party was generally responsible for the preparation of this Investment Agreement.

Each Party agrees to execute, acknowledge and deliver such further instructions, and to do all such other acts, as may be necessary or appropriate in order to carry out this Investment Agreement.

If any act is required by the terms of this Investment Agreement to be performed on a day which is not a Business Day, the act will be valid if performed on the next succeeding Business Day.

This Investment Agreement may be executed in any number of counterparts and delivered via facsimile or electronically in portable document format. Each such counterpart, when so executed and delivered, shall be deemed an original and all such counterparts, when taken together, shall constitute one and the same instrument.

SCHEDULE B – DEFINED TERMS

FOR THE PURPOSES OF THIS AGREEMENT, THE FOLLOWING TERMS ARE DEFINED TO HAVE THE CORRESPONDING MEANING:

- (a) **“Applicant”** means the entity identified on the front page of this Investment Agreement who completed and submitted an approved Application, and may in future include the new entity assigned with a “Change of Control” in accordance with the Terms and Conditions set out in Schedule A – Section 3;
- (b) **“Applicant Representative”** means the individual who is authorized to act on behalf of the Applicant;
- (c) **“Application”** means the initial application form submitted by the Applicant for consideration, prior to being invited to submit a Project Plan;
- (d) **“Business Day”** means any day other than a Saturday, Sunday, or statutory holiday in the Province of Alberta;
- (e) **“Change of Control”** means any change in Control of a Person, directly or indirectly, by any means whatsoever (whether by merger, plan of arrangement, sale of shares or other equity interest through a single transaction or a series of related transactions), but all provided that the appointment of one additional co-trustee of any trust (for a total of two co-trustees in respect of such trust) is not a change in Control for purposes of this Investment Agreement;
- (f) **“Contribution”** means the financial contribution to be provided by the Applicant and the Industry Partner as detailed in ARTICLE 4;
- (g) **“Control”** means one or more of the following:
- i a body corporate is controlled by a Person if: (A) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the Person; and (B) the votes attached to those securities are sufficient to elect a majority of the directors of the body corporate;
 - ii a trust is controlled by a Person if that Person is a trustee of such trust;
 - iii an association, partnership, or other organization is controlled by a Person if: (A) more than 50% of the ownership interests, however designated, into which the association, partnership or other organization is divided are beneficially owned by the Person; and (B) the Person is able to direct the business and affairs of the association, partnership, or other organization; and
 - iv a Person that controls another Person is deemed to control any Person that is controlled or deemed to be controlled by the other Person.
- (h) **“Default”** means any one (1) or more of the following:
- i the bankruptcy or insolvency of the Applicant or Industry Partner, (including becoming the subject matter of any proceeding relating to its bankruptcy, insolvency, receivership, liquidation, dissolution or winding up); or
 - ii any breach of an obligation or failure to perform or observe any provision on its part under the Investment Agreement or, made by the Applicant or the Industry Partner and any such breach or default continues for a period of five (5) days after receipt of written notice from Alberta Innovates specifying such breach; and
 - iii but provided that where Alberta Innovates gives notice of the occurrence of a Default and the Default is cured within five (5) days, notice that the Default is no longer continuing will be given to Alberta Innovates by the Applicant immediately after the Applicant becomes aware that the Default has been cured, and Alberta Innovates will not rescind its Investment on the basis of that Default.
- (i) **“Eligible Expense”** means:
- i labour costs (gross wages or salaries incurred at reasonable market rates) for those individuals who are specifically identified as performing the service which is directly attributable to the Project and thereby quantifiable or measurable. Accordingly, general overhead is not considered an Eligible Expense;
 - ii costs of materials, made at the lower of cost or fair market value, which can be specifically identified and quantified as having been incurred in the performance of the Project activities, and which are so identified and quantified consistently in the cost accounting practices of either the Applicant or the Industry Partner, as the case may be;
 - iii acquisitions of property including capital improvements to facility premises and capital equipment (but excluding land and buildings), made at the lower of cost or fair market value, that are critical to the performance of the Project will be considered on a case by case basis upon submission to Alberta Innovates by the Applicant. The contribution will be pro-rated to the Project time frame based on asset’s expected economic life, if purchased, at industry standard depreciation rates with any residual undepreciated value attributed to the economic life of the asset remaining after Project completion being an Ineligible Expense;
 - iv acquisitions of software or information databases, made at the lower of cost or fair market value, that are critical to the performance of the Project will be considered. The cost of such technology will be pro-rated over the duration of the Project;
 - v additional direct operating costs (incurred at reasonable market rates), not falling within the categories of labour and materials, but which can be specifically identified and quantified as having been incurred, or to be incurred, in the performance of the Project activities and which are so identified and quantified consistently by the Applicant’s cost accounting practices;

- vi technology transfer to the Applicant from an Alberta public sector research organization;
 - vii costs related to travel (including mileage, airfare (lowest economy class / excursion or other promotional type of air fares must be sought at the time of booking) and accommodation) by the Applicant to the Industry Partner's location, where the Industry Partner' place of business is located in a different city than the Applicant; and
 - viii any other cost which Alberta Innovates pre-approves in writing as an Eligible Expense.
- (j) **"Final Report"** means Alberta Innovates' standard form entitled the "Final Report" under the Program;
- (k) **"Full Time"** means a condition existing when, for a calendar month, a Person permanently employed by an SME averages at least thirty (30) hours of service per week, or one-hundred-thirty (130) hours of service per month;
- (l) **"Industry Partner"** means the entity identified on the front page of this Investment Agreement;
- (m) **"Ineligible Expense"** means any one (1) of the following:
- i any cost that does not qualify as an Eligible Expense;
 - ii any cost incurred prior to formal approval of an Investment by Alberta Innovates, except where Alberta Innovates has provided written approval to include the cost as an Eligible Expense;
 - iii transactions between related parties;
 - iv provisions for contingencies;
 - v allowance for interest on debt;
 - vi losses on investments, bad debts and expenses for collection charges;
 - vii losses on other projects or activities outside the approved Project;
 - viii fines and penalties;
 - ix unreasonable compensation for Project labour;
 - x costs for professional training & development;
 - xi Federal and Provincial income taxes, goods and services taxes;
 - xii costs related to land and buildings (for example, acquisitions, leases and/or leasehold improvements);
 - xiii advertising costs, except reasonable advertising of an industrial or institutional character placed in trade, technical or professional journals for the dissemination of information for the industry or institution;
 - xiv costs associated with applying for government grants and programs;
 - xv costs of internships or support for students of knowledge institutions;
 - xvi basic professional services, fees and disbursements, such as ongoing routine accounting, tax and legal business requirements and financing fees unless directly related to the Project;
 - xvii routine testing and maintenance;
 - xviii costs relating to meals, entertainment, hospitality and gifts; and
 - xix any other costs deemed ineligible by the Selection Committee.
- (n) **"In-Kind"** means a contribution in goods or services to the Project, as opposed to cash;
- (o) **"Intellectual Property"** means tangible or intangible property in which Intellectual Property Rights subsist and/or that is subject to Intellectual Property Rights including, without limitation, ideas, formulae, algorithms, concepts, techniques, processes, procedures, approaches, methodologies, plans, systems, research, information, documentation, data, data compilations, specifications, requirements, designs, diagrams, inventions, technology, computer programs (including all related code), tools, products, knowledge, know-how and trade secrets;
- (p) **"Intellectual Property Rights"** means:
- i any and all proprietary rights anywhere in the world provided under: patent law, copyright law, trademark law, design patent or industrial design law, semiconductor chip or mask work law, trade secret law, or any other statutory provision or common law principle that provides a right in either intellectual property or the expression or use of intellectual property; and
 - ii any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing;
- (q) **"Investment Agreement"** means this Alberta Small Business Innovation and Research Initiative Investment Agreement between Alberta Innovates, the Industry Partner and the Applicant;
- (r) **"Investment"** means the total amount of funding granted by Alberta Innovates to an Applicant under the Program and governed by this Investment Agreement;
- (s) **"Milestone"** means a major segment of the Project activities for the purpose of monitoring and measuring the progress of the Project, concluding in every case, with a critical "go/no go" decision and **"Milestones"** mean all major segments of the Project activities which comprise the entire Project;
- (t) **"Milestone Payment(s)"** means the portion of the Investment allocated to a Milestone as described in the Milestone, Reporting and Payment Timelines;
- (u) **"Milestone, Reporting and Payment Timelines"** means the schedule of Milestone Payments as set out in Schedule D of this Investment Agreement;

- (v) "**MNE**" means a multi-national enterprise;
- (w) "**Parties**" means the parties to this Investment Agreement, and 'Party' means any of them;
- (x) "**Person**" means any individual, body corporate, partnership, sole proprietorship, joint venture, trust, unincorporated association, unincorporated organization, and any other entity or organization of any nature whatsoever. Unless the context otherwise requires, any reference to a Person includes its heirs, administrators, executors and other legal representatives, successors and permitted assigns;
- (y) "**Post-Investment Metrics Report**" means a report completed by the Applicant upon request by Alberta Innovates for the Post-Investment Period;
- (z) "**Post-Investment Period**" means the seven (7) year period following Alberta Innovates' acceptance of the Final Report;
- (aa) "**Program**" means the Alberta Small Business Innovation and Research Initiative;
- (bb) "**Progress Report**" means Alberta Innovates' standard form entitled "Progress Report" under the Program;
- (cc) "**Project**" means the scope of work to be performed by the Applicant and the Industry Partner, and the work product arising from the collaboration between the Applicant and the Industry Partner, and if applicable, Sub-Contractors;
- (dd) "**Project Completion Date**" means the date on which the Applicant and Industry Partner anticipate completing the Project, understood to be the Milestone Completion Date of the last Milestone as indicated in Schedule D;
- (ee) "**Project Costs**" means all Eligible Expenses incurred during the course of the Project;
- (ff) "**Project Plan**" means the detailed written plan put forward by the Applicant for consideration under the Program, a copy of which is attached hereto as Schedule C;
- (gg) "**Project Start Date**" means the earliest date upon which the Applicant can start incurring Project Costs, understood to be the Milestone Start Date of the first Milestone as indicated in Schedule D.
- (hh) "**SME**" means, for the purposes of Program, a company with fewer than 500 Full Time employees and less than \$50,000,000 annual gross revenue;
- (ii) "**Stacking Limit**" means the limit imposed by Alberta Innovates on the total, cumulative government funding for the Project, as described in section 3.8 of the main body of this Investment Agreement;
- (jj) "**Sub-Contractor**" means an SME, MNE, government department or agency, and/ or an academic institution which provides services and/or products to the Applicant that are required to perform the Project;
- (kk) "**Terms and Conditions**" means the terms and conditions governing this Investment Agreement, as set out in Schedule A.

The preceding definitions are not exhaustive and other defined terms may be used throughout this Investment Agreement.

INVESTMENT AGREEMENT

(Alberta Small Business Innovation and Research Initiative)

SCHEDULE C – PROJECT PLAN

[TBD]

INVESTMENT AGREEMENT

(Alberta Small Business Innovation and Research Initiative)

SCHEDULE D – MILESTONE, REPORTING & PAYMENT SCHEDULE