

INVESTMENT AGREEMENT

(Industry r&D Associates and Industry Commercialization Program)

Agreement Number: [Record Number]

THIS INVESTMENT AGREEMENT, DATED THE ## DAY OF MONTH 20##, BETWEEN:

ALBERTA INNOVATES

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

- and -

[NAME]

A Corporation incorporated pursuant
to the laws of [TBD]

(the “Applicant”)

- and -

[NAME]

An individual legally permitted to work in the Province of Alberta

(the “Associate”)

BACKGROUND

1. The Applicant is a for profit, small or medium enterprise (SME) that has submitted an application to develop and commercialize a novel technology or business solution to address a gap or market need in Alberta.
2. Such novel solution forms the basis of the Project as detailed in this Investment Agreement;
3. The Applicant intends to work on the Project but requires funding from Alberta Innovates to carry out the Project;
4. The Associate will play in integral role in such activities, and the Applicant wishes to employ the Level [1, 2, OR 3] Industry [r&D OR Commercialization] Associate to assist in carrying out the Project; and
5. Alberta Innovates has reviewed the Application and, on such basis, has approved funding for the Project.

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 START AND COMPLETION DATES2.1 Project

The Applicant agrees to carry out the Project in accordance with the Work Plan & Budget Tables, a copy of which is attached as Schedule **C**, including achieving the Milestones as set out in Schedule **C**.

2.2 Project Start Date

It is agreed between the Parties that the Project Start Date is **<START DATE, YEAR>**.

2.3 Project Completion Date

It is agreed between the Parties that the Project Completion Date is **<END DATE, YEAR>**. If the Project is not completed by such date then, subject to an amendment agreed to between the Parties, Alberta Innovates may elect to terminate this Investment Agreement. In such event, Alberta Innovates will notify the Applicant of its decision to terminate as soon as reasonably practical and shall advise the Applicant of the effective date of termination. Alberta Innovates will have no liability or obligation to reimburse the Applicant for any Project Costs incurred after the effective date of termination and may require the Applicant to return any portions of the Investment which were spent on Ineligible Expenses. Additionally, any portion of the Investment not used and accounted for in accordance with this Agreement as of the Project Completion Date or earlier termination is repayable by the Applicant to AI at AI's request.

2.4 Effective Date of this Investment Agreement

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

ARTICLE 3 INVESTMENT BY ALBERTA INNOVATES, CONTRIBUTION OF THE APPLICANT**3.1 Investment by Alberta Innovates**

Subject to the Terms and Conditions of this Investment Agreement, Alberta Innovates agrees to provide the Applicant with a contribution to the Project (the "Investment") not exceeding \$ **AMOUNT** Canadian dollars. The Investment consists of a Stipend of \$ **AMOUNT**, and an Annual Expense Allowance of \$7,000, such Annual Expense Allowance may be provided to a maximum of \$14,000 over the term of the Investment. Notwithstanding the generality of the foregoing, Alberta Innovates reserves the right to withhold payment of any portion of the Investment if the Applicant incurs a debt to Alberta Innovates, or its affiliates Innotech Alberta Inc. or C-FER Technologies (1999) Inc.

3.2 Monthly Payments

The Stipend will be paid to the Applicant in equal monthly payments. The Annual Expense Allowance will be paid within 45 days of the Project Start Date and after the execution of this Investment Agreement.

3.3 Contribution by the Applicant

The Applicant must apply, pay and deliver their Contribution as set out in Schedule **C**, and in equal monthly payments.

3.4 Eligible and Ineligible Expenses

The Stipend shall only be applied towards the Associate's Eligible Salary. The Annual Expense Allowance shall only be applied towards Eligible Expenses. 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 has the right to require the Applicant to repay to Alberta Innovates any portions of the Investment which were used to cover any expenses other than the monthly Stipend of the Applicant or Eligible Expenses, and such amount shall constitute a debt immediately owing and repayable on demand by the Applicant to Alberta Innovates.

ARTICLE 4 EMPLOYMENT CONSIDERATIONS**4.1 Employment Location**

The Applicant will employ the Associate at [**Applicant Address**] in the Province of Alberta. A copy of the employment agreement between the Applicant and the Associate shall be provided to Alberta Innovates prior to the execution of this Investment Agreement, together with any amendments to such contract during the term of this Investment Agreement. Prior to the Project Start Date, the Applicant will ensure that the Associate has obtained and possess all necessary approvals, permissions, entry visa(s), and/or temporary resident visa(s) that are required by the Associate to travel to, enter, remain, and work in Canada for the duration of the Project.

4.2 Associate Commitment

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The Associate agrees to work for the Associate as set out in the employment agreement. For clarity, this Investment Agreement does not create an employment relationship between Alberta Innovates and the Associate.

4.3 Taxes and Deductions

The Applicant shall be solely responsible for the payment of all income tax, Canada Pension, employment insurance and all other required payments, withholdings or deductions that arise or may hereafter arise with respect to the employment services provided by the Associate to the Applicant, and for all filings and reporting regarding same.

4.4 No Employment Relationship

Nothing in this Investment Agreement will be deemed to create an employment relationship between Alberta Innovates and the Associate.

ARTICLE 5 REPORTING REQUIREMENTS

5.1 Terms and Conditions

All payments of the Investment are subject to the Terms and Conditions. Alberta Innovates will pay and deliver the Investment upon 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.

5.2 Reporting Obligations During the Project

The Applicant and the Associate acknowledge that Alberta Innovates is a provincial corporation owned by the Government of Alberta with one of its primary mandates being to support the development and commercialization of new and innovative technologies for the benefit of Alberta and Albertans. For that reason, Alberta Innovates is required to report to the Government of Alberta on the use of grant funding to ensure the mission and mandate of Alberta Innovates are achieved.

Accordingly, the Applicant and the Associate agree to provide Alberta Innovates with a Progress Report in the required form at least twenty (20) business days prior to the completion of the first year of the Project as set out in Schedule C. For clarity, the failure to provide the required Progress Report may be cause for Alberta Innovates to withhold payment of any portion of the Investment.

Because the Progress Report may contain technical or proprietary information about the Project, Alberta Innovates agrees to keep such reports confidential. Alberta Innovates may only disclose these reports to the Government of Alberta on a strictly confidential basis.

For the final year of the Project, the Applicant will deliver to Alberta Innovates the Final Report in the required form at least twenty (20) business days prior to the Project Completion Date. Alberta Innovates will provide a template for the Final Report. The template will clearly set out what information is considered 'confidential' and what information may be disclosed in the public domain. The Final Report is

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intended to provide a high-level summary of the Project. It allows Alberta Innovates to compare the results achieved to key performance indicators, and to gauge whether the Project was successful. It may also be used by Alberta Innovates to report on its use of grant funds. Accordingly, Alberta Innovates may distribute the Final Report on a strictly confidential basis to the Government of Alberta immediately upon receipt.

However, Alberta Innovates will not publish any portion of the Final Report not clearly identified as 'Non-Confidential', and Alberta Innovates will aggregate such information by removing any identifying particulars of the Applicant.

5.3 Annual Surveys

The Applicant further agrees to complete an annual survey in a format to be provided by Alberta Innovates, both during the term of the Project and for five (5) years thereafter. The information contained within these surveys 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. All such information is deemed to be non-confidential for all of Alberta Innovates' purposes and the Applicant agrees to provide such information when requested by Alberta Innovates for five (5) years after the Project Completion Date. Failure to complete the annual surveys may result in the Applicant being ineligible for future funding from Alberta Innovates.

ARTICLE 6 CHANGES TO THE PROJECT

6.1 Changes and Review Procedure

Alberta Innovates expects the Applicant and Associate to set reasonable start and completion dates for the Project. Should an unforeseen circumstance arise whereby it is not possible to meet the deliverables as set out in Schedule C and employment contract, the Applicant and the Associate may request an amendment to the Investment Agreement by contacting Alberta Innovates' representative set out in ARTICLE 7 below. Changes may include, but are not limited to, the following: (i) an increase or decrease in the Investment associated with the Project as a whole due to the departure of the Associate for any reason; (ii) illness or other leave of absence of the Associate; (iv) a Change in Control of the Applicant; or (v) any other changes as determined by Alberta Innovates. Upon review of the request, Alberta Innovates may, at its sole and unfettered discretion, approve, decline or request further information concerning the change. Should a change be approved by Alberta Innovates, the remainder of the Investment Agreement shall remain in full force and effect unamended. Depending on the nature of the change, Alberta Innovates may require the Parties to execute an amendment to the Investment Agreement or by notice to all Parties that a new Work Plan & Budget Table has been approved. If the requested change is declined, the Applicant and Associate 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.

6.2 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 7 NOTICES7.1 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: Roger Lindenbach

Address: 250 Karl Clark Rd. NW
 Edmonton, AB T6N 1E4

Phone: (780) 450-5111

Email: inbox_grants@albertainnovates.ca**IF TO THE APPLICANT:**

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.

IF TO THE ASSOCIATE

Name: _____

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Address: _____

Phone: _____

Email: _____

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]

ALBERTA INNOVATES

Terry Rachwalski
Executive Director, Entrepreneurial Investments

Rollie Dykstra
Vice President, Investments

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CONSENT AND ACKNOWLEDGEMENT TO BE BOUND TO THE INVESTMENT AGREEMENT BY THE ASSOCIATE:

The undersigned agrees to be bound by this Investment Agreement.

[INSERT ASSOCIATE'S NAME]

WITNESS

Signature

Signature

(Printed) Name

(Printed) Name

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CONSENT AND ACKNOWLEDGEMENT TO BE BOUND TO THE INVESTMENT AGREEMENT BY THE APPLICANT:

The undersigned agrees to be bound by this Investment Agreement, and has agreed to provide the Contribution to the Associate.

[APPLICANT]

Per: (printed name): _____

Position: _____

I have authority to bind the company.

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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 Associate at all times being in compliance with the Investment Agreement;
- (b) the Project progressing as set out in ARTICLE 5 - REPORTING REQUIREMENTS 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 3 – Investment by Alberta Innovates, Contribution of the Applicant;
- (e) timely completion of all Reports as required.

2. 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 Associate to provide a summary Report as set out below. Alberta Innovates will notify the Applicant and Associate 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 Associate, and Alberta Innovates' obligation to make any further payments of the Investment shall cease upon delivery of such notice.

Alberta Innovates additionally has 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 Associate and the new entity execute an assignment and novation agreement whereby the original Applicant or Associate 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 consents to such assignment and assumption.

Should Alberta Innovates elect to terminate this Investment Agreement, for any reason, the Applicant and Associate 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.

3. Termination of the Project for Delay

If the Applicant suspends or delays the Project for any reason whatsoever for a period in excess of three (3) months, or for periods which in the aggregate exceed three (3) months during the term of the Project, then Alberta Innovates may terminate this Investment Agreement immediately upon notice to the Applicant and Associate, in which case Alberta Innovates will have no further payment obligation. If any one of the Applicant or the Associate 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 Associate from providing a Final Report summarizing the outcomes of the Project up to such date of termination.

4. Repayment of the Investment

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

- (a) the Applicant or the Associate fail to comply with all reporting requirements set out in this Investment Agreement;
- (b) the Applicant or the Associate terminate their portion of the Project prior to the Project Completion Date; or
- (c) the Applicant or Associate 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 accrued interest is due and payable within forty-five (45) days of Alberta Innovates delivering the notice of rescission.

For clarity, Alberta Innovates will not require the Applicant to repay portions of the Investment where a Milestone could not be completed, or one of the desired outcomes of the Project was not achieved, despite the best efforts of the

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Applicant. Alberta Innovates acknowledges that unforeseen technical issues and other delays may occur which are outside the Applicant's reasonable control, and for that reason the Applicant is offered the opportunity to request an amendment to this Investment Agreement, per the procedure set out in Article 6.1 above – Changes and Review Procedure. Alberta Innovates may however require the Applicant to repay all or a portion of the Investment in any of the circumstances listed above where there is evidence of misuse of the Investment, a serious breach or Default, or other egregious behaviour on the part of the Applicant or the Associate, as determined by Alberta Innovates in its sole discretion.

5. Intellectual Property

Alberta Innovates makes no claim to any Intellectual Property generated as a result of its Investment in the Project. The Applicant acknowledges the importance to Alberta Innovates that any Intellectual Property that may be generated through the Project be used to the benefit of Alberta and Albertans. Ownership of any Intellectual Property developed through the Project will follow the practices of the Applicant and agreement(s) to which the Applicant is a party, and a copy of such agreement must be provided to Alberta Innovates as proof of compliance with this requirement prior to execution of this Investment Agreement.

6. 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.

7. Representations of the Associate

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

- (a) all information contained in Schedule C, together with any other documentation provided to Alberta Innovates in relation to the Project is accurate and complete and will remain so in all material respects during the term of this Investment Agreement;
- (b) he or she 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;

- (c) he or she has all necessary power and authority to execute, deliver and perform its obligations under this Investment Agreement and all necessary action has been taken by it to approve this Investment Agreement and the transactions contemplated hereby;
- (d) 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;
- (e) he or she will complete the Project in accordance with ARTICLE 5 - REPORTING REQUIREMENTS; and
- (f) he or she is legally permitted to enter, work, and remain in Canada and to provide the services to the Applicant as set out herein.

8. Representations of the Applicant

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

- (a) all information contained in the Application, together with any other documentation provided to Alberta Innovates in relation to the Project is accurate and complete, and will remain so in all material respects during the term of this Investment Agreement;
- (b) 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;
- (c) it has all necessary power and authority to execute, deliver and perform its obligations under this Investment Agreement and all necessary action has been taken by it to approve this Investment Agreement and the transactions contemplated hereby;
- (d) 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;
- (e) 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;
- (f) it will complete the Project in accordance with Schedule C, and the Application;

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- (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 Application without the prior written consent of Alberta Innovates, which consent may be withheld for any reason; and
- (i) it will ensure the Associate maintains all required permits as contemplated by ARTICLE 4.1 above.

9. Records, Reporting and Monitoring

During the term of the Project and for a period of five (5) years thereafter, the Applicant 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 Applicant acknowledges that certain records required to be maintained under this Investment Agreement may be subject to the protection and access provisions of the *Freedom of Information and Protection of Privacy Act* (Alberta) (FOIP). Alberta Innovates may, from time to time, upon reasonable prior notice to the Applicant, audit or examine the records or books of account to be maintained in accordance with this section. The 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 to maintain proper records as required by this section, in which case the costs shall be paid by the Applicant.

Alberta Innovates shall be entitled, at reasonable times and upon reasonable prior notice to the Applicant and the Associate to have their authorized agents attend at the premises of the Applicant 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 the Associate are complying with the terms of this Investment Agreement. The Applicant and Associate 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 except as contemplated by this section.

10. Forms

The Applicant and the Associate agree to use Alberta Innovates' standard form documents found on the Alberta Innovates website at www.albertainnovates.ca, and other forms or reporting templates which may be provided by Alberta Innovates from time to time during the course of completing and reporting on the Project. Alberta Innovates may update or amend its standard forms from time to time

without notice to the Applicant or the Associate. Accordingly, the Applicant and the Associate 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.

11. Publications and Public Messaging

All publications, presentations and public messages concerning the Investment or the Project must acknowledge the contribution of Alberta Innovates, the Ministry of Economic Development, Trade, and Tourism, and the Government of Alberta, where applicable, and be provided to Alberta Innovates in draft form for approval, such approval to be received no later than ten (10) Business Days from the date of the request. Use of the full legal name 'Alberta Innovates' is required, rather than 'AI' or a similar acronym. Such approvals shall not be unreasonably withheld. Alberta Innovates' financial support or investment in a Project in no way constitutes an endorsement of the Project or the Applicant, 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.

12. Non-Confidential Information and Publication of Non-Confidential Information and the Final Report

In accordance with ARTICLE 5, the Applicant acknowledges and agrees that, as a public body, Alberta Innovates is required to report on and promote the success of innovation initiatives within the Province of Alberta. Accordingly, Alberta Innovates may publish and/or disseminate in the public domain certain information about the Project contained in the Application, the Progress Report, Final Report, and/or annual surveys, but only where such information is explicitly marked as 'non-confidential'. Alberta Innovates may also use and disclose the Final Report in accordance with the terms of ARTICLE 5.2.

13. Freedom of Information

Alberta Innovates is governed by FOIP. This means Alberta Innovates may be asked to disclose the information received under this Application, or other information delivered to Alberta Innovates in relation to the Project, when an access request is made by anyone in the general public.

In the event an access request is received by Alberta Innovates, exceptions to disclosure within FOIP may apply. If an exception to disclosure applies, certain information may be withheld from disclosure. The Applicant is encouraged to familiarize itself with FOIP. Information regarding FOIP can be found at <http://www.servicealberta.ca/foip/>.

14. Liability and Indemnities

Alberta Innovates shall not be liable in any way whatsoever to the Applicant or the Associate, or, where applicable, any of their directors, officers, employees, agents, personal legal representatives and/or heirs for any losses, damages or

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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 Associate, 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 Associate, or the negligence or tortious act or willful misconduct of the Applicant or the Associate or anyone for whom they are responsible at law, in relation to the foregoing or their respective obligations under the Project.

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

15. Insurance

The Applicant shall, at its own expense and without in any way limiting its liabilities herein, insure its operations under a contract of Commercial 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 Associate acknowledge that no protection is available from Alberta Innovates for any third-party claims pursuant to the Project. The Applicant shall provide a certificate of insurance when requested by Alberta Innovates. In addition, the Applicant shall maintain all workers' compensation coverage required by applicable laws. Where permitted by its constituting documents and bylaws, the Applicant may elect to self-insure its obligations under this section.

16. Dispute Resolution

In the event of a dispute between the Applicant and the Associate, or any other party involved in the Project, it is the responsibility of the disputing parties to reach a resolution. Alberta Innovates will not act as a mediator or adjudicator. In the event of a dispute in all instances, Alberta Innovates is not liable to pay any arbitration, court or any other dispute resolution related costs.

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 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 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 an agreement between the Parties.

For clarity, nothing in this Investment 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

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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 Associate.

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 Alberta Innovates and the other 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 (ii) 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) “**Annual Expense Allowance**” means the amount set out at the beginning of each term to directly assist the Associate in their duties;
- (b) “**Applicant**” means the entity identified on the front page of this Investment Agreement who completed and submitted an approved Application;
- (c) “**Applicant Representative**” means the individual who is authorized to act on behalf of the Applicant and may not be the Associate;
- (d) “**Application**” means the initial application form submitted by the Applicant;
- (e) “**Associate**” means the person being hired by the Applicant to work on the Project;
- (f) “**Business Day**” means any day other than a Saturday, Sunday, or statutory holiday in the Province of Alberta;
- (g) “**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;
- (h) “**Contribution**” means the financial contribution to be provided by the Applicant as detailed in ARTICLE 3;
- (i) “**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.
- (j) “**Default**” means any one (1) or more of the following:
- i the bankruptcy or insolvency of the Applicant, (including becoming the subject matter of any proceeding relating to its bankruptcy, insolvency, receivership, liquidation, dissolution, winding up) or entering into a plan of arrangement or similar agreement with its creditors;
 - 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 Associate and any such breach or default continues for a period of ten (10) business days after receipt of written notice from Alberta Innovates specifying such breach; or
 - iii failure by the Applicant to proceed with the Project, not carry out the Project, materially alter the Project without obtaining Alberta Innovates prior written permission as contemplated herein, or breach any of its obligations pursuant to this Investment Agreement;
 - iv but provided that where Alberta Innovates gives notice of the occurrence of a Default and the Default is cured within ten (10) business 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;
- (k) “**Eligible Expense**” means one or more of the following:
- i. Relocation expenses incurred by the Associate moving to commence employment with the Applicant to work on the Project, even when incurred immediately prior to approval of the Application by Alberta Innovates;
 - ii. Expenses related to the search for and hiring of the Associate, expressly excluding recruitment firms;

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- iii. Reasonable transportation and accommodation expenses. Lowest economy class / excursion or other promotional type of air fares must be sought at the time of booking. Accommodation is claimable up to a maximum nightly room rate of \$200 (not including applicable taxes); and
- iv. Any other cost which Alberta Innovates pre-approves in writing as an Eligible Expense;
- In addition, in the case of the Commercialization Associate, "Eligible Expense" means:
- i. Marketing intelligence costs reasonably related to the Project including, but not limited to, access to database and market reports for increasing sales or revenue, building a business case/plan, commercialization plan, and/or a commercialization strategy;
 - ii. Professional development and membership fees incurred for the benefit of the Commercialization Associate and reasonably connected to the Project;
 - iii. Library, computer hardware and software, and minor equipment costs used by the Commercialization Associate in the Project; and
- In addition, in the case of the r&D Associate, "Eligible Expense" means:
- i. Scientific materials and supplies used by the r&D Associate in the Project;
 - ii. Books, periodicals and journal subscriptions used by the r&D Associate in the Project;
 - iii. Professional development and technical training costs incurred for the benefit of the r&D Associate and reasonably connected to the Project;
- (l) "**Eligible Salary**" means the aggregate Stipend from Alberta Innovates and the Contribution from the Applicant, which will be paid to the Associate as compensation for the work it performs for the Applicant;
- (m) "**Final Report**" means the final report summarizing the outcomes of the Project, to be completed by the Applicant and the Associate in the standard form no later than twenty (20) days prior to the Project Completion Date. The Final Report must provide accounting for all Project revenues and expenses, and include a concise summary of what the project has achieved, and compare the outcomes and performance of the Project with reference to the desired outcomes specified by Alberta Innovates, and the desired Project outcomes as stated in the Application and in this Investment Agreement;
- (n) "**Full Time**" means a condition existing when, for a calendar month of the term of this Investment Agreement, the Associate provides no less than thirty (30) hours of service to the Applicant per week, or no less than one-hundred-thirty (130) hours of service per month;
- (o) "**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. Federal and Provincial income taxes, goods and services taxes;
 - x. costs related to land and buildings (for example, acquisitions, leases and/or leasehold improvements);
 - xi. capital equipment including, but not limited to office furniture;
 - xii. marketing and advertising collateral including, but not limited to banners, business cards, pamphlets, and costs related to trade show booths;
 - xiii. costs associated with applying for government grants and programs;
 - xiv. costs of internships or support for students of knowledge institutions;
 - xv. basic professional services fees and disbursements including, but not limited to ongoing routine accounting, tax and legal business requirements and financing fees unless directly related to the Project;
 - xvi. routine testing and maintenance;

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- xvii. costs relating to meals, entertainment, hospitality and gifts; and
- xviii. any other costs deemed ineligible by Alberta Innovates.
- (p) **"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;
- (q) **"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;
- (r) **"Investment"** means the total amount of funding granted by Alberta Innovates to an Applicant, which investment consists of the Stipend and the Annual Expense Allowance and is governed by this Investment Agreement;
- (s) **"Investment Agreement"** means this Investment Agreement between Alberta Innovates, the Associate and the Applicant, including all schedules hereto;
- (t) **"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;
- (u) **"Parties"** means the parties to this Investment Agreement, and 'Party' means any of them;
- (v) **"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;
- (w) **"Programs"** means collectively the Industry r&D Associates Program and the Industry Commercialization Associates Program, and Program means either of them;
- (x) **"Progress Report"** means report required by Alberta Innovates from the Applicant in the standard form, no later than twenty (20) days prior to the completion of the first year of the Project. The report must provide accounting for all Project revenues and expenditures, a concise summary of what the Project has achieved, and the status of performance of the Project addressing the specific outcomes in relation to the objectives of Alberta Innovates and the expected outcomes as stated in the Applicant's Application and this Investment Agreement;
- (y) **"Project"** means the scope of work to be performed by the Applicant, as first described in the Application, and as set out in the Work Plan and Budget Tables attached as Schedule C;
- (z) **"Project Completion Date"** means the date set out in Section 2.3 on which the Applicant anticipates completing the Project, understood to be the Project Completion Date of the last Milestone as indicated in Schedule C;
- (aa) **"Project Start Date"** means the date set out in Section 2.2 on which the Applicant can start incurring Project Costs, understood to be the Project Start Date of the first Milestone as indicated in Schedule C;
- (bb) **"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;
- (cc) **"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.
- (dd) **"Stipend"** means the fixed regular sum paid as a salary from Alberta Innovates"
- (ee) **"Terms and Conditions"** means the terms and conditions governing this Investment Agreement, as set out in Schedule A;
- (ff) **"Work Plan and Project Budget Tables"** means the milestones of the work plan and budget as set out in Schedule C.

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

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SCHEDULE C – WORK PLAN & BUDGET TABLES

AS ATTACHED