

MAINTENANCE SERVICES AGREEMENT

This Agreement, effective this 17 of April, 2014, made and entered into by and between:

NANOSTRUCK TECHNOLOGIES INC., a body corporate, having an office at the City of Mississauga, in the Province of Ontario

(hereinafter called "Maintenance Provider")

and

METROLINX, a body corporate, having an office at the City of Toronto, in the Province of Ontario

(hereinafter called the "Customer")

WHEREAS the Maintenance Provider is engaged in the manufacture and maintenance of water filtration systems;

AND WHEREAS Buttcon Limited ("Buttcon") has been retained by the Customer for the construction of a bus maintenance facility to be operated by the Customer (the "GO Transit Project");

AND WHEREAS, as a part of the GO Transit Project, Buttcon is required to acquire a water treatment system for the benefit of the GO Transit Project and the Customer;

AND WHEREAS Buttcon has entered into an agreement with the Maintenance Provider which is attached hereto as Schedule "A" (the "Plant Agreement"), which is hereby incorporated by reference, to purchase certain water treatment equipment, as more fully described in Section 2 of this Agreement (the "Plant");

AND WHEREAS the Customer wishes to obtain the services of the Maintenance Provider to ensure proper maintenance of the Plant during the warranty period provided by Buttcon;

NOW THEREFORE in consideration of the mutual agreements and covenants contained therein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed and covenanted by and between the parties to this Agreement, as follows:

1. Services. Maintenance Provider agrees to provide the following inspection and maintenance services on the Plant:

The services shall be those services described in the "Requirements Document for GO Transit Waste Water Treatment Plant" as referred to in Section 1 and Exhibit A of the Plant Agreement.

(the "Services").

2. Description of the Plant, and the equipment (the "Equipment") covered by this Agreement:

The Plant and Equipment are described in the "Requirements Document for GO Transit Waste Water Treatment Plant" referred to in Section 1 and Exhibit A of the Plant Agreement.

3. Location for Performance of the Services: The Plant and Equipment are to be serviced at the Installation Site as that term is defined in the Plant Agreement.
4. Term: This Agreement is in effect for 1 year (The "Term") beginning the date of installation of the Plant (such installation to be satisfactory to the Customer), subject to extension as set out in section 11.
5. Rates for Maintenance:
 - A. The cost for the Services for the Term of this Agreement shall be SEVEN THOUSAND SIX HUNDRED DOLLARS (\$7,600) dollars, payable sixty (60) days after the satisfactory installation of the Plant (the "Maintenance Rate").
 - B. The Maintenance Rate for each Extended Term (as that term is defined in Section 11 herein) shall be negotiated by the parties, acting reasonably, no later than 30 days prior to the end of any Term or Extended Term. However, the Maintenance Rate for any Extended Term shall be increased by no more than 20% of the Maintenance Rate for the preceding Term or Extended Term.
 - C. The Maintenance Rate for any Extended Term shall become due and payable on the date of commencement of such Extended Term.
 - D. There shall be no other charges to the Customer subject to any maintenance or repairs that arise as a result of misuse or negligence on the part of the Customer in which case the Customer shall be invoiced for any Equipment on a cost basis and shall be billed an hourly rate of \$150 per hour for labour, such labour to be provided by a person who is competent with respect to the maintenance of the Plant based on knowledge and experience.
 - E. If this Agreement is terminated pursuant to subsection 12.B. the Maintenance Provider shall be entitled to set off any amounts owed by Customer to Maintenance Provider against any amounts that the Customer has prepaid pursuant to this Agreement.
6. Performance of Services:
 - A. Regular maintenance and testing of the Plant will be performed monthly during normal working hours. Service may be reasonably delayed for weather or other causes beyond Maintenance Provider's control. All cleaning of mechanical parts, adjustment and repair revealed by Maintenance Provider's inspection and maintenance will be performed at the time of the inspection or as soon thereafter as feasible.
 - B. If Services are required due to a failure or damage to the Plant or Equipment the Maintenance Provider shall provide best efforts to attend at the Installation Site within 24 hours, including weekends and statutory holidays.
7. Limitation of Services: Maintenance Provider will not be under any obligation to make any overhauls, alterations, renewals or repairs except those that are necessary for the normal use and proper operation of the Plant and Equipment as originally intended.
8. Reports of Service: A copy of a monthly maintenance and testing report shall be completed, signed and attached to the Plant or submitted to the Customer after each inspection. Copies of this or other reports of Service performed hereunder shall be furnished to any legal authority or other party deemed appropriate by Maintenance Provider.

9. Customer Representations and Warranties: The Customer represents and warrants to the Maintenance Provider as stated below and acknowledges that the Maintenance Provider is relying on the accuracy of each such representation and warranty in entering into this Agreement:
- A. Customer organization and standing; power and authority. The Customer is a corporation duly organized, validly existing and in good standing under the laws of Ontario.
 - B. Power and capacity. The Customer has all power and capacity required to execute, deliver and perform this Agreement.
 - C. Operation of the Plant/Equipment. Customer agrees to use the equipment in a safe and proper manner in conformity with all Federal, Provincial, and Municipal laws and ordinances, pertaining thereto and in accordance with the Maintenance Provider's Operator's Manual, copies of which the Customer does hereby acknowledge having received. Should the Plant or Equipment or any part thereof become unsafe, in a state of disrepair, or not be in good operating condition, Customer shall notify Maintenance Provider as soon as reasonably possible and shall cease all operation of the Plant or any part thereof until the same has been examined by Maintenance Provider or by someone appointed by Maintenance Provider. Customer shall notify the Maintenance provider, as soon as is reasonably possible, of any changes in the operations or operating procedures of the Customer that may impact the operation of the Plant. Customer shall provide Maintenance Provider such reasonable access to the Plant as arranged between Customer and Maintenance Provider for the purpose of inspection and examination of said equipment.
 - D. Proper Use. Customer acknowledges that proper use of safety equipment is required for safe operation of the equipment and warrants that use will only be by competent and duly trained employees of Customer.
 - E. Authorization and enforceability. The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of the Customer. When executed and delivered by the parties thereto, all instruments, agreements, writings, consents, and other documentation as delivered by the Customer as a condition of closing will each constitute a legal, valid, and binding obligation against it in accordance with its terms.
10. Representations and Warranties of the Maintenance Provider. The Maintenance Provider represents and warrants to the Customer as stated below and acknowledges that the Customer is relying on the accuracy of each such representation and warranty in entering into this Agreement.
- A. The Maintenance Provider's organization and standing; power and authority. The Maintenance Provider is a corporation duly organized, validly existing and in good standing under the laws of Ontario.
 - B. Power and capacity. The Maintenance Provider has all power and capacity required to execute, deliver and perform this Agreement.
 - C. Performance of Services. All inspections and maintenance work shall be done by personnel qualified and supervised by Maintenance Provider.
 - D. Authorization and enforceability. The execution, delivery, and performance of this Agreement and

the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of the Maintenance Provider. This Agreement is a legal, valid and binding obligation of the Maintenance Provider, enforceable against it in accordance with its terms. When executed and delivered by the parties thereto, all instruments, agreements, writings, consents, and other documentation as delivered by the Maintenance Provider as a condition of closing or as a closing delivery, will each constitute a legal, valid, and binding obligation against it in accordance with its terms.

11. Extension: Unless Metrolinx is in default of this Agreement Metrolinx shall be entitled to extend the agreement for an additional year(s) upon Thirty (30) days prior written notice to Maintenance Provider(each subsequent year being an "Extended Term"). Sixty (60) days prior to the end of each Extended Term, Maintenance Provider will forward to Customer the rates that will take effect in the Extended Term.
12. Termination:
 - A. Either party may terminate this Agreement at any time during an Extended Term following thirty (30) days written notice.
 - B. Maintenance Provider may terminate this Agreement, following ten (10) days' written notice in the event that any payment owed to Maintenance Provider by Customer under this Agreement shall not have been made and payment is not made prior to the expiry of the ten (10) day notice period.
 - C. Customer may terminate this Agreement, following ten (10) days' written notice in the event that the Maintenance Provider is in breach of this Agreement and such breach is not remedied within 5 business days of the Maintenance Provider being notified, in writing, of the breach.
13. Indemnity and Hold Harmless: To the fullest extent permitted by law, the Maintenance Provider agrees, during the Term of this Agreement or any Extended Term, to indemnify and hold Customer harmless, against claims, losses, actions, suits, proceedings, costs, expenses, damages, and liabilities (including but not limited to negligence, tort and strict liability) and any and all costs and expenses in connection therewith, including legal fees and costs, arising out of, or connected with the maintenance, repair, inspection, use and possession of the Plant by Maintenance Provider; and for a period of two (2) years subsequent to the termination of this Agreement, the Maintenance Provider agrees to indemnify and hold Customer harmless, against claims, losses, actions, suits, proceedings, costs, expenses, damages, and liabilities (including but not limited to negligence, tort and strict liability) and any and all costs and expenses in connection therewith, including legal fees and costs, arising out of, or connected with the findings of an investigation conducted by an arm's length third party investigating the operation of the Plant during the term of the Agreement. The indemnification provided pursuant to this Section 13 is not intended to require the Maintenance Provider to indemnify Customer for the Customer's own negligence. The parties agree to give each other prompt written notice of any and all such claims.
14. Maintenance Provider shall, at their sole cost and expense and at all times during the Term of this Agreement, maintain in force Commercial General Liability insurance including but not limited to coverage for personal injury and bodily injury, including death, property damage including loss of use thereof, contractual liability, non-owned automobile liability, employers liability, sudden and accidental pollution liability, cross liability with severability of interest clause. Such insurance shall be written on an

occurrence basis with limits not less than Two Million Dollars (\$2,000,000) per occurrence, an aggregate limit of not less than \$2,000,000 within any policy year. In addition, Automobile Liability insurance with a limit not less than Two Million Dollars (\$2,000,000) shall be maintained for all vehicles owned, rented, leased or borrowed by Maintenance Provider. The Customer shall be listed as an additional insured on such Commercial General Liability policy and copies of the certificates of insurance shall be delivered to the Customer prior to commencement of the Term. Maintenance Provider shall provide the Customer with not less than thirty (30) days written notice by registered mail prior to cancellation of such policies if it is aware of same.

15. Entire and Binding Agreement: This Agreement shall constitute the entire agreement between the parties, and all prior representations whether written or verbal are merged herein. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto, provided that this Agreement shall not be assigned by either party without written consent of the other party.
16. No Waiver: No Employee or agent of the parties shall have authority to delete or waive any of the provisions of this Agreement.
17. Confidentiality. For the duration of this Agreement, the parties shall hold in strictest confidence any information and material which is related to either Customer's or Maintenance Provider's business or is designated by either Customer or Maintenance Provider as proprietary and confidential, herein or otherwise. It is understood that this confidentiality clause does not include information which: (i) is now or hereafter in the public domain through no fault of the party being provided the confidential information; (ii) prior to disclosure hereunder, is property within the rightful possession of the party being provided the confidential information; (iii) subsequent to disclosure hereunder, is lawfully received from a third party with no restriction on further disclosure; or (iv) is obligated to be disclosed pursuant to the *Freedom of Information and Protection of Privacy Act*; or (v) is obligated to be produced under order of a court of competent jurisdiction, unless made the subject of a confidentiality agreement or protective order in connection with such proceeding, which the parties in all cases will attempt to obtain. Customer and Maintenance Provider hereby covenant that each shall not disclose such information to any third party without prior written authorization of the other. Maintenance Provider further covenants not to disclose or otherwise make known to any party nor to issue or release for publication any articles or advertising or publicity matter relating to this Agreement in which the name of Customer or any of its affiliates is mentioned or used, directly or indirectly, unless prior written consent is granted by Customer.
18. Non-Solicitation. The Customer agrees that during the term of this Agreement, the Customer will not hire, contract or take away or cause to be hired, contracted or taken away any employee or independent contractor of the Maintenance Provider
19. Relationship of the parties. Nothing contained herein will be construed to create a partnership relationship between the parties or the relationship of employer and employee between the parties or between a party or any of such party's employees or agents and any of the other party's employees or agents. It is the express intent of the parties that no party is an employee of the other party for any purpose, but is an independent contractor for all purposes and in all situations. Each party and its directors, officers, employees and agents may not represent that they are

employees of the other party, nor may they in any manner hold themselves out to be employees of the other party.


20. Non-Exclusivity. Nothing in this Agreement will be deemed to limit or restrict the Maintenance Provider from entering into agreements with any other entity or person with respect to the Services or from offering the Services.
21. Applicable Law / Dispute Resolution: This Agreement shall be governed by and construed under the laws of the Province of Ontario and the federal laws of Canada applicable therein. In the event a dispute arises from or relates to this Agreement and the Parties are unable to settle the dispute between them, the dispute shall be referred to a mutually agreeable mediator within twenty (20) days of a written request for mediation submitted by either Party. The Parties will share the costs of mediation equally and the mediation shall be held in Toronto, Ontario.
22. Arbitration: In the event mediation is not successful, Customer and Maintenance Provider agree that all claims, disputes of other controversies arising out of this Agreement or related thereto, shall be settled by and subject to binding arbitration, with one (1) arbitrator, under the *The Arbitrations Act (Ontario)*. Customer and Maintenance Provider agree that the location of any arbitration proceeding commenced shall be Toronto, Ontario. Customer and Maintenance Provider agree to be bound by the findings and award of such arbitrator finally and without recourse to any court of law other than for the enforcement of the arbitrator's decision or award. Any arbitrator's decision or award may be entered as a judgment in any Court in Ontario having jurisdiction. The prevailing party, as determined by the arbitrator, shall be entitled to any award of its costs, arbitration costs, and reasonable attorneys' fees.
23. Waiver of Subrogation: Maintenance Provider hereby agrees to waive any right of action against Metrolinx in contribution, indemnification or otherwise to the extent that Maintenance Provider has been or can be reimbursed by Insurance. To the extent required, Maintenance Provider will insure that its insurance policies contain provisions permitting this waiver of subrogation.
24. Headings. The paragraph titles of this Agreement are for conveniences only and shall not define or limit any of the provisions hereof.
25. Binding Effect. The provisions hereof shall be binding upon and shall enure to the benefit of the Customer and Maintenance Provider, their respective successors, and permitted assigns.
26. Notices. All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed duly to have been given if personally delivered to the other party or if sent by the certified mail, return receipt requested, postage prepaid or by Federal Express, United Parcel Service or other nationally recognized overnight carrier. All notices or communications between Buyer and Company pertaining to this Agreement shall be addressed as follows:

If to Buyer: Metrolinx
Attention: Director, Bus Fleet and Facilities
6190 Mississauga Road
Mississauga, ON L5N 1A7
Fax: 905-286-1473

If to Maintenance Provider: Nanostruck Technologies Inc.
Attention: Fred Albi
2660 Meadowvale Blvd., Suite 6B
Mississauga, ON, L5N 6M6
Fax: (905) 813-0800


27. Counterparts. Provided that all parties hereto execute a copy of this Agreement, this Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile transmission or other comparable means. This Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory required hereby.

**NANOSTRUCK TECHNOLOGIES
INC.**

Per: 
Name: RAJEEV AGARWAL
Title: CFO
May 8 '2014

I have the authority to bind the Corporation

METROLINX

Per: 
Name: Mike Newman, Manager
Title: Procurement - Operations & Administration

Per: _____
Name:
Title:

I/we have the authority to bind the Corporation